MANUAL

OF

OFFICIAL PROCEDURE

OF THE

GOVERNMENT OF CANADA

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INTRODUCTION

The *Manual of Official Procedure of the Government of Canada* has been prepared to fill a long-recognized need for quick and thorough guidance on the many constitutional and procedural issues on which the Prime Minister, individual ministers or the Government must from time to time exercise discretion and judgement.

The Manual examines the principal elements of government, states the legal position in given situations, and identifies the considerations relevant to decision and discretion in particular circumstances. Precedents are described and evolution outlined. Administrative procedures are defined and representative documents are included as sources or examples. The Manual is designed to be expanded to cover additional areas of interest and new practices arising from changes in law or custom.

The Manual was prepared in the Privy Council Office and is the work of its Special Advisor, Mr. Henry F. Davis, assisted by Mr. André Millar, who are responsible for its form as well as its content.

I do not believe that a guide to procedure of this nature has been produced elsewhere and I am confident that it will be of valuable assistance to my successors in the office of Prime Minister and to all those directly responsible for the process of government in Canada.

L B Pearson

Prime Minister

Ottawa, 1968.

USERS INSTRUCTIONS

The Manual is designed as a quick guide to the principal elements of government.

Subjects are grouped in sections according to governmental function. Sections are divided into chapters which deal with particular aspects of the matter as indicated by the chapter heading.

Chapters are subdivided into parts. Part I "Position" describes the situation where decisions may have to be taken or discretion exercised in stated circumstances. Part II "Background" outlines the pertinent background which has led to the present position. Part III "Procedure" prescribes the administrative action necessary to implement a decision and identifies those responsible for such action. Part IV "Ceremonial" deals with ceremonial where any is involved. A list of appendices appears at the end of each chapter where applicable.

The appendices are in a separate volume. All significant documents referred to in the text and identified by an asterisk are included. These are grouped according to chapters and are repeated where necessary. They include examples or suggested texts of implementing documents as well as background papers. Statutes are not included.

The Table of Contents lists the sections in alphabetical order and gives the page number for each chapter. It is fully descriptive so there is no index. A separate Table in the volume of appendices lists those chapters which have appendices.

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AMBASSADORS, HIGH COMMISSIONERS AND CONSULS

AMBASSADORS, HIGH COMMISSIONERS AND CONSULS

Appointment of Ambassadors, High Commissioners and Consuls — I—POSITION

1. Canadian Ambassadors are selected by the Secretary of State for External Affairs. In cases where the post is of particular importance or if the nominee is outside the Foreign Service the Secretary of State for External Affairs consults with the Prime Minister. Appointments of Ambassadors are brought to Cabinet for approval before formal action is taken. The Prime Minister informs the Governor General in advance of any announcement of the appointment.
2. The same procedure up to this point is followed for the appointment of High Commissioners.
3. When the decision is taken, the Department of External Affairs requests the Secretary to the Governor General to obtain the informal approval of the Sovereign to the appointment of the Ambassador.
4. This is not done in the case of High Commissioners.
5. On being informed of the Sovereign's approval the Department of External Affairs takes the necessary steps to obtain the agrément of the receiving State.
6. In the case of High Commissioners the receiving Commonwealth Government is told the name of the nominee and given the opportunity to indicate that his appointment would be welcome.
7. When agrément has been granted, the Secretary of State for External Affairs sends a formal request* for the appointment to the Sovereign through Government House.
8. A letter of credence*, and where appropriate a letter of recall* for the predecessor, are prepared by the Department of External Affairs and transmitted to the Sovereign for signature.
9. High Commissioners appointed to monarchies within the Commonwealth carry letters of introduction* from Prime Minister to Prime Minister. Those appointed to republics carry letters of commission* signed by the Queen addressed to the President. The Queen's approval either informal or formal is not sought for High Commissioners, even those appointed to republics.
10. Announcements of the appointment of Canadian Heads of Mission are made by the Department of External Affairs except in special circumstances when the announcement* may be made by the Prime Minister.
11. On the recommendation of the Secretary of State for External Affairs an order in council* is passed for the appointment of an Ambassador or High Commissioner. A commission* under the Great Seal of Canada evidencing

the appointment as Ambassador or High Commissioner is issued by the Registrar General.

12. Appointments are without fixed term and usually run for three to five years.

13. Special Ambassadors are appointed for ceremonial occasions such as Presidential inaugurations. The Secretary of State for External Affairs will develop the plan for Canadian attendance which will be discussed in Cabinet if thought desirable.

14. The technique of appointing a special Ambassador differs in that the appointment is not normally submitted to Cabinet, no agrément is sought, no order in council nor commission is issued, and there is no notice in *The Canada Gazette*. In other respects the procedures are the same including the issue of a letter of credence in cases where credentials are required by the receiving State.

15. The Department of External Affairs is responsible for the agrément for foreign Ambassadors appointed to Canada. The Secretary of State for External Affairs consults the Prime Minister in cases where he considers this desirable, then asks Government House to obtain the Queen's informal agreement to the appointment. Subsequently a formal submission* signed by the Secretary of State for External Affairs is sent to the Queen for approval.

16. In instances where a Commonwealth country informs us of the name of the person they intend to appoint as High Commissioner to Canada, the Secretary of State for External Affairs is responsible for giving the Canadian Government's assent after discussion with the Prime Minister in cases where he judges this to be desirable. This usually takes the form of a message intimating that the Canadian Government would welcome the appointment of the person mentioned.

17. Consuls General, Consuls and Vice-Consuls are appointed by order in council* on the recommendation of the Secretary of State for External Affairs. In the case of a Consul General the appointment is submitted to Cabinet. In all three cases a commission evidencing the appointment is issued under the Seal of the Registrar General.

Appointment of Ambassadors, High Commissioners and Consuls

II—BACKGROUND

1. The extent to which the Prime Minister and Cabinet are involved in the selection and appointment of Canadian Ambassadors and High Commissioners has varied. With the development of the Foreign Service the appointment of career officers to these posts is now usually treated as a departmental posting. However Cabinet approval continues to be sought.

2. The Letters Patent of the Governor General empower him to act for the Sovereign in the appointment of Ambassadors but it was specifically agreed at the time they were approved that this function would not be taken over by the Governor General without prior consultation with the Sovereign. The Sovereign is therefore always consulted informally as to the acceptability of the ambassadorial nominee and subsequently approves a formal submission* for the appointment from the Secretary of State for External Affairs. Letters of credence* and of recall* are also always signed by the Sovereign. They are normally dated from London but in 1964 one was signed by the Queen and dated in Ottawa. Letters of credence may be in either official language depending on the mother-tongue of the appointee or the official language of the receiving State.

3. There is no legal justification for the order in council* purporting to appoint an Ambassador since the appointment has already been made through the formal submission* approved by the Sovereign who in addition signs the appointee's letters of credence*.

4. There is no consistent practice throughout the Commonwealth regarding the need to inform the receiving Government in advance of the selection of a nominee for the post of High Commissioner. Some members (e.g., United Kingdom) only inform the receiving Government that the appointment is made, and this sometimes after a public announcement.

5. It has been the Canadian practice however to inform the receiving Government in confidence of the intention to make the appointment to give an opportunity to indicate that the appointment of the nominee would be welcomed.

6. The Sovereign has not been consulted or informed on the intended appointment of High Commissioners as they are regarded as intergovernmental representatives. However now that the republics within the Commonwealth require Head of State letters of commission it is for study whether the Queen should not be consulted in such cases as in the case of Ambassadors since the theory that a High Commissioner represents the Government rather than the Head of State no longer has practical significance.

7. The draft international convention on diplomatic practice, adopted in 1961 in Vienna, recognizes that High Commissioners have the same status as Ambassadors.

8. The announcement* of the appointment of an Ambassador or High Commissioner is usually made by the Prime Minister if the appointee is a former member of the Government, otherwise it is made by the Secretary of State for External Affairs.

9. The appointment of special Ambassadors for ceremonial occasions is not normally examined in Cabinet but in instances of special importance this may be considered desirable, particularly if the receiving State requests representation at the ministerial level.

10. The Prime Minister is consulted in important cases before the Queen's agrément is sought to the appointment of a foreign Ambassador. In other cases he is kept informed.

11. The same applies for High Commissioners. However, as all Commonwealth countries have not adopted the practice of giving the receiving Government the opportunity to react to their selection, it could not be said that the traditional right to decline to accept a specific nominee, which is carefully preserved in the case of Ambassadors, has become the practice in the case of High Commissioners. Now that the position of a High Commissioner is equated to that of an Ambassador, and that many carry the Sovereign's letter of commission*, there is less ground for contending that the intimate nature of the Commonwealth association and the special character of their duties make the diplomatic formality of agreement undesirable and unnecessary. There is little reality to the contention that the close association of the Commonwealth renders it unnecessary to obtain the prior agreement of the receiving Government to the person selected. On the one hand our relations with some Commonwealth countries are not as close, in fact, as they are with some countries with whom we exchange Ambassadors, and on the other hand it is illogical to assume that it would damage our relationship to allow Commonwealth countries to express themselves on the intended appointee, a privilege accorded to all "foreign" countries. If there is any substance to the idea that High Commissioners enjoy the closest relations with the receiving Government there is valid ground for assuring that the appointee will be welcome.

12. Consular appointments are generally made from within the Department of External Affairs. Consulates General however have considerable significance, and rank in importance with independent diplomatic missions. Appointment to these posts therefore merits the attention of the Prime Minister or the Government, particularly when the appointee is from outside the Department of External Affairs or the Public Service.

Appointment of Ambassadors, High Commissioners and Consuls

III—PROCEDURE

1. The Department of External Affairs is responsible for preparing the formal recommendation* for the appointment of an Ambassador, his letter of credence* and his predecessor's letter of recall*, all of which are signed by the Sovereign. That Department is also responsible for preparing the letter of commission* or of introduction* for a High Commissioner, to be signed by the Sovereign or the Prime Minister. The recommendation for an order in council* appointing a Consul General, Consul or Vice-Consul is also prepared by the Department.

2. The Department of External Affairs prepares the letter of reply* which the Prime Minister may wish to send after receiving a High Commissioner's letter of introduction.

AMBASSADORS, HIGH COMMISSIONERS AND CONSULS

Appointment of Ambassadors, High Commissioners and Consuls

1. The Governor General usually receives Canadian Ambassadors and High Commissioners before their departure to take up their appointment. They are also received by the Prime Minister.

AMBASSADORS, HIGH COMMISSIONERS AND CONSULS

Appointment of Ambassadors, High Commissioners and Consuls — APPENDICES

Formal submission made to Sovereign for appointment of Ambassador

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CABINET

CABINET

Description and Legal Status of Cabinet I—POSITION

1. The Cabinet is the creation of constitutional evolution; it is not established by law. It is composed of persons selected by the Prime Minister to join with him in advising the Sovereign on policies for governing the country and to take collective responsibility for so doing. Convention requires that members of the Cabinet be in Parliament. Convention in recent years also requires that they (apart from the Leader of the Government in the Senate) be in the House of Commons to answer for matters of policy there, rather than in the Senate.

2. If the persons selected are not already Privy Councillors they must become members of the Privy Council since, in principle, it is as members of the Privy Council that they advise the Sovereign. Normally they are designated by the Prime Minister to be ministers in charge of departments, as provided by law. They may, however, not be in charge of a department and simply be ministers without portfolio.

3. The Prime Minister's freedom of choice for his Cabinet is usually circumscribed by considerations of a political nature relating to geographic and other representation in the Cabinet. These considerations are, however, for the Prime Minister alone to judge and weigh in the light of his assessment of the personal and political factors involved.

4. The tenure of office of a Cabinet minister depends on the Prime Minister. Should the Prime Minister cease to be in office for whatever cause the Cabinet as such is dissolved. The Prime Minister may ask for the resignation of any minister or ministers or recommend their replacement at any time, and their resignation is subject to his approval.

5. Members of the Cabinet take seniority after the Prime Minister according to the date on which they were first sworn to the Privy Council, regardless of portfolio.

6. The Cabinet operates under the related principles of secrecy and solidarity to maintain the atmosphere necessary for free discussion and governmental stability.

7. Cabinet is a policy-making body not an executive agency. Decisions are translated into action either by legislation or order in council, or by the action of some minister, department or agency already empowered to act.

CABINET

Description and Legal Status of Cabinet II—BACKGROUND

1. The Cabinet evolved in Canada from the Executive Council on the basis of the United Kingdom pattern of the Nineteenth Century. This resulted in the Privy Council being distinguished from the Cabinet and the gradual recognition that the presence of the Governor at Cabinet was inappropriate. This was acknowledged in 1878 when new letters of instruction were issued to the Governor General taking into account objections which had been raised to the former wording which had failed to recognize the constitutional freedom of Canada and the principle of ministerial responsibility. The new instructions placed the Governor General in a position analogous to that of the Sovereign in relation to Cabinet. This was carried to its conclusion in 1926 by the Imperial Conference.

2. All members of the Cabinet are first summoned and sworn to the Privy Council if they are not already members.

3. There is no written requirement that Cabinet ministers be members of Parliament but those who are not in the House of Commons or Senate stand for election at an early opportunity. If they cannot get elected custom requires that they do not remain in the Cabinet.

4. Cabinet ministers have sat in the Senate, as department heads as well as ministers without portfolio and have been acting ministers, even Acting Prime Minister. Now it is exceptional for a minister who is head of a department to be in the Senate. In the two most recent instances (Rhodes, 1935 and McCutcheon, 1963) Parliament was not in session at the time. Senator G. D. Robertson (Minister of Labour, 1930-1932) was the last such minister to sit in the Senate during sessions of Parliament.

5. All heads of departments are now in the Cabinet although there is no legal requirement for this. In the past other appointments also have carried Cabinet membership from time to time, and until 1930 ministers without portfolio were not regular members of the Cabinet. In the present practice all ministers are members of the Cabinet even if named to posts without departmental responsibilities or ministers without portfolio.

6. A minister is appointed on the recommendation of the Prime Minister on whom his continuation in office depends. The death or resignation of a Prime Minister dissolves his ministry but ministers remain in office until a new Government is formed. A Prime Minister may ask for a minister's resignation or terminate his office by recommending his dismissal or the appointment of a successor. The Governor General will not accept a minister's resignation without the Prime Minister's recommendation.

7. The relative precedence of ministers other than the Prime Minister is not based on the portfolio they hold but is determined by seniority according to the date and order in which they were first sworn to the Privy Council. The order in which they are sworn is decided by the Prime Minister. Changes of portfolio do not affect this seniority. Ministers without portfolio rank with other ministers according to seniority as Privy Councillors.

8. The correct interpretation of the conventions of Cabinet government has always been open to argument. The two principles which have been regarded as established are collective responsibility, and secrecy and confidence. A Cabinet decision is binding on all members. A minister must defend a decision if called upon and cannot excuse himself on the grounds that he was outvoted or disagreed with the decision. If he is not prepared to assume his share in the collective responsibility of the Cabinet, his alternative is to resign. It follows that it is quite improper for one minister to claim or disclaim personal responsibility for any part of a decision.

9. The Privy Council oath of secrecy is applicable to Cabinet proceedings. Disraeli reported fully to the Queen on Cabinet discussions identifying the varying opinions of ministers. Gladstone however took the view that if Disraeli mentioned to Queen Victoria any colleagues who opposed him in Cabinet "he was guilty of great baseness and perfidy".[1] A limited exception to the rule of secrecy is made to permit ministers to explain their reasons for resigning. This is granted by the Governor General on the recommendation of the Prime Minister, and covers only the specific occasion for which the permission was granted.

[1] John Morley, *Life of William Ewart Gladstone,* Vol. II (London, 1903), p. 575.

CABINET

Meetings of Cabinet

I—Position

1. Meetings of Cabinet are held on the instructions of the Prime Minister. All ministers in Ottawa are expected to attend. The Prime Minister or in his absence the Acting Prime Minister presides over Cabinet meetings. Meetings are held where the Prime Minister indicates and have from time to time been held outside Ottawa*.

2. An agenda for each meeting is prepared by the Secretary to the Cabinet in consultation with the Prime Minister. It is circulated in advance to ministers together with the supporting documents for the items listed. Items not on the agenda cannot under the procedural rules of the Cabinet be brought up except in cases of extreme urgency and with the Prime Minister's agreement.

3. Ministers send the Secretary a memorandum on the question they wish to have considered by Cabinet. It will usually be referred to the appropriate Cabinet committee for study and report. The recommending minister is responsible for having his proposals cleared with Treasury Board and the Department of Finance, as required, if there are financial implications.

4. Parliamentary Secretaries do not attend Cabinet meetings. Officials may be summoned to Cabinet meetings to give information on particular matters although this is most unusual.

5. The Secretary attends assisted by an Assistant Secretary. Minutes are kept and records of Cabinet decisions are prepared.

6. Cabinet transforms itself into the Committee of the Privy Council in order to pass formal advice to the Governor General which, on his approval, becomes an order in council.

7. Meetings of Cabinet are secret and informal. There is usually no public announcement of meetings. Any announcements after meetings are made by the Prime Minister at a press conference or by press release, or can be made by the responsible minister.

8. Commonwealth Prime Ministers and some Heads of State have been invited to special Cabinet meetings*. They have been accompanied by ministers, diplomatic representatives and senior officials.

Meetings of Cabinet II—BACKGROUND

1. There are no fixed rules regarding Cabinet meetings. They are held when and where the Prime Minister wishes and as often as he considers necessary. Each Administration usually develops its own pattern for meetings in Ottawa, holding them on regular days. When Parliament is in session meetings are usually held in the Centre Block, otherwise in the Privy Council Chamber.

2. All ministers are expected to attend unless they are absent from Ottawa. The office of the Secretary to the Cabinet informs each minister's office by telephone of the time and place of each meeting.

3. Meetings can be held outside Ottawa* when the Prime Minister wishes. This was more frequent in the Nineteenth Century than now, but is still not unknown. In 1950 a Cabinet meeting was held on a train taking the Prime Minister to Toronto. Eighteen ministers attended. In 1959 eighteen ministers attended a meeting in Halifax and twenty were present at Cabinet in the Citadel in Quebec in 1961.

4. The agenda for Cabinet is drafted by the Secretary on the basis of items submitted by the Prime Minister, ministers or by the Secretary. When the agenda is approved by the Prime Minister it is distributed to all ministers before the meeting, together with all supporting material for the items included.

5. Items not on the agenda cannot be discussed unless the Prime Minister has agreed that they are of extreme urgency. There have been exceptions to this rule.

6. An item is normally left off the agenda if the minister who submitted it is to be absent from the meeting.

7. Most items submitted by ministers for Cabinet consideration are first referred to the appropriate Cabinet committee by the Secretary. Exceptions are made in the case of routine or clearly political items and in cases of urgency. The committee's report is then attached to the minister's memorandum for distribution when the item is on the Cabinet agenda.

8. The following are amongst the usual conclusions of Cabinet. The recommendation may be approved, modified or rejected. If approved, an order in council may, if legally necessary, be passed to implement the decision. Note may simply be taken of discussion of the proposal or it may be decided to refer it back to the original Cabinet committee or to a different one for re-examination. The item may be referred to Treasury Board or to a committee if it came direct to Cabinet. The item may be deferred or presented by the acting minister if the responsible minister is absent.

9. When Cabinet decides to take executive action by order in council, it is considered to be a meeting of the Committee of Council when it passes the order which is subsequently approved by the Governor General. There is no formality involved in this transition, ministers present are simply recorded to have been acting in their capacity as Privy Councillors.

10. The Secretary and one Assistant Secretary usually attend Cabinet meetings. The Assistant drafts the minutes and the records of decision for the Secretary's approval.

11. Distinguished visitors to Ottawa such as Commonwealth Prime Ministers, the President of the United States and the President of France, have frequently been invited to attend meetings with members of the Cabinet*. This is the usual but not invariable practice. High Commissioners and Ambassadors have attended with their principals. This practice may have lost its initial uniformity and become more flexible with the increased number of visitors to Ottawa and with the general elaboration of our international political contacts.

12. The United Kingdom Foreign Minister and the United States Secretary of State have on one occasion each been invited to attend a Cabinet meeting*. Both instances were during periods of grave international concern. With these exceptions, ministers are not otherwise invited unless accompanying their Prime Minister or President.

Meetings of Cabinet III—PROCEDURE

1. The Secretary determines when and where the Prime Minister wishes to hold a Cabinet meeting. He arranges for all ministers' offices to be informed and finds out who will not attend.

2. The Secretary confers with the Assistant Secretaries and the Registrar of the Cabinet on items to be included in the agenda. These are taken from a list of items not included in previous agenda and new items since submitted by ministers. Also included are items initiated by the Prime Minister or by the Secretary. The draft agenda is then presented to the Prime Minister for amendment or approval. The Secretary arranges for it to be circulated to all ministers with the supporting material on each item. The agenda and all supporting documents which have financial implications are also circulated to Treasury Board and the Department of Finance in order to insure that proposals have been cleared by them as required.

3. The Secretary attends the meeting and assists the Prime Minister in the conduct of business. He keeps notes of the general direction of discussion and of decisions. One Assistant Secretary is always present to keep complete notes, prepare draft minutes, and be in a position to follow up with ministers or departments on decisions that require additional information or co-ordination of action.

4. The Secretary approves the minutes and records of decision and arranges for their distribution to ministers.

CABINET

Meetings of Cabinet APPENDICES

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Persons other than ministers or officials who have attended meetings of Cabinet

Committees of Cabinet and Interdepartmental Committees — I—POSITION

1. Cabinet committees, either standing or special and ad hoc, are established to save the time of the full Cabinet and to assure complete study of proposals, including discussion with the responsible officials, who can be asked by their ministers to attend.

2. Cabinet committees are an extension of Cabinet itself and the same rules of secrecy and solidarity apply to their operation, including information regarding their membership and usually even their existence.

3. Cabinet committees are established by directive of the Prime Minister, usually in consultation with Cabinet. Membership is made up exclusively of ministers and the chairman is designated. The terms of reference are established.

4. Parliamentary Secretaries have on occasion attended. The policy as to attendance is a matter for the Prime Minister and the Cabinet, and attendance in specific cases is on the decision of the minister. Parliamentary Secretaries are not members of the committees and should not normally attend in place of their minister.

5. Officials attend Cabinet committees on the invitation of their minister but are not members of the committees. The committee secretary is usually an Assistant Secretary to the Cabinet.

6. As a rule, all memoranda to Cabinet are referred by the Secretary to the Cabinet to the appropriate Cabinet committee for study and report. Items may also be referred to a committee by the Cabinet. Only routine, urgent or clearly political items go direct to Cabinet.

7. The initiating department is responsible for assuring that all proposals having financial implications are examined by the Department of Finance and Treasury Board before submission. Nevertheless, the Secretary to the Cabinet will refer all submissions with financial implications to the Department of Finance and Treasury Board upon receipt in the Privy Council Office.

8. The report of a Cabinet committee on a proposal submitted to it for study is made in the form of a memorandum to Cabinet to which is attached the memorandum prepared by the sponsoring department. Action can only be taken on the basis of the Cabinet record of decision.

9. Interdepartmental committees exist to study proposals of interest to more than one department or agency. They are not an extension of Cabinet or Cabinet committees. There are no definite rules governing their establishment or operation. They may be created by Cabinet and directed to report

to Cabinet or to ministers, or they may be created by ministerial or official directive. The establishing authority determines the terms of reference and the membership. Interdepartmental committees are composed or officials; ministers do not attend.

10. Because of its responsibility for keeping the Prime Minister informed and for insuring that departmental action is co-ordinated, the Privy Council Office has a special interest in interdepartmental committees. The Secretary to the Cabinet frequently acts as chairman.

Committees of Cabinet and Interdepartmental Committees II—BACKGROUND

1. Cabinet committees are now established without a formal document although in the past some were established by order in council.
2. A complete list of Cabinet committees has never been made public and their composition as to ministers and attending officials, has never been disclosed. This position has been frequently and consistently maintained here as in the United Kingdom.
3. Minutes of Cabinet committee meetings are sent only to ministers, except with special ministerial authorization, and are not kept on departmental files.
4. The arrangement for the occasional attendance of Parliamentary Secretaries at Cabinet committee meetings was made in 1966 on a trial basis without establishing a right of attendance. Attendance by Parliamentary Secretaries has not been frequent.
5. Cabinet committees cover virtually the total area of governmental responsibility. It is only in cases of genuine urgency or when a matter is of little real interest to more than one department or is not within the terms of reference of a committee, that an item will be placed directly on the agenda of Cabinet. Routine or clearly political items also go direct to Cabinet.
6. In 1963 arrangements were made to enable Cabinet committees to take decisions rather than simply arrive at agreed recommendations to Cabinet. Such decisions were to be subject to Cabinet confirmation on which action would then be taken. In practice, however, the decisions of Cabinet committees have continued to be in the form of recommendations to Cabinet and the 1963 arrangements are not in fact operational.

Cabinet Records I—POSITION

1. Cabinet discussion is recorded in minutes of Cabinet which state the conclusions reached. Supporting documents are not included. Minutes are available only to ministers to whom they are circulated after each meeting. They are required to be returned to the Cabinet office within 60 days.
2. Cabinet conclusions which require departmental action or information are issued as records of decision which are distributed to interested departments only. These records may be retained on departmental files.
3. Minutes of meetings of Cabinet committees are normally circulated only to ministers and must be returned to the Cabinet office within 60 days.
4. All items on the Cabinet agenda require an explanatory memorandum giving a clear statement of all the relevant facts and considerations and of the decision which is recommended. This memorandum is signed by the minister or ministers making the recommendation. It may include supporting documents prepared by departments and the report of any Cabinet committee which has considered the proposal. These Cabinet documents are circulated in advance of meetings.
5. Standard security clearance does not constitute authority to see Cabinet documents. They are essentially for the use of ministers and should be made available to others only as necessary and on the authority of a minister.
6. The Secretary to the Cabinet and such members of his staff as are authorized by him for the proper discharge of their duties have access to Cabinet minutes and documents.
7. There is no clear policy as yet in Canada governing access to government papers by scholars and others although access to certain departmental papers has infrequently been granted. Such access has never been given for Cabinet records.
8. In Canada ministers are given access to Cabinet minutes only of the period of their membership in the Government. They cannot have access to minutes for any time during which they were not in the Government. It is recognized that former ministers may, on request, have access to Cabinet minutes and Cabinet documents covering their period of office as ministers.
9. Disclosure of Cabinet records is regulated by the Privy Councillor's oath* and by the concept that Cabinet decisions are advice to the Sovereign which may only be revealed with his consent. Permission is sought through the Prime Minister who may recommend to the Governor General that it be granted, limited or refused. Permission is regarded as applying only to the occasion for which it was sought. It is normal to grant permission to resigning ministers to explain the reason for their resignation.

Cabinet Records II—BACKGROUND

1. There have been frequent changes in the administrative arrangements for handling Cabinet records in order to safeguard the limitations on access to them. The controlling principles have been ministerial responsibility and Cabinet, rather than departmental, custody.

2. Access has not occasioned problems of any great significance in Canada where the strict limitations are quite generally accepted.

3. Disclosure is a more controversial matter, usually arising in political circumstances. Political factors have thus influenced the weight given various considerations when defending or criticizing alleged disclosures. This has obscured the identification of generally acceptable criteria for judging the circumstances which justify disclosure. Although political conditions have on occasion similarly obscured the constitutional position in the United Kingdom, there are nevertheless indications that greater recognition is given there to the rule that Cabinet records should not be published or information about their contents made public without the prior approval of the Sovereign given on the advice of the Government of the day.

Cabinet Records III—PROCEDURE

1. Memoranda to the Cabinet are prepared in the department and signed by the minister or ministers responsible. Fifty copies are sent to the Secretary to the Cabinet. They are numbered and become Cabinet documents for distribution to ministers when the item is on the agenda.

2. Action to refer recommendations to Cabinet committees will be taken as necessary by the Secretary to the Cabinet not by the originating minister or department.

3. A resigning minister wishing to obtain authorization to disclose the contents of Cabinet documents or the substance of discussions in Cabinet, addresses a request in writing* to the Prime Minister. The Prime Minister's recommendation to the Governor General should be made by instrument of advice*.

Cabinet Records APPENDICES

Oath of a Privy Councillor

Draft letter from former minister to Prime Minister requesting authorization to disclose Cabinet information

Draft instrument of advice from Prime Minister to Governor General recommending authorization for disclosure of Cabinet information

CABINET

Cabinet Secretariat I—POSITION

1. The title "Cabinet Secretariat" is not generally in current use. The staff which performs the secretarial and administrative duties for the Cabinet, Cabinet committees and the Council is usually referred to as the Privy Council Office.

2. In 1940 the duties of Secretary to the Cabinet were enunciated in an order in council which made the first concurrent appointment of a Clerk of the Privy Council and Secretary to the Cabinet. The duties of both offices have since been performed by the same person. Similarly those appointed to fill the Public Service position of Assistant Secretary have also been appointed by order in council to be Assistant Clerks of the Privy Council.

3. The Cabinet Secretariat consists of the Secretary and Assistant Secretaries who are assisted by additional officers. With the exception of the Secretary, the members of the Secretariat are either on the strength of the Privy Council Office or are on rotation from another department.

4. The Cabinet Secretariat is responsible for the secretarial work of the Cabinet and Cabinet committees. It also services interdepartmental committees providing chairmen as well as secretaries.

5. The Secretariat assists in co-ordinating proposals of concern to several departments. This involves interdepartmental consultation, either in committee or direct, and briefing of the Prime Minister and ministers before Cabinet discussion.

6. With the exception of a unit which handles the formalities regarding orders in council and other formal Council matters, the staff of the Privy Council Office is not divided into separate Cabinet and Council sections.

ELECTIONS

ELECTIONS

General Elections I—POSITION

1. The dissolution of Parliament is the preliminary to a general election. The Prime Minister will want to be in a position to announce his plans for an election as soon as the Governor General grants dissolution. He should therefore be prepared to submit for approval an order in council* fixing the date of the writs, polling day and the date for the return of writs.
2. Writs* are normally dated and issued the day of dissolution but the law does not specify any delays either maximum or minimum.
3. Polling day must be a Monday, or if Monday is a holiday, Tuesday. Because of statutory delays for notice of appointment of enumerators and for enumeration, polling day cannot legally be earlier than the 55th day after the issue of writs. In practice about 60 days have usually been allowed.
4. The date for the return of writs must be at least 17 days after polling day. The usual delay has been about 30 days.
5. Parliament is summoned *pro forma* at the time of dissolution for a day not earlier than the date fixed for the return of writs. Parliament could be summoned to meet for business on that day.
6. Nominations close on Monday the 14th day before polling day except in listed districts where they close on the 28th day before polling day.
7. Candidates may be officially declared elected not earlier than the 14th day after polling day, except in the case of uncontested elections when the candidate is declared elected at the close of nominations.

General Elections II—BACKGROUND

1. It is usual to announce* the date of the general election as soon as dissolution has been granted. There is a strong convention that the order in council* fixing the election date should be passed the day that dissolution is granted, but this is not a legal necessity. In 1940 for example, dissolution was on January 25 and the order in council dealing with the issue and return of writs and polling day was not passed until January 27. The Prime Minister nevertheless would normally have selected the election date, the day for the return of writs and for the *pro forma* summoning of Parliament so as to be able to take action to call the election immediately dissolution is granted. When the election is called three proclamations* are issued: one dissolving Parliament, another declaring that writs of election are being issued and a third summoning Parliament to meet on a *pro forma* date. A proclamation* summoning Parliament to meet for business is issued after the election is over.

2. The Chief Electoral Officer is normally consulted before deciding on the date of a general election although there is no legal requirement to do so. This is advisable to assure that the necessary administrative procedures can be accomplished within the selected delays.

3. The legal minimum notice of the intention to appoint enumerators, five days, is usually considered inadequate and about ten days are usually allowed.

   The notice cannot be given until the intention to call an election is announced and therefore if notice is given the day of the proclamation of the issue of writs, five to ten days must be allowed before the statutory period of 49 days for enumeration commences.

4. As the law now stands polling day cannot be earlier than the nearest Monday, or Tuesday if Monday is a holiday, after the 54th day following dissolution and the proclamation of the writs. In practice the period has, since 1930, ranged between 56 and 61 days.

5. The day for the return of writs cannot be before the earliest day on which a candidate can be considered elected; the 14th day after polling day. To this must be added the time necessary to meet the requirement of the *Canada Elections Act* that writs must be sent to the Chief Electoral Officer by registered mail. Allowing two clear days, the earliest date for the return of writs is the 17th day after polling day. The Chief Electoral Officer contends that in order to assure that all writs can be returned by the required date a delay of 30 days is desirable. Present administrative arrangements make it impossible to assure the return of all writs within a shorter period although the number of constituencies where the longer delay is required would be relatively few.

6. The significance of shortening this period only arises if it is desired to be able to summon the new Parliament at the earliest possible date after the election. A review of past practice shows that since 1930 the period between polling day and the opening of Parliament has varied from a minimum of 37 to a maximum of 125 days, while the delay between polling day and the return of writs has varied from 20 to 58 days. In no case therefore, since 1930, was the length of the period between polling day and the return of writs the controlling factor in determining the date of the opening. Even in 1930 when the shortest delay for the return of writs was adopted, Parliament did not open until 21 days later. It might nevertheless be desirable to inaugurate administrative arrangements which would make it practical to adopt the legal minimum delay to make it possible to summon Parliament at the earliest permissible date.

7. Since Parliament is traditionally always on summons a proclamation* is issued on dissolution summoning Parliament to meet after the elections. A date about a week after the return of writs has usually been selected, but this is a formality since it does not determine the actual date of the opening of Parliament which, after the election results are clear, may be summoned for business at a date either before or after that appearing in the initial *pro forma* proclamation. It will, however, be necessary for a new proclamation* to be issued not later than that date, either summoning Parliament for business or again *pro forma* if the date of the opening has not then been decided.

8. Parliament may be opened on the day fixed for the return of writs or any day thereafter as announced by proclamation summoning Parliament for business. At any time after an election when the Prime Minister has been installed or confirmed in office, the proclamation may issue. Only practical considerations regarding the length of time required by members to reach Ottawa affect the minimum notice which must be given. The requirement for Parliament to meet once in each 12 months sets the only maximum limit. This is interpreted to mean that Parliament must meet for business within one year of the date of its last sitting.

9. According to the *Canada Elections Act* the earliest day on which the official addition of the vote can take place is Monday, the seventh day after polling day. A candidate cannot be declared officially elected until after six days after that, thus on the 14th day after election day. Only then can the writ of election be signed and dispatched to the Chief Electoral Officer. However a candidate cannot be declared elected while a judicial recount is pending or taking place. In the case of election by acclamation the writ may be signed and returned at the close of nominations.

10. Upon receipt of the writ the Chief Electoral Officer issues a certificate which he sends to the Clerk of the House and has the notice of election* published in *The Canada Gazette* as required by the *Canada Elections Act*. In practice the Clerk of the House will administer the required oath to a newly elected member as soon as he receives the Chief Electoral Officer's certificate.

General Elections III—PROCEDURE

1. The practicability of holding a general election at dates under consideration is cleared with the Chief Electoral Officer.
2. The Prime Minister selects the date for the general election and after the Governor General has approved the dissolution of Parliament immediately submits an order in council* calling for the issue of writs*, fixing polling day and the date for the return of writs.
3. A proclamation* is issued declaring that writs are being issued and giving the date for their return.
4. An instrument of advice* is prepared recommending that a proclamation issue summoning Parliament *pro forma* at a date selected by the Prime Minister.
5. The proclamation* summoning Parliament *pro forma* is issued.
6. The procedure regarding these steps should be kept in proper sequence. The Prime Minister presents the advice* to dissolve to the Governor General and if it is accepted presents the dissolution proclamation* for the Governor General's signature. The Prime Minister may then formulate the advice for calling the election by having the order in council* passed and he presents this to the Governor General for his approval. He then presents the proclamation* regarding the issue of writs and their return. The instrument of advice* to summon is then presented followed by the consequent proclamation*. The proclamations should be sealed and issued in the proper order. Action should not be taken on the order in council regarding the election until after the Governor General has acted upon the advice to dissolve by signing the dissolution proclamation. The Prime Minister may however take that proclamation to the Governor General when he presents the advice to dissolve. Similarly the four documents necessary for the second phase may all be prepared and submitted at one time in the proper order.
7. The Prime Minister announces* the date of the general election, since this does not appear in the proclamation.
8. When the election results are clear the Prime Minister decides when the new session of Parliament is to open and presents an instrument of advice* to the Governor General for his approval. A proclamation* summoning Parliament on that date for business is then issued.

ELECTIONS

General Elections APPENDICES

Instrument of advice for issue of proclamation dissolving Parliament

Proclamation dissolving Parliament

Order in council authorizing issue of election writs, fixing polling day and date for return of writs

Proclamation declaring that election writs are being issued

Draft instrument of advice for issue of proclamation summoning Parliament *pro forma*

Proclamation summoning Parliament *pro forma*

Prime Minister's announcement of general election

Writ of election

Notice of member's election published in *The Canada Gazette*

Instrument of advice for issue of proclamation summoning Parliament for business

Proclamation summoning Parliament for business

Table of delays in Canadian general elections

Table of delays regarding election by acclamation

ELECTIONS

By-Elections I—POSITION

1. When the existence of a vacancy* through death, resignation or other cause has been recognized by the House of Commons a warrant* is immediately issued to the Chief Electoral Officer for a writ of election.
2. The Chief Electoral Officer is required by law to issue the writ within six months of receipt of the warrant informing him of the vacancy. This is done on the authority of an order in council* which fixes polling day for the by-election.
3. Polling day is customarily almost as soon as legally possible after the issue of the writ although the Government is free to select a later date.
4. No date is set for the return of the writ in a by-election. It is normal for such writ to be returned as soon as possible which can be after the sixth day after polling day.
5. The Canadian Forces voting rules do not apply in by-elections.
6. In an uncontested by-election the candidate is declared elected at the close of nominations.

By-Elections II—BACKGROUND

1. After a vacancy has been recognized by the House of Commons and a warrant issued the Government must authorize the issue of the election writ within six months and at that time select polling day. There is no maximum delay within which the by-election must be held although it has been the practice to hold the by-election within the minimum practical delay after the issue of the writ. This means in effect that the issue of the writ is authorized when the Government has decided that the by-election should take place.

2. It has become the practice, for administrative reasons, to wait until there are two or more vacancies before calling a by-election. This is not, however, necessary.

3. In by-elections, as in general elections, it is customary to allow about ten days for the pre-enumeration period rather than the legal minimum of five days.

4. Polling day is usually set by the same order in council* authorizing the issue of writs. The date selected is customarily near the legal minimum time limit. It would be for consideration whether this regular practice may have created a constitutional convention weakening the unlimited discretion conferred by the law in selecting a by-election date.

5. Administrative arrangements are made to assure the return of writs in by-elections as soon as possible. To this end expenses many times greater than in general elections are incurred for such services as collecting ballot boxes in remote districts, especially when the House is sitting.

6. In practical terms this means that in a by-election unless there is a recount the candidate can be officially declared elected on the seventh day after polling day and allowing time for the writ to be returned to Ottawa, could take his seat on the tenth day after polling day. This would be a period of somewhat more than seven weeks from the issue of the writ depending on the length of the pre-enumeration period.

7. There is no special procedure for administering the oath to a member elected at a by-election. It is, however, customary for him to be introduced when he first takes his seat. This is a formality without legal consequences.

By-Elections III—PROCEDURE

1. When a vacancy has occurred in the House of Commons the Government decides whether to take action* to draw its existence to the notice of the Speaker.
2. An order in council* must be passed calling for the issue of a writ of election within six months of the date of issue of the warrant* to the Chief Electoral Officer. The order in council also fixes polling day.
3. The Prime Minister announces* the date of the by-election, in the House if it is in session.
4. It is customary for the member newly elected at a by-election to be introduced in Parliament by the leader of his party.

ELECTIONS

By-Elections APPENDICES

Notice of vacancy in House of Commons given by Government to Speaker

Speaker's warrant for issue of writ of election

Order in council authorizing issue of writ of election and fixing polling day

Announcement made in House of Commons regarding date of by-election

Press release regarding by-election

Election Offences I—POSITION

1. The *Canada Elections Act* sets out what constitute election offences. These are described as illegal or corrupt practices in the Act. The *Dominion Controverted Elections Act* establishes the grounds for invalidating an election and the procedures to be followed to bring this about. These grounds include electoral offences as described in the *Canada Elections Act.*
2. The Government has no responsibility under law or convention for initiating action in regard to election offences.
3. Candidates or any person who had the right to vote in the election may initiate action to invalidate elections as provided in the *Dominion Controverted Elections Act.* This is done by petition to a court as provided in the Act.
4. The Representation Commissioner can take action to investigate any alleged offence by election officers or the alleged offences committed by any other person as specified in section 70 of the *Canada Elections Act.* If the investigation indicates that the offence may have been committed action to prosecute is taken.
5. The House of Commons may receive petitions to investigate possible election offences by its officers. The responsibility in regard to offences allegedly committed by others is considered to have been transferred to the courts under the *Dominion Controverted Elections Act* and the *Canada Elections Act.*
6. The right of a member to sit in Parliament and to vote is not affected by the initiation of any procedure under the *Dominion Controverted Elections Act* until a decision is reached invalidating the election.
7. If allegations in a petition under the *Dominion Controverted Elections Act* are upheld the election may be invalidated, and if the irregularity appears to be an offence covered by the *Canada Elections Act* the judge may direct that prosecution be instituted.
8. If a person other than a candidate is found guilty under the *Canada Elections Act* of an offence which would invalidate an election, a petition must be lodged under the *Dominion Controverted Elections Act* to declare the election null and void.
9. If a candidate is found guilty of an offence under the *Canada Elections Act* which would disqualify him for membership, the House of Commons must take action to acknowledge the vacancy.

Election Offences II—BACKGROUND

1. The *Canada Elections Act* determines the procedure for holding elections in Canada and establishes what constitute illegal and corrupt practices of which candidates, election officers and others may be guilty. The Act prescribes punishment by fine and/or imprisonment.
2. In addition to the prescribed punishment a person found guilty of a corrupt or illegal practice is disqualified from membership in the House or from being appointed to a Government office and is disenfranchised, for a period of seven or five years.
3. The Representation Commissioner is empowered to investigate and cause prosecution to be taken in the case of election offences by election officers. Election officers include all persons having any duty to perform under the *Canada Elections Act.*
4. The right of the House of Commons to receive a petition regarding alleged election offences by an official of the House was recognized by the Speaker in 1926*, but it is for determination whether this right persists in view of the statute empowering the Representation Commissioner to take such action.
5. There was a case in 1965 when the House adopted a motion by an opposition member requesting the Chief Electoral Officer to investigate charges of election irregularities. The Representation Commissioner, who was then temporarily exercising the duties of the Chief Electoral Officer, reported that he was unable to carry out the requested investigation and the member then asked the Government to institute a judicial inquiry. The Government immediately passed an order in council*, which was tabled in the House, appointing a Commissioner under the *Inquiries Act.* The House had adjourned when the Commissioner completed his report and was subsequently dissolved and there is no record of further action on the matter.
6. The *Dominion Controverted Elections Act* establishes the procedure for the courts to determine whether a candidate who has been declared elected should continue to sit, or should be replaced by another candidate, or a new election held. Amongst the causes which can be entertained by the court are illegal or corrupt practices as described in the *Canada Elections Act.*
7. The court informs the Speaker of the decision on an election petition. The Speaker will then take the necessary action* to confirm or alter the election return or to issue a warrant for a new election. The decision on the petition may be appealed to the Supreme Court of Canada.
8. The disqualifications from membership in the House and from Government office and disenfranchisement imposed by the *Canada Elections Act* apply to those found guilty of an election offence under the *Dominion Controverted Elections Act.*

Election Offences APPENDICES

Announcement made by Speaker following receipt of report from court before which a petition for invalidating a member's election was tried

Order in council for commission of inquiry to investigate alleged election offences

Ruling of Speaker of House of Commons made in 1926 regarding trial of controverted elections

ELECTIONS

Election Officials I—POSITION

1. The Chief Electoral Officer is appointed by resolution* of the House of Commons introduced by or on behalf of the Prime Minister and seconded by another minister. The salary is fixed by statute.
2. The appointment is valid until retirement, the Chief Electoral Officer being removable only for cause on an address by both Houses of Parliament.
3. The Chief Electoral Officer has the rank of a deputy minister and communicates with the Governor in Council through the Secretary of State. The Prime Minister and other ministers communicate directly with the Chief Electoral Officer on election matters.
4. Under the *Representation Commissioner Act* of 1963, which is subject to review in 1968, the Chief Electoral Officer is under the direction of the Representation Commissioner through whom he reports to Parliament.
5. The Chief Electoral Officer's primary responsibility is for the administrative conduct of elections.
6. If the Chief Electoral Officer dies or is incapacitated while Parliament is not sitting a substitute may be appointed by the Chief Justice on the recommendation of the Secretary of State to carry out the duties until Parliament next meets and can make a permanent appointment.
7. A returning officer is appointed for each electoral district by order in council* recommended by the Secretary of State. The returning officer must reside in the district for which he is appointed. The appointment is without a term and the incumbent can be removed by order in council* for cause as stated in the *Canada Elections Act*. A returning officer requires the permission of the Chief Electoral Officer to resign.
8. The returning officer appoints the election clerk in his district and is responsible, at the local level, for the administrative conduct of the elections.
9. In 1963 the position of Representation Commissioner was established by statute for the purpose of recommending methods of reducing the time required for the holding of federal elections. The report is to be submitted to the Speaker by June 1968. The statute is to be reviewed in 1968 by a committee of the House to make recommendations regarding the provisions of the statute.

Election Officials II—BACKGROUND

1. On the last two occasions there has been inter-party consultation before presenting the resolution* for the appointment of a Chief Electoral Officer. The resolutions were adopted without debate.
2. The distribution of responsibilities between the Chief Electoral Officer and the Representation Commissioner reflects the special situation in regard to the experience of the present incumbents, and is subject to review.
3. There is no provision in the existing statute for the appointment by Parliament of a temporary or acting Chief Electoral Officer. Hence in the event of a vacancy a permanent appointment, valid until the incumbent reaches retirement age, must be made.
4. The Cabinet may develop procedures for selecting those to be nominated for appointment as returning officers. There is no formal or uniform technique for this selection. Although the appointments are on the recommendation of the Secretary of State they are usually brought to the attention of the Cabinet.

1. The Prime Minister will consult with other parties to the extent he considers desirable before presenting the resolution* for the appointment of a Chief Electoral Officer to the House. He will decide who is to second the motion.
2. If a Chief Electoral Officer dies or is incapacitated while Parliament is not sitting the Prime Minister will decide who should be recommended by the Secretary of State to the Chief Justice to carry on the duties until Parliament meets. The Prime Minister must take action within 15 days of the commencement of the next session to recommend a permanent appointment.
3. The Prime Minister will wish to decide how those to be recommended to Council by the Secretary of State for appointment* as returning officers are to be selected. In particular he will wish to assure that vacancies are filled to avoid possible election delays.

FUNERALS AND MEMORIAL SERVICES

FUNERALS AND MEMORIAL SERVICES

Sovereign I—POSITION

1. The Government decides who will represent* Canada at the funeral of the Sovereign.
2. The Government decides whether to hold a memorial service* in Ottawa on the day of the funeral. Such a service would be the responsibility of the Secretary of State in close consultation with the Prime Minister.
3. In cases where Canadian representation* at the funeral of a member of the Royal Family is contemplated, consideration should be given to the designation of the High Commissioner in London, having in mind the level of representation by other Commonwealth countries.
4. There are no helpful precedents regarding memorial services for members of the Royal Family. Each case would have to be studied individually having in mind the personal connection of the deceased with Canada.
5. The Prime Minister sends messages* of condolence to the Sovereign and to other members of the Royal Family upon the death of the Sovereign or a member of the Royal Family.
6. Parliament adopts loyal addresses* of condolence to the Sovereign and approves messages* of condolence to other members of the Royal Family. The Prime Minister may also move the adjournment of the House as a gesture of respect in the event of the death of the Sovereign or a member of the Royal Family.
7. The Prime Minister will make a public statement* of condolence on the death of the Sovereign or of a member of the Royal Family.
8. The Prime Minister will take steps to declare a period of official mourning. A national holiday to be observed as a day of mourning is proclaimed* for the day of the funeral. Decisions should be taken on other details of the observance of mourning. The flag regulations provide for flags to be at half-mast.

FUNERALS AND MEMORIAL SERVICES

Sovereign II—BACKGROUND

1. On the last three occasions the High Commissioner in London has been the official representative at the Sovereign's funeral. In 1952 two ministers (who were in Europe at a conference) and the Governor General-designate also attended as members of the official party.
2. It is likely that ministerial attendance would in future be considered desirable whether or not High Commissioners in London are regarded as the official Commonwealth representatives.
3. On the last two occasions a period of mourning, similar to that adopted in the United Kingdom, has been declared in Canada. This does not involve a holiday and is decided in Cabinet and announced by the Prime Minister.
4. A national day of mourning to be observed as a holiday throughout Canada by institutions covered by the *Bills of Exchange Act* and by the Public Service is proclaimed for the day of the funeral. It is customary to pass an order in council* to authorize the issue of the necessary proclamation*.
5. In 1910, when Edward VII died, a simple memorial service was organized on Parliament Hill with the Governor General and members of the Government in attendance. On the death of George VI in 1952 a more elaborate national ceremony* was held in the Hall of Fame of Parliament. This was organized by the Secretary of State.
6. In view of the increased personal contacts of members of the Royal Family with Canada it would be desirable to examine what should now be done regarding official representation at funerals and the holding of memorial services here. There is no consistent pattern of Canadian action in the past although the High Commissioner did represent Canada at the funeral of Queen Mary.

Sovereign III—PROCEDURE

1. The Prime Minister will select the official representatives* to attend the funeral of the Sovereign.
2. The Prime Minister will consult Cabinet to decide whether to hold a memorial service* for the Sovereign and instruct the Secretary of State to make the necessary arrangements.
3. The Prime Minister will decide whether and by whom Canada is to be represented at the funeral of a member of the Royal Family.
4. The desirability of holding a memorial service for a member of the Royal Family should be examined. The Secretary of State would be responsible for the arangements.
5. Messages* of condolence from the Prime Minister should be sent by cable as soon as possible. These are usually released subsequently to the press.
6. The loyal address* or message of condolence* should be introduced in Parliament at the first convenient sitting after the death of the Sovereign or of a member of the Royal Family.
7. If Parliament is sitting the Prime Minister will decide whether to move an adjournment.
8. In addition to the announcement* which the Prime Minister will make to Parliament if it is in session, the Prime Minister would also wish to make a public statement* on the death of the Sovereign or of a member of the Royal Family.
9. A declaration is issued regarding the period of official mourning.
10. An order in council* is passed authorizing the issue of a proclamation* declaring the day of the funeral as a national day of mourning to be observed as a holiday.
11. The Prime Minister will be kept fully informed of all developments regarding the official observances following the death of the Sovereign or of a member of the Royal Family. In particular he must approve the arrangements for any official memorial service.

FUNERALS AND MEMORIAL SERVICES

Sovereign IV—CEREMONIAL

1. There is no fixed precedent for arrangements for a memorial service. The Prime Minister would therefore wish to keep in close touch with plans for any future memorial service to assure that they meet with his approval. The programme* for the 1952 service is included in the appendices.

FUNERALS AND MEMORIAL SERVICES

Sovereign APPENDICES

Message of condolence from Prime Minister to Sovereign on death of previous Sovereign

Message of condolence from Prime Minister to Sovereign on death of member of Royal Family

Message of condolence from Prime Minister to Sovereign's consort on death of Sovereign

Public statement by Prime Minister on death of Sovereign

Public statement by Prime Minister on death of member of Royal Family

Statement made in Parliament by Prime Minister on death of Sovereign, including:

(i) address of condolence and loyalty from Parliament to new Sovereign

(ii) message of condolence from Parliament to late Sovereign's consort

Order in council authorizing proclamation for mourning on death of Sovereign

Proclamation for mourning on death of Sovereign

Programme for 1952 Canadian memorial service in Ottawa on occasion of death of Sovereign

Canadian representatives at funerals of George V (1936), George VI (1952) and Queen Mary (1953)

FUNERALS AND MEMORIAL SERVICES

Canadian Dignitaries I—POSITION

1. In practice the following have been regarded as entitled to State funerals: the Governor General* and a former Governor General*, the Prime Minister and a former Prime Minister*, ministers*. It is notable that the Chief Justice of Canada is not included.

2. There is no accepted definition of what constitutes a State funeral in Canada. It should be regarded as being a funeral which merits official participation at the highest level, organized and financed by the State even though the extent of actual Government involvement in each area, participation, organization and finance, may vary greatly according to the circumstances and the wishes of the family. A State funeral is justified on the ground that the State is a "co-bereaved" because of the position of the deceased.

3. The Prime Minister, after consultation with Cabinet if he considers it desirable, decides whether a State funeral should be proposed and ascertains the wishes of the family of the deceased. The Secretary of State is then instructed to proceed with the arrangements.

4. The Prime Minister will be kept informed of all plans to assure that they conform to the Government's wishes. Since there are no consistent precedents to indicate with any precision the extent of Government participation many decisions will have to be made on each occasion regarding details of the ceremonies, having in mind the status of the deceased and the particular circumstances, including the wishes of the family.

5. The Prime Minister has taken a close personal interest in the arrangements for the State funerals held for the two Governors General who died in office.

6. A former Governor General who was a Canadian is entitled to a State funeral. There has been one instance* of this.

7. Should a Prime Minister die in office the Acting Prime Minister or senior member of the Government holding office pending the formation of a new Administration would take responsibility for supervising the arrangements for the State funeral made by the Secretary of State.

8. On the death of a former Prime Minister the Prime Minister's role is similar to that which he has in the case of a State funeral for a former Governor General.

9. The absence of a State funeral for a Chief Justice cannot be traced to Government decision. Since, as head of the judiciary he ranks third amongst the officers of State, above ministers, Cabinet might wish to give consideration to according honours appropriate to his office.

10. The Prime Minister will ascertain the wishes of the family of a deceased minister regarding a State funeral and place the arrangements in the hands of the Secretary of State.

11. Former ministers have not been accorded State funerals but the Government has participated ceremonially and financially on many occasions. The Prime Minister will wish to consider, possibly in consultation with Cabinet, what should be done in any particular case having regard to all the circumstances, including the wishes of the family.

12. The Government is not responsible for arrangements for funerals of Lieutenant-Governors, or Provincial Premiers or ministers. The Prime Minister will decide according to the circumstances how the Government should be represented.

13. There is no regular pattern for Government participation in funerals of senators, members of Parliament, judges, or senior officials or distinguished private citizens. This will vary according to circumstances, and consultation with the Prime Minister may be desirable.

Canadian Dignitaries II—BACKGROUND

1. The expression "State funeral" is applied in some quarters only to those funerals which include all formal ceremonial observances. There is no statement to explain at what point the elimination of ceremonial elements reduces a funeral to a level where it should not be regarded as a "State funeral". As a rule the Department of the Secretary of State concerns itself only with funerals which it regards as "State funerals" because they include all formal ceremonial observances. Other agencies such as the Prime Minister's Office are left to organize funerals where full ceremonial is not planned. It would make for greater efficiency to interpret the responsibility for State ceremonial given by statute to the Secretary of State as covering all Government ceremonial of every degree of formality. Then, whatever the decision of the Prime Minister or the Cabinet regarding the extent of Government involvement in the areas of participation, organization or finance, implementation would consistently be by the Department of the Secretary of State. A body of precedent would thus be developed in one agency which would then be in a position to give advice on what would be appropriate in each instance and thereby facilitate equitable decisions.

2. Whoever is responsible for arranging Government participation in funerals or memorial services should assure that the Prime Minister is kept fully informed and that all important points carry his concurrence.

3. The State funerals for Lord Tweedsmuir and for General Vanier* were organized by the Department of the Secretary of State and were similar in all essential elements.

4. It has not been the practice to arrange a memorial service in Canada for a former Governor General being buried in England.

5. It is recognized that a former Governor General who was a Canadian should receive a State funeral. The administrative arrangements for planning such a funeral are similar to those for the State funeral of a Governor General. When Mr. Massey* who had been Governor General from 1952 to 1959 died in 1967 while on a visit to London his body was flown back to Ottawa where a State funeral was held prior to the burial in his home community.

6. Two Prime Ministers have died while in office. Thompson died during a stay in the United Kingdom in 1894. After lying in state in the United Kingdom his body was taken to Halifax where burial took place following a funeral service attended by the Governor General and the Cabinet. Macdonald's death occurred in 1891 in Ottawa while Parliament was sitting. He was buried in Kingston following a State funeral in the capital.

7. A State funeral has, as a rule, been arranged for former Prime Ministers being buried in Canada.

8. When Viscount Bennett died and was buried in England in 1947 no official memorial service was held in Canada. The Government was however represented at the funeral by the Acting High Commissioner in London and the Ambassador to France.

9. There is no evidence that the absence of a State funeral for a Chief Justice is based on a Cabinet decision. As third in the order of precedence, above ministers who are given State funerals, and as someone who will likely have acted as Administrator, the entitlement of a Chief Justice or former Chief Justice to this recognition should be considered.

10. The pattern of State funerals for ministers is reasonably consistent. There have been problems however when, because a full State funeral has been declined, arrangements for Government participation have not been placed in the hands of the Secretary of State.

11. There is no consistent pattern of Government participation or involvement in funerals or memorial services for former ministers. This has varied from sending a wreath, and sometimes not even that, to attendance by the Prime Minister, ministers or representatives of the Government and provision of ceremonial and financial support approaching the level of a State funeral. This has depended on the circumstances and particularly the wishes of the family.

12. The Government has usually been represented at the funerals of Lieutenant-Governors and heads of Provincial Governments. There has been consultation with provincial authorities who are responsible for arrangements.

13. There is no consistent pattern of Government involvement in funerals and memorial services for officials or private dignitaries. A decision is taken in each case on an examination of the circumstances.

Canadian Dignitaries III—PROCEDURE

1. In cases where there is an entitlement to a State funeral the Prime Minister will determine by direct communication with the family of the deceased, or otherwise, whether a State funeral is desired. If it is not he will determine, in consultation with the family, and with Cabinet if he so wishes, what the Government's involvement should be, in particular what the Government representation will be.

2. The Prime Minister will have instructions issued to the Secretary of State to take charge of arrangements*. The Clerk of the Privy Council will assure that these include adequate provision for keeping the Prime Minister informed at all stages of planning.

3. If a period of mourning is to be recognized it will be declared by the Prime Minister or announced by proclamation. The Prime Minister may in addition declare a national day of mourning, not involving a holiday, for the day of the funeral.

4. In cases where there is no entitlement to a State funeral the Prime Minister will decide on the extent of Government involvement, in particular Government representation. If possible the Secretary of State should provide a review of precedents in similar cases to facilitate a decision. The Secretary of State should be made responsible for implementing the decision.

5. In the case of Lieutenant-Governors and heads of Provincial Governments, the Prime Minister will decide on Government participation after determining the expectations of the provincial authorities and consulting Cabinet.

Canadian Dignitaries IV—CEREMONIAL

1. The ceremonial arrangements for funerals and memorial services are determined according to the circumstances in each instance. The arrangements* made in the past for certain State funerals are described in the appendices.

Canadian Dignitaries APPENDICES

Details of State funeral for Governor General

Details of State funeral for former Governor General who was a Canadian

Arrangements for State funeral for former Prime Minister

Arrangements for State funeral for Cabinet minister

Non-Canadian Dignitaries I—POSITION

1. International practice prescribes that an Ambassador who dies at his post should be accorded a State funeral* by the host country. This has been done in Canada.
2. Appropriate services or facilities would also have to be arranged by the Government should a foreign Head of State, Head of Government or other foreign dignitary die in Canada.
3. As a rule the Canadian Government does not arrange memorial services in Canada for non-Canadian dignitaries who die outside of Canada. The Government may however decide to participate in, or be represented at, a memorial service* arranged for the deceased by the diplomatic mission of his country, or otherwise.
4. The Canadian Government will decide whether to be represented at the funeral abroad of a non-Canadian dignitary. The level of representation will be influenced by the plans of other similarly placed countries.
5. Messages* of condolence are sent according to the circumstances, the degree of connection with Canada and the practice of similarly placed nations being taken into account.
6. The flag regulations state when the flag is to be flown at half-mast and provide for this honour to be accorded in other cases when the Government judges it proper.
7. Other marks of recognition to deceased non-Canadians, such as tributes* in Parliament, a day of mourning, etc., are made when the Government judges it appropriate.
8. In reaching decisions on what should be done on the death of a non-Canadian dignitary the Prime Minister will have the advice of the Secretary of State for External Affairs who should provide as much information as possible on the intentions of other similarly placed countries.

Non-Canadian Dignitaries II—BACKGROUND

1. Several Heads of Mission have died while accredited to Canada. Appropriate honours* have in each case been accorded by the Canadian authorities, arrangements being supervised by the Chief of Protocol.

2. In 1967 the Prime Minister of Jamaica came to Canada for medical treatment and died in Montreal. The Canadian Government aided the Jamaican High Commission in making arrangements for a lying-in-state in Montreal and a memorial service in Ottawa. The body was flown to Jamaica by the R.C.A.F. The Chief of Protocal supervised these arrangements*.

3. An instance of honours being given a non-Canadian dignitary who died here occurred in 1927 when an American pilot accompanying Lindbergh to the 60th anniversary of Confederation was killed.

4. The official memorial service* arranged for Churchill was an exception to the usual practice of leaving arrangements for a memorial service to the foreign mission concerned. Special gestures of respect were also made by the Government when President Kennedy died.

5. The practice in regard to representation at funerals held abroad has varied. The Prime Minister and the Secretary of State for External Affairs attended President Kennedy's funeral and the Prime Minister headed a delegation to Churchill's funeral. Cabinet ministers attended the funeral of the Prime Minister of India in 1966 and of the former Chancellor of Germany in 1967. A Cabinet minister attended the funeral of Pope John in 1963. When Nehru died in 1964 the representation was an Ambassador specially designated.

6. In the case of the death of a Head of State or Head of Government the Governor General sends the necessary messages* as the Head of State.

7. The precedents in regard to flying the flag at half-mast in cases not covered by the regulations are not consistent and a decision will be necessary in each case.

8. Tributes* have been made in Parliament on the deaths of Pope John, President Kennedy and Mr. Nehru, Prime Minister of India.

Non-Canadian Dignitaries III—PROCEDURE

1. When a Head of Mission accredited to Ottawa dies the Chief of Protocol will be responsible for arrangements* made by the Canadian Government. The Prime Minister will be kept informed and should approve the plans particularly in regard to his own participation, Government representation and major expenditures.

2. Should a Head of State, Head of Government or foreign dignitary die in Canada the Secretary of State for External Affairs will propose for the Prime Minister's approval what part the Canadian Government should play in the necessary arrangements. In particular decisions will have to be made by the Prime Minister on the action to be taken on the following points:

   (1) Messages of condolence;
   (2) Tributes, public or parliamentary;
   (3) Half-masting of flags;
   (4) Mourning;
   (5) Government attendance at services in Canada;
   (6) Government representation for return of body and at funeral service in country of deceased.

3. On the death of a non-Canadian Head of State, Head of Government or dignitary outside of Canada decisions will have to be taken on the points listed below. The Secretary of State for External Affairs will provide the Prime Minister with advice on what would be appropriate having regard to the relations between Canada and the country of the deceased and with information on the intentions of countries similarly placed.

   (1) Messages* of condolence;
   (2) Tributes*, public or parliamentary;
   (3) Half-masting of flags;
   (4) Mourning;
   (5) Government representation at memorial service in Canada;
   (6) Government representation at funeral abroad.

Non-Canadian Dignitaries IV—CEREMONIAL

1. The ceremonial arrangements for funerals and memorial services for non-Canadian dignitaries are determined according to the circumstances in each case. The actions* taken in Canada upon the death of the Prime Minister of Jamaica in Montreal in 1967 are described in the appendices.

FUNERALS AND MEMORIAL SERVICES

Non-Canadian Dignitaries APPENDICES

Message of condolence from Prime Minister on death of foreign Head of State

Statement by Prime Minister in Parliament on death of foreign Head of State

Press release regarding death of foreign Head of Government

Arrangements for State funeral for Ambassador accredited to Canada

Actions taken in Canada on death of Prime Minister of Jamaica in Montreal in 1967

Programme for memorial service held in Ottawa on occasion of death of Churchill

Message of condolence from Governor General on death of foreign Head of State

GOVERNMENT

Resignation of Government I—POSITION

1. The resignation of the Government is effected by the resignation of the Prime Minister. His resignation, whether for political or personal reasons, automatically carries with it that of all his ministers.
2. Ministers relinquish office when the incoming Prime Minister is ready to form his Government.
3. It is not customary for ministers to submit individual resignations when the Government is resigning. The Prime Minister's resignation, which is customarily submitted to the Governor General orally, covers that of his ministers.
4. It is the usual, but not invariable, custom for outgoing ministers to call* together on the Governor General to take leave. This may be at the time the Prime Minister calls to present his formal resignation, or at a separate time.
5. Ministers who are remaining in the new Government, whether with the same or different portfolios, do not take leave of the Governor General.
6. On leaving office the Registrar General should return the Great Seal of Canada to the Governor General from whom he received it on his appointment.
7. The Prime Minister will arrange for the removal of his personal files. Ministers should return all Cabinet papers to the Privy Council Office. Official papers should be taken off their personal files before these are removed.
8. The resignation of the Government terminates the employment of the office staff of the Prime Minister and of ministers appointed pursuant to the *Public Service Employment Act*. The staff are, however, entitled under certain prescribed conditions to employment in the Public Service.

Resignation of Government II—BACKGROUND

1. The Prime Minister's resignation from office brings about the resignation of all ministers and of the Government. Whether the Prime Minister's resignation follows a defeat in the House or at the polls or is for personal or other reasons* the life of the ministry is terminated with the formal acceptance of his resignation. Individual ministers however continue in office until the new Government is formed.

2. Where the Prime Minister's resignation is followed by the formation of a new Government with the same party affiliation the offices of the resigning ministers are at the disposition of the successor Prime Minister. This happened in 1948 and 1968 upon the retirement of Mr. King and Mr. Pearson respectively from office. On each occasion the new Prime Minister proceeded to form a new Administration composed of both continuing and new ministers. The full list of the proposed new ministry was then submitted to the Governor General for his approval.

3. Canadian practice in regard to ministers taking leave* of the Governor General on the resignation of the Government is by no means as consistent as it is in the United Kingdom although the same considerations would make it desirable.

4. A Government takes office when the Prime Minister accompanies those he has selected to form his Cabinet to the Governor General for the administration of the oaths of office. It would be reasonable and courteous for them to call upon the Governor General in the same way, as a group, when they are relinquishing the responsibilities with which they had been charged.

5. Ministers who are to remain in the new Government have no need to take leave since they will continue to be His Excellency's advisors. Changes of portfolio will be implemented when ministers are sworn to their new offices.

6. There is a special reason why the Registrar General should make a farewell call on the Governor General. When he assumed office the Governor General gave the Great Seal of Canada to him for safekeeping. He should therefore return it to the Governor General when his custodianship ends. It would not be correct to leave it to the Deputy Registrar General to return the Great Seal to the Governor General at the time the new Registrar General takes office, although on occasion this has incorrectly been left to the deputy rather than being done by the retiring responsible minister.

7. In some instances the Prime Minister has been accompanied by all his ministers when he has taken leave of the Governor General. On other

occasions ministers have called in a group at another time and sometimes some or all of them have not called at all.

8. The Prime Minister's Office maintains a separate filing system for papers of a personal and political nature to keep them apart from official papers. It might however be desirable, before removing the personal files, to assure that they do not contain official documents.

9. In the absence of official guidance ministers must use their discretion when deciding whether a paper is official or personal.

10. The Dominion Archivist has offered to provide secure storage for personal papers which ministers may wish to send for safekeeping.

11. Those members of the office staff of the Prime Minister and of ministers who qualify for employment in the Public Service should apply for positions in accordance with the provisions of the *Public Service Employment Act.*

Resignation of Government III—PROCEDURE

1. The Prime Minister's resignation is customarily transmitted to the Governor General orally and without formality.
2. The Prime Minister may wish to make arrangements* with Government House for a farewell call on the Governor General by the Government.
3. The retiring Registrar General should arrange to return the Great Seal of Canada personally to the Governor General.
4. Approval should be given for the transmission by the Clerk of the Privy Council of a letter* to the incoming Prime Minister setting out the now customary terms on which the new Government would be denied access to the records of Cabinet meetings and of Cabinet committee meetings. This is usually cleared in Cabinet.
5. Outgoing ministers should arrange to return all Cabinet documents to the Privy Council Office for destruction as necessary.
6. Files in the P.M.O. registry should be removed after being checked to determine that copies of papers of public significance are put on P.C.O. files. The P.M.O. files may be transferred to the Dominion Archives for safekeeping.
7. Privy Council Office files should be reviewed if it is considered that they may contain material of a personal or political nature which should be transferred to the personal papers of the outgoing Prime Minister.
8. Ministers should separate their personal papers from their official files in preparation for removing the former or putting them in the custody of the Dominion Archivist.
9. It may be considered desirable to prepare lists of the Prime Minister's and ministers' personal staffs showing position and date of appointment so that reassignment according to section 37 of the *Public Service Employment Act* may be applied.

Resignation of Government IV—CEREMONIAL

1. Any ceremonial connected with the Government's farewell call* on the Governor General will be arranged by Government House.

GOVERNMENT

Resignation of Government APPENDICES

Letter from Clerk of Privy Council to incoming Prime Minister regarding access to Cabinet records of resigning Government

Government House arrangements for resigning Government's farewell call

Extract from *The Montreal Star* of 23 April, 1963 regarding farewell visit to Government House by resigning ministers

Formation of New Ministries I—POSITION

1. A new ministry is formed when the Prime Minister is sworn into office.
2. If there is a change in Government, outgoing ministers are considered to have resigned on that date, even if new ministers are not appointed at the same time. They may, however, remain in charge of the administration of their departments until a member of the new Government takes charge.
3. If there is no change in Government, ministers retain their posts until their resignations are accepted or their successors appointed. If they retain the same portfolios they are not re-sworn.
4. The outgoing Prime Minister informs the Governor General of his intention to resign. When the Governor General has found someone to form a new Government the outgoing Prime Minister calls again and formally tenders his resignation which is accepted. His ministers usually accompany him on this later occasion. The Registrar General should return the Great Seal to the Governor General when he takes his leave.
5. The new Prime Minister calls* on the Governor General with his ministers immediately after the outgoing Prime Minister's resignation has been accepted. The composition of the new Cabinet is approved, including any ministers who are retaining their portfolios as well as new appointments. The necessary oaths are administered.

Formation of New Ministries II—BACKGROUND

1. The formation of the new Government is dated from the induction of the Prime Minister even though some members of his Cabinet may not be sworn until later.

2. Outgoing ministers' resignations are considered to be effective the day the Prime Minister's resignation takes place. No specific action on their part is necessary to effect resignation which results from the resignation of the Prime Minister. It is traditional for them to remain in charge of the routine operation of their ministry until a member of the new Administration takes charge of it.

3. Ministers who retain the same portfolios in the new Government are not re-sworn and do not receive new commissions.

4. The one instance, in 1920, when ministers (Meighen's) were reappointed and re-sworn is at variance with all other precedents. In 1948 the question was re-studied when Mr. St. Laurent succeeded Mr. King and no ministers retaining the same portfolio were either reappointed or re-sworn. The same rule was followed in 1968 when Mr. Trudeau succeeded Mr. Pearson.

5. The new Prime Minister must, nevertheless, get the Governor General's approval for the composition of his ministry which includes approval of ministers who are to retain their same portfolios. This may be done orally or by presenting an instrument of advice* or a list showing the continuing as well as the new appointments. This latter technique was followed in both 1948 and 1968 when Mr. St. Laurent and Mr. Trudeau respectively formed their Governments.

6. A resigning Prime Minister calls on the Governor General to inform him of his intention to resign and then remains in office until informed that the Governor General has found someone to form a new Government. When the new Government is ready to be formed the Prime Minister calls again and formally resigns. He would usually be accompanied by his ministers on this occasion who would also take leave of the Governor General. The Registrar General would also return the Great Seal. On one recent occasion ministers called to take leave a day before the Prime Minister's resignation became effective. There is no evident reason for this.

7. When a Prime Minister decides to resign he may invite his likely successor to discuss the changeover. This has been done on the three last changes in Government, in all cases before the Prime Minister informed the Governor General of his intention to tender his resignation.

8. The new Prime Minister and ministers traditionally call* on the Governor General to be sworn to office immediately the resigning Prime Minister and his ministers have left. The Prime Minister will probably have informed the Governor General of the composition of his Cabinet when he advised him that he could form a Government, but the formal instruments of advice* may be presented on this later occasion.

Formation of New Ministries III—PROCEDURE

1. Instruments of advice* should be prepared
   (a) for appointment to office of those already Privy Councillors;
   (b) for summoning to Privy Council and appointment to office of others.
2. The Prime Minister may send a message* of loyalty to the Sovereign after his Government has been formed.
3. The Prime Minister accepts* the arrangements proposed by the Clerk with the approval of the outgoing Prime Minister in regard to the inviolability of old Cabinet records.
4. Departments take responsibility for continuing action by new ministers on questions pending before Cabinet, Council, and Treasury Board.
5. Necessary documents are prepared for urgent appointments to be made. This can include orders in council on acting ministers and on ministerial responsibility for boards and commissions.
6. Arrangements should be made to ensure that departments and agencies brief their new ministers.

Formation of New Ministries IV—CEREMONIAL

1. All members of a new ministry are present when the oaths are administered by the Governor General usually at Government House. The Clerk of the Privy Council attends. The Deputy Registrar General is present to bring the Great Seal. Government House issues a detailed order* for the ceremony.

Formation of New Ministries APPENDICES

Government House arrangements for swearing-in of new ministry

Instrument of advice submitted to Governor General regarding appointment of Twentieth Ministry (Trudeau, 1968) and including ministers continuing in office from previous ministry

Message of loyalty from Prime Minister to Sovereign

Prime Minister's reply to letter from Clerk of Privy Council regarding Cabinet records of former Government

Government House announcement regarding swearing-in of new ministry

Restraints on Business which may be transacted by Governments in Certain Circumstances

I—POSITION

1. A Government receives its authority from the Crown and is responsible to Parliament for the exercise of that authority. As long as a Government remains in office its legal authority is unimpaired and its obligation to carry on the government of the country remains, whether Parliament is dissolved or not. The necessity to account to Parliament for the exercise of this authority does impose restraints in certain circumstances. The extent of these restraints varies according to the situation and to the disposition of the Government to recognize them.

2. The possibility of restraint only arises if the continuation of confidence in the Government is called into question. A defeat in the House preceding dissolution or a defeat at the polls would be the usual causes of restraint.

3. The restraint has been recognized as applying to important policy decisions and appointments of permanence and importance. Urgent and routine matters necessary for the conduct of government are not affected.

Restraints on Business which may be transacted by Governments in Certain Circumstances

1. In addition to defeat in Parliament or at the polls other situations may indicate that some measure of restraint might be desirable, at least until the Government's position is clarified. Such a situation would be that of a Government facing a vote of censure in the House or, following a general election while awaiting the results of the election to confirm its continued majority position. Similarly a period of restraint might be considered to exist while confirmation by Parliament was being awaited by a minority Government after a general election. An Administration formed after the resignation of the former Government without a general election might also feel restrained until its position was confirmed by Parliament.

2. Before Sir John Macdonald resigned in 1873 to be immediately succeeded by the Government of Alexander Mackenzie, an order in council was passed making a long list of appointments. Within a week of taking office Mackenzie submitted an order in council cancelling the majority of those appointments on the ground that they should not have been made since the Government was under threat of a motion of censure in the House. Lord Dufferin took the view that the mere introduction of a motion of censure could not "paralyze" the Government's right to make appointments but that nevertheless an outgoing Administration should use its right to fill vacancies with moderation and discretion. He agreed with the contention that many of the appointments complained of were unwarranted by the exigencies of the service and were inexpedient. For this reason he approved an order* cancelling them. This case does not however constitute a precedent for any contention that the introduction of a motion of censure limits a Government's right of appointment. The Governor General specifically rejected this and the appointments complained of were in fact effective. Some of them were left undisturbed and those that were cancelled ceased to be effective because of the positive action of the new Administration rather than because of any inherent invalidity.

3. The Aberdeen-Tupper case in 1896 was different. The Tupper Government was formed after the dissolution of Parliament and was defeated in the subsequent elections. In refusing* to approve senatorial and judicial appointments put forward by the Government before its resignation, Lord Aberdeen acknowledged that the powers of the Administration were "undoubtedly full and unrestricted" but that in the circumstances "their exercise would seem to be rightly limited" [1] to necessary public business. The Governor General

[1] From memorandum by Lord Aberdeen, to Prime Minister (Tupper), July 4, 1896, on P.C.O. file G-10-1.

therefore judged that whatever business could, without detriment to the public interest await the formation of the succeeding Government, should be held over.

4. In 1963 the Government was defeated on two votes of confidence and Parliament was dissolved. No appointments were made before the elections and when the Government was defeated in the elections no appointments were made before it resigned.

5. Although the use of restraint has been more easily witnessed in the area of appointments it is equally clear that Governments which have felt inhibited in this way have also tended to avoid making important policy decisions having the effect of binding a possible successor Administration. In the latter situation it has however proved difficult to identify what actions the Government would otherwise have taken had it not felt so restrained.

6. It is recognized that the principle of restraint should not however operate to prevent action being taken on urgent or routine matters necessary for the conduct of government or to forestall immediate action where the public interest requires it. So long as an Administration has not formally been replaced by the successor Government it remains, irrespective of its position in Parliament, directly responsible for the conduct of the affairs of the country.

Restraints on Business which may be transacted by Governments in Certain Circumstances APPENDICES

Order in council cancelling appointments made on Macdonald's resignation in 1873

Extract from memorandum from Lord Aberdeen to Sir Charles Tupper explaining refusal to approve certain recommenced appointments

Considerations relating to Minority Governments I—POSITION

1. A minority Government* is one formed by a party which does not have a majority of the seats in Parliament.
2. The fact that a Government is a minority Government does not limit its legal authority.
3. There are conventional limitations on its authority which have been recognized by Governments defeated in Parliament or at the polls.
4. Undefeated minority Governments have, in some circumstances, felt a political limitation on their authority until they have met Parliament and been sustained by a vote of confidence.
5. These propositions are founded on the constitutional fact that a Government derives its authority from the Crown. It possesses this authority in totality from the time the Prime Minister has acted on the Governor General's invitation to form a Government until his resignation is accepted. At the same time the Government is responsible to Parliament and at the polls for its exercise of this authority. Therefore, if a Government is rejected in Parliament or defeated in an election, a conventional restriction is recognized as limiting the extent to which the Government should exercise its authority in certain fields, notably that of non-urgent permanent appointments. Moreover, when a continuing Government has failed to win the majority of seats in an election it may feel under a political limitation in regard to permanent non-urgent appointments until Parliament has expressed its continuing support.

Considerations relating to Minority Governments II—BACKGROUND

1. The authorities are agreed that as long as a Government is in office it has the legal authority to exercise all its powers regardless of its position as a minority in Parliament.

2. It is recognized that a Government which has been defeated in Parliament is restrained by convention from exercising its full authority particularly in regard to permanent non-urgent appointments. Similarly a Government which has won too few seats in an election to remain in office is, by Canadian convention, under a like restraint in the period preceding the formation of the new Government.

3. In 1896 Lord Aberdeen refused to approve such appointments recommended by Sir Charles Tupper whose Government had been formed after the dissolution of Parliament and had then been defeated in the elections.

4. A successor minority Government may not feel under any restraint in the period before Parliament has given its support. This was the case in 1921, 1957 and 1963, when 20, 38 and 11 major appointments were made before Parliament had voted confidence. However in the special circumstances existing in 1926 Mr. Meighen did not make any appointments although his was a minority Government formed on the resignation of Mr. King.

5. A continuing Government which has failed to win a majority in an election may, for political reasons, consider it wise to exercise reasonable restraint until its position has been endorsed by Parliament. However cases vary. In 1925, Mr. King in that situation announced that he would make no important appointments until he had met Parliament. An examination of the facts reveals that he did not in effect appear to have restricted himself. He did appoint two Lieutenant-Governors before the vote on the address in reply, on 3 March, 1926. Neither could be considered urgent and in fact one was a reappointment technically not necessary. He also appointed a judge to the Exchequer Court on 1 February. The fact that he made no senatorial appointments in that period has been interpreted by some as support for the view that Mr. King considered himself under some restraint. However, this is not necessarily so for Mr. King had filled all 11 existing vacancies in the Senate before the elections and delayed filling the two that subsequently occurred until just before he resigned on 28 June. It cannot be said therefore that the absence of senatorial appointments was due to a decision to await the vote on the address before making senior appointments. Indeed the weight of evidence, the appointments made before Parliament voted its support, and the absence of significant appointments right after the vote, suggest that Mr. King made the appointments he wanted despite his minority position.

6. In 1962, Mr. Diefenbaker returned without a majority but nevertheless felt free to make some 34 major appointments including six senators and eight judges before meeting Parliament.

7. In 1965, Mr. Pearson did not make any major appointments after his re-election in which he failed to win a majority until after adoption of the address.

GOVERNMENT

Considerations relating to Minority Governments APPENDICES

List of minority Governments which have held office in Canada

Access to Records of Other Administrations

I—POSITION

1. In 1957 and again in 1963 the incoming Prime Minister agreed that Cabinet records of the former Administration would not be available to the new Government. This is in accordance with British practice and is recorded in an exchange of letters* with the Clerk of the Privy Council.
2. It follows that former Cabinet ministers are entitled to access to Cabinet records of the period when they were in office.
3. It is to be noted that there is no record that this question arose in 1948 when Mr. St. Laurent succeeded Mr. King, but in 1968 when Mr. Trudeau succeeded Mr. Pearson it was decided that no letters would be exchanged.

Access to Records of Other Administrations II—BACKGROUND

1. This question of access to the records of a former Administration first arose in Canada in 1957 when the first change in Government since the introduction of Cabinet minutes in 1940 took place. It had not come up in 1948 when Mr. St. Laurent took over on Mr. King's retirement.

2. The undertaking given by the incoming Prime Minister that the new Government will not have access to the records of the former opposition Government follows British practice and is a constitutional convention derived from the recognition that it would be politically undesirable for the record of confidential discussion to be available to political opponents. The arrangement which is based on this appreciation of political realities as well as on constitutional propriety has acquired general acceptance as a constitutional convention although without statutory foundation.

3. The fact that the practice is intended to prevent a succeeding opposition Government from making political use of the Cabinet discussion of its predecessor indicates why the question did not arise when Mr. St. Laurent succeeded Mr. King. A memorandum* on United Kingdom procedure confirms and supports this practice.

4. When Mr. Diefenbaker came to office he satisfied himself that the proposed arrangement was indeed in accordance with British practice.

5. It is recognized that a former Cabinet minister may have access to Cabinet records issued to him while he was in office. There are at least two recorded cases of a former opposition Cabinet minister asking for access to the records of Cabinet of the time when he was in office. In one case (1963) the request was directed to the Secretary to the Cabinet who had the Cabinet records examined before supplying the required information by private and confidential letter. In the other case (1966) the request was directed to the Prime Minister and was accepted in principle but not in fact granted on the ground that the matter at issue had been turned over to a Royal Commission for investigation.

6. By extension former ministers are also entitled to access to departmental files seen or used by them while in office, although this has not been put into practice here.

7. This question of access should be distinguished from disclosure which is a distinct issue involving release from the Privy Councillor's oath.

Access to Records of Other Administrations

1. When an opposition party takes over on a change in Government the Clerk of the Privy Council with the approval of the outgoing Prime Minister, sends a letter* to the new Prime Minister asking him to agree that the new Government would not have access to the records of the previous Administration.

2. The new Prime Minister informs his colleagues in the Government and replies* to the Clerk accepting the proposed arrangement.

Access to Records of Other Administrations APPENDICES

Letter from Clerk of Privy Council to incoming Prime Minister regarding access to Cabinet records of resigning Government

Prime Minister's reply to above letter

Extract from *United Kingdom H. of C. Debates,* January 28, 1960 regarding access to Government records by former ministers

Memorandum by Secretary to United Kingdom Cabinet regarding access by ministers to documents of an earlier Administration

GOVERNOR GENERAL

GOVERNOR GENERAL

Appointment and Extension of Term I—POSITION

1. It is the Prime Minister's prerogative to recommend to the Sovereign who should be appointed Governor General.

2. A recommendation is preceded by an informal inquiry to ascertain that the proposed nominee would be acceptable to Her Majesty.

3. The appointment is then made by the Sovereign on the basis of formal advice submitted by the Prime Minister in writing by instrument of advice* or otherwise. The appointment is announced* simultaneously in London and Ottawa.

4. It has become the convention that appointments are for a term of five years dating from time of installation, although legally the appointment is at pleasure. Extensions of varying and indeterminate lengths have been frequent, and are granted by the Sovereign on the recommendation of the Prime Minister.

5. The Prime Minister after consultation with the Governor General and with his colleagues in the Government can decide to seek an extension.

6. In most cases extension has been for a stated period, usually about a year. In the case of General Vanier's second extension (1965) it was specifically stated that no term had been set.

7. The procedure for obtaining royal approval is similar to that on initial appointment. Steps are taken to learn informally* that Her Majesty would be favourable to an extension.

   Subsequently a formal recommendation* is made for Her Majesty's approval.

   A press release* is prepared and cleared with Government House and Buckingham Palace. An announcement* is made in the House of Commons if Parliament is in session.

8. The Governor General's term of office ends on the installation of his successor.

9. In one instance (Lord Alexander, 1952) a Governor General vacated his post, with the agreement of the Canadian Government and the King's permission, before the completion of his extended term and before the installation of his successor.

10. Since Confederation two Governors General have died in office.

Appointment and Extension of Term II—BACKGROUND

1. In exercising his prerogative to propose a new Governor General to the Queen the Prime Minister does not consult the opposition. He may inform the Leader of the Opposition as was done in 1959 and 1967, but the decision is one for which the Government is responsible.

2. It is known that in 1935 the Prime Minister, Mr. Bennett, consulted with Mr. King, the Leader of the Opposition, regarding the selection of a successor to Lord Bessborough. The circumstances, however, were special and this is not regarded as a precedent. Parliament was about to be dissolved as its five-year term ran out and when Lord Bessborough wanted to return to England before the end of his five-year term Mr. King made it known that, in the expectation of winning a majority in the forthcoming general election, he would not accept a Governor General nominated by Mr. Bennett. This position is constitutionally unjustifiable since Mr. Bennett was the Prime Minister undefeated in Parliament and the elections had not taken place. George V reacted strongly to this suggestion and informed the Governor General that he should either bring Mr. Bennett and Mr. King to agreement on a nominee or remain in office until after the elections. The Governor General brought the Prime Minister and the Leader of the Opposition together and they agreed on the selection of John Buchan. In no other case is there known to have been consultation between the Prime Minister and the Leader of the Opposition. In a press interview following the appointment of Mr. Massey, Mr. St. Laurent, while not saying specifically that consultation had not taken place, declined to say that it had and insisted that he, as Leader of the Government, took full responsibility for the recommendation. Following General Vanier's appointment, Mr. Diefenbaker replied to a private inquirer that while he had informed the Leader of the Opposition of his selection before the public announcement, this did not constitute consultation. In 1967 Mr. Pearson informed Mr. Diefenbaker of the selection of Mr. Michener, but without any "consultation".

3. The technique for selecting a Governor General has evolved from the initial stage when he was selected and appointed without reference to Canadian authorities, to the present practice where he is selected and appointed on the initiative, recommendation and action of Canadian authorities exclusively, acting in direct relation with the Sovereign.

4. In 1926 Lord Willingdon's name was put forward by the United Kingdom Prime Minister to the King after consultation with the Canadian Prime Minister who had previously turned down several names proposed by Mr. Baldwin.

5. The Imperial Conference of 1930 resolved that the King should act on the advice of his Dominion ministers concerned in appointing a Governor

General. Advice was to be preceded by consultation to establish that the nominee was acceptable to His Majesty. No formalities were laid down.

6. Later that year, when it came to the selection of Lord Willingdon's successor, Mr. Bennett suggested certain names to the King in an informal letter dated 23 December, 1930. The King indicated his willingness to approve any one of them and at Mr. Bennett's request, four others were suggested—but not to be given preference over those originally proposed by Mr. Bennett. Subsequently, Mr. Bennett sent a telegram dated 7 February, 1931 formally recommending the appointment of Lord Bessborough who was on his original list and followed this by a formal written submission. The commission, under Sign Manual and Signet, was countersigned for the first time by the Canadian Prime Minister.

7. In 1945, Mr. King put forward three names to King George VI and when His Majesty indicated his preference for one of them, Lord Alexander, the Prime Minister made a formal recommendation for his appointment.

8. When it came to the appointment of Mr. Massey, his name alone was put before the King. This procedure was repeated for the appointments of General Vanier and Mr. Michener.

9. The method of obtaining the informal reaction of the Sovereign and of submitting the formal advice* for appointment have varied. The Prime Minister has either consulted the Sovereign personally if the occasion arose or communicated through the Governor General to Buckingham Palace, or through the Canadian High Commissioner in London.

   Formal advice for appointment has also been variously given; either through the Governor General, the High Commissioner in London, or personally. For the appointment of General Vanier a written instrument of advice from the Prime Minister was approved by Her Majesty.

10. In 1967 the Prime Minister consulted the intended nominee (who was in India), then telephoned to the Queen's Private Secretary to ask whether the Queen would be prepared to approve his appointment. The informal approval was communicated by telephone to the Clerk of the Privy Council the next day and an instrument of advice, bearing that date, was prepared and sent direct to the Palace by registered airmail.

11. The commission* is now prepared in Canada for transmission to Buckingham Palace for the Queen's signature.

    Until Mr. Massey's appointment, the commission was under Sign Manual and Signet. Lord Alexander's was the last in this form and the commissions for Mr. Massey, General Vanier and Mr. Michener are under the Great Seal of Canada.

    In General Vanier's case the Queen signed two original commissions, one in French and one in English. General Vanier expressed a preference for the French version and it alone was sealed and the English version was destroyed by the Secretary of State.

    In 1967 Mr. Michener's commission was prepared in both languages as a single document. It bore the date of the instrument of advice*. It was

prepared by the Deputy Registrar General, signed by the Prime Minister and transmitted to London for the Queen's signature. When it was returned it was imprinted with the Great Seal and signed by the Registrar General.

12. On initial appointment, the Queen makes an announcement simultaneously with that made by the Prime Minister*. The text of these announcements should be cleared with Her Majesty and the Governor General-designate.

13. Royal approval of an extension of term is obtained in the same way as in the case of initial appointment.

14. In selecting the channel of communication it may be thought desirable for reasons of delicacy to avoid using Government House.

15. No document is necessary to implement the decision to have the Governor General remain in office as the commission* of appointment does not mention a term.

16. The announcement* of an extension is normally made only in Canada, although in the case of General Vanier's first extension in 1964 the announcement was made in London as well. In 1965, the next extension was announced in Ottawa only.

17. A Governor General's term of office continues as long as his commission is in effect, that is, until it is superseded by the entry into office of his successor.

18. In one case, that of Lord Alexander, a term was concluded by a special royal proclamation. Lord Alexander was being appointed to the United Kingdom Cabinet in 1952 and the announcement was to be made while he was still in Canada. The Canadian Government considered it desirable that his successor should be announced and that Lord Alexander should have vacated the position of Governor General before his appointment to the United Kingdom Cabinet became known. In order to achieve this a royal proclamation was used to terminate his appointment as Governor General since he could not with propriety resign a royal office. An Administrator was appointed from the date of the proclamation. Lord Alexander remained in Canada privately for a short time after vacating office.

19. Two Governors General have died in office since Confederation, Lord Tweedsmiur and General Vanier. Lord Sydenham had died in office in Kingston on 19 September, 1841 and on 19 May, 1843, his successor, Sir Charles Bagot also died in Canada, but after Lord Metcalfe had taken over from him. Also, the Duke of Richmond, who was Governor and Commander-in-Chief, died in office in Richmond, Ontario, on 28 August, 1819.

Appointment and Extension of Term III—PROCEDURE

1. After consultation with the Cabinet if desired, the Prime Minister ascertains whether his nominee would be acceptable to the Sovereign.

2. There is not sufficient precedent to establish a firm rule how this should be done. If the Prime Minister did not find an occasion during a visit to London or during a visit of the Sovereign to Canada to raise the question verbally with Her Majesty, the Queen's reaction could be ascertained by a direct communication to Her Majesty transmitted either through Government House or Canada House in London. The Prime Minister would wish to consider the extent to which the Governor General then in office should be kept informed.

3. The informal agreement of the Sovereign once received, a formal letter of advice* from the Prime Minister may be transmitted directly to the Queen recommending the appointment. This was done in 1959 and 1967 for the appointments of General Vanier and Mr. Michener.

   Alternatively, formal advice may be transmitted by telegram through the High Commissioner in London and the Queen's Private Secretary. This method was used in 1952 when Mr. Massey was appointed.

   Another possibility would be to have Government House transmit the advice from the Prime Minister to Buckingham Palace for the Queen.

4. The procedures followed in the case of the appointment of Mr. Massey indicate some of the possible techniques which may be adopted. The informal proposal was made by letter addressed to the King, signed by the Prime Minister, and delivered to His Majesty's Private Secretary by the Canadian Minister of Finance who was in England.

   The King's favourable reaction was conveyed by telegram from his Private Secretary to the Prime Minister transmitted through Canada House.

   The day this message was received, a telegram was sent by the Prime Minister to the King's Private Secretary, through Canada House, containing the text of a formal recommendation to His Majesty for Mr. Massey's appointment.

   Formal approval was conveyed by telegram from the King to the Prime Minister sent through Canada House.

5. In the case of General Vanier the Prime Minister informed the Queen of his desire to propose General Vanier's appointment. This was followed by informal and personal consultation between the Prime Minister and the Queen while Her Majesty was in Canada. Her Majesty subsequently signed both the formal instrument of advice recommending the appointment and the new Governor General's commission in Halifax, prior to her return to the United Kingdom.

6. The essential element of direct communication between the Prime Minister and the Queen being well established, there would not appear to be any purpose in limiting the alternatives by attempting to insist that the same procedures should be followed for each stage in every instance. The existing alternatives provide the flexibility to meet all situations.

7. The commission* of appointment is now prepared by the Deputy Registrar General, signed by the Prime Minister, then forwarded to London for the Queen's signature. On its return to Canada the commission is imprinted with the Great Seal and signed by the Registrar General.

8. The original commission is traditionally held by the appointee; the Registrar General retaining a photostat or a microfilm copy. A suggestion put forward on one occasion that the original commission should be kept as part of the public record rather than being given to the appointee is refutable.

9. As the customary five-year term draws to a close, the Prime Minister recommends an extension to the Sovereign if he does not plan to recommend a new appointment.

10. If the formal* or informal* submission to the Queen for an extension is to be made through the High Commission in London, instructions are usually conveyed by telegram. On occasion messages have been passed through Government House although it might be better not to use this channel, in order not to embarrass the Governor General. A formal instrument of advice has not been used up to now.

11. The text of the press release* is cleared with Government House and with Buckingham Palace who are informed when the announcement will be made, usually only in Ottawa. If Parliament is in session the Prime Minister announces* the extension in the House.

12. Only in the exceptional circumstances of Lord Alexander's case has a proclamation been used to end a Governor General's term of office. This was signed by the Queen on the advice of the Prime Minister. In normal circumstances, no administrative action is called for as no document is issued.

13. The Governor General's salary is paid up to and including the day before his successor is sworn in.

    If the Governor General is a non-Canadian, travelling allowance is paid to and including the day he embarks on his departure from Canada.

    For a Canadian, the travelling allowance is paid up to and including the day he leaves Ottawa to return home.

GOVERNOR GENERAL

Appointment and Extension of Term APPENDICES

Formal recommendation for appointment of Governor General

Announcement to House of Commons regarding appointment of Governor General

Press release regarding appointment of Governor General

Commission of appointment as Governor General

Informal recommendation for extension of term as Governor General

Formal recommendation for extension of term as Governor General

Announcement to House of Commons regarding extension of term as Governor General

Press release regarding extension of term as Governor General

Installation I—POSITION

1. The Governor General is installed at a ceremony which is now normally held in the Senate Chamber. The Chief Justice or the senior judge of the Supreme Court administers the oaths*. Some Privy Councillors are required to be present in order to hear the commission* read. The Prime Minister participates in the ceremony.
2. The Administrator, whenever he has been exercising the powers of the Governor General at the time of the installation of the new incumbent, participates in the installation ceremony; as did two Governors General who remained in office until their successors took over.
3. After the oaths have been administered the Prime Minister makes a formal speech* of welcome to which the Governor General replies*. These speeches are subsequently published in *Hansard.*
4. The ceremony is open to invited guests and is fully covered by press, radio and television.
5. The Secretary of State is responsible for planning the ceremony and the Prime Minister will want to assure that the arrangements* are satisfactory.
6. The installation ceremony includes the formal arrival of the Governor General-designate in Ottawa in which the Prime Minister participates. The Government will also be involved in the travel arrangements to Canada if the Governor General-designate is abroad when appointed.
7. The Governor General has the title "Right Honourable" for life from the moment of his installation.

Installation II—BACKGROUND

1. In the past installation ceremonies have been held in various places, usually points of debarkation but this is no longer a consideration and Ottawa is now the indicated location unless unusual circumstances were to dictate otherwise. Eight installations have taken place in Quebec, four in Halifax and one in Montreal. Seven have been held in Ottawa including the last five.

2. The Prime Minister as the head of the Government has a prominent part in the ceremony*. In 1940 Senator Dandurand, the Senior Privy Councillor in the Government, who was Leader of the Government in the Senate participated in the ceremony by accompanying the Prime Minister when the viceregal party arrived at Parliament and when they left. The Leader of the Government in the Senate has similarly participated in the subsequent installation ceremonies. Opposition leaders from either Chamber have not, however, been involved as such, nor have the Speakers, who represent all the members of both Houses without political distinction. It is for consideration whether the participation of Parliament would be more properly indicated by giving the Speakers a role in greeting the Governor General-designate and a more prominent place in other parts of the ceremony.

3. The prominence given to ladies in the ceremony has varied according to the presence and views of the wife of the Governor General and the wife of the Prime Minister.

4. The Letters Patent* of the Governor General prescribe that his commission of appointment shall be read before the Chief Justice or other judge of the Supreme Court of Canada and members of the Privy Council. This need not be a meeting of the Privy Council and the ceremony is not now so regarded although some early ceremonies were recorded to be Councils. Those at the Privy Councillors' table in the Senate for the ceremony are members of the Government.

5. The Privy Council minute books show that early installations took place at meetings of Council, with members of the Government in attendance. There is no requirement for a meeting of Council and the practice has not been continued.

6. The Governor General's commission* is read in both languages.

7. Three oaths* are taken: allegiance, office, and Keeper of the Great Seal. In 1959 these were for the first time reproduced in the oath book in both languages and in such a way as to require the Governor General to sign only once. These oaths are administered by the Chief Justice or by the senior judge of the Supreme Court if the Chief Justice is the Administrator.

8. Since 1878 the only signatures required are those of the Governor General, who signs below the oath forms, and the judge administering the oaths, who signs the jurat. Other judges present have signed from time to time. This practice was consistent from 1926 until 1959 when the Chief Justice was the only judge to sign. The Clerk of the Privy Council signed the oath book as a witness for the first time in 1911 and has continued to do so since. Mr. King was the first Prime Minister to sign as witness in 1926 and the practice has been continued.

9. When the Governor General was not a Canadian he usually left the country to return to the United Kingdom before his successor arrived. The Government was then in the charge of the Administrator. He traditionally attended the installation ceremony since he was the actual representative of the Sovereign until the oaths had been administered to the new Governor General. On occasion the ceremonial arrangements seem to have lost sight of the fact that the Administrator is entitled to full honours while in office, the courtesies due the Governor General-designate notwithstanding. Only when the Governor General-designate has been installed does he become entitled to royal honours as the Sovereign's representative.

10. In 1883 Lorne attended the installation of Lansdowne at Quebec and Aberdeen saw Minto installed in Quebec in 1898. In 1959 Mr. Massey left Ottawa on the morning of General Vanier's installation. As he remained in Canada there was no question of an Administrator and no Deputy Governor General attended the ceremony. Thus the transfer of authority to the new Governor General was carried out in the absence of any representative of the Head of State. There seems to be little justification for this and many factors argue in favour of having the outgoing Governor General present for the transfer of responsibility.

11. The speech* of welcome and the Governor General's reply* are now given only once with parts in French and parts in English. At an early sitting of Parliament after the installation the Prime Minister moves* the inclusion of the addresses in *Hansard*. This practice has been consistently followed except in 1952.

12. The Governors General who have been Canadians happened to be abroad when appointed. The Government would want to ascertain what assistance it could give the Governor General-designate in returning to Canada to assume his office. This has been done but there is no formal ceremonial on arrival until the Governor General reaches Ottawa for his inauguration.

13. Since 1959 the installation ceremony has been covered by radio and television.

14. In 1967 the Cabinet paid a formal call on the Governor General immediately after the installation ceremony.

15. The Table of Titles for Canada provides that the Governor General shall be styled "Right Honourable" for life. This title becomes effective upon his assumption of office.

Installation III—PROCEDURE

1. If the Governor General-designate is abroad at the time of appointment the Prime Minister will want to consider what official assistance should be provided in arranging his return to Canada. This would include appropriate greeting on the part of the Government on arrival in Canada. Any arrangements which are to be made could be placed in the hands of the Secretary of State, as a preliminary to the installation ceremony.

2. Mr. Massey was brought to Canada from the United Kingdom by R.C.A.F. aircraft in 1952, after his appointment had been announced. He landed at Trenton where he was greeted by a Cabinet minister, then proceeded to his home near Port Hope to await the trip to Ottawa for his installation. General Vanier returned to Canada from Europe by ship after his appointment was announced. He made his own arrangements and landed in Montreal where he lived. He was not greeted on behalf of the Government on that occasion. In 1967 Mr. and Mrs. Michener were brought home from New Delhi by the R.C.A.F. The Assistant Secretary to the Governor General and an A.D.C. went to New Delhi to accompany the party on the trip. An overnight stop was made in London so the Governor General-designate could accept the Queen's invitation to stay at Windsor.

3. The installation ceremonies begin when the Governor General-designate journeys to Ottawa. These arrangements* are the responsibility of the Secretary of State and the Prime Minister will want to assure himself that they are satisfactory. In 1967 the greeting on arrival at Ottawa was informal. The Prime Minister and Mrs. Pearson, the Dean of the Diplomatic Corps and his wife and the Secretary of State were on hand. The Administrator was prevented by illness from attending. The Governor General-designate and Mrs. Michener stayed in the Government Hospitality House until after the installation.

4. In selecting the date for the installation the Prime Minister should consult with the Speaker of the Senate to determine that the Senate Chamber can be made available.

5. The installation ceremony* itself is planned by the Secretary of State in co-operation with Government House and the Prime Minister's Office to assure that the wishes of the Governor General-designate and the Prime Minister are met. Parliament, the Department of National Defence and others are consulted in regard to their participation.

6. The Prime Minister's speech* of welcome to be delivered at the ceremony should be prepared sufficiently in advance to give the Governor General-designate an opportunity to prepare his reply*. Consultation on this point

could take place between the Clerk of the Privy Council and the Governor General's Secretary. The Prime Minister may also wish to consult Cabinet about the content of the speeches which are traditionally non-political in character. Consideration should be given to having alternate paragraphs of the speeches in English and French.

7. The Clerk of the Privy Council arranges for the Prime Minister's speech to be engrossed by the Secretary of State after the ceremony and sends it to Government House for the Governor General's records.

8. The Clerk of the Privy Council is responsible for the preparation of the oath book and the provision of the bible which is subsequently presented to the Governor General after having been endorsed by the Justice who administered the oaths*, the Prime Minister and the Clerk.

9. At the first convenient sitting of Parliament after the installation, the Prime Minister moves that the addresses be printed in *Hansard*. This motion* has been seconded by the Leader of the Opposition.

GOVERNOR GENERAL

Installation IV—CEREMONIAL

1. The Prime Minister participates in the ceremony welcoming the Governor General-designate on his arrival in Ottawa to be installed, at the arrival of the Governor General-designate to the Parliament Buildings and in the ceremony itself. The detailed arrangements* will be made by the Secretary of State.

2. The other chief participants are the Administrator or possibly the retiring Governor General, the Justice of the Supreme Court who will administer the oaths*, members of the Privy Council to hear the commission* read and the Registrar General to hand over the Great Seal. The Clerk of the Privy Council, the Secretary to the Governor General and the Deputy Registrar General also have parts to play.

Installation APPENDICES

Clause X of the 1947 Letters Patent regarding oaths to be taken by Governor General and the reading of his commission of appointment

Commission of appointment as Governor General

Oaths taken by Governor General

Proclamation announcing assumption of duties and functions of Governor General

Address and reply delivered by Prime Minister and Governor General respectively at installation ceremony

Motion made by Prime Minister in House of Commons for inclusion of above address and reply as an appendix to official report of debates of the House of Commons

Official programme for installation of Governor General

Memorandum on arrangements for installation of Governor General

Extract from "Installation of Governors General 1867-1952" by J. F. Delaute on subject of attendance by outgoing Governor General at induction of his successor

End of Term I—POSITION

1. The appointment of a Governor General is without specific term and persists legally until brought to an end by the installation of a successor. By convention the term has come to be regarded as five years but its actual length is determined by the Prime Minister's recommendation to the Sovereign on the appointment of a successor.
2. Legally a Governor General's term of office expires when his successor is installed without any specific action by or in regard to the departing Governor General.
3. The Government has marked the termination of a Governor General's term of office in various ways. These have included formal addresses from both Houses of Parliament, farewell dinners and receptions, and ceremonies on departure from the capital and from the country. One Governor General was summoned to the Privy Council on leaving office.
4. On every occasion when Parliament has been in session at the time of a Governor General's departure, a joint address* has been adopted bidding him farewell. Parliament was either prorogued or dissolved when six Governors General left so there were no addresses. The addresses have been moved by the Prime Minister and seconded by the Leader of the Opposition.
5. The Canadian policy on titles has made it difficult for the Queen to recognize the service of a retiring Canadian Governor General as her personal representative. Mr. Massey did, however, receive the Royal Victorian Chain.

End of Term II—BACKGROUND

1. The convention that a Governor General is appointed for a term of five years is so well established that his replacement before that time would probably cause comment unless an evident and acceptable reason existed. When he has been in office about five years his replacement would be considered normal although the recent practice of extending the term of office by two or more years may revise the view on what constitutes a normal term.

2. Legally the Prime Minister is at liberty to make what recommendation he wishes to the Sovereign regarding the length of tenure of a Governor General and his replacement. George V however let it be known in 1935 that he would not entertain a recommendation from a new Prime Minister to replace the Governor General he was to appoint that year, before the general election, on the recommendation of the then Prime Minister. That difficult situation was avoided by the only known instance of consultation between the Prime Minister and the Leader of the Opposition leading to agreement on the nominee who was to be proposed to the King.

3. Joint addresses* were presented to all departing Governors General until 1916 when Connaught left while Parliament was prorogued. The three subsequent Governors General likewise did not receive addresses as Parliament was not in session. However, in 1935 and in 1946 Parliament was in session to pass the addresses when the Governors General departed. Then in 1952 and 1959 the Governors General left office while Parliament was not sitting. On these last two occasions tribute was paid to the Governor General in Parliament during the debate on the Speech from the Throne as the new session opened.

4. The Government has customarily entertained the departing Governor General at dinner, the Prime Minister acting as host. In 1952 the guest list was made up of Privy Councillors perhaps because the Governor General had already left office and had been summoned to the Privy Council. The opposition was represented. In 1959 it was a Government dinner with senior officials and press represented but no opposition leaders present.

End of Term

Joint address of Parliament on end of term as Governor General

Removal I—POSITION

1. There are no specified conditions or techniques governing the removal of a Governor General.
2. The appointment is by the Sovereign, on the recommendation of the Prime Minister, and is at pleasure without a specified term which normally ends when a new incumbent subscribes to the oaths of office.
3. The term of office could be brought to an end by Letters Patent signed by the Sovereign terminating the appointment made in the commission, without regard to the appointment of a successor. In such a case the powers and authorities of the Governor General would be vested in the Administrator until a successor was appointed.
4. Any action to remove the Governor General would require the intervention of the Sovereign whose personal appointee he is. As such, his position is unaffected by changes in Governments.

Removal II—BACKGROUND

1. There is no instance of a Governor General being removed. Should the Government advise removal for cause the Sovereign could hardly decline the advice.

2. When Lord Alexander wished to leave office before the time foreseen, the Queen signed Letters Patent* terminating the appointment made in his commission without naming a successor. In order to allow the Administrator to take over* without special royal instructions this action was interpreted here as being a removal, although the reason for Alexander's departure—to take a Cabinet post in the United Kingdom—made it clear that this was not a removal in any other but the strict technical sense.

3. Changes in Governments have not affected the length of tenure of Governors General. On one occasion, however, this possibility did arise, when in 1935 Mr. King, as Leader of the Opposition took the position that he would not, if elected as expected in the forthcoming general elections, accept a Governor General selected by Mr. Bennett to succeed Lord Bessborough. The King urged the Governor General to get Bennett and King to agree to an appointee since His Majesty strongly held the view that the appointment of his personal representative was not subject to veto by a subsequent Prime Minister. Neither this point nor the constitutional correctness of Mr. King's position in attempting to control the advice which a Prime Minister, undefeated in Parliament or at the polls, should give regarding the appointment of a Governor General, were put conclusively to the test since King and Bennett met and agreed on the selection of Buchan. This is the only recorded instance of consultation with the Leader of the Opposition on the appointment of a Governor General and did not establish a precedent.

4. The acceptability of a Canadian appointee might get the attention of a new Government but in the two instances to date each new Government has extended the term of the incumbent selected by the preceding Administration.

GOVERNOR GENERAL

Removal APPENDICES

Letters Patent terminating Lord Alexander's term of office; together with Administrator's subsequent proclamation

Absence I—POSITION

1. The Prime Minister is informed when the Governor General plans to be absent from Ottawa visiting other parts of Canada. Government House arranges who will be acting as Deputy Governor General and informs the Prime Minister.

2. When the Governor General plans to be absent from Canada to visit the United States for a period not exceeding two weeks the Prime Minister's approval is sought*. The Governor General usually informs the Sovereign but royal permission is not necessary.

3. When the Governor General wishes to be absent to spend more than two weeks in the United States or to visit any other country the Queen's permission* must be sought through the Prime Minister.

4. Whenever the Governor General will be absent from Canada for less than 30 days a Deputy Governor General takes over. Should the absence be prolonged past 30 days an Administrator is then appointed. If it is known that the absence from Canada will exceed 30 days an Administrator is sworn in on the Governor General's departure.

Absence II—BACKGROUND

1. While the Governor General does not require the Prime Minister's approval to be absent from Ottawa visiting in Canada circumstances may indicate that consultation would be desirable in order to avoid possible political inconvenience.
2. If the Governor General plans to be absent from Ottawa for part of a day only it has been found convenient to have the Deputy Governor General act for the entire day.
3. Since the Governor General's travel plans frequently required him to pass through the United States when travelling between parts of Canada, and since he often has wished to make short visits to the United States the Prime Minister was granted authority* in 1947 to sanction visits to the United States for periods not exceeding two weeks without reference to the Queen. The Governor General may, however, inform the Queen, particularly if his absence is not simply due to his travel itinerary.
4. The Prime Minister's transmission* of the Governor General's request* for permission to be absent from Canada implies his approval although it has often not been stated.
5. If the Governor General's absence is not to exceed 30 days his duties are performed by a Deputy Governor General who may not be the same person throughout the absence.
6. If the absence is prolonged an Administrator must be sworn in on the thirtieth day.
7. If the absence is planned to exceed 30 days an Administrator is sworn in on the day the Governor General leaves Canada. If he is travelling by ship from Montreal or Quebec City this is taken to be when the ship leaves the Gulf of St. Lawrence. In such a case a Deputy Governor General would act from the Governor General's departure from Ottawa until the Administrator is installed.

Absence III—PROCEDURE

1. The Governor General's Secretary informs the Prime Minister's Office about the intended absence of the Governor General from Ottawa, and the arrangements for a Deputy Governor General to act.
2. The Governor General obtains the Prime Minister's approval either orally or by letter* when he plans to visit the United States for a period not exceeding two weeks.
3. When other visits are planned the Governor General writes* to the Prime Minister to tell him his plans and to ask him to obtain the Queen's permission. The Prime Minister may decide to refer the question to Cabinet. The Prime Minister then communicates with the Sovereign through Her Majesty's Private Secretary either by letter* or cable. The Prime Minister informs* the Governor General when the Queen's permission* has been received.
4. If the Governor General's absence from Canada is to exceed 30 days an Administrator is sworn in on the Governor General's departure.

Absence APPENDICES

Submission from Prime Minister to Sovereign regarding visits to United States by Governor General for periods not exceeding two weeks in each case

Letter from Secretary to Governor General to Prime Minister's Special Assistant regarding approval of Governor General's absence to visit United States for a period not exceeding two weeks

Reply to above letter

Letter from Governor General to Prime Minister seeking Queen's permission for absence to visit a country other than the United States or the United States for more than two weeks

Letter from Prime Minister to Queen's Private Secretary transmitting to Her Majesty Governor General's request for permission to be absent abroad

Reply of Queen's Private Secretary to Prime Minister

Letter from Prime Minister to Governor General informing latter of Queen's permission for absence abroad

Death I—POSITION

1. On the death of the Governor General in office authority devolves automatically according to clause VIII* of the Letters Patent on the Administrator. The powers vest in him from the time he takes the oaths as taken by the Governor General. There is no requirement for others to take new oaths of office when the Administrator takes over*.
2. The Prime Minister will immediately inform* the Sovereign of the death of the Governor General.
3. The Prime Minister will wish to consider how the public announcement is to be made and whether he should make a statement* for press, radio and television. Whether Parliament is in session will be an important factor and will affect a decision on whether special messages should be sent to leaders of opposition parties.
4. The Prime Minister will express his condolences to members of the Governor General's immediate family by calling in person or sending messages as appropriate in the circumstances.
5. A period of official mourning will be declared. This is done by proclamation* issued on the authority of an order in council* approved by the Administrator.
6. Arrangements are made for a State funeral. The Secretary of State is responsible for the arrangements in close co-operation with the Prime Minister's Office, Government House and other government departments and agencies involved.
7. A State funeral is offered by the Government on the death of a former Governor General who was a Canadian.

GOVERNOR GENERAL

Death II—BACKGROUND

1. Two Governors General have died in office: Lord Tweedsmuir in 1940 and General Vanier in 1967.

2. Lord Tweedsmuir died in Montreal where he was in hospital, on Sunday, 11 February, 1940.

3. The Prime Minister, Mr. King, took a personal interest in the arrangements for which the Secretary of State was responsible in close co-operation with the Secretary to the Governor General.

4. The Governor General's death was immediately announced from the hospital in Montreal by his Secretary in a bulletin signed by his five physicians. The news was immediately carried by radio stations which observed a two-minute silence and discontinued "light programmes".

5. The Prime Minister was informed while in church in Ottawa and immediately returned to Laurier House. He sent a telegram to the Secretary to the King to inform His Majesty of the Governor General's death. The Prime Minister also sent personal messages of condolence to Lady Tweedsmuir in Montreal and to the Governor General's sons. The Prime Minister informed the leaders of opposition parties and advised Cabinet ministers to return to Ottawa. At 10 p.m. the Prime Minister broadcast a tribute to Lord Tweedsmuir. Parliament was not in session.

6. At 10:15 the Prime Minister drove to the residence of the Chief Justice to be present when he was sworn in as Administrator by the Acting Clerk of the Privy Council. Also present were the Under Secretary of State, the Prime Minister's Private Secretary and the Assistant Secretary to the Governor General.

7. A period of mourning of seven days was approved by order in council and announced by proclamation.

8. The Prime Minister cancelled the political broadcast he was due to make on Wednesday and asked his ministers to defer any political speeches until after the funeral. Other politicians followed suit.

9. Lady Tweedsmuir returned to Ottawa by special train on Monday and was met by the Prime Minister at the station.

10. The Governor General's body remained in Montreal at a funeral home where only personal friends were admitted until taken by special train to Ottawa on Tuesday morning. There was an official procession from the funeral parlour to the station in Montreal.

11. The train reached Ottawa at noon and was met by the Administrator and the Prime Minister who accompanied the body to Parliament where it lay in state in the Senate Chamber. The public were admitted from 3:00 to 10:00 p.m.

12. The funeral was held at 2:30 p.m. Wednesday at St. Andrews Church. Admittance was by invitation only—about 1,000—sent out from Secretary of State. Federal and civic offices were closed. Provincial legislatures which were in session adjourned and many schools closed throughout the country. Memorial services were held in many centres.

13. The Administrator represented the King at the funeral. Lady Tweedsmuir did not attend. After the funeral the body was put on a special train for Montreal. The Administrator and the Prime Minister went to the station for the departure. An hour after arrival at Montreal a private cremation service was held.

14. A special train carrying the ashes left Montreal on 15 February for the port of Halifax where it arrived in the early afternoon of the 16th (Friday). On board were an A.D.C., representing the late Governor General's family, the Minister of National Revenue, Mr. Ilsley, the Premier of Nova Scotia, the Chief of the Naval Staff and the Under Secretary of State. The train was met, on arrival at Halifax, by the Administrator of the Province of Nova Scotia, the Mayor of Halifax as well as by an Admiral of the Royal Navy, senior officers of the Royal Canadian Navy, and others.

15. The casket was removed in procession from the train to the Royal Navy cruiser "Orion" which sailed for England immediately thereafter. Two Canadian destroyers preceded the "Orion" through the harbour gates, as a last mark of respect from the Royal Canadian Navy. No Canadian representative accompanied the ashes during the passage. A memorial service was held at Westminster Abbey on 22 February and the ashes were buried in Scotland.

16. General Vanier died at Rideau Hall on Sunday morning, 5 March, 1967. The Governor General's Secretary telephoned the information to the Prime Minister.

17. The Prime Minister advised the Queen by telephone and by confirming telegram* and issued a press statement* and tribute.

18. The Chief Justice was sworn in as Administrator in the Privy Council Chamber Sunday evening in the presence of the Prime Minister. The Acting Registrar General attended to transfer the Great Seal. The Administrator then issued his proclamation* of assumption of office.

19. The Governor General's body first lay in state at Rideau Hall where the public were not admitted but could sign the book.

20. On Monday the Cabinet approved a seven-day period of mourning which was proclaimed*.

21. Parliament met on Monday at the usual time to hear tributes*, then both Chambers adjourned.

22. On Monday afternoon the Governor General's body was transferred to the Senate Chamber to lie in state until the funeral. The public were admitted Monday evening and on Tuesday.

23. The State funeral was held on Wednesday at the Roman Catholic Basilica. The Administrator represented the Queen. The Prime Minister attended.

24. After the service the body was transferred to Quebec by special train. The Administrator and the Prime Minister and Mrs. Pearson were in the accompanying party.

25. A requiem mass was held on Thursday in Quebec attended by the official party and the body placed in the crypt to await burial.

26. Interment was on May 4th in the chapel of the Royal 22nd Regiment. The Governor General and Mrs. Michener, the Prime Minister and Mrs. Pearson attended.

27. When Mr. Massey who had been Governor General of Canada from 1952 to 1959 died while on a visit to London in 1967 his body was flown back by the R.C.A.F. to Ottawa where a State funeral was held. The Governor General, the Prime Minister and other dignitaries attended.

Death III—PROCEDURE

1. A message*, informing the Sovereign that the Governor General has died and the Administrator has taken over*, is prepared for the Prime Minister's signature.
2. Messages of condolence from the Prime Minister to the Governor General's family are prepared as appropriate.
3. A statement is prepared for the Prime Minister to deliver in Parliament* and for the press*, radio and television.
4. If Parliament is not in session messages are prepared for the Prime Minister's approval informing opposition leaders of the Governor General's death.
5. An order in council* is prepared for the issue of a proclamation* declaring a period of official mourning.
6. The Secretary of State is directed to arrange a State funeral.

1. The arrangements for the State funeral of a Governor General and a former Governor General are described in the appendices listed under the section *Funerals and Memorial Services.*

GOVERNOR GENERAL

Death APPENDICES

Clause VIII of the 1947 Letters Patent regarding devolution of authority on death of Governor General

Message from Prime Minister to Sovereign informing latter of death of Governor General; and Her Majesty's reply to this message

Administrator's proclamation

Press release regarding death of Governor General

Tribute to late Governor General by Prime Minister in House of Commons

Order in council authorizing proclamation for period of mourning on death of Governor General

Proclamation for period of mourning on death of Governor General

Letters Patent constituting Office of Governor General

I—POSITION

1. The office of Governor General is constituted under Letters Patent* under the Great Seal of Canada, dated 8 September, 1947, signed by the King and the Canadian Prime Minister. They came into effect by proclamation on 1 October, 1947.

2. The Letters Patent authorize the Governor General to exercise, on the advice of his Canadian ministers, all the powers of the Sovereign in respect of Canada.

3. The practice regarding the continued submission of certain matters to His Majesty was not altered. An undertaking was given to His Majesty that ". . . unless exceptional circumstances made it necessary to do so, it was not proposed by the Canadian Government to alter existing practices without prior consultation with or notification to the Governor General and the King".[1]

4. The following are the matters which continue to be submitted to the Sovereign:

   "(*a*) signatures of Full Powers for the signing of treaties in the Heads of States form, and signature of ratifications of such treaties;

   (*b*) approval of the appointment of Canadian Ambassadors and Ministers to foreign countries, and signature of their Letters of Credence;

   (*c*) approval of the proposed appointment of foreign Ambassadors and Ministers to Canada (i.e., granting the agrément);

   (*d*) authorizing the Declarations of War;

   (*e*) appointing the Governor General of Canada;

   (*f*) granting of honours".[2]

[1] From letter by the Rt. Hon. W. L. Mackenzie King, Prime Minister of Canada, to Sir Alan Lascelles, Private Secretary to the King, August 7, 1947, on P.C.O. file G-50.

[2] From letter by A. E. Gotlieb, Department of External Affairs, to A. S. Millar, Privy Council Office, November 29, 1965, on P.C.O. file R-2-1(a).

Letters Patent constituting Office of Governor General

1. Initially the Governor General occupied the office by reason of a commission of appointment under the Great Seal of the United Kingdom which also specified the powers and duties of the post. He also received a personal letter of instructions from the Queen.

2. In 1875 the United Kingdom Government proposed to amend this procedure for all Governors and issue permanent Letters Patent establishing the office and continuing letters of instruction. These drafts gave rise to considerable discussion with the Canadian Government and the resulting documents came into force when the fourth Governor General, Lorne, was appointed in 1878. The changes recognized the formation of the Supreme Court of Canada in 1875. The commission became solely the instrument of appointment.

3. In 1905 new Letters Patent and instructions were again issued, to confer the title of Commander-in-Chief on the Governor General and to provide for the Chief Justice or senior judge of the Supreme Court to be the Administrator instead of the Commander of British Forces as heretofore.

4. After the Imperial Conference of 1926 the documents were again redrafted to reflect the constitutional developments which had been recognized at the Conference. These came into effect in 1931.

5. The next significant change came in 1947 when the Letters Patent* were redrafted as a Canadian document incorporating the instructions. Provision was made for the exercise of all the royal powers by the Governor General but this was by way of "enabling legislation" as it was not the intention to introduce changes in the existing practice whereby certain matters were referred to the Sovereign.

6. There was an exchange of letters with Buckingham Palace on this point. The King's Private Secretary pointed out that "His Majesty notes that, as stated in the last sentence of your letter, it would only be in exceptional circumstances that any change would be made in the existing practice with regard to submissions to The King and that no such change will take effect without previous consultation".[1]

7. Mr. King replied, "The wording of the second sentence of the penultimate paragraph of your letter of May 21st suggests that there may have been a slight misunderstanding as to the sense of my letter of May 5th. What I had

[1] From letter by Sir Alan Lascelles, Private Secretary to the King, to the Rt. Hon. W. L. Mackenzie King, Prime Minister of Canada, May 21, 1947, on P.C.O. file G-50.

intended to convey was that, unless exceptional circumstances made it necessary to do so, it was not proposed by the Canadian Government to alter existing practices without prior consultation with or notification to the Governor General and the King".[1]

8. This question arose again in 1951 when King George VI became ill. A Council of State was appointed in the United Kingdom and Canada was informed. The Palace observed that the Canadian Government would want to consider whether any documents requiring the King's approval should be held until the King could deal with them personally or should be signed by the Governor General.

9. The Prime Minister suggested that the Governor General should, as a temporary measure during the existence of the Council of State, act for the King, in accordance with the terms of the Letters Patent, in respect of those matters heretofore still referred to the King. The Palace replied that as the King's health was improved he would prefer to deal personally in the usual way with the matters referred to.

10. The Palace also suggested that ". . . to meet any similar situation in the future, . . ." the Canadian Government should consider how section 6 of the United Kingdom *Regency Act, 1937* should be amended. Since the Letters Patent provide general authority for the Governor General to act without regard to the terms of the United Kingdom Regency Act it was not considered necessary for Canada to concern itself with possible amendments to that Act.

[1] From letter by the Rt. Hon. W. L. Mackenzie King, Prime Minister of Canada, to Sir Alan Lascelles, Private Secretary to the King, August 7, 1947, on P.C.O. file G-50.

Letters Patent constituting Office of Governor General

III—PROCEDURE

1. The draft of the new Letters Patent which had been shown to the Governor General after being approved by Cabinet was sent to the King's Private Secretary by the Prime Minister for an indication of the King's views.
2. The Private Secretary informed the Prime Minister that the King approved the intention to amalgamate the documents and the text of the Letters Patent. Clarification was exchanged regarding the powers to be exercised by the Sovereign.
3. The document* was prepared in Canada and bears the signature of the King and the Prime Minister and is sealed with the Great Seal of Canada.

Letters Patent constituting Office of Governor General

Letters Patent of 1947 constituting the office of Governor General

Choice of Prime Minister I—POSITION

1. The Prime Minister is chosen by the Governor General when the position becomes vacant. Convention dictates that if a party has a majority in the House of Commons its leader must be selected. If there is no majority party the Governor General seeks the leader of the party able to command support from a majority in the House.

2. In Canada the Governor General is bound by convention to accept the leader selected by the party and does not make his own choice from amongst the members.

3. Advice to the Crown by the Prime Minister before resignation has, in Canada, been looked upon as a normal state of affairs, but constitutional opinion clearly indicates that the Crown, in exercising its prerogative in selecting a Prime Minister, is theoretically under no obligation to take the advice of the Prime Minister. In practice, of course, the Crown may have little alternative. For example, "Where the Government is defeated and there is a leader of the Opposition the King must send for him".[1]

4. After resignation or retirement, advice cannot be given unless solicited, and advice given at the Sovereign's request is merely that of a Privy Councillor as distinct from that of a Prime Minister. As such it need not be followed.

5. It is also clear that ". . . where a Cabinet resigns owing to internal dissensions, or where a Prime Minister dies or tenders a personal resignation, or where, on the defeat of a Government, the leader of the Opposition is unable or unwilling to form a Government, the Queen may consult whom she pleases".[2]

6. The Prime Minister-designate need not already be a member of the Privy Council, nor in theory, of Parliament.

7. No document is necessary to effect the appointment which becomes operative when the Prime Minister-designate informs the Governor General that he is in a position to accept the invitation to form a Government.

8. The new Prime Minister takes the Privy Council oath if he has not previously done so, and on occasion (Mr. Meighen, Mr. King, Mr. Diefenbaker, Mr. Pearson, Mr. Trudeau) the oath as Prime Minister although there is no requirement for the latter. If he is taking responsibility for another portfolio he is also sworn into that office.

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1 W. Ivor Jennings, *Cabinet Government*, 1st edition (Cambridge, 1947), p. 35.
2 *Ibid.*, 3rd edition, p. 50.

Choice of Prime Minister II—BACKGROUND

1. The discretion of the Governor General in selecting the Prime Minister is exercised within the limits of his position as representative of a constitutional monarch. He is looking for a Prime Minister who will be supported by a majority in the House of Commons and whose advice he will accept as long as he retains his confidence. He therefore looks to the leaders of the political parties in the House of Commons. It has been said "Where, for instance, the Government has been beaten, and the Opposition has its own appointed leader, the King has no practical alternative but to offer him the post. Or, . . . both party and public opinion is so clear as to who is his proper successor that the King must follow the drift of that opinion. For he knows that, in such circumstances, it is wholly unlikely that any other nominee will be able to form a Government".[1]

2. The uncertainty which in Canada surrounds the question of advice by a Prime Minister about his successor arises in part from failure to distinguish the situations before and after resignation. In 1926, Mr. King's hypothesis that he ". . . might have advised His Excellency to send for some other hon. member of this House to form an administration, . . ."[2] clearly referred to the alternative advice to dissolution which would have been given before his resignation. When he did resign on dissolution being refused there is no reference to any advice regarding his successor. In 1930 Mr. King announced on 29 July that he had advised the Governor General to send for Mr. Bennett. He did not resign until August 6. In 1944, when considering resignation, he was again speaking of advice before resignation *and* in reply to a question by the Governor General. Even this may be more than what is expected in England but it is nevertheless constitutionally defensible.

3. There are three known occasions when the Governor General's invitation to form a Government was not accepted. When Macdonald died Thompson was invited to form a Government but he declined and advised that Abbott, a senator, be sent for. When Bowell was about to resign Sir Donald Smith was sounded out but was not receptive and Tupper was invited to form the Government. Then when Borden was leaving because of ill health Sir Thomas White was summoned to Government House but declined the invitation which Meighen subsequently accepted.

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[1] Harold J. Laski, *Parliamentary Government in England* (London, 1938), pp. 229-230.
[2] *Can. H. of C. Debates,* June 30, 1926, p. 5217.

Choice of Prime Minister III—PROCEDURE

1. The Governor General traditionally conveys the invitation to form a Government orally to the person he has selected. The acceptance is usually also oral. No commission or document of any kind is required.

Summoning, Prorogation and Dissolution of Parliament I—POSITION

1. The Governor General takes the operative steps, on the advice of the Prime Minister, to summon, prorogue and dissolve Parliament.
2. The Governor General accepts the Prime Minister's advice on summoning and proroguing Parliament.
3. On dissolution the Governor General retains a degree of discretion and is entitled to satisfy himself that dissolution recommended by the Prime Minister is justified under Canadian constitutional practice. A decision by the Governor General not to accept the advice to dissolve Parliament would, however, amount to a withdrawal of his confidence in the Prime Minister and could involve immediate and serious problems, as was demonstrated in 1926.

Summoning, Prorogation and Dissolution of Parliament II—BACKGROUND

1. The Governor General does not retain any discretion in the matter of summoning or proroguing Parliament, but acts directly on the advice of the Prime Minister. This was not always so. In 1873 the Governor General, Lorne, met with the Privy Council to lay before the Government ". . .the terms on which he would accede to a prorogation of Parliament . . ."[1], but this is now of historic interest only.

2. In regard to dissolution the preponderant constitutional opinion appears to be that in certain circumstances the Governor General does still retain some discretion, even after the 1926 crisis. Those events did not eliminate the Governor General's discretionary right to decline the advice to dissolve but served to bring out the extremely limited circumstances in which the possibility of declining the advice of the Prime Minister could be entertained.

[1] J. R. Mallory, "Cabinets and Councils in Canada", *Public Law* (Autumn 1957), pp. 231-251 at p. 233.

Consultation with Governor General I—POSITION

1. Since the Imperial Conference of 1926 it has been recognized that the Governor General occupies the same position in relation to his ministers as does the Sovereign in the United Kingdom. The Letters Patent of 1947 confirmed him in the exercise of the Sovereign's powers as Head of State for Canada.

2. Consultation is thus consistent with the exercise of responsibility by the Governor General in such matters as approval of the formation of a Government and of dissolution of Parliament.

3. Consultation moreover has reciprocal benefits for the Governor General and the Prime Minister in the context of the obligation to assure the existence in office of a Government which can command the support of Parliament.

4. Consultation does not depend on any statutory or conventional obligation but finds its basis in the inter-relationship of the constitutional responsibilities of the Prime Minister and the Governor General. In practice it will vary in extent, depth, and frequency according to the nature of the personal relationship between the Prime Minister and the Governor General.

5. The qualities and experience which would determine the selection of a Governor General would be helpful to a Prime Minister in providing an objective reaction to matters he might choose to discuss with the Governor General as Head of State. Moreover this would seem to be consistent with the traditional right to encourage and to warn which has continued to attach to the latter position.

Consultation with Governor General II—BACKGROUND

1. The Imperial Conference of 1926 declared that the Governor General "should be kept as fully informed as His Majesty the King in Great Britain of Cabinet business and public affairs".[1] The Governor General's position in this respect was further strengthened by the Letters Patent of 1947 which delegated all the royal powers to him, thereby putting him in the same position in regard to the Canadian Government as that of the Sovereign in regard to the United Kingdom Government. The practice of appointing Canadians as Governor General has facilitated the recognition of this new constitutional position.

2. It is recognized that the Head of State's time-honoured right to encourage and to warn suggests that he should be fully informed of government business in order that he may act effectively and with wisdom in those rare but crucial occasions when his advice is solicited or his action required.

3. The practice of consultation with the Governor General has been varied and generally informal without a firm programme.

4. Recently a Prime Minister undertook to consult the Governor General in advance on appointments within the following categories:
   (a) Ambassadors and High Commissioners;
   (b) Chief Justices;
   (c) Lieutenant-Governors;
   (d) Justices of the Supreme Court and the Exchequer Court;
   (e) Deputy Ministers;
   (f) Chairmen of importatnt Boards and Commissions.

   This arrangement was not continued into the succeeding regime.

5. Other Prime Ministers have also indicated the value they attached to the advice and counsel of the Governor General. Sir Robert Borden recorded that:

   "It would be an absolute mistake to regard the Governor-General as a mere figure-head, a mere rubber stamp. During nine years of Premiership I had the opportunity of realizing how helpful may be the advice and counsel of a Governor-General in matters of delicacy and difficulty; in no case was consultation with regard to such matters ever withheld; and in many instances I obtained no little advantage and assistance therefrom."[2]

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[1] *Imperial Conference 1926, Summary of Proceedings* (Ottawa, 1926), p. 14.

[2] "The Imperial Conference", *Journal of the Royal Institute of International Affairs* (July 1927), p. 204.

Consultation with Governor General III—PROCEDURE

1. No fixed procedure for consultation has been adopted. However the Prime Minister's visits to Government House where he informs the Governor General of current government business provide a regular opportunity for consultation to take place.
2. Consultation by telephone also takes place.
3. Minutes of Cabinet meetings together with a copy of the documents referred to in such minutes are sent to the Governor General.

Information on Cabinet Business and Access to Cabinet Documents I—POSITION

1. Beginning in 1963 Cabinet minutes and relevant Cabinet documents have been provided to the Governor General for his information.
2. The Prime Minister has periodical meetings with the Governor General to discuss Government business and public affairs.

Information on Cabinet Business and Access to Cabinet Documents

1. A system of sending Cabinet minutes and relevant documents to the Governor General for his perusal was inaugurated on 8 May, 1963. Until then Prime Ministers had not provided the Governor General with this information on a regular basis.

2. During the first and second World Wars the Governors General were kept specially informed about the conduct of the war but this did not lead in either case to the adoption of a regular system of informing the Governor General on matters before the Government. This was despite the report of the Imperial Conference of 1926 which had recognized that because of the development of the Governor General's position he should receive copies of important documents and be fully informed on Cabinet business and public affairs. However, the manner in which and the extent to which the Governor General is now informed of Cabinet discussions and provided with Cabinet documents is still recognized as a matter for decision by the Prime Minister.

3. The practice of regular meetings between the Governor General and the Prime Minister to discuss business varies according to the relationship between the incumbents. Latterly the tendency has been to attempt to develop a regular practice although busy timetables make this difficult.

Information on Cabinet Business and Access to Cabinet Documents

1. Under the arrangements established by the Prime Minister in May 1963, the Registrar of the Cabinet sends minutes of each Cabinet meeting together with a copy of the documents referred to in such minutes to the Governor General by messenger in a special locked briefcase.

2. They are handled only by the Secretary to the Governor General, or in his absence the Assistant Secretary. After the Governor General has read them they are returned by messenger to the Privy Council Office. Copies or extracts are not made in Government House and the Governor General does not make notations on the documents. The documents are available if the Governor General should wish to see them again.

3. Arrangements were made with the approval of the Prime Minister to send documents to General Vanier when he was in Canada but out of Ottawa for an extended time.

4. The Prime Minister discusses Government business and public affairs with the Governor General at private meetings which are held about once a week as far as the programmes of the Prime Minister and the Governor General permit. It has been the practice to set a fixed time each week for the Prime Minister to visit the Governor General for this purpose but frequent changes are necessary and the initiative in arranging the meetings is generally assumed by the Governor General's Secretary.

Powers of Governor General in respect of Federal and Provincial Legislation

I—POSITION

1. Federal bills which have been passed by both Houses of Parliament must receive Royal Assent before they become law. The authority to give assent is conferred on the Governor General by the *B.N.A. Act.*
2. The power to veto federal legislation conferred on the Governor General by the *B.N.A. Act* which provides for withholding assent to bills has never been exercised.
3. The power of the Governor General to reserve federal bills for the Queen's pleasure, found in section 55 of the *B.N.A. Act* was declared obsolete after the Imperial Conference of 1926 and has not in fact been exercised since 1886.
4. The power of the Queen in Council found in the *B.N.A. Act* to disallow federal statutes which have received Royal Assent from the Governor General was declared to be obsolete after the Imperial Conference of 1926 and has in fact only been used once, in 1873.
5. The power of the Governor General in Council to disallow* provincial statutes which have received Royal Assent from the Lieutenant-Governor has been exercised 112 times, the last in 1943, and still subsists in law.
6. The Minister of Justice reports to the Governor in Council on all provincial legislation and recommends that Acts be left to such operation as they may have*. He could also recommend that a particular provincial Act be disallowed although recent developments within Canada now make this both politically and constitutionally problematical. No clear and consistent principles appear to have been applied to the provincial legislation which has been disallowed in the past.
7. The power of Lieutenant-Governors to veto provincial legislation, conferred by the *B.N.A. Act* has been exercised 28 times, the last time being in 1945 when the action was upheld by the courts.
8. The power of Lieutenant-Governors to reserve provincial legislation for the Governor General's pleasure has been exercised at least 70 times, last in 1961, and 14 of these bills have been given assent* by the Governor General in Council.

Powers of Governor General in respect of Federal and Provincial Legislation

1. Although the power to veto federal legislation was conferred on the Governor General by the *B.N.A. Act* it was recognized from the outset that it would be contrary to the principle of responsible government for it to be exercised.

2. The power to reserve federal bills for an expression of the Queen's pleasure, which meant the United Kingdom Government, was used 22 times in the first two decades of Confederation, last in 1886. There are however indications that in 1897 the Governor General considered resorting to the power when it appeared that Laurier was contemplating tariff increases which would have upset Chamberlain. Then in 1906 and 1916 the United Kingdom authorities reminded Governors that the power to reserve persisted. Following the Imperial Conference of 1926 however, it was decided that constitutional evolution had made the power obsolete. It was suggested that the legislation conferring the power could be amended but Canada has not taken action to amend the *B.N.A. Act* in this sense.

3. The power of the Queen in Council to disallow Canadian federal statutes which have received Royal Assent was used to veto a statute which provided for committees of the Senate or House of Commons to examine witnesses on oath, this being considered by United Kingdom authorities to be contrary to the *B.N.A. Act*. The specific recognition by the Imperial Conference of 1926 of the right of each Dominion to advise the Crown in all matters relating to its own affairs brought this power of disallowance to an end although it still remains in the *B.N.A. Act*.

4. With the obsolescence of these powers the requirement under the *B.N.A. Act* to send copies of all Canadian federal statutes to London lost its meaning and the practice was discontinued. In 1947 the *Publication of Statutes Act* was amended to remove the requirement although it still remains unheeded in the *B.N.A. Act*.

5. The *B.N.A. Act* empowers the Governor General in Council to disallow* provincial statutes and the Lieutenant-Governor to reserve provincial bills for the Governor General's pleasure. Both these powers were recognized in 1938* by the Supreme Court of Canada as subsisting, the latter one subject to any limitation in the Instructions to the Lieutenant-Governor. The Instructions do not however contain anything of that character. Orders in council of 1882 and 1924 however stated that only in cases of extreme necessity should a Lieutenant-Governor reserve a bill without specific instructions. This position was reiterated by the Prime Minister in 1961* in the House of Commons when discussing the case of a Saskatchewan bill reserved on the Lieutenant-Governor's discretion alone.

6. The federal Government has consistently adopted the position that a Lieutenant-Governor should only reserve legislation for the Governor General's pleasure on the authority of specific instructions from the Governor General sought in each case where the Lieutenant-Governor considers such action might be justified. Recent developments in Canada have considerably reduced the possibility of such instructions being issued. The lack of specific authorization has not however prevented Lieutenant-Governors from reserving bills, as in 1961.

7. That case demonstrated that the authority to reserve could still be used, even without instructions from Ottawa. There was discussion in Parliament and the Government passed an order in council* assenting to the reserved bill.

8. It has generally been accepted that the Government will not disallow or withhold assent to a provincial measure unless it is considered to be *ultra vires* the legislature, or to be not in the national interest or to be otherwise objectionable. These conditions have been differently interpreted. The tendency is to leave the question of competence to the court. The other two considerations are a matter of opinion for the Government.

9. Provincial bills which have been reserved have no validity until and unless they receive assent by the Governor General in Council within the year's delay. If they do not, they die and can only be revived by re-enactment. In the past when a provincial bill has been reserved for the pleasure of the Governor General, the Minister of Justice has reported to Cabinet on whether the bill should receive assent or not. When a recommendation against assent is accepted an order in council to this effect is passed and communicated to the Lieutenant-Governor for his information. A recommendation for assent to the bill is followed by an order in council* granting such assent, which order is subsequently communicated to the Lieutenant-Governor.

Powers of Governor General in respect of Federal and Provincial Legislation

III—PROCEDURE

1. Royal Assent to federal legislation is a routine ceremonial carried out at a time selected by the Government.

2. The Department of Justice examines and reports on all provincial statutes. The report is submitted to Council by the Minister of Justice who recommends that they may be left to such operation as they may have. If he was to recommend that a certain statute be disallowed action to disallow would have to be taken within one year of the reception of the statute by the Governor General.

3. An order in council* is passed accepting the report and authorizing its transmission to the Lieutenant-Governor. This order amounts to a declaration, before the expiry of the time limit for disallowance, that the power to disallow will not be exercised in respect of the statutes listed. It is not however necessary to the validity of the statutes which are operative until and unless they are disallowed.

4. If a provincial statute is being disallowed an order* is passed effecting the disallowance. A copy of this order together with a certificate* signed by the Governor General testifying to the date of receipt of the statute by him are sent to the Lieutenant-Governor.

5. If a Lieutenant-Governor believes that a bill which will come before him for assent should be reserved he should seek the Governor General's instructions by the quickest possible means giving his reasons why reservation is desirable. The Government will immediately decide whether he is to be instructed to reserve or not. This decision would probably be taken by order in council on the recommendation of the Minister of Justice.

6. If a Lieutenant-Governor reserves a bill either with or without instructions the Minister of Justice will report on it and recommend whether assent should be given or not. If assent is to be given action* by the Governor General in Council must be taken within one year of the receipt of the bill for assent by the Lieutenant-Governor. This decision will be communicated to the Lieutenant-Governor. If assent is not to be given the decision should be confirmed likewise by order in council and communicated to the Lieutenant-Governor. The Government might however decide to withhold action of any kind and allow the bill to die on the expiry of the one year's delay.

Powers of Governor General in respect of Federal and Provincial Legislation

1. The ceremonial for Royal Assent given to federal bills is described in the *Parliament* section.

Powers of Governor General in respect of Federal and Provincial Legislation APPENDICES

Order in council leaving provincial statutes to "such operation as they may have"

Order in council disallowing a provincial statute

Certificate of Governor General regarding the day on which disallowed provincial statute was received by him

Extract from 1938 Supreme Court of Canada decision regarding reservation and disallowance powers

Order in council assenting to reserved provincial statute

Statement regarding exercise of power of reservation by Lieutenant-Governor made by Prime Minister in House of Commons in 1961

GOVERNOR GENERAL

Prerogative of Mercy I—POSITION

1. The prerogative of mercy is an attribute of the Crown which is delegated to the Governor General by clause XII* of the Letters Patent. The *Criminal Code* contains a statutory statement of the prerogative of mercy which conforms with the provision of the Letters Patent.

2. The prerogative is exercised in both capital and non-capital cases. In capital cases the prerogative decision may be to let the law take its course, to grant a reprieve or postponement of the execution of the sentence, or to commute the sentence. In non-capital cases the prerogative decision may be to remit corporal punishment, to grant a free or conditional pardon, to remit sentences to prison, to remit fines, pecuniary penalties, forfeitures or costs in whole or in part, or to suspend orders prohibiting driving.

3. Every capital case is reviewed by Cabinet whether or not an application for mercy has been made. Under the 1967 amendment to the *Criminal Code* adopted for a five-year trial period, capital murder is restricted to murder of police officers and prison guards.

4. The Solicitor General presents a full report on the case and Cabinet as a whole takes a decision on the advice to be tendered to the Governor General by order in council*.

5. The Governor General may ask for further information, consult with the Prime Minister or other ministers and may ask that Cabinet reconsider before he approves the order.

6. In non-capital cases the Minister of Justice is responsible for the recommendation in cases under section 596 of the *Criminal Code*. In other non-capital cases the Solicitor General puts forward the recommendation of the Parole Board. The Governor General approves an order in council based on the recommendation in each case.

7. The *Parole Regulations* are enacted by order in council.

Prerogative of Mercy II—BACKGROUND

1. The prerogative of mercy was originally exercised on the Governor General's "own deliberate judgement".[1]

2. In 1878 the reference to pardons in the new Instructions was considerably revised and since then it has been taken that the prerogative of mercy should only be exercised on ministerial advice.

3. This came about after Dufferin in 1875 had commuted to two-years imprisonment the death sentence of Ambroise Lépine of Riel's "provisional" Government, for shooting Thomas Scott. Prior to the commutation Dufferin had written that he would act "... on my own responsibility, under the powers accorded to me by my instructions".[2] The Mackenzie Government of the time was unwilling to assume responsibility for advising a commutation.

4. The prerogative of mercy delegated to the Governor General in the Letters Patent* and enunciated in the *Criminal Code* are one and the same. The procedure has been to take action with reference to the statutory provisions of the Code although the prerogative would continue to exist, as set out in the Letters Patent, even if the *Criminal Code* were silent on the subject.

5. An example of the exercise of mercy without reference to the provisions in the *Criminal Code* occurred in 1957 when on the occasion of the Queen's visit to Canada a partial remission of the terms of imprisonment of all those having committed an offence under acts of the Parliament of Canada was granted. An order in council* recommended by the Minister of Justice granting the remission was approved by the Deputy Governor General. A proclamation* announcing the remission was also issued. A similar remission under the exercise of mercy had taken place in 1939 on the occasion of the royal visit of that year.

6. All capital cases are reviewed and the judgement of the entire Cabinet is engaged in the decision whether it be for commutation or not. At one time consideration was given to whether the ministers responsible should make the determination for Cabinet approval, thus avoiding full Cabinet discussion, but this has not been considered desirable.

7. Under the 1967 *Criminal Code* amendment abolishing capital punishment for a five-year trial period the death sentence remains available only in cases of murder of a police officer or a prison guard. Such a sentence can however still be commuted.

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[1] From Instructions of 1861 issued to Lord Monck. The discretion was continued in the new Instructions issued to Monck at Confederation.

[2] From Despatch by Dufferin, Governor General, to Carnarvon, Colonial Secretary, dated 10 December, 1874, Public Archives of Canada.

8. While the prerogative of mercy is now only exercised on advice, the Governor General is nevertheless expected to reach a personal judgement for which purpose he is given full background information. He is free to express any concerns he may have about the advice offered and may even ask for it to be reconsidered.

9. This happened in 1959 and the Solicitor General reconsidered the case in the light of the Governor General's views and consulted several of his colleagues. The Governor General was then advised to proceed as originally recommended. The report to Cabinet notes that the Governor General's action was strictly within his prerogative.

10. In non-capital cases it is usual for the Governor General to accept the recommendation laid before him.

Prerogative of Mercy III—PROCEDURE

1. An order in council* transmitting the advice regarding the exercise of mercy is prepared for the approval of the Governor General.

GOVERNOR GENERAL

Prerogative of Mercy APPENDICES

Clause XII of the 1947 Letters Patent regarding the exercise of mercy by the Governor General

Order in council commuting sentence of death to a term of life imprisonment

Order in council allowing law to take its course (regarding sentence of death)

Order in council postponing date of execution of sentence

Order in council for remission of sentences on occasion of 1957 royal visit

Proclamation regarding above remission

Warrants I—POSITION

1. Section 28 of the *Financial Administration Act* provides that when Parliament is not in session, the Governor in Council* may direct that a special warrant* be signed by the Governor General authorizing payments to be made from the Consolidated Revenue Fund to cover urgent payments for the public good where no other appropriation exists.
2. Special warrants must be published in *The Canada Gazette* within 30 days and reported to the House of Commons within 15 days of the next session.
3. The amounts appropriated by special warrant are to be included in the next appropriation approved by Parliament.
4. Although the limit is not imposed by statute, it is the consistent practice to issue special warrants to cover expenditures for only one month at a time.
5. In the case of expenditures covered by an existing appropriation section 26 of the *Financial Administration Act* provides that no payment shall be made under the appropriation unless, on the authority of an order in council*, the Governor General signs a warrant* authorizing such expenditures. A warrant is issued as a matter of routine following Royal Assent to an appropriation act.

Warrants II—BACKGROUND

1. Special warrants of the Governor General have been used since Confederation and their field of application has gradually broadened until now they are used to meet ordinary government expenditures.

2. Special warrants to cover essential public services were issued in 1896, 1926, 1940, 1945, 1958, 1963, 1965 and 1966*. In 1958 and 1963 warrants were used to complete the financing of general services for one fiscal year and to commence the financing of services for the coming year. Warrants were also passed without publication of the Estimates for the year concerned.

3. While it had become the custom to include the amount appropriated by special warrant in the next Estimates in order to bring them under scrutiny of Parliament, this was not legally necessary until the *Financial Administration Act* was amended in 1958 to make this a statutory requirement. Such amount is now deemed to be included in, and not be in addition to, the amounts enacted in the next Appropriation Act of Parliament.

4. A warrant* under section 26 of the *Financial Administration Act* is issued for each Appropriation Act approved by Parliament as soon as the latter Act has received Royal Assent. No payments can be made under the Act until such a warrant, authorized by order in council*, has been signed by the Governor General. The President of the Treasury Board recommends the order.

Warrants III—PROCEDURE

1. The Minister of Finance presents the application for a special warrant* based on the submissions made to Treasury Board by departments and agencies.
2. The Committee of the Privy Council recommends that the Governor General sign a special warrant for the requested amount.
3. The Governor General signs the special warrant* and it is published in *The Canada Gazette* within 30 days.
4. Within 15 days of the commencement of the next session of Parliament the Minister of Finance shall table a statement showing all special warrants issued.
5. The order in council* for the issue of a warrant under section 26 of the *Financial Administration Act* is approved by the Governor General who then signs the warrant* which is transmitted to the Comptroller of the Treasury as authorization for expenditures under the Appropriation Act.

GOVERNOR GENERAL

Warrants APPENDICES

Order in council for issue of special warrant to authorize urgent payment for the public good (section 28 of the *Financial Administration Act*)

Special warrant authorizing urgent payment for the public good

Order in council for issue of warrant authorizing expenditures under approved Appropriation Act (section 26 of the *Financial Administration Act*)

Warrant authorizing expenditures under approved Appropriation Act

Great Seal of Canada and Governor General's Privy Seal — I—POSITION

1. The Letters Patent constituting the office of Governor General empower the Governor General to keep and use the Great Seal of Canada. The Seal is entrusted to the Registrar General for safekeeping.
2. A Great Seal is prepared for each reign, and the design is approved* by the Sovereign. The present Seal was approved in 1955.
3. The Great Seal is affixed to formal documents of the Government of Canada issued in the name of the reigning Sovereign.
4. The Privy Seal of the Governor General is used to seal other documents. It bears the arms of the Governor General and one version in the custody of the Registrar General is inscribed with the Governor General's name. The other copy, without the inscription, is kept for use at Government House.
5. A Privy Seal is prepared for each Governor General.

Great Seal of Canada and Governor General's Privy Seal

II—BACKGROUND

1. Until October 1, 1966 the Great Seal and the Privy Seal were in the custody of the Secretary of State. This custody was transferred to the Registrar General on that date as a result of a statutory reorganization of ministerial responsibilities which created a Department of the Registrar General with the Registrar General as its minister. On 21 December, 1967 the coming into force of the *Department of Consumer and Corporate Affairs Act* abolished the Department of the Registrar General and provided that the Minister of Consumer and Corporate Affairs would perform the duties of the Registrar General of Canada. Provision was also made in the new Act for the appointment of Deputy Registrars General by the Minister. The custody of the Great Seal and the Privy Seal is therefore now in the hands of the Minister of Consumer and Corporate Affairs. There is statutory provision for a transfer by order in council of the Registrar General's duties to another minister should this be desired.
2. The first Great Seal of Canada was approved by Queen Victoria in 1869 and a new one has been approved for each succeeding reign.
3. In 1950 the Great Seal was modified during a reign when the reference to "Emperor of India" was deleted from the inscription.
4. The Great Seal for the reign of Queen Elizabeth II is the first to have been designed and made in Canada. For the first time the inscription is in English and French rather than in the customary abbreviated Latin. The title "Queen of Canada—Reine du Canada" was also an innovation. It was approved by Cabinet and by the Queen but without the discussion which might have been expected to precede the adoption of a new royal title.
5. The Registrar General is responsible for initiating the preparation of a new Great Seal at the beginning of a reign. The old Seal may continue to be used until the new one is approved. Formerly its continued use was specially authorized by the new Sovereign. This is no longer necessary.
6. The Privy Seal is prepared as soon as possible for each new Governor General. Until it is ready an impersonal Seal is used.

Great Seal of Canada and Governor General's Privy Seal

III—PROCEDURE

1. The Great Seal is handed to the Governor General at his installation and he immediately gives it to the Registrar General for safekeeping. Whenever a Registrar General leaves office the Great Seal should be returned by him to the Governor General who will give it to his successor for safekeeping.
2. The Registrar General is responsible for obtaining the approval* of Council for the preparation of a new Great Seal at the commencement of a reign. A submission* is then presented to the Sovereign asking for approval of the design and authorization for the use of the new Seal.
3. When a new Seal is approved the old Seal is presented to the Governor General to be defaced and then placed in the Public Archives. The new Seal is given by the Governor General into the custody of the Registrar General.

Great Seal of Canada and Governor General's Privy Seal

IV—CEREMONIAL

1. The ceremony of defacing the old Great Seal and accepting the new was carried out at Government House in February 1956.

2. The Secretary of State, who at that time was the custodian of the Great Seal, was present to turn over the old Seal and receive the new. The minister responsible for the Public Archives was present to receive the defaced Seal. The Under Secretary of State, the Dominion Archivist, the Master of the Royal Canadian Mint and the artist who designed the Seal were invited to be present. The minister performing the duties of the Registrar General, as the custodian of the Great Seal, and the Deputy Registrar General would replace the Secretary and Under Secretary of State at a similar ceremony in the future.

Great Seal of Canada and Governor General's Privy Seal

III—PROCEDURE

1. The Great Seal is handed to the Governor General at his installation and he immediately gives it to the Registrar General for safekeeping. Whenever a Registrar General leaves office the Great Seal should be returned by him to the Governor General who will give it to his successor for safekeeping.
2. The Registrar General is responsible for obtaining the approval* of Council for the preparation of a new Great Seal at the commencement of a reign. A submission* is then presented to the Sovereign asking for approval of the design and authorization for the use of the new Seal.
3. When a new Seal is approved the old Seal is presented to the Governor General to be defaced and then placed in the Public Archives. The new Seal is given by the Governor General into the custody of the Registrar General.

Great Seal of Canada and Governor General's Privy Seal

Order in council authorizing Secretary of State to request the Sovereign's approval for design and authorization for use of a new Great Seal of Canada; together with submission from Secretary of State to Sovereign requesting such approval and authorization[1]

[1] These two documents are included for purposes of illustration only. The order in council would now authorize the minister performing the duties of the Registrar General who would make the submission to the Sovereign.

Status of Governor General when Sovereign in Canada

1. The presence of the Sovereign in Canada does not impair or supersede the authority of the Governor General to perform the functions delegated to him under the Letters Patent.
2. The Governor General's position will be affected only to the extent that the Sovereign may be called upon to perform specific royal functions.
3. The Governor General remains solely empowered to perform acts prescribed by statute to be performed by him as *persona designata,* the Sovereign having no authority in respect thereto.
4. The presence of the Sovereign in Canada does not, therefore, affect the Governor General's entitlement to be informed and consulted.
5. The Government is responsible for advising what acts shall be performed by the Sovereign while in Canada and what shall continue to be performed by the Governor General.

Status of Governor General when Sovereign in Canada

1. In preparation for the King's visit in 1939 the Minister of Justice gave an opinion, dated 16 December, 1938, that the presence of the Sovereign in Canada did not affect the delegation of powers under the Letters Patent and Instructions. The Governor General remains empowered to perform all his normal functions while the Sovereign is here.

2. The inability of the Sovereign to perform acts prescribed by statute for the Governor General as *persona designata* was demonstrated in 1957 at the induction of Prince Philip into the Privy Council. Pursuant to section 11 of the *B.N.A. Act,* the Governor General approved the instrument of advice appointing Prince Philip to the Privy Council. This was done at a meeting in the Queen's presence.

3. When the Sovereign does perform a royal function in Canada, such as giving Royal Assent, as in 1939, or opening Parliament as in 1957, the Governor General steps aside. In 1957 at a Privy Council the Queen approved an order in council authorizing the issue of full powers to sign a tax agreement with Belgium, an order which would normally have been approved by the Governor General.

4. Most of the legislative acts of the Governor General performed by order in council are in virtue of statutes conveying authority to the Governor General in Council. These cannot therefore be performed by the Sovereign and the authority remains vested exclusively in the Governor General in Council regardless of the Sovereign's presence. Royal Powers Acts providing for the exercise by the Sovereign when personally present of any statutory power exercisable by the Governor General were passed by Australia and New Zealand before the Queen visited those two countries in 1953/54. A similar Canadian Act has been drafted but has never been presented to Parliament.

5. It follows that as the Governor General will continue to perform the major part of his political functions during the Sovereign's visit, his relations with the Prime Minister in regard to consultation should be unchanged.

6. Within these limits it is for the Government to recommend what functions, normally performed by the Governor General, should be taken over by the Sovereign while in Canada. For example, it was decided in 1959 that the Queen would not receive Ambassadors for the presentation of letters of credence, and the presentations continued to be made to the Governor General while the Queen was in Canada even though the letters are of course addressed to Her Majesty.

GOVERNOR GENERAL

Visits Abroad I—POSITION

1. The Letters Patent provide for the Governor General to retain his authority during absences of less than a month. This is interpreted as including the authority to represent the Sovereign of Canada abroad and therefore as warranting Head of State treatment by receiving countries.

2. Permission to leave Canada is obtained from Her Majesty through the Prime Minister*.

3. State visits by Governors General* have been made to the United States on three occasions and once under special circumstances to Brazil. In 1968 State visits to Jamaica, Trinidad and Tobago, Guyana and Barbados were announced but subsequently postponed because of the parliamentary situation in Canada. Two official visits have also been made by Governors General to the United States.

4. It is a matter of Government policy whether the Governor General shall make State visits. The Queen should be consulted or informed regarding plans for the Governor General to make a State or official visit.

5. In 1947, the Prime Minister recommended that for visits to the United States not exceeding two weeks, general leave be granted subject to the concurrence of the Prime Minister and advice to Her Majesty. This was approved. This provides for the cases which arise from time to time when because of travel arrangements or other casual reasons the Governor General enters U.S. territory. The United States authorities are informed in advance through the Department of External Affairs.

6. The constitutional position of the Commonwealth does not affect the recognition of a visiting Governor General as the representative of the Canadian Head of State.

7. Governors General have frequently made private visits to foreign countries while on leave. Permission to leave Canada is obtained in the prescribed way from the Queen through the Prime Minister*. The Governments of countries to be visited are notified through the Department of External Affairs.

Visits Abroad II—BACKGROUND

1. There are no constitutional or legal impediments to State visits by the Governor General. Clause VIII of his Letters Patent states that the Governor General continues to exercise all the powers vested in him during absences from Canada not exceeding one month. This is interpreted to mean that the Governor General continues to represent the Sovereign during such visits abroad which in turn entitles him to be received with the honours accorded to a Head of State. The Sovereign's permission for the visit must however be obtained*.
2. At first there were difficulties about the Governor General retaining his status when outside Canada and about the position of a British Ambassador, also the King's representative. Changes in the Letters Patent and the evolution of constitutional thought have removed these difficulties.
3. State visits to the United States were made by the Governor General in 1928, 1945 and 1954. Lord Alexander was invited to Brazil in 1948 because he had had Brazilian troops under his command in Italy. As Governor General of Canada he was received with the honours due a visiting Head of State. In 1968 the acceptance with the Queen's permission of invitations for State visits to four Commonwealth Caribbean countries confirmed the absence of constitutional or other impediments to visits to countries where the Queen is also Head of State, as long as the Queen herself is not also present. The parliamentary situation in Canada however led to the postponement of these four visits.
4. The arrangements for the planned 1968 State visits were developed by the Department of External Affairs in co-operation with the Prime Minister's and the Governor General's offices. The Queen was consulted before a formal request* for her permission was submitted and approved. The visits were announced by a press release* from the Prime Minister's Office.
5. Because of their representative and official character, State visits by the Governor General can only be undertaken with the approval of the Prime Minister. All arrangements for the visit will therefore be developed in consultation with his office to insure that they carry his sanction.
6. In 1954, when Mr. Massey was expecting an invitation from the President of the United States to return the visit which General Eisenhower had made to Canada in 1953, the Governor General cabled* to the Queen to say that plans for the visit were being made with the concurrence of the Prime Minister and in consultation with the Secretary of State for External Affairs. While a petition for leave of absence was not necessary because the visit was to the United States and would be for less than two weeks, the Governor General considered it his duty to inform the Queen of the intended visit prior to the formal announcement. The Queen replied* expressing her pleasure at learning of the visit.

Visits Abroad III—PROCEDURE

1. When it is decided by the Government that the Governor General should make a State visit, the Prime Minister requests* the Queen's permission for the Governor General's absence from Canada for a period not exceeding 30 days. This request should normally be preceded by informal consultation with the Palace to ascertain that the visit meets with the Sovereign's approval.
2. The Prime Minister is kept informed of the arrangements and programme developed for the State visit. He may also wish to make the announcements* related to the visit.
3. Government House will make the necessary arrangements for a Deputy Governor General to act during the Governor General's absence from Canada and will advise the Privy Council Office accordingly.

Visits Abroad IV—CEREMONIAL

1. The ceremonial arrangements for a State visit by the Governor General should recognize that he is the representative of the Head of State both abroad and in Canada. The Governor General is therefore entitled to Head of State treatment at both the departure and return ceremonies in Canada as well as in the country visited.

GOVERNOR GENERAL

Visits Abroad APPENDICES

Submission from Prime Minister to Sovereign regarding approval by latter of Governor General's absence from Canada for purpose of State visit

Sovereign's reply to above submission

Press release regarding State visit by Governor General

Message from Mr. Massey to Sovereign regarding his 1954 visit to United States

Sovereign's reply to above message

Submission from Prime Minister to Sovereign regarding approval of Governor General's absence from Canada for purpose of private visit

Sovereign's reply to above submission

Message from Prime Minister to Governor General regarding Sovereign's approval of absence of Governor General from Canada for purpose of private visit

List of official and State visits made by Governors General

New Year Levee I—POSITION

1. The Governor General customarily receives men who wish to pay their respects at a Levee held in the Senate Chamber on the morning of New Year's Day.
2. The Prime Minister is usually informed of the plans by letter* from the Governor General's Secretary and replies* to say whether he will attend or be represented by a minister to pay the Government's respects to the Governor General.
3. Ladies are not expected to attend except for those who hold senior official positions.

New Year Levee II—BACKGROUND

1. The Levee has its origin in the practice of the French Governors and has been continued ever since under varying conditions. For many years it was an informal affair held in the Governor General's Office in the East Block. Lord Willingdon moved it to the Senate Chamber with increased formality. After being held for a period in the Hall of Fame it has been returned to the Senate.

2. Except for those ladies holding high office, ladies are not expected to attend the Levee. On occasion, ladies have turned up at the Levee and as a matter of courtesy the Governor General has not declined to receive them. These cases, which are contrary to the traditional practice, are not regarded as precedents.

New Year Levee III—PROCEDURE

1. Arrangements for the Levee are the responsibility of Government House.
2. In reply* to the enquiry* from Government House the Prime Minister's Office informs the Governor General's Secretary whether the Prime Minister will attend or who will represent him in his absence. The Prime Minister arranges for the senior minister attending to represent him and present the Government's compliments to the Governor General.

New Year Levee IV—CEREMONIAL

1. Government House issues orders describing the procedure to be followed at the Levee.
2. Officials who attend are presented in order of precedence, the Prime Minister being the first to be presented.

GOVERNOR GENERAL

New Year Levee APPENDICES

Letter from Governor General's Secretary to Prime Minister informing latter of plans for Levee

Reply to above letter by Prime Minister's Secretary advising whether Prime Minister or a representative will attend Levee

Presentation of Letters of Credence by Heads of Missions — I—POSITION

1. Ambassadors to Canada present* their letters of credence* to the Governor General. The arrangements are made by Government House and the Department of External Affairs. Entry into office of Ambassadors dates from the presentation.
2. After an Ambassador has presented his letters arrangements are made by the Chief of Protocol for him to be received by the Prime Minister.
3. High Commissioners who carry Head of State letters of commission* also present* them to the Governor General. They, too, are received by the Prime Minister after they have thus entered into office.
4. High Commissioners who carry Head of Government letters of introduction* enter into office when the letter is presented to the Prime Minister. The Chief of Protocol arranges for this to be done soon after the High Commissioner's arrival. The High Commissioner is subsequently received by the Governor General. A reply* should be sent to the letter of introduction.

Presentation of Letters of Credence by Heads of Missions

1. In 1957 the possibility of having an Ambassador present his credentials to the Queen during her visit to Ottawa was rejected. Although the validity of such a ceremony would be unassailable, it was decided to avoid any occasion for thinking that one Ambassador was receiving special attention.
2. The ceremony* always takes place in Ottawa. If the Governor General is absent the Administrator or the Deputy Governor General officiates.

Presentation of Letters of Credence by Heads of Missions

III—PROCEDURE

1. Government House and the Department of External Affairs are responsible for administrative details surrounding the presentation* of letters of credence*.
2. The reply* which the Prime Minister normally sends to the letter of introduction* from a Head of Government which a High Commissioner hands to him is prepared in the Department of External Affairs.

Presentation of Letters of Credence by Heads of Missions

1. Government House on each occasion issues orders* describing the ceremonial for the presentation of letters of credence*.
2. A High Commissioner carrying a Head of Government letter of introduction* is accompanied by the Chief of Protocol when he calls on the Prime Minister. There is no formality and the High Commissioner is not normally accompanied by any members of his staff.

Presentation of Letters of Credence by Heads of Missions APPENDICES

Ambassador's letter of credence

High Commissioner's Head of State letter of commission

High Commissioner's Head of Government letter of introduction

Prime Minister's reply to above letter of introduction

Government House order of ceremony for Ambassador presentation

Government House order of ceremony for High Commissioner presentation

GOVERNOR GENERAL

Secretary to Governor General I—POSITION

1. The Secretary to the Governor General is appointed by order in council* on the recommendation of the Prime Minister. The appointment is without term and is legally unaffected by a change of Governor General.
2. The selection of a Secretary rests primarily with the Governor General who will consult the Prime Minister.

Secretary to Governor General II—BACKGROUND

1. The selection of a Secretary has been considered personal to the Governor General and until 1946 he came, like the Governor General, from the United Kingdom. Until that time the appointment was regarded as terminated by the ending of the Governor General's term of office. Thus in 1940 an order in council was passed to provide for the Secretary to continue in office when the Administrator took over following the death of the Governor General.

2. In 1952 the Deputy Minister of Justice gave the opinion that "... the office of the Secretary is a continuing office whether or not the occupant of the office of Governor General has changed or whether or not that office is vacant".[1]

3. The Secretary to the Governor General is appointed* under section 38 of the *Public Service Employment Act* which declares that the Governor in Council may make the appointment and fix the remuneration. However, the position of Secretary does not fall under the selection provisions of the Act and appointments have been made from without the Public Service.

[1] From opinion dated 26 January, 1952 given by Deputy Minister of Justice to Clerk of the Privy Council, on P.C.O. file G-50-4.

Secretary to Governor General III—PROCEDURE

1. An order in council* for the appointment of the Secretary to the Governor General is prepared for approval on the recommendation of the Prime Minister.

GOVERNOR GENERAL

Secretary to Governor General APPENDICES

Order in council appointing Secretary to the Governor General

GOVERNOR GENERAL

Aides-de-camp I—POSITION

1. Aides-de-camp are assigned to the Governor General's staff by the Department of National Defence after consultation between Government House and the Department. Cabinet is not normally involved.

Financial Provisions for Governor General and Government House

I—POSITION

1. The Governor General's salary is set at £10,000 a year by the *B.N.A. Act.* This is converted to $48,667 Canadian and is tax free.
2. Funds are also provided as allowances for official expenses and maintenance of the Governor General's residence. These are in the Estimates of the Secretary to the Governor General and are recommended by the Prime Minister.
3. A pension equal to one third of the salary was provided for the Governor General by Parliament in 1967. It is non-contributory and there is no qualifying period of service. One half of the pension is paid to the widow of a Governor General or to the widow of a former Governor General who was his wife when he ceased to hold office.

Financial Provisions for Governor General and Government House

1. The Governor General's salary has remained at the same figure since Confederation. Now however it is recognized that the costs of maintaining the office should be met from public funds and allowances and services are provided in the Estimates each year. These now total over $375,000 a year in addition to salary. This includes the cost of running the Governor General's Office.
2. The waiver of income tax on salary accorded to Governors General since Confederation has not been affected by the appointment of Canadians.
3. The pension enacted in 1967 is paid to former Governors General and widows of former Governors General.

Deputy Governor General I—POSITION

1. The *B.N.A. Act* provides for the Queen to authorize the Governor General to appoint Deputies and this authorization is given in the Letters Patent. The appointment is made by commission* under the Governor General's Privy Seal.
2. It has become the practice to appoint the Chief Justice of Canada and the Justices of the Supreme Court, Deputy Governors General.
3. Once appointed the commission remains valid and the appointee may act under it whenever required without formality, as long as the appointing Governor General remains in office. Since 1936 no oath* of office has been administered to a Deputy Governor General. This should be reviewed.
4. It is customary to authorize Justices of the Supreme Court who are appointed Deputy Governors General to exercise all powers except that to dissolve Parliament.
5. The Deputy Governor General, unlike the Administrator, does not become entitled to the honours and privileges accorded to the Governor General.
6. It is also customary to appoint Deputy Governors General authorized only to sign certain classes of documents. The appointees are usually members of the Governor General's staff.
7. The decisions regarding the appointment of Deputies are made by the Governor General without reference to Cabinet or Council.
8. It is customary for the senior available member of the Supreme Court to assume the functions of Deputy Governor General. Government House informs* the Privy Council Office and other interested agencies of the name and period of duty of the Deputy Governor General on each occasion.
9. Deputy Administrators are similarly appointed when an Administrator takes office.

Deputy Governor General II—BACKGROUND

1. There is no difference in the legal basis or formalities of appointment of Deputy Governors General whatever limitation may apply to the delegation of powers.
2. The practice of appointing members of the Supreme Court has developed to the stage where they now usually all receive commissions*. It is still customary for the senior available Justice to act.
3. The appointments are made virtually as a matter of routine without consultation, the selection being regarded as personal to the Governor General.
4. Until 1936 Deputy Governors General whatever their powers took an oath* of office. Since then they have not been sworn. The practice seems to have fallen into disuse following a decision that Deputy Governors General need not be re-sworn when issued a new commission by a newly appointed Governor General.
5. There is no legal requirement for an oath but the importance of the powers they exercise, the fact that their principal is always sworn and the insufficiency of the judicial oath suggest that the practice should be revived.
6. The usage has developed of attempting to indicate the limited character of the powers delegated to a Deputy authorized only to sign documents, by referring to him as a "Governor General's Deputy" rather than a "Deputy Governor General". This is without legal foundation.

GOVERNOR GENERAL

Deputy Governor General APPENDICES

Commission of appointment as Deputy Governor General with all powers except power to dissolve Parliament

Commission of appointment as Deputy Governor General for signature of certain documents

Oath taken by Deputy Governor General (until 1936 only)

Letter from Assistant Secretary to Governor General to Clerk of Privy Council giving name and period of duty of Deputy Governor General

Administrator I—POSITION

1. In the event of the death, incapacity, removal or absence of the Governor General from Canada his powers and authorities are vested in the Administrator.
2. According to the Governor General's Letters Patent the Chief Justice of Canada, or in the event of his death, incapacity or absence from Canada, the senior judge of the Supreme Court, shall be the Administrator. If the Governor General is absent for less than 30 days an Administrator is not appointed.
3. The Governor General, or in the case of incapacity or death his staff, takes the initiative in informing* the Prime Minister that the Administrator is to take over.
4. The Administrator assumes office on each occasion by taking the oaths* appointed to be taken by the Governor General which are administered by the Clerk of the Privy Council, and issues a proclamation* to the effect that he has assumed office. No commission is issued to the Administrator.
5. It is customary for the Administrator to appoint Deputy Administrators on each occasion of taking office, a commission* being issued to each Deputy Administrator each time. All judges of the Supreme Court are usually so named. Although it was formerly the custom Deputy Administrators have not, since 1945, taken an oath* of office. This should be reviewed.
6. The Administrator is accorded the same honours as the Governor General.
7. There are no formalities involved in the resumption of office by the Governor General.

Administrator II—BACKGROUND

1. Prior to 1947 the Administrator was appointed specifically by the Sovereign as each occasion arose.
2. The Letters Patent of 1947 make a continuing designation of the Chief Justice or next senior judge of the Supreme Court as Administrator and no document of appointment is now necessary.
3. In the case of absence from Canada the Governor General will have been in touch* with the Prime Minister to obtain the Queen's permission and he will on the eve of his departure inform the Prime Minister that the Administrator will take over.
4. If the Governor General dies or is incapacitated, his Secretary is responsible for informing the Prime Minister that the Administrator should take over. The Queen is also informed.
5. If the Governor General's absence is for less than 30 days he designates a Deputy Governor General to act for him. If he intends to be absent for more than 30 days the Administrator takes over on the Governor General's departure.
6. Since 1947 Administrators have, as of 5 March, 1967, assumed office on 10 occasions. In one case this was because of illness not absence.
7. In 1963 the Administrator took over for the opening of Parliament, a period of six hours, because of the Governor General's declared incapacity following a mild heart attack. This was recommended* by the Governor General to the Prime Minister and permitted full ceremonial honours to be accorded the Chief Justice as Administrator which would not have been the case if he had opened Parliament in the capacity of Deputy Governor General. Although the arrangement was only for the short period of six hours all the usual formalities associated with the installation of the Administrator were observed including the transfer of the Great Seal.
8. On the death of Lord Tweedsmuir in 1940 the Administrator held office for over four months.
9. There is one situation where doubt has been expressed concerning the devolution of the Governor General's powers to an Administrator: the death, incapacity, removal or absence from Canada of the Governor General at a time when the office of Chief Justice is vacant because of the latter's resignation or statutory retirement. The Deputy Minister of Justice however gave the opinion in 1968 that the word "removal" in clause VIII of the Governor General's Letters Patent should be interpreted as covering both the resignation or the statutory retirement of the Chief Justice so as to allow

the next senior judge of the Supreme Court to succeed to the Governor General as Administrator in such circumstances.

10. Deputy Administrators are appointed as a matter of course each time an Administrator assumes office. Usually all judges of the Supreme Court are named and also the Secretary and Assistant Secretary to the Governor General, the latter two for the purpose of signing documents. New commissions* of appointment must be issued on each appointment, the commission being judged to lapse when the Administrator ceases to hold office on the Governor General's resumption of duty. Deputy Administrators were appointed in 1963 when the period of office of the Administrator was only six hours.

11. The practice for Deputy Administrators to take an oath* of office fell into disuse after 1945. Even in the absence of a legal requirement the advisability of abandoning the oath is questionable.

12. The Administrator makes use of the Governor General's office facilities as required although he does not live at Government House. He may use the Governor General's car and standard.

13. No increased salary nor special allowance is paid to the Administrator. Administrators have however been reimbursed for official expenses.

Administrator III—PROCEDURE

1. When the Governor General is to be absent from Canada for more than 30 days he sends a letter to the Prime Minister on the eve of his departure to tell him who is to be the Administrator and when he will assume office. Arrangements with the Chief Justice or senior judge are made by Government House.
2. Government House, in co-operation with the Privy Council Office, make the arrangements* for the Administrator to take the oaths of office. The oaths* are administered by the Clerk of the Privy Council. If present, the Prime Minister signs as a witness. The Registrar General is responsible for the transfer of the Great Seal and the proclamation* issued by the Administrator.
3. Administrators have been sworn in at the Supreme Court (Taschereau 1963), at his Ottawa residence (Rinfret 1940), at his country house (Kerwin 1960, 1961), in the Privy Council Chamber (Taschereau 1967). On two occasions at least (1940 and 1967) the Prime Minister has been present, but this is not usual. The ceremony is private and reporters and photographers are not admitted. However, on one occasion at least (Kerwin 1951), pictures were taken during the ceremony and subsequently distributed to the press.
4. The Secretary to the Governor General informs the Queen that the Administrator has taken office.
5. The Clerk of the Privy Council sends* the Administrator the bible on which he was sworn for the first time.

Administrator IV—CEREMONIAL

1. The arrangements* for the swearing-in of the Administrator are made by Government House in consultation with the Administrator.
2. The Prime Minister does not usually attend although he was present when the Administrator took office after the deaths of Lord Tweedsmuir and General Vanier.
3. The Great Seal is given by the Registrar General to the Administrator at the ceremony and returned by him to the Registrar General for safekeeping. This is properly the responsibility of the Registrar General and not of the Deputy Registrar General. But on at least two recent occasions the deputy rather than the minister has been incorrectly given this function. In March 1967 however, in the absence of the Registrar General, the minister replacing him as Acting Registrar General was properly called in.

Administrator APPENDICES

Letter from Governor General to Prime Minister asking for Sovereign's approval for leave to be absent from Canada and advising that arrangements for an Administrator will be made

Letter from Governor General to Prime Minister advising that Administrator will assume office

Oaths taken by Administrator

Proclamation of Administrator

Arrangements for swearing-in of Administrator

Draft letter from Clerk of Privy Council to Administrator forwarding bible on which Administrator was sworn

Commission of appointment as Deputy Administrator

Oath taken by Deputy Administrator (until 1945 only)

HONOURS AND AWARDS

HONOURS AND AWARDS

Honours and Awards I—POSITION

1. Authorized titles for Canada, approved by the Sovereign, are given in the Table of Titles* to be used in Canada. Changes in the Table are made on the recommendation* of the Prime Minister approved by the Sovereign.
2. The Order of Canada was instituted on 1 July, 1967. It was established by Letters Patent* signed by the Queen on the advice* of the Governor General in Council.
3. The constitution* of the Order provides that Canadians may be appointed Companions of the Order "for merit, especially service to Canada or to humanity at large". It also provides that non-Canadians may be appointed honorary Companions either for merit or as a "distinguished citizen of a country other than Canada whom Canada desires to honour".
4. The constitution also provides for a Medal of Courage and a Medal of Service, both of which may be awarded to "any person", the first for "an act of conspicuous courage in circumstances of great danger" and the second "for merit, especially service to Canada or humanity at large". The constitution further provides that a "distinguished citizen of a country other than Canada whom Canada desires to honour" may be awarded the Medal of Service on an honorary basis.
5. Nominations for appointments and awards are examined by an Advisory Council composed of holders of certain offices listed in the constitution of the Order. The Council selects those who shall be appointed Companions or be awarded the Medal of Courage or the Medal of Service.
6. Appointments of non-Canadians to be honorary Companions, and awards of the Medal of Service to non-Canadians are made on the authority of an order in council.
7. There is a limit on the total number of Companions and on the number of Companions who may be appointed in any one year. The constitution specifies that the limits do not apply to honorary Companions. There is also a limit on the number of Medals of Service which may be awarded in any one year. The constitution does not state that awards of the Medal of Service on an honorary basis are outside this limit.
8. The Secretary to the Governor General is the Secretary General of the Order.
9. It is Government policy to decline permission for Canadians to accept United Kingdom honours carrying titles. An exception has in practice been made for membership in the United Kingdom Privy Council.
10. Permission is not granted for Canadians to accept foreign awards in peacetime. An exception can be made for acts of bravery in the saving of life.

Honours and Awards II—BACKGROUND

1. The Table of Titles* to be used in Canada was established at Confederation and approved by Queen Victoria. It has been changed several times, most recently in 1967 and 1968. Amendments are made on the recommendation* of the Prime Minister submitted to the Sovereign for approval.

2. In 1943 the Canada Medal was established with the King's permission, by order in council. The medal was never awarded and in 1967, on the establishment of the Order of Canada, an order in council was passed to revoke the 1943 order and thereby disestablish the Canada Medal.

3. While Canadians are not granted permission to accept awards carrying titles, there is no restriction on their use by those who inherit or claim them.

4. Awards by the Sovereign which do not call for British ministerial advice and do not carry titles are not covered by the policy statements.

5. Honours conferred by a church were declared by Mackenzie King in 1934 in the House to "lie outside the control of the House of Commons and the ministry".[1] Nevertheless Canadians on official missions to the Vatican are not given permission to accept the decorations traditionally conferred on such occasions by the Pope as Head of State. No steps have been taken however to disturb the long-standing practice of conferring Papal distinctions on Canadian churchmen and laymen.

6. Similarly awards in the Order of St. John continue to be made and the decorations, conferred at investitures by the Governor General, are worn by members of the Armed Forces, civilians and officials.

7. The prohibition against foreign awards carries no sanction. Therefore Canadians, both officials and private citizens, have received and retained awards within the prohibited categories. The provision in the Order of Canada for awards to non-Canadians could lead to a re-definition of the Canadian policy on foreign awards for Canadians.

[1] *Can. H. of C. Debates,* January 29, 1934, p. 48.

1. The Prime Minister makes a formal submission* to the Sovereign to recommend a change in the Table of Titles* to be used in Canada. The submission would probably be accompanied by an explanatory letter* from the Prime Minister.

2. Nominations for membership in the Order of Canada are directed to the Advisory Council.

3. The recommendation for an award to non-Canadians under the Order of Canada is transmitted by order in council. The submission to Council for the recommending order may be made by the Prime Minister or a minister. This procedure however does not apply to non-Canadian recipients of the Medal of Courage who are recommended by the Advisory Council.

4. Offers of awards by foreign Governments to Canadians should be made through the Department of External Affairs.

1. Investitures of the Order of Canada are arranged by the Secretary General of the Order. The arrangements* for an investiture are described in the appendices.

Honours and Awards APPENDICES

Order in council establishing constitution of Order of Canada

Letters Patent establishing Order of Canada

Instrument of appointment to Order of Canada

Government House arrangements for investiture into Order of Canada

Table of Titles for Canada

Submission from Prime Minister to Sovereign for amendment to Table of Titles for Canada

Explanatory letter from Prime Minister to Sovereign regarding amendment to Table of Titles for Canada.

HOUSE OF COMMONS

Members of House of Commons: Qualifications I—POSITION

1. The qualifications of a candidate for election to the House of Commons are set out in the *Canada Elections Act*.
2. The *Canada Elections Act*, the *House of Commons Act* and the *Senate and House of Commons Act* set out the factors which make a person ineligible for election and those which disqualify a member from continuing to sit and vote in the House of Commons or the Senate.
3. The election of any person who is ineligible or disqualified is null and void.
4. Financial penalties are stipulated to be exactable from any person who is ineligible or disqualified who sits or votes in the House or in the Senate.

Members of House of Commons: Qualifications II—BACKGROUND

1. The *Canada Elections Act* stipulates that a candidate for election to the House of Commons must be a Canadian citizen or other British subject, a qualified elector under the Act and of the full age of 21 years.
2. A candidate need not reside in the constituency where he is seeking election.
3. British subjects with one year's residence in Canada preceding polling day are eligible as candidates.
4. There is no record that the financial penalties to which those who sit and vote in Parliament while they are ineligible or disqualified, have ever been exacted. An action taken to impose the penalty on a senator in 1935 was dismissed on a point of law.

Members of House of Commons:
Term of Office

I—POSITION

1. The term of office of a member of Parliament is considered to begin when his writ of election has been returned and gazetted*.
2. He is then in office although he may not until later take the oath of allegiance* which is prescribed before he can properly take his seat in the House and vote.
3. A member remains in office until Parliament is dissolved or until his seat is vacated.
4. Remuneration is paid to members for the period from the date of election to the date of the next general election, if the seat is not vacated earlier.
5. Seniority amongst members of Parliament dates from first election for an uninterrupted period.

Members of House of Commons: Term of Office II—BACKGROUND

1. Once the writ of election has been gazetted* a member is considered to be in office even if his election is contested.
2. The parliamentary oath* which is prescribed by section 128 of the *B.N.A. Act* affects only the entitlement to occupy his seat and to vote, not the member's general qualification as such. An affirmation of allegiance can be substituted.
3. When Parliament is dissolved the term of office of all members is terminated and they are no longer entitled to the designation "M.P.".

Members of House of Commons: Term of Office

1. After a general election, elected members of Parliament take their oath of allegiance* individually in the office of the Clerk of the House or with others in the House of Commons Chamber shortly before the opening of Parliament. After a by-election the oath is taken in the Clerk's office. The Clerk of the House, the First Clerk Assistant and the Sergeant-at-Arms are empowered to administer the oath or the affirmation.

HOUSE OF COMMONS

Members of House of Commons: Term of Office APPENDICES

Notice in *The Canada Gazette* regarding election of member of Parliament

Oath of allegiance taken by member of Parliament

Vacation of Seats in House of Commons I—POSITION

1. A vacancy is created in the House of Commons by the death of a member, by the acceptance of an office of profit under the Crown, by resignation, by expulsion and by nullification of an election.
2. The vacancy created by death is acknowledged when the fact of death is brought to the notice* of the Speaker or the Chief Electoral Officer as prescribed by the *House of Commons Act.*
3. The same procedure applies for recognition of a vacancy caused by the acceptance of an office of profit under the Crown. The member accepting such an office may however resign his seat in the House before formally accepting the office.
4. The Government has no statutory responsibility to bring about recognition of a vacancy created by death or by the acceptance of office, although particularly in the latter case, the Government usually takes the initiative*.
5. A member may resign by announcing* his intention from the floor of the House, by sending a written notice* to the Speaker, or in certain circumstances by a written notice to two members.
6. The procedure for expelling a member is covered in the chapter on "Expulsion of Members from House of Commons" in this section.
7. The court which hears a petition regarding the election of a member of the House of Commons can confirm or alter the original election return or determine that a new election be held. This is examined in the chapter on "Election Offences" in the section on *Elections.*

Vacation of Seats in House of Commons

1. There is no time limit within which the death of a member must be acknowledged by the House. This, however, is normally done at an early sitting and on the initiative of the Government although neither statute nor convention require the Government to take action. Recently on some occasions a member of another party, to which the deceased member belonged, has drawn the attention of the House to his demise.

2. When a member is appointed to an office of emolument under the Crown, it is usual for him to resign his seat before the appointment becomes effective. If he does not do so a Government spokesman would normally inform the House of the creation of the vacancy at an early sitting after the appointment.

3. The usual practice in resignation is for a member to address a letter* of such intention signed by two witnesses to the Speaker, or to resign by giving notice* from his seat in the House.

4. There is some uncertainty however about the technique which a member could use to resign during an adjournment should the Speaker be absent from Canada. It is likely that in that situation a declaration of intention to resign addressed to two members who would then address a warrant to the Chief Electoral Officer in accordance with the *House of Commons Act* would be acceptable.

Vacation of Seats in House of Commons APPENDICES

Written notice given to Speaker regarding death of member of Parliament

Statement of resignation made in House by member of Parliament

Written notice of resignation from resigning member of Parliament to Speaker

Written notice from two Government members of Parliament to Speaker regarding vacancy created by acceptance of office of emolument

Expulsion of Members from House of Commons

1. Expulsion is a disciplinary sanction which the House of Commons may impose on its members. Expulsion terminates the member's mandate and is followed by the issue of a new writ of election.

2. Expulsion is also used to describe the action of the House of Commons in declaring a seat vacant when, by reason of conviction of certain crimes, a member has, according to the terms of section 654* of the *Criminal Code,* ceased to be qualified to sit in the House.

3. Expulsion in either form, is considered when a member is found guilty by a proper tribunal, or by a committee of the House, of such offences as rebellion, forgery, perjury, corruption and contempts, libels, and other offences committed against the House itself.

4. The initiative in cases of expulsion rests in the House of Commons where the question may be raised by the Speaker, the Prime Minister, the Minister of Justice, the Leader of the House, or any member.

5. Section 654 of the *Criminal Code* provides that anyone convicted of treason or any indictable offence for which he is sentenced to death or imprisonment for a term exceeding five years is incapable of being elected or sitting or voting as a member of either House of Parliament.

6. If a member has been convicted of a crime outside the scope of section 654, expulsion is not automatic but results from the adoption of a motion, based on evidence of the conviction.

7. A member found guilty of an offence against the House is expelled by a motion based on the report of the committee which investigated the charge.

8. In all cases where expulsion takes place there is a subsequent resolution* calling for the issue of a new writ of election to fill the vacancy.

9. The Prime Minister has no legal authority by statute or by convention to discipline individual members of Parliament. Nevertheless in his position as leader of the party controlling a majority in the House he is expected to take the lead in disciplinary cases.

10. Except as provided by section 654 of the *Criminal Code* expulsion does not disqualify a member from standing for re-election. The disqualification imposed by the *Criminal Code* ceases when the sentence has been served, or a pardon has been granted.

Expulsion of Members from House of Commons — II—BACKGROUND

1. Expulsion is imposed by a motion* of the House. In cases under section 654* of the *Criminal Code* the seat becomes vacant when the House approves a motion accepting the evidence of conviction.

2. In all cases a resolution* is passed calling for the issue of a new writ of election to fill the vacancy.

3. The incapacity imposed by the *Criminal Code* dates from 1892 and finds its origin in a United Kingdom statute of 1870.

4. In the Rose case the Speaker laid before the House documents to establish conviction within the terms of the *Criminal Code*. The Prime Minister then moved, seconded by the Secretary of State for External Affairs, that Rose having become incapable of sitting or voting in the House, the Speaker issue his warrant for a new writ of election. The motion* was passed without debate.

5. On the occasion of Riel's second expulsion the Prime Minister tabled the record of Riel's conviction and moved that he had been "adjudged an outlaw for felony".[1] This was carried and was followed by a motion for the issue of a new writ of election. There was considerable debate because the opposition wished to force the House to pass judgement on Riel and expel him, whereas the Government wished the House simply to declare the seat vacant as a result of the judgement of the court. The Government's position carried.

6. In the case of Thomas McGreevy in 1891 there was no conviction before a criminal court but a motion by a private member to establish a select committee to enquire into allegations against McGreevy. The committee made seven reports in all and the Leader of the House took the lead in pressing the matter, the Prime Minister of the day being in the Senate. After acceptance of the report the Leader of the House moved McGreevy's expulsion on the basis of the committee's finding that he was guilty of the charges against him. The motion* was passed and followed by a motion for a new writ of election.

7. The first Riel expulsion was by a motion* accusing him of having failed to obey an order to appear in the House. The House had previously approved a motion requiring his attendance. The motion for a new writ of election was also passed.

8. In Riel's first expulsion the Prime Minister did not move or second the motions, but in the three subsequent cases the Prime Minister or his representative took the lead in bringing about the disciplinary action.

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[1] *Can. H. of C. Debates,* February 24, 1875, p. 308.

9. Following Riel's first expulsion he contested the seat in the by-election and was re-elected. He was then expelled the second time following his conviction as an outlaw. McGreevy was subsequently re-elected and again took his seat in the House. Rose was disqualified until he had served his sentence and did not run again.

Expulsion of Members from House of Commons

1. If expulsion results from conviction under the *Criminal Code* the Speaker should lay before the House a true copy of the verdict and sentence. In the Rose case a copy of the certificate of the clerk of the court attesting to the said verdict and sentence was also tabled. The Prime Minister then moves a resolution* acknowledging the conviction and calling for a new writ of election to fill the vacancy. This is seconded by a senior minister.

2. In the case of a criminal conviction not covered by section 654* the documentary evidence of conviction would be tabled by the Prime Minister on moving a resolution for expulsion. When this resolution is passed the Prime Minister then moves that a new writ of election be issued.

3. When the cause of expulsion is an offence against the House, not a criminal conviction, there is an initial motion referring the allegations to a committee of the House. If the report of the committee supports the charges, the Prime Minister moves* expulsion on the basis of the report. The motion for issue of a new writ of election follows.

Expulsion of Members from House of Commons

Motion for expulsion for failure to obey House order (1st Riel expulsion)

Motion for new writ of election to replace member unable to sit or vote because of criminal conviction (Rose expulsion)

Motion for expulsion on basis of House committee report (McGreevy expulsion)

Section 654 of *Criminal Code*

HOUSE OF COMMONS

Members of House of Commons: I—POSITION
Indemnity

1. A sessional allowance, authorized by statute, is paid to each member at the rate of $12,000 per annum. It is calculated from polling day to polling day and is payable monthly once a member has been sworn in. The sessional allowance is taxable.
2. A non-taxable expense allowance is also paid to each member at the rate of $6,000 per year, in quarterly payments.
3. Each of these allowances is subject to a deduction of $60 for each unjustified day's absence per session in excess of 21.
4. Members are reimbursed for their return travel expenses to Ottawa once for each session and, in addition, during the session may claim travel expenses for one return trip a week to their constituencies. The cost of the commercial economy air fare is however the maximum which can be reimbursed in each of these cases.
5. Members of Parliament are entitled under the *Railway Act* to passes for free transportation. This privilege extends to dependents on application for each journey.
6. Certain long distance telephone facilities from Ottawa are available to members. Telegraph charges must be paid by the member.
7. Members of Parliament are granted a franking privilege for their mail.
8. There is a compulsory contributory pension plan applying to members. It makes provision for widows. The maximum pension for a member is $9,000 per annum and for a widow $5,400 per annum.
9. There is a compulsory $2,000 death benefit plan for members.
10. Members may receive remuneration from other sources which do not contravene the provisions of the *Senate and House of Commons Act** which prohibits a member from being employed by the Government or doing business with the Government.

Members of House of Commons: Indemnity II—BACKGROUND

1. The sessional allowance of a member is calculated from polling day for his election to the day of the next general election regardless of the length of sessions, or the dissolution of Parliament. The first payment retroactive to polling day for his election is made when a member has taken the parliamentary oath. If a member is re-elected the allowance continues to be paid without interruption.
2. The expense allowance is paid for the same period as the sessional allowance.
3. Each of these allowances is reduced by $60 for each day of absence in excess of 21 in any session unless the absence was for illness or official business. The rules of the House determine what constitutes attendance.

HOUSE OF COMMONS

Speaker of House of Commons — I—POSITION

1. The Speaker is elected* by the House of Commons at the preliminary meeting which is the prelude to the opening of the first session of a new Parliament. If the speakership becomes vacant during a Parliament a new Speaker is elected forthwith for the remaining term of that Parliament.
2. The Speaker has always belonged to the party forming the Government* at the time he is nominated. The Prime Minister makes the nomination and the seconder is customarily a minister. It is usual for the Prime Minister to get Cabinet approval for his selection.
3. By tradition the Speaker is alternately French-speaking then English-speaking for succeeding Parliaments, but there have been instances when this pattern has been modified because of special circumstances.
4. A Speaker normally holds office throughout a Parliament and is not usually re-elected for a second Parliament.
5. On leaving the chair a Speaker may be authorized to retain the title "Honourable"* for life.
6. On completion of his term of office the Speaker has frequently been appointed to the Senate and either alternatively or additionally to the Privy Council.
7. The Speaker's term ends on the dissolution of Parliament, except that under the *House of Commons Act* he remains responsible for the internal economy of the House until a new Speaker is elected.
8. The Chairman of committees of the whole House who is also Deputy Speaker and the Deputy Chairman of committees of the whole House are elected* by the House of Commons when the House resumes its sitting after the Speech from the Throne opening the first session of a new Parliament has been read in the Senate.

Speaker of House of Commons II—BACKGROUND

1. The Prime Minister selects the person to be nominated* for Speaker from amongst the members of his own party in the House. If there has not been a change in Government, it is usual to choose the Deputy Speaker from the last Parliament. The Prime Minister's choice is normally submitted to the Cabinet for approval. It has become the tradition to avoid controversy in the selection of a Speaker and the Prime Minister may therefore consider it desirable to consult or inform the Leader of the Opposition about his nominee.

2. It is the custom for the Speakers of succeeding Parliaments to be alternately English-speaking then French-speaking and this has usually been respected by new Governments. In four cases Speakers were re-elected for succeeding Parliaments and in one case a new Government selected a Speaker of the same language as the Speaker of the last Parliament.

3. A Speaker holds office for a full Parliament unless he resigns. On two occasions the Speaker has resigned to be appointed to the Cabinet. One resigned on being appointed to the Senate; another for personal reasons. Another resigned between sessions when his election was contested; ran in a by-election, was re-elected to the House and then re-elected Speaker for the remaining session of that Parliament.

4. Speakers are not normally re-elected although there have been four exceptions. The first Speaker was re-elected for the 2nd Parliament. Two others were re-elected when their first period of office was cut short by dissolution. Rhodes was elected in January 1917 to fill a vacancy for the last nine months of the 12th Parliament. He was then re-elected for the 13th Parliament. Mr. Michener was elected to preside the 23rd Parliament in October 1957 and re-elected to preside the 24th Parliament in May 1958. One Speaker was re-elected twice. Lemieux served throughout the 14th Parliament from 1921-1925 and was re-elected to preside the 15th which ended within the year following the Byng-King incident. He was then elected a third time to preside the 16th Parliament.

5. If the Speaker is to be appointed to the Privy Council and/or to the Senate on leaving the chair, this is normally done at the time of the dissolution of the House. In one instance it was left to a successor Government to confer a Privy Councillorship on the former Speaker some years later.

6. While the House of Commons ceases to exist on dissolution of Parliament, the Speaker in office at the time remains responsible for the administration of Parliament until his successor is elected.

7. The motions* for the appointment of the Deputy Speaker and the Deputy Chairman of committees of the whole House are made by the Prime Minister. The name of the proposed Deputy Speaker is usually submitted to Cabinet. His appointment is for the life of the Parliament for which he is elected. If a vacancy occurs during that time a new Deputy Speaker must be elected forthwith for the remaining term of the Parliament.

8. The *Standing Orders of the House of Commons* require that the member elected as Deputy Speaker and Chairman of committees "possess the full and practical knowledge of the official language which is not that of Mr. Speaker for the time being".[1]

[1] S.O. 52(2).

Speaker of House of Commons III—PROCEDURE

1. At the preliminary meeting of the House prior to the opening of the first session of a new Parliament the Prime Minister moves* for the election of a Speaker. The name of the nominee is usually submitted to Cabinet. The Prime Minister may find it desirable to consult or inform the Leader of the Opposition concerning the nomination.
2. If, upon his retirement, it is desired to appoint the Speaker to the Privy Council or to the Senate or to both, the necessary instrument for the recommendation of the appointment to the Governor General in each case is prepared for the Prime Minister's signature.
3. The Prime Minister moves* for the election of the Chairman of committees of the whole House (Deputy Speaker) and the Deputy Chairman of committees of the whole House when the House reconvenes following the reading of the Speech from the Throne opening the new Parliament.

Speaker of House of Commons IV—CEREMONIAL

1. After the Clerk of the House has declared the Speaker elected it is usual for the Prime Minister and the seconder of the motion for appointment, to conduct the new Speaker from his seat in the House to the Speaker's chair.

HOUSE OF COMMONS

Speaker of House of Commons APPENDICES

Motion for election of Speaker

Extract from Table of Titles for Canada regarding "Honourable" title for Speaker

List of Speakers of House of Commons since 1867

Motion for election of Deputy Speaker

Motion for election of Deputy Chairman of committees of the whole House

Commissioners of Internal Economy of House of Commons

I—POSITION

1. Under the authority of the *House of Commons Act** four ministers are appointed at the beginning of each session by order in council* to form with the Speaker of the House of Commons, the Committee of Internal Economy of the House.
2. The Prime Minister makes the recommendation to Council, usually before the opening of Parliament.
3. The appointments are, in accordance with the requirements of the statute, communicated to the House in a message* from the Governor General within the first week of each session of Parliament.
4. The Commissioners may continue to act after dissolution until their successors are appointed.

Commissioners of Internal Economy of House of Commons

1. While the statute* specifies that the Governor in Council shall select four Privy Councillors who are members of the House of Commons, this is interpreted to mean members of the Cabinet of the day. When the original Act was passed in 1868 Privy Councillors had not yet been given life tenure so members of Parliament who were Privy Councillors were then invariably ministers. It has been usual to include the Minister of Finance or Revenue, the Leader of the Government in the House and a representative of both language groups. Often a lady has been named.
2. Commissioners are frequently reappointed for two or more sessions.
3. On at least one occasion Commissioners were replaced during a session. This was done by passing a new order in council which was transmitted to the House by the Governor General. No formal action on resignation by the former members was considered necessary.

Commissioners of Internal Economy of House of Commons

1. The Prime Minister proposes to Cabinet before the new session opens, who should be the Commissioners after having consulted with the nominees, and an order in council* is then passed.
2. The Governor General signs a message* to the House of Commons transmitting a certified copy of the order in council making the appointments.
3. The Prime Minister announces to the House, at its first meeting, that he has the message which is handed to the Speaker to read.

Commissioners of Internal Economy of House of Commons APPENDICES

Section 16 of *House of Commons Act* regarding appointment of Commissioners of Internal Economy of House of Commons

Order in council for appointment of Commissioners of Internal Economy of House of Commons

Message from Governor General to House of Commons transmitting certified copy of order in council appointing Commissioners of Internal Economy of House of Commons

Secret Sessions of House of Commons I—POSITION

1. Secret sessions of the House of Commons have been held on four occasions, once in World War I and three times during World War II. These were actually secret sittings during a session in progress and did not extend beyond a full day.
2. The Government takes responsibility for organizing a secret session which is approved by the House.
3. Different techniques have been adopted to obtain the approval of the House; a special motion* after notice, a decision* not to open its doors, and a motion* to prohibit the reporting of debates. A motion for the withdrawal of strangers under S.O. 13 such as is used in England could also be moved.
4. The Prime Minister is the indicated person to propose a secret session to the House. He would probably wish to consult opposition leaders although this is not necessary.
5. Normally arrangements would permit senators to attend. The Senate itself has never held a secret session.
6. *Hansard* has not reported on secret sessions. The press gallery has been cleared and a public announcement* of the session has been made by the Speaker.

Secret Sessions of House of Commons II—BACKGROUND

1. The four secret sessions have been held on Government initiative to discuss the military situation during wartime. On at least one occasion a secret session was suggested in peacetime (1950) but the proposal, put forward by the opposition, was rejected by a majority in the House.

2. The Government being in the position to provide the information sought at a secret session, and being in control of the majority of the House, takes responsibility for organizing a secret session. The House, however, must itself approve the proposal to meet in secret. The rejected proposal for a secret session in 1950, mentioned above, shows that while the opposition may take the initiative in this matter success depends on control of the House.

3. On the first two occasions (1918* and 1942) the secret session was approved by a vote on a special motion put forward by the Prime Minister after 48-hours notice. Both motions, as passed, fixed the time of the session. In July 1942 the Prime Minister announced that a secret session would be the first order of business the following day. The session came about by the passage of a motion* of the Prime Minister's that the secret session should not be reported in *Hansard*. In 1944 another technique was adopted by simply having the House decide* not to open its doors after prayers. This procedure had been discussed in the House the previous day.

4. The practice in regard to consultation with the opposition has varied. On the first occasion there was consultation with the Leader of the Opposition regarding the advisability of holding a secret session. On the second occasion the opposition was consulted regarding the timing of the session. On the third and fourth occasions there does not appear to have been any inter-party consultation outside the House although the question had come up in debate. In February 1942 the opposition informed the Prime Minister of the questions they would ask and in July 1942 the Prime Minister suggested in the House that a member should inform the Minister of National Defence of the matters he wished to have discussed.

5. Arrangements have been made for senators not to be excluded from the gallery when the House is in secret session. On one occasion the session was timed to coincide with the end of a senatorial adjournment. On another occasion, however, the secret session was held when the Senate stood adjourned.

6. The debate at a secret session is not reported but an announcement* of the session in the form of a report of proceedings is issued by the Speaker at its conclusion and carried in *Hansard*. This announcement is short and in very general terms.

Secret Sessions of House of Commons III—PROCEDURE

1. If the Government wishes to hold a secret session of the House of Commons a motion* to this effect is made by the Prime Minister who, if he considers it desirable, will consult the opposition regarding the requirement for such a session and the time at which it could be held.

HOUSE OF COMMONS

Secret Sessions of House of Commons APPENDICES

Motion made by Prime Minister for secret session of House of Commons (1918)

Motion made by Prime Minister for ban on reporting of House debates (1942)

Extract from official report of House of Commons debates regarding decision that doors of House remain closed after prayers—1944

Speaker's report of proceedings following secret session of House

Procedure in House of Commons I—POSITION

1. The House of Commons is master of its own rules of procedure which are set out in Standing Orders.
2. The Prime Minister has a special interest in the efficient conduct of business by the House and it is the Government therefore that traditionally takes the initiative in promoting amendments to the rules. It would of course technically be open to any member to initiate the procedure to amend Standing Orders.
3. The Speaker's decisions on the interpretation of the rules become binding precedents. A Speaker's ruling can be challenged in the House which will then confirm or reject it.
4. Canadian authorities on parliamentary procedure are cited to support the interpretation of Standing Orders.
5. Procedure in the United Kingdom House may be cited as precedent when none is found in Canadian practice.

1. Although the Government may have a special interest in the rules of the House and a special responsibility as the major party the decision is of concern to the entire House. Preliminary agreement to any proposed changes is desirable to prevent opposition parties from blocking their adoption.

2. Proposed changes in the rules of the House are examined by a committee set up by the House, usually on a Government motion*. Action is taken to amend the rules on the basis of the report of the committee.

Procedure in House of Commons III—PROCEDURE

1. The Prime Minister or another minister moves in the House that a select committee be appointed to consider with the Speaker changes in the procedures of the House. The motion* is usually seconded by a member of the Government.
2. A minister or Government supporter subsequently moves* that certain designated members representing the parties in the House in accordance with their numerical standing be appointed to the above committee.

Procedure in House of Commons APPENDICES

Motion for appointment of House committee to consider changes in procedures of House of Commons

Motion for appointment of members of House to above committee

Motion for acceptance of above committee's report regarding procedures of House of Commons

Officers of House of Commons I—POSITION

1. The Clerk is the senior officer of the House of Commons who, pursuant to the *Public Service Employment Act* is appointed by order in council* to hold office at pleasure at a salary fixed by order.

2. The duties of the Clerk are set out in Standing Orders. He is responsible to the Speaker, and gives advice on rules, usages and proceedings of Parliament.

3. The Clerk is responsible, under the *House of Commons Act,* for preparing for the Speaker the estimates for the expenses of Parliament. He thereby becomes responsible to the Speaker for the administration of Parliament.

4. The Clerk may be suspended by the Speaker for misconduct or unfitness.

5. The parliamentary staff also comprises four others officers with related duties, specified in the *House of Commons Act* and Standing Orders, the Clerk Assistant, the Law Clerk and the 2nd and 3rd Clerk Assistants. The Clerk Assistant is appointed by order in council* and that would also be the indicated procedure for the appointment of the Law Clerk. The 2nd and 3rd Clerk Assistants are appointed by the Speaker.

6. The Sergeant-at-Arms is the law enforcement officer of the House of Commons. He is appointed by order in council* and is under the jurisdiction of the Speaker by whom he can be suspended for misconduct. He also has certain responsibilities in regard to staff and services in Parliament.

Officers of House of Commons II—BACKGROUND

1. There have been eight* Clerks of the House since Confederation, and they normally remain in office until retirement.
2. The last five Clerks have been either former members of Parliament or candidates in a federal election.
3. It has not been customary for the Prime Minister to consult opposition leaders about the appointment of a Clerk.
4. Upon the appointment of a new Clerk it is customary for the Prime Minister to move in the House that the retiring Clerk be appointed as an honorary officer of the House of Commons. The Leader of the Opposition usually seconds the motion* which gives the retiring Clerk an entrée to the chamber and a seat at the table on ceremonial occasions.
5. Certain duties of the Law Clerk in regard to the drafting and preparation of bills have been criticized as not appropriate or not in accordance with present parliamentary procedure. A revision of these duties, enumerated in Standing Orders, was studied in 1963 but was not carried out.
6. The Sergeant-at-Arms has usually been a distinguished war veteran.

Officers of House of Commons III—PROCEDURE

1. The Prime Minister recommends the order in council* appointing the Clerk, Sergeant-at-Arms, Clerk Assistant and Law Clerk of the Commons. A commission* evidencing the appointment is issued to the Clerk and the Sergeant-at-Arms by the Registrar General.
2. The Prime Minister moves for the appointment of the retiring Clerk as an honorary officer of the House. The Leader of the Opposition is consulted regarding his agreement to second this motion*.
3. The Prime Minister would probably wish to issue a press release* announcing these appointments and the Speaker announces* the appointments to the House.

HOUSE OF COMMONS

Officers of House of Commons APPENDICES

Order in council for appointment of Clerk of House of Commons

Commission issued to Clerk of House of Commons

Motion by Prime Minister for appointment of retiring Clerk as honorary officer of House of Commons

Announcement made by Speaker regarding appointment of Clerk of House of Commons

Press release regarding appointment of Clerk of House of Commons

List of Clerks of House of Commons since 1867

Order in council for appointment of Clerk Assistant of House of Commons

Order in council for appointment of Sergeant-at-Arms

Press release regarding appointment of Sergeant-at-Arms

JUDGES

JUDGES

Appointment I—POSITION

1. Section 96 of the *B.N.A. Act* gives the Governor General the power to appoint the judges of the "Superior, District, and County Courts in each Province". The *Supreme Court Act* and the *Exchequer Court Act* provide that the appointment of judges to the Supreme Court of Canada and the Exchequer Court of Canada respectively shall be made by the Governor in Council by letters patent* under the Great Seal.
2. The recommendation for the appointment is traditionally made by the Prime Minister in the case of Chief Justices and by the Minister of Justice in other cases.
3. Ten years of membership in a provincial Bar is a statutory requirement for appointment to the Bench. In the courts of the Province of Quebec judges must be selected from the Bar of that Province.
4. At least three of the members of the Supreme Court of Canada are required to be from the Bench or Bar of Quebec.
5. Judges' salaries and annuities are fixed by statute.
6. Judges of superior courts, of the Supreme Court and of the Exchequer Court cease to hold office at age 75. Judges of county and district courts are retired by order in council* at 75.
7. The Prime Minister attends the induction of the Chief Justice of the Supreme Court of Canada who according to the provisions of the *Supreme Court Act* is to be sworn into office before the Governor General in Council. It is usual for the Chief Justice to be summoned* to the Privy Council on appointment. The Chief Justice of the Supreme Court is called the Chief Justice of Canada and has the title "Right Honourable" for life.

JUDGES

Appointment II—BACKGROUND

1. The courts* to which judges are appointed by the federal Government are listed in the appendices.
2. The practice has been for advice regarding all judicial appointments to be tendered by order in council* although such an order is statutorily required for Supreme and Exchequer Court judges only. The instrument of appointment for the latter judges is the commission* issued by the Registrar General's Office; in other cases a commission* in testimony of the appointment is issued on the basis of the appointing order.
3. Judicial appointments are discussed in Cabinet after which selected appointees are consulted on their willingness to accept appointment.
4. The Prime Minister is kept informed of all vacancies under federal appointment but traditionally only puts his name to the recommendation of Chief Justices.
5. In 1967 the Minister of Justice informed the Canadian Bar Association that he would consult the National Committee on the Judiciary set up by the Canadian Bar Association on a strictly informal and personal basis in regard to appointments to the Bench. This would not detract from the inalienable responsibility of the Government in this matter which was recognized by the Bar.
6. The automatic retirement of judges of the superior courts, of the Exchequer Court and of the Supreme Court on attaining 75 years of age is provided for by statute. Council action on the recommendation of the Minister of Justice is however necessary to bring about the mandatory retirement of judges of county and district courts at age 75 and short extensions to meet court requirements are frequent.
7. Automatic or mandatory retirement at 75 coupled with a required minimum of 10 years service on the Bench to qualify for an annuity (except for resignation due to permanent infirmity) places a practical limit of 65 as the maximum age for initial appointment to the Bench.
8. Section 11 of the *Supreme Court Act* stipulates that the oath* taken by the Chief Justice of that court shall be administered before the Governor General in Council. In 1968 the Governor General expressed the wish that the attendance of a quorum of Privy Councillors at the induction ceremony, a practice which had been allowed to lapse, should be reinstated, in accordance with the statutory requirement.
9. The Chief Justice of Canada is usually sworn in at Government House with the Prime Minister in attendance. The Prime Minister may, if he wishes, sign the oath book as a witness.

JUDGES

Appointment

I—POSITION

1. Section 96 of the *B.N.A. Act* gives the Governor General the power to appoint the judges of the "Superior, District, and County Courts in each Province". The *Supreme Court Act* and the *Exchequer Court Act* provide that the appointment of judges to the Supreme Court of Canada and the Exchequer Court of Canada respectively shall be made by the Governor in Council by letters patent* under the Great Seal.

2. The recommendation for the appointment is traditionally made by the Prime Minister in the case of Chief Justices and by the Minister of Justice in other cases.

3. Ten years of membership in a provincial Bar is a statutory requirement for appointment to the Bench. In the courts of the Province of Quebec judges must be selected from the Bar of that Province.

4. At least three of the members of the Supreme Court of Canada are required to be from the Bench or Bar of Quebec.

5. Judges' salaries and annuities are fixed by statute.

6. Judges of superior courts, of the Supreme Court and of the Exchequer Court cease to hold office at age 75. Judges of county and district courts are retired by order in council* at 75.

7. The Prime Minister attends the induction of the Chief Justice of the Supreme Court of Canada who according to the provisions of the *Supreme Court Act* is to be sworn into office before the Governor General in Council. It is usual for the Chief Justice to be summoned* to the Privy Council on appointment. The Chief Justice of the Supreme Court is called the Chief Justice of Canada and has the title "Right Honourable" for life.

10. Since appeals to the Judicial Committee of the United Kingdom Privy Council were abolished in 1949 the Chief Justice of the Supreme Court of Canada has been summoned to the Canadian Privy Council on appointment. Prior to 1949 the Chief Justice had traditionally been summoned to the United Kingdom Privy Council for the purpose of hearing appeals on the Judicial Committee. Since 1968, pursuant to a new provision in the Table of Titles for Canada, he is designated "Right Honourable" for life upon assuming office as Chief Justice of Canada.

Appointment III—PROCEDURE

1. The Clerk of the Privy Council keeps the Prime Minister informed of all judicial vacancies.
2. The Minister of Justice may choose to get the opinion of the National Committee on the Judiciary of the Canadian Bar Association with respect to the qualifications of persons being considered for judicial appointments.
3. Appointments to the Bench are considered in Cabinet and orders in council* are passed. Those appointing Chief Justices are recommended by the Prime Minister, others by the Minister of Justice. A press release* is issued.
4. A copy of the order in council is sent to the appointee by the Department of Justice who also send a copy of the order to the Attorney General of the province in which the new judge will act and, where applicable, to the Chief Justice of the court on which he will sit. In the case of the Chief Justice of the Supreme Court of Canada who is the head of the judicial branch of government, the Prime Minister way wish to write a personal note to the new appointee.
5. If the Chief Justice of Canada is to be appointed to the Privy Council, the Prime Minister also signs an instrument of advice* to this effect.
6. Commissions* of appointment are issued to all federally appointed judges by the Registrar General.
7. In the case of the appointment of the Chief Justice of Canada, the Privy Council Office makes arrangements with Government House for the induction ceremony which the Governor General and the Prime Minister attend. As of 1968 these arrangements should include the presence of Council or of a quorum of Council. Other judges are sworn in at the court on which they will act and no action is required by the Prime Minister's Office or the Privy Council Office.
8. An order in council* is passed on the recommendation of the Minister of Justice for the compulsory retirement of judges of county and district courts.

Appointment IV—CEREMONIAL

1. In 1968 the Governor General expressed the wish that future arrangements for administering the oath* of office to the Chief Justice of Canada should include the presence of a quorum of Privy Councillors, in accordance with the statutory requirement.

JUDGES

Appointment APPPENDICES

List of courts to which judges are appointed by the federal Government

Order in council for appointment of Chief Justice of Supreme Court of Canada

Letters patent for appointment of Chief Justice of Supreme Court of Canada

Press release regarding appointment of Chief Justice of Supreme Court of Canada

Oath taken by judges of Supreme Court of Canada

List of Chief Justices of Canada

Instrument of advice for summoning of Chief Justice of Supreme Court of Canada to Privy Council

Order in council for appointment of superior court judge

Commission issued to above judge

Press release regarding appointment of judge

Press release regarding appointment of Chief Justice of provincial court

Order in council for compulsory retirement of judge at age 75

Resignation, Removal and Leave I—POSITION

1. A request for leave of absence in excess of 30 days must be approved by an order in council* which stipulates the period for which leave is granted. This procedure applies to judges of superior, district and county courts as well as to those of the Supreme and Exchequer Courts of Canada.
2. The order in council is recommended by the Minister of Justice and the request discussed in Cabinet. The leave of absence is usually granted with pay.
3. A request for leave of absence for a period of 30 days or less is granted by the Minister of Justice without Council action.
4. There are no statutory provisions regarding the procedure for tendering and accepting judicial resignations. Where the intention to resign has been communicated to the Government, the acceptance is by order in council* on the recommendation of the Minister of Justice. This procedure applies to all federally appointed judges.
5. Judges of county and district courts are compulsorily retired, pursuant to the *Judges Act,* at age 75.
6. The *B.N.A. Act* provides that judges of the superior courts shall be removable by the Governor General on address of the Senate and House of Commons. The same procedure is provided in the *Supreme Court Act* and in the *Exchequer Court Act* for the removal of judges of those courts.
7. No judge has ever been removed by the application of these provisions.
8. The *Judges Act* provides that judges of district and county courts may be removed by the Governor in Council for misbehaviour or incapacity, following an inquiry as specified in the Act. There is no record of a removal under this provision.

Resignation, Removal and Leave II—BACKGROUND

1. The Prime Minister would normally be interested in a request for leave of absence by the Chief Justice of the Supreme Court of Canada who also has governmental duties as Deputy Governor General or Administrator in the absence of the Governor General.

2. The *Exchequer Court Act* provides for the temporary appointment of a deputy judge with all the powers of a judge of the Exchequer Court in the case of sickness, absence from Canada or engagement upon other duty of the President or other judge of that court.

3. A judge found to be incapacitated or disabled from the due execution of his office pursuant to the *Judges Act* may be granted a leave of absence with pay. An order in council on the recommendation of the Minister of Justice and stipulating the period for which leave is granted must be passed.

4. There is no prescribed formality for tendering a resignation from the Bench. The order in council* for acceptance of the resignation is not considered in Cabinet and requests to be allowed to resign are normally granted. In the case of the Chief Justice of the Supreme Court the order would be recommended by the Prime Minister.

5. The order in council* accepting a judicial resignation will also fix, where applicable, the annuity which is to be granted to the resigning judge. Should the resignation be accepted in the order for the appointment of a successor, a separate order in council is passed regarding the annuity of the resigning judge.

6. No resignation is required where the statute provides for cessation of office or compulsory retirement at age 75.

7. A judge who is found incapacitated or disabled pursuant to the *Judges Act* may resign his office and be granted by order in council the annuity he would have been entitled to at the time of the finding.

8. It has not been necessary to resort to a joint address in order to remove from office a judge whose usefulness has been impaired by misconduct or otherwise. Resignation has up to now settled the cases which have arisen.

9. In 1967, proceedings reached the stage of the introduction of a motion for an address in the Senate following the recommendation of a joint parliamentary committee of inquiry which had confirmed the conclusions of a Royal Commission recommending removal. At this point the judge resigned and the motion was withdrawn. It is not clear whether the use of a commission could always be justified. As to its use Sir John A. Macdonald expressed the opinion that "... a Commission ought not to go further than a

Commission to take evidence. It should certainly not in any way be a Commission to try a Judge as that would be exceeding the powers given us [House of Commons] under the Constitution as a legislative body".[1]

10. Since no judge has ever been removed from office as the result of a joint address, the administrative technique to be employed to terminate the appointment has never been selected. It would be for study whether an order in council cancelling the appointing order should be passed or whether a fiat should be issued by the Governor General calling for the cancellation of the judge's commission.

11. As in the case of judges removable by joint address, resignation has obviated the need to use the removal procedure provided by the *Judges Act* for district and county court judges.

[1] *Can. H. of C. Debates,* May 1, 1882, p. 1236.

Resignation, Removal and Leave III—PROCEDURE

1. Where leave of absence in excess of 30 days is to be granted an order in council* on the recommendation of the Minister of Justice is prepared for Cabinet approval. The same procedure would be followed where leave is being granted to a judge found to be incapacitated or disabled pursuant to the *Judges Act.*
2. An order in council* accepting a judicial resignation and fixing the annuity to be granted is prepared for approval by Council.
3. A county or district court judge is retired at age 75 by an order* approved in Council. This order in council will also fix the annuity granted.
4. In the case of the resignation of a Chief Justice, the Prime Minister may wish to issue a press release*.
5. The removal of a judge requires a joint parliamentary address or an order in council, as prescribed by statute.

Resignation, Removal and Leave APPENDICES

JUDGES

Title I—POSITION

1. The Table of Titles for Canada* provides that judges of the Federal, Provincial and Territorial Courts listed shall be styled "Honourable" during tenure of office.
2. The Table also provides that these same judges shall be eligible for permission to retain the title "Honourable" after they have ceased to hold office. Permission is granted by the Governor General on behalf of Her Majesty.
3. Since 1968 the Chief Justice of the Supreme Court of Canada is designated "Right Honourable" for life on appointment as Chief Justice.

Title II—BACKGROUND

1. When retirement was made compulsory in 1958 it was decided not to propose that the retention of the title "Honourable" on leaving the Bench should be automatic.

2. Permission has not always been granted although the criteria on which a decision is made are not made public.

3. Until Canadian appeals to the Judicial Committee of the Privy Council in the United Kingdom were abolished in 1949, it had been the practice for the Chief Justice of the Supreme Court to be appointed to the United Kingdom Privy Council and thus to carry the title "Right Honourable". In 1968 the Table of Titles for Canada* was amended to provide that this title should attach to the head of the judiciary in Canada for life.

Title III—PROCEDURE

1. When a judge leaves the Bench the Minister of Justice takes the initiative in sending a submission* to the Governor General recommending permission to retain the title "Honourable".
2. The Minister then sends the approved submission to the judge.
3. Should the Minister of Justice decide not to recommend the retention of the title no submission is made.

JUDGES

Title APPENDICES

Extract from Table of Titles for Canada regarding judges' title

Submission from Minister of Justice to Governor General for retention of "Honourable" title by judges leaving the Bench

JUDGES

Indemnity I—POSITION

1. The salaries of judges appointed by federal authority are fixed by the *Judges Act*. These include the judges of the superior, county and district courts in the provinces and those of the Supreme and Exchequer Courts of Canada.
2. Judges receive an additional salary of $2,000 per annum as compensation for extra-judicial duties and expenditures for the fit and proper execution of their office.
3. Judges are entitled to be reimbursed under certain conditions for expenses incurred travelling on duty.
4. Section 39 of the *Judges Act* prohibits the acceptance of extra remuneration for additional duties performed by a judge. Expenses incurred in the performance of these duties are however excepted.
5. The Governor in Council may grant* a judge a non-contributory annuity equal to two thirds of his salary under the conditions prescribed in the *Judges Act*. The annuity is taxable.
6. A retired judge's widow receives* an annuity equal to one third of the annuity received by the judge at time of death. If the judge dies in office, his widow receives an annuity equal to two ninths of his salary. In the latter case the widow is also granted a sum equal to two monthly installments of the deceased judge's salary.
7. Judges are entitled to take part in the medical insurance plan provided for the Public Service.

Indemnity II—BACKGROUND

1. An amendment to the *Judges Act* is required for effecting changes in the salaries and annuities paid to judges.
2. Section 31 of the *Judges Act* provides for the cessation of a judge's salary if on a report from the Minister of Justice the Governor in Council finds him to have become incapacitated from the due execution of his office by reason of age or infirmity. There is no record of this provision having been implemented.
3. Judges cease to hold office or are compulsorily retired at age 75. The annuity is payable on attaining this age if 10 years of judicial office have elapsed, or if office was held in 1960.
4. After 15 years service a judge may resign on reaching 70 years of age and be entitled to the annuity.
5. A judge will also be entitled to the annuity if, after 15 years service he resigns and in the opinion of the Governor in Council the resignation is conducive to the better administration of justice, or is in the national interest.
6. A judge who is afflicted with some permanent infirmity disabling him from the due execution of his office is entitled to the annuity if he resigns or is removed.
7. The annuity commences on the judge's resignation, removal or ceasing to hold office and continues during his natural life.
8. There are no statutory provisions for the grant of an annuity to judges removed for misbehaviour.
9. The annuity granted to the widow of a judge commences at the latter's death and continues during the widow's natural life.

Indemnity III—PROCEDURE

1. An order in council* for the grant of the applicable annuity to a judge who resigns, ceases to hold office or is compulsorily retired is prepared on the recommendation of the Minister of Justice. In cases of compulsory retirement or resignation the same order* usually effects the mandatory retirement or accepts the resignation.

2. Where a judge in office or a retired judge dies an order in council* fixing the applicable annuity to be granted his widow is prepared on the recommendation of the Minister of Justice.

Indemnity APPENDICES

Order in council for annuity to judge who ceases to hold office at age 75

Order in council for annuity to resigning judge

Order in council for annuity to widow of judge who dies in office

Order in council for annuity to widow of retired judge

LIEUTENANT-GOVERNOR

LIEUTENANT-GOVERNOR

Appointment, Extension and Replacement I—POSITION

1. A Lieutenant-Governor is appointed by the Governor General in Council by instrument* under the Great Seal. The recommendation* to Council is made by the Prime Minister.
2. A Lieutenant-Governor begins his period in office when he takes the prescribed oaths*. He cannot be removed from office before five years from that date except for cause. He normally remains in office until his successor takes over sometime after the expiry of that period.
3. Lieutenant-Governors have resigned for reasons of health even within five years of appointment but usually have not formally relinquished the post until a successor has taken office.
4. As the five-year period draws to a close the Prime Minister communicates* with the Lieutenant-Governor regarding the Government's plans for the appointment of a successor or for his continuation in office. It is customary to consult Cabinet and for the Prime Minister to inform the Governor General of an intended new appointment.
5. There is no constitutional requirement to consult the provincial Government about the appointment of the Lieutenant-Governor and no consistent practice has developed. The Prime Minister usually, but not always, informs the provincial Premier of the appointment in advance of a public announcement.
6. Members of Parliament cannot accept an appointment as Lieutenant-Governor and also remain in the House and senators resign on appointment.
7. The appointment being at pleasure no formalities are required to extend a term beyond the customary five years. A Lieutenant-Governor remains in office until his successor takes the prescribed oaths.
8. If a Lieutenant-Governor dies in office a successor should be appointed immediately since an Administrator cannot act when the post is vacant.
9. Lieutenant-Governors are styled "His Honour" while in office. Since 1927 they have been accorded the title "Honourable" for life.

Appointment, Extension and Replacement II—BACKGROUND

1. A Lieutenant-Governor's term begins, for all legal and administrative purposes, when he takes the oaths* of office regardless of the wording of the order in council* or the commission* of appointment. The commission is now usually so worded and by its terms supersedes the old on that date when the five-year period under section 59 of the *B.N.A. Act* commences.

2. It has become the practice to recite, in the order in council* recommending a new appointment, the date of appointment and of assumption of office of the outgoing Lieutenant-Governor in order to establish that he has been in office for more than five years and can therefore be replaced at pleasure. There have been cases where this has not been done or where the cause of a vacancy arising within five years of appointment has not been stated. This has not however affected the validity of the new appointment.

3. In 1963 the order in council and commission appointing the Honourable Earl Rowe to Ontario stated that it was effective 1 February, 1963. Illness prevented him from assuming office at that time and the incumbent remained in office until Mr. Rowe took the prescribed oaths on 3 May when the old term ended and the new began. The order in council no longer specifies an effective date for the appointment.

4. The provision whereby a Lieutenant-Governor cannot be removed within five years except for cause has resulted in the usual term being considered to be about five years. The term can be extended simply by not appointing a successor. The Prime Minister usually consults the Lieutenant-Governor to reach agreement on how long he will remain in office. No formal action by way of order in council or otherwise is however necessary to retain him in office.

5. This interpretation was confirmed by the Department of Justice in 1962. A Lieutenant-Governor holds office during the pleasure of the Governor General and the commission so provides. Section 59 of the *B.N.A. Act* does not establish a term of office but constitutes a limitation on the Governor General's power to remove. After the expiry of five years a Lieutenant-Governor continues to hold office at the pleasure of the Governor General.

6. Lieutenant-Governors who resign do not formally relinquish their posts until a successor has taken office. An exception occurred in 1968 when the resignation of the Lieutenant-Governor of New Brunswick was implemented by order in council* without the simultaneous appointment of a successor. A new Lieutenant-Governor was however appointed the following day.

7. It is not possible to discern any pattern regarding the length of extensions. However once the five-year period has elapsed a new appointment can be made freely without raising implications of politics or performance.

8. There is no fixed practice regarding the announcement of appointments. Some have been announced in Parliament, others not. If the appointee is a member of the Government an announcement in Parliament would be usual.

9. The Governor General wishes to be informed of the intended appointment of Lieutenant-Governors before being asked to take formal action.

10. There is no constitutional requirement to consult the provincial Government which has no authority to reject an appointee. This has not often given rise to overt objections from the provinces but when it has the position has been strongly defended. There was a direct exchange with a protesting Premier in 1945 when Fiset was to be "reappointed"* to Quebec; and in 1961, when Comtois was appointed to Quebec, provincial spokesmen publicly criticized the lack of consultation. On the other hand, in 1966 the Prime Minister mentioned in the House of Commons that he had discussed the appointment of the Lieutenant-Governor with the Prime Minister of Quebec. The practice will thus be conditioned by the political relations between the Governments.

11. There have been occasions when there have been purported reappointments to extend terms. In a number of cases new commissions were issued. This is constitutionally questionable and legally inconsequential. The Department of Justice has given the opinion that in the cases of purported reappointment to extend a term the five-year period of non-removal would not run again.

12. There are five instances of purported reappointment. The last on record was in 1945, in Quebec. This case arose from a disagreement between the federal and provincial Governments, the latter claiming the right to participate in the selection of the Lieutenant-Governor. The federal Government denied this right and rather than simply allowing the Lieutenant-Governor to remain on proceeded to reappoint him, to issue a new commission and to have him sworn into office anew.

13. The only case of a real reappointment as distinct from an extension has been that of Sir Leonard Tilley who was Lieutenant-Governor of New Brunswick from 15 November, 1873 to 23 July, 1878 and then again from 12 November, 1885 until 21 September, 1893.

14. The post of Lieutenant-Governor is acknowledged to be one of those under section 10 of the *Senate and House of Commons Act* which makes the holder ineligible to sit in the Commons. Consequently some appointees have resigned, others have had their seat declared vacant under section 16 of the Act.

15. The provisions for appointing an Administrator to take over during the absence or illness of the Lieutenant-Governor do not apply when the post is vacant. It is therefore imperative that a new appointment be made immediately if a Lieutenant-Governor dies in office in order that the Government of the province may function. Also, because of this situation, a Lieutenant-Governor does not normally vacate the office until the new appointee takes over.

Appointment, Extension and Replacement III—PROCEDURE

1. It is the prerogative of the Prime Minister to recommend to Council the appointment of a Lieutenant-Governor. It is customary for him to inform the Governor General before the order in council* is presented for approval.

2. The Prime Minister sends a letter* to the incumbent announcing the intention to appoint a successor and mentioning the approximate date of the take-over about which there will have usually been preliminary discussion with the outgoing Lieutenant-Governor. The Prime Minister's letter also expresses appreciation for the way the post was filled.

3. The order in council* recommending the appointment mentions the date of appointment and of assumption of office of the outgoing Lieutenant-Governor. It no longer fixes a starting date for the new Lieutenant-Governor, but recognizes that the term begins when the oaths* are taken.

4. The commission* bearing the same date as the order in council is signed by the Governor General. It specifies that the appointment is effective at pleasure from the date the prescribed oaths are taken, when the previous appointment is superseded.

5. The Prime Minister issues a press release announcing the appointment. If Parliament is in session the announcement may be made in the Commons. This is not always done but would be usual if the appointee was a member of the Government or of Parliament.

6. The Clerk of the Privy Council sends:
   (i) a copy of the order in council to the Registrar General so that the commission of appointment may be prepared, signed and sent to the appointee through the Secretary of State;
   (ii) a letter* to the appointee transmitting a copy of the order in council and outlining the arrangements for assuming office;
   (iii) a letter* to the Chief Justice of the Province asking him to preside over the ceremony and administer the oaths;
   (iv) a letter* to the Premier advising him of the proposed arrangements; and
   (v) a letter* to the Clerk of the Executive Council requesting his assistance and asking him to co-ordinate the arrangements.

7. The Privy Council Office informs the Secretary of State when the oaths* have been sworn so that salary and allowances may commence.

8. If the appointee is a member of Parliament he either resigns his seat or a notice of vacancy is given according to the *House of Commons Act.*

9. If it is desired to implement the resignation of a Lieutenant-Governor without concurrently appointing a successor, an order in council* accepting the resignation is passed. This order should refer to the commission by which the appointment of the resigning Lieutenant-Governor was made.

LIEUTENANT-GOVERNOR

Appointment, Extension and Replacement APPENDICES

Letter from Prime Minister to outgoing Lieutenant-Governor

Order in council for issue of commission of appointment as Lieutenant-Governor when predecessor is in office

Order in council for issue of commission of appointment as Lieutenant-Governor when predecessor has died

Commission of appointment as Lieutenant-Governor; together with annexed Instructions

Letter from Clerk of Privy Council to appointee outlining arrangements for assuming office

Letter from Clerk of Privy Council to Chief Justice of Province asking him to administer oaths to appointee

Letter from Clerk of Privy Council to provincial Premier advising him of proposed arrangements for induction of new Lieutenant-Governor

Letter from Clerk of Privy Council to Clerk of Executive Council asking him to co-ordinate arrangements for induction of new Lieutenant-Governor

Order in council of 9 June, 1945 appointing Fiset as Lieutenant-Governor of Quebec (reappointment)

Letter from Prime Minister to Lieutenant-Governor regarding extension of the latter's term of office

Order in council for acceptance of resignation of Lieutenant-Governor

Oaths taken by Lieutenant-Governor of province other than Quebec

Oaths taken by Lieutenant-Governor of Quebec

Removal I—POSITION

1. During his first five years in office a Lieutenant-Governor can only be removed for cause, communicated to him and to the Senate and House of Commons.
2. After five years in office a Lieutenant-Governor can be removed by the appointment of a replacement. In such a case no cause need be assigned since the appointment is at pleasure without a specific term.

Removal II—BACKGROUND

1. Two Lieutenant-Governors have been removed before the expiry of five years in office.

2. Mr. Letellier had been appointed to Quebec by the Mackenzie Administration in December 1876. In March 1878 the Lieutenant-Governor dismissed his provincial ministers and this action was criticized in resolutions of the Senate and of the House of Commons. The latter, dated 11 March, 1879, described this action as "unwise and subversive".[1] The Prime Minister, Sir John A. Macdonald, recommended to the Governor General that Letellier be removed but agreed to have the Governor General refer the case to London for advice as this was the first instance when section 59 of the *B.N.A. Act* was being applied. London replied that the Governor General should act on his ministers' advice in this matter and without expressing a view on the substance of the complaint advised a reconsideration by the Canadian Government. London noted that the difference in politics between the federal Government and the Lieutenant-Governor would not be a reason for exercise of the right to remove. Macdonald's Cabinet reconsidered the case and passed an order in council sustaining their recommendation that Letellier should be removed since his "usefulness as a Lieut.: Governor was gone".[2] On 25 July, 1879 the Governor General approved this recommendation which was communicated to the Senate and House of Commons when the next session of Parliament met in February 1880. There are indications that some contemporary observers felt that partisan political considerations were an element in the Government's judgement that the Lieutenant-Governor's action justified his removal.

3. The other case of removal concerned the Honourable T. R. McInnes of British Columbia who was both appointed and dismissed by the Laurier Administration, also because of his handling of the provincial Government. He was seriously criticized for having dissolved the provincial legislature rather than having attempted to form another Government. The order in council* dated 21 June, 1900 recommending dismissal was patterned after that used in Letellier's case but there had been no prior resolutions of the Senate and House of Commons which were subsequently informed* about the action taken, according to section 59 of the *B.N.A. Act.*

   Dismissal having been recommended by the appointing Administration there was no question of partisan political considerations being a factor. The correspondence does, however, indicate that there may have been ground for the Lieutenant-Governor to think that he had received instructions from

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[1] *Can. H. of C. Debates,* March 11, 1879, p. 270.
[2] From order in council P.C. 1105 of 25 July, 1879.

the Secretary of State to take the action for which he was subsequently criticized and dismissed.

4. No case for dismissal has arisen since although on at least one occasion, when action by a Lieutenant-Governor in reserving a bill was not approved, the possibility of removal was considered.

Removal III—PROCEDURE

1. Removal is effected under section 59 of the *B.N.A. Act*. It is brought about by order in council* on the recommendation of the Prime Minister stating the cause which is communicated to the Lieutenant-Governor within one month after the order in council is approved.

2. This cause must also be communicated by message* to the Senate and House of Commons within one week after the order in council is approved if Parliament is then sitting and if not then within one week after the commencement of the next following session of Parliament.

LIEUTENANT-GOVERNOR

Removal APPENDICES

Order in council for removal of Lieutenant-Governor

Extract from *Journals of the Senate* regarding message to Senate communicating cause of removal of Lieutenant-Governor

Leave of Absence I—POSITION

1. A Lieutenant-Governor is required by his Instructions to get permission to leave his Province.
2. Leave of absence for holidays or personal reasons is granted by the Secretary of State without further consultation in routine cases.
3. Leave of absence for official purposes is granted after consultation with the Secretary of State for External Affairs and the Prime Minister, as the Secretary of State may deem advisable in each case.

Leave of Absence II—BACKGROUND

1. Requests from Lieutenant-Governors to be absent on leave or on personal business are sent to the Secretary of State and permission is granted in his name, as a matter of routine, by the Under Secretary of State.

2. Where the purpose of the absence is to undertake an official mission abroad the case receives more thorough consideration. The Prime Minister instructed the Secretary of State in 1965 that the Secretary of State for External Affairs should be consulted and, if necessary, the Prime Minister.

3. Those new instructions were issued because official visits abroad by Lieutenant-Governors could expose the Queen's representative to criticism, could create problems in the external field and raised the question of the provincial role in external relations.

4. The Lieutenant-Governor of Nova Scotia made an official trip to Germany in 1964 on a trade mission without having sought permission and a similar trip to Japan in 1965 after consultation with Ottawa.

5. Before 1953 permission for a Lieutenant-Governor to leave the province was granted by order in council in each case and an Administrator similarly appointed for each absence. In late 1952 it was decided that since Administrators would be appointed in future on a standing basis, the Secretary of State could henceforth authorize leave without going to Council.

Leave of Absence III—PROCEDURE

1. Permission for leave of absence for reasons of health or for personal or official travel is sought by letter addressed to the Secretary of State. This may come from the Lieutenant-Governor or be written on his behalf. The request is assumed to have the concurrence of the provincial Government and the specific recommendation of the Premier is not required.
2. If the absence is for official purposes information to this effect is required and the Secretary of State will decide whether to consult with the Secretary of State for External Affairs and the Prime Minister before granting permission.
3. Permission is granted by message from the Under Secretary of State conveying the approval of the Secretary of State.

LIEUTENANT-GOVERNOR

Powers and Duties I—POSITION

1. The powers and duties of a Lieutenant-Governor are set out in the *B.N.A. Act,* sections 58-67 and 90, in Instructions* dated 1952, and in orders in council.
2. The Lieutenant-Governor occupies a formal position similar to that of the Governor General prior to 1926. He is the representative of Her Majesty for all purposes of the provincial Government. He is also a federal officer governed by Instructions issued by the Governor General and by orders in council.
3. As the Queen's representative he is head of the provincial Government and as a federal officer he was originally regarded as being responsible for maintaining the federal interest in that Government.
4. The *B.N.A. Act* confers on Lieutenant-Governors the power to assent to, withhold assent from or reserve provincial bills.
5. Claims made from time to time for special powers under section 64 of the *B.N.A. Act,* which declares that the executive authority in Nova Scotia and New Brunswick shall continue as at the Union until altered, are becoming ineffective under the weight of constitutional precedent favouring uniformity of practice.

Powers and Duties II—BACKGROUND

1. Formal Instructions signed by the Governor General in the same terms for each Lieutenant-Governor were first approved and issued in 1887. They are largely administrative rather than political in content and have remained virtually unchanged. The present version*, unchanged since 1952, was last amended by order in council in 1950.

2. The Instructions for Quebec* differ from the others by covering two special points made in the *B.N.A. Act,* in section 73 regarding members of the Legislative Council and in section 80 regarding the 13 Quebec electoral districts which at the time of Confederation were English protestant. Instructions for Quebec are now issued in French.

3. There has been no question about the requirement for a Lieutenant-Governor to follow specific instructions given by the Governor General in Council on a particular issue but there appears to be some uncertainty about the continuing validity of any such instructions which go beyond the terms of the formal Instructions from the Governor General to the Lieutenant-Governor. The terms of the commission of appointment of the Lieutenant-Governor and of orders in council containing specific or general instructions do not support this interpretation of the limited validity of order in council instructions. Nevertheless any practical difficulty which could arise from this uncertainty can be avoided by re-issuing specific instructions by order in council in any situation where the Government wishes to control the Lieutenant-Governor's action.

4. The Judicial Committee of the Privy Council laid down in 1892 that ". . . a Lieutenant-Governor, when appointed, is as much the representative of Her Majesty for all purposes of provincial government as the Governor General himself is for all purposes of Dominion government".[1]

5. This has not caused great difficulty. There is however some uncertainty about the position and status of a Lieutenant-Governor when outside his Province, either on leave or on official occasions.

6. Being selected, appointed, instructed, paid and replaced by the Governor General on the advice of the Government a Lieutenant-Governor is also, in theory, a federal officer. He was originally regarded as being responsible for maintaining the federal interest in the provincial Government. In practice this aspect of the Lieutenant-Governor's functions has fallen into disuse.

7. The authority to assent or withhold assent to bills and to reserve bills is specifically conferred on the Lieutenant-Governor by the *B.N.A. Act.* It was

[1] Lord Watson in *Liquidators of the Maritime Bank v. The Receiver-General of New Brunswick,* 1892 A.C. 437, at 443.

recognized in an order in council* as early as 1882 that a Lieutenant-Governor was not warranted in reserving any measure on the advice of his provincial ministers but that he should do so only in his capacity as a Dominion officer and on instructions from the Governor General. Only in a case of extreme necessity should a Lieutenant-Governor act in this field without instructions. This view has been reiterated, in 1924 and latterly in 1961.

8. This principle was recognized in 1961 by the Prime Minister in the House of Commons. At that time the Premier of Saskatchewan confirmed his support of this position in a letter to the Prime Minister.

9. This, the most recent case of reservation without instructions, occurred in Saskatchewan in 1961. The Minister of Justice reported to Council that contrary to the opinion of the Lieutenant-Governor he did not consider the bill to be *ultra vires* the provincial Legislature nor that it was in conflict with national policy or interest. Council also concluded that the bill was not otherwise objectionable so as to ". . . warrant departure from the normal course of recommending assent".[1] The Governor General therefore assented to the bill.

10. The position in regard to withholding assent by a Lieutenant-Governor, which amounts to a veto, is somewhat less clear. The order in council* of 1882 stated that the royal veto was obsolete in England and implied that it should therefore not be exercised by a Lieutenant-Governor. Nevertheless, in 1924 assent was withheld to a Prince Edward Island bill and without instructions. The federal Government viewed this action with regret but its validity was uncontested. These views expressed in an order in council were transmitted to Prince Edward Island for information. In 1945 assent was withheld from another bill in Prince Edward Island. This action was simply noted in an order in council without comment or reference to earlier instructions or to constitutional practice. A judgement of the Prince Edward Island Supreme Court arising from the situation thus created treats the action of withholding assent as valid.

11. The resulting situation is that while the power of veto may be obsolete in England and while it has been stated in orders in council that assent should not be withheld without instructions from the Governor in Council, this power can in law still be validly exercised by a Lieutenant-Governor as a matter of independent discretion. The order in council of 1924 recognized that there was no way to overcome the effect of withholding consent except to have the bill passed by the legislature again and presented anew for assent. Furthermore, the Supreme Court of Prince Edward Island in *Gallant v. The King*[2] found that it was ineffective to have a successor Lieutenant-Governor give assent to the bill without its re-passage through the legislature.

12. An amendment to the Instructions* issued to Lieutenant-Governors by the Governor General could clarify the requirement to act only on instructions

[1] From order in council P.C. 1961-675 of 5 May, 1961.
[2] (1949) 2 D.L.R. 425.

although there is an opinion that it may not be possible to eliminate entirely the discretion of the Lieutenant-Governor conferred in the *B.N.A. Act.* Furthermore, while an amendment of the Instructions would be both simple and tidy this would establish a mandatory federal responsibility which, in some situations, might not be politically desirable.

13. The subsistence of the right of reservation by the Lieutenant-Governor was confirmed by the Supreme Court of Canada in a constitutional reference in 1938. In that judgement the Chief Justice said, "The power of reservation is subject to no limitation or restriction, except in so far as his discretion in exercising it may be controlled or regulated by the Instructions of the Governor General . . ."[1]

14. Section 64 of the *B.N.A. Act* has been cited as authority for the Lieutenant-Governor to sit with the Executive Council as he did in pre-Confederation times. It has nevertheless been held in an opinion from the Deputy Minister of Justice that it is now firmly established constitutional usage that a Lieutenant-Governor should not sit in on deliberations of his Cabinet.

15. Similarly section 64 was quoted in 1950 to support the exercise by a Lieutenant-Governor of the prerogative of mercy, without advice. He was informed that he could not act except on the advice of his constitutional advisors.

[1] Duff C. J., in *Reference re the Power of the Governor General in Council to Disallow Provincial Legislation and the Power of Reservation of a Lieutenant-Governor of a Province,* 1938 S.C.R. 71, at 79.

Powers and Duties APPENDICES

Formal Instructions (1952 edition) issued to Lieutenant-Governors of provinces other than Quebec

Formal Instructions (1952 edition) issued to Lieutenant-Governor of Quebec (in French)

Order in council dated 29 November, 1882 regarding reservation of provincial measures by a Lieutenant-Governor

Status of Lieutenant-Governor when Sovereign or Governor General in Province or when Outside of Province

I—POSITION

1. The presence of the Sovereign or the Governor General in the Province does not impair or supersede the authority of the Lieutenant-Governor to perform his functions. The Lieutenant-Governor remains solely empowered to perform acts prescribed by statute to be performed by him as *persona designata.*
2. The Lieutenant-Governor's position will be affected only to the extent that the Sovereign or the Governor General may be called upon to officiate at specific functions.
3. The Sovereign and the Governor General nevertheless take precedence over the Lieutenant-Governor at any function which they may attend together.
4. It is not clear to what extent a Lieutenant-Governor can be regarded as the Queen's representative when he is outside Canada or his own Province.
5. Instructions have been issued that Lieutenant-Governors travelling abroad in a private capacity should be treated as distinguished private citizens.
6. There is no instance of a Lieutenant-Governor making a recognized official trip abroad.
7. When in the United Kingdom the official status of a Lieutenant-Governor may be recognized to the extent that the Queen may, if convenient, receive him on an informal basis.
8. The *Guide to Relative Precedence at Ottawa* fixes the precedence of Lieutenant-Governors when in Ottawa. This is based on a recognition of their representative character even while absent from their Province.

Status of Lieutenant-Governor when Sovereign or Governor General in Province or when Outside of Province

1. It is considered quite proper that the Lieutenant-Governor should attend important public functions in his Province at which the Sovereign or the Governor General is present, even though they would take precedence over him.
2. The status of a Lieutenant-Governor when outside his Province has only been settled for visits to Ottawa on official occasions.
3. Otherwise a Lieutenant-Governor's duties are normally confined to his Province and it has not been found necessary to draw up rules governing his status elsewhere in Canada.
4. Lieutenant-Governors have, on at least two occasions, travelled abroad in circumstances where recognition of their official status was a consideration in the arrangements. Ottawa has not acknowledged that such trips can be made in anything but a private capacity and has attempted to regulate this by requesting that information regarding the proposed itinerary be given when leave of absence is requested.

LIEUTENANT-GOVERNOR

Indemnity I—POSITION

1. According to the *B.N.A. Act* Parliament is responsible for the salary of Lieutenant-Governors.
2. The present schedule* of salaries was approved by Cabinet and provided in the Estimates of 1963.
3. Since 1951 the Estimates have also provided a travel and hospitality allowance* for Lieutenant-Governors. These were last adjusted in 1964.
4. Some provinces also provide accommodation, facilities, services and additional funds for operating or entertainment expenses. The federal Government is not concerned with such arrangements.
5. There is no provision for a pension for Lieutenant-Governors although the question has been examined on several occasions.

LIEUTENANT-GOVERNOR

Indemnity II—BACKGROUND

1. The salaries provided for Lieutenant-Governors have not been changed often. There was no adjustment between 1927 and 1953 except for Prince Edward Island, and the present schedule* which reflects the different size of the provinces is arrived at arbitrarily rather than by the application of any formula.
2. Allowances* for travel and hospitality have only been provided since 1951.
3. Neither salary nor allowances take into account what the Province may provide by way of administrative or financial assistance. This varies enormously and gives the provinces a means of influencing the extent of the Lieutenant-Governor's participation in public and ceremonial functions.

LIEUTENANT-GOVERNOR

Indemnity APPENDICES

Schedule of salaries for Lieutenant-Governors; together with schedule of federal hospitality and travelling allowances

LIEUTENANT-GOVERNOR

Provincial Administrator I—POSITION

1. An Administrator is appointed by order in council* recommended by the Secretary of State to execute the functions of the Lieutenant-Governor.
2. The standing appointment is at pleasure and is effective regardless of who occupies the office of Lieutenant-Governor. The Administrator cannot act when the post of Lieutenant-Governor is vacant.
3. It is customary to appoint the Chief Justice of the Province to be the Administrator but there have been many exceptions. The provincial Premier is usually consulted by the Secretary of State.
4. In the absence or incapacity of the Administrator another is appointed on a temporary basis by order in council* on the recommendation of the Secretary of State. On his return the regular Administrator would be reappointed by order.
5. The Administrator must take the prescribed oaths* before assuming the duties of his office. These oaths are taken either on appointment or on first assuming office. If however the appointment has been interrupted by the appointment of a replacement the Administrator must be re-sworn on reappointment.
6. While the appointment is effected by order in council the *Public Officers Act* specifies that a commission* shall issue to a provincial Administrator.
7. The appointment of the Administrator may be terminated by the order in council* appointing his successor.

Provincial Administrator II—BACKGROUND

1. Before 1953 an Administrator was appointed by order in council each occasion the necessity arose. The decision was taken in 1953 to appoint the Chief Justice of the Province to be the Administrator on a standing basis. The provinces were consulted and all agreed except British Columbia who wanted the Administrator appointed for a period of a year. In 1958 the practice was extended to British Columbia as well.

2. The provincial Administrator is appointed by virtue of section 67 of the *B.N.A. Act* in case of "Absence, Illness, or other Inability". This has been interpreted by the Department of Justice to preclude an Administrator from acting if the post of Lieutenant-Governor is vacant.

3. An attempt was made to find a way around this difficulty in 1872 by appointing Administrators to be temporary Lieutenant-Governors in the event of the incumbents' deaths. The Minister of Justice gave the opinion* in 1967 that these appointments as succeeding Lieutenant-Governors, which did not become effective, would have been subject to section 59 of the *B.N.A. Act* regardless of the language in the order.

4. The appointment of an Administrator remains valid even if he should cease to hold the position he occupied when appointed.

5. The Department of Justice has given the opinion that it would be contrary to the *B.N.A. Act* to appoint an alternate Administrator to act in the absence or incapacity of both Lieutenant-Governor and Administrator.

6. In the opinion of the Department of Justice it is doubtful that the *B.N.A. Act* envisaged the concurrent appointment of two or more Administrators. Therefore the advice was to appoint only one Administrator.

7. The position of the provincial Administrator in regard to oaths of office is different from that of the federal Administrator who is not vested with the powers until the oaths are taken on each occasion. Once a provincial Administrator has taken the oaths* he can assume his functions when the circumstances arise without renewing the oaths.

Provincial Administrator III—PROCEDURE

1. The Secretary of State recommends the appointment of the Administrator which is made by order in council*.

2. All correspondence with the provinces on this matter is the responsibility of the Secretary of State.

LIEUTENANT-GOVERNOR

Provincial Administrator APPENDICES

Order in council appointing Administrator on standing basis

Order in council appointing temporary Administrator

Commission issued to Administrator

Oaths taken by Administrator

Justice opinion dated 4 October, 1967 regarding Administrators appointed as provisional Lieutenant-Governors

MINISTERS

MINISTERS

Appointment I—POSITION

1. Ministers are appointed on the recommendation of the Prime Minister approved by the Governor General.
2. The Prime Minister informs the Governor General informally of the intended recommendation before presenting the instrument of advice*.
3. According to convention a minister is normally a member of Parliament or a senator. He can however be appointed and act while not in Parliament provided he can get elected to the Commons or becomes a senator.
4. Statutes establishing departments provide that the appointment of the minister shall be by commission* under the Great Seal. This is not the case however for the Secretary of State for External Affairs, the President of the Privy Council or ministers without portfolio, however in the interest of uniformity the instrument of advice states that they too, shall be issued with commissions.
5. The same procedure for appointment is followed when ministers are transferred to other portfolios.
6. On the formation of a new Government the Prime Minister recommends for the Governor General's approval those ministers who will retain the portfolios they held in the old Government but these ministers are not issued with new commissions nor re-sworn.
7. A minister must be sworn as a Privy Councillor and to office before he can discharge his responsibilities. The Prime Minister is normally present.
8. The Prime Minister reports* the appointment of new ministers to Parliament on the first opportunity. A press release* is issued when the appointment is made. Notice* of the appointment of ministers appears in *The Canada Gazette*.

Appointment II—BACKGROUND

1. The requirement that the Governor General approve the appointment of ministers selected by the Prime Minister to form his Government, and the practice of prior consultation are based on convention rather than statute. This undoubtedly evolved from the Sovereign's original control in the naming of Privy Councillors to advise him. Another reason entitling the Governor General to be consulted in advance and to approve ministerial appointments is that the composition of the Government could affect the Prime Minister's parliamentary support. However, the essential point is that the appointment of ministers is a prerogative right of the Crown and as such requires the Crown's approval. Although advance consultation is a courtesy which cannot be insisted on by the Governor General the practice has generally been followed by Prime Ministers.

2. Recommendations for ministerial appointments were formerly submitted in the form of orders in council. The selection of ministers is a prerogative of the Prime Minister and the recommendations should be from him and not as from Council. It is not the practice for Prime Ministers to discuss ministerial appointments in Cabinet.

3. There is no legal requirement that a minister must be in Parliament but the practice is firm that an appointee from outside Parliament, or a minister who loses his seat in an election, must be able to get elected to the Commons or be appointed to the Senate if he is to remain in office. Meanwhile he may exercise the functions of minister. In the period when ministers, including the Prime Minister, had to resign from the Commons to stand for re-election on first appointment, they continued to be ministers although not in Parliament. Similarly ministers retain their positions on the dissolution of Parliament. In 1944-45 the Minister of National Defence held office for over 10 months without being an M.P. or a senator. General McNaughton was appointed on 2 November, 1944 and before standing in a by-election appeared three times, with permission, on the floor of the House to present reports. He was defeated in February 1945 and again in the general election in June 1945 and resigned on 21 August when Mr. King started to reform his Government before Parliament reconvened. There have been instances of a Prime Minister remaining in office after losing his seat in an election. Mackenzie King was personally defeated in the general election of October 1925 and remained the head of the Government which met Parliament in January 1926. After the first vote of confidence he arranged to stand at a by-election which he won on 15 February. He also remained Prime Minister after personal defeat in the general election of June 1945. He won a by-election in August before Parliament met.

4. An appointment as Privy Councillor must precede an appointment to ministerial office although the recommendation for both may appear in the same instrument of advice*. When this happens the administration of the oath of allegiance and the Privy Council oath precedes that of the ministerial oath*.

5. The position in regard to the operative document in the appointment of a minister has evolved over the years. Statutes establishing departments normally provide that the minister shall be appointed by commission*. In the case of two ministers, the Secretary of State for External Affairs and the President of the Privy Council, there is no such requirement nor is there for ministers without portfolio. However, in the interest of uniformity, the wording of the instrument of advice* recommending ministerial appointments now calls for every appointment to be made by commission. Until 1966 the appointment of the Solicitor General was, exceptionally, required to be by order in council. The law was then amended to specify that the Solicitor General shall be appointed by commission.

6. The practice in Canada, as in England, is that ministers who retain the same portfolios in a new Government are not reappointed nor re-sworn. The Governor General must nevertheless approve their continuing in office so their names are submitted for his approval with those who are to be appointed to new portfolios. In 1948 this was done by submitting a list of the entire ministry, then separate documents to cover the new appointments. In 1968 the names of those continuing in office as well as those being appointed were included in one instrument of advice*.

7. On only one instance have ministers who retained their portfolios in a new Government been reappointed and re-sworn. This was in 1920 on the formation of the first Meighen Government and has not been followed as a precedent.

8. The practice of reporting new ministerial appointments to Parliament is not mandatory when a redistribution of portfolios amongst existing ministers does not involve additions or departures. Nevertheless the Prime Minister may choose to inform* Parliament of the new distribution of responsibilities. According to an opinion given by Beauchesne in 1940 "As long as Ministers remain in the Cabinet, they are jointly responsible for the Government's policies, no matter what Departments they administer; and shifts in the personnel which do not involve resignations from the Cabinet or the admission of outsiders seem to be matters of detail or convenience... It seems therefore that the Prime Minister is not bound to give ministerial explanations with respect to these changes".[1]

[1] From memorandum by Arthur Beauchesne, Clerk of the House of Commons, to W. L. Mackenzie King, Prime Minister, dated January 15, 1940, on P.C.O. file C-20.

Appointment III—PROCEDURE

1. The Prime Minister personally informs the Governor General of the recommendations he intends to make regarding the appointment of ministers. This is done for a redistribution of portfolios as well as for new appointments.

2. The Prime Minister signs an instrument of advice* recommending the appointment. It specifies that the appointment shall be by commission*.

3. The Prime Minister consults the Governor General on a proposed appointment and obtains his informal approval. The time for the oath ceremony* is also fixed. The Privy Council Office then notify the new minister when the ceremony will be or confirm the arrangement if the Prime Minister has already advised the appointee, and make other preparations for the Government House ceremony. On the appointed day the Governor General approves the instrument of advice recommending the appointment as minister and this is immediately followed by the administration of the ministerial oath*. If the minister being appointed is not already a Privy Councillor the recommendation for appointment as minister is preceded, in the same instrument of advice*, by a recommendation for a summons to the Privy Council. In this case the oath of allegiance, the Privy Council oath and the ministerial oath are administered in that order after the approval of the instrument of advice by the Governor General.

4. In exceptional circumstances the instrument of advice recommending the ministerial appointment may be approved by the Governor General some time before the oath of office is administered. However this is not normal practice and, although there is no statutory requirement for the ministerial oath, it is recognized that a minister should not act unless he has subscribed to his oath of office.

5. There have been instances when appointments of ministers have been made effective for a subsequent date. The oaths, including that of a Privy Councillor if it applies, would be administered on the date the appointment becomes effective.

6. The Prime Minister makes an announcement* in Parliament in every case where a new minister has joined the Government or where a minister has left the Cabinet. In other cases of redistribution of portfolios the Prime Minister makes an announcement in Parliament if he thinks it desirable. The Prime Minister also usually issues a press release*.

7. When a minister joins the Government the Prime Minister signs the bible on which he took his oath of office. This is also signed by the Governor General and by the Clerk of the Privy Council who sends* it to the minister

as a memento. The bible is in the language of the minister, and in accordance with his religious denomination.

8. The commission* of appointment is prepared by the Registrar General who sees to its signature. It bears the date the instrument of advice was approved. The original is sent to the minister after being microfilmed.

9. The Privy Council Office send the minister a copy of the approved instrument of advice recommending his appointment. A copy is also sent to the Comptroller of the Treasury in order that ministerial salary and allowances may be paid.

10. The Office of the Registrar General arrange for notice* of the appointment to appear in *The Canada Gazette*.

MINISTERS

Appointment IV—CEREMONIAL

1. New ministers who are not Privy Councillors are sworn to the Privy Council and to office at the same ceremony* which normally takes place at Government House.
2. The Prime Minister normally attends and it is not customary for ministers or officials other than those participating to attend. The Clerk of the Privy Council officiates and the Deputy Registrar General attends with the Great Seal if a Registrar General is being installed.
3. The order of ceremonial* for a typical induction of a minister is in the appendices.

MINISTERS

Appointment APPENDICES

Instrument of advice for appointment as a Privy Councillor and a minister

Instrument of advice for appointment as a minister when appointee is already a Privy Councillor

Commission of appointment as a minister

Sample ministerial oath

Announcement made in House of Commons regarding appointment of minister

Press release regarding appointment of minister

Notice in *The Canada Gazette* regarding appointment of minister

Letter from Clerk of Privy Council to new minister forwarding inscribed bible on which ministerial oath was taken

Instrument of advice for appointment of new ministers and including ministers continuing in office from previous Government submitted to Governor General for approval (1968)

Description of swearing-in ceremony for new minister

Resignation and Dismissal I—POSITION

1. The resignation of ministers in whatever circumstances is subject to the approval of the Governor General on the advice of the Prime Minister. In the case of the resignation or death of the Prime Minister, the resignation of ministers and its acceptance by the Governor General are implicit.

2. When a minister resigns for personal reasons, because of defeat in elections or by request of the Prime Minister, he should inform the Prime Minister of his intention and request that his resignation be sent to the Governor General for approval.

3. The recommendation of the Prime Minister regarding the acceptance or refusal of the resignation should be submitted to the Governor General by instrument of advice* together with the minister's letter of resignation*.

4. The resignation of a minister can also be brought about by the acceptance by the Governor General of a recommendation by the Prime Minister that a replacement be appointed or that the minister be declared to be no longer a member of the Government.

5. An announcement* of a resignation, for whatever cause, is made by the Prime Minister, in the House if Parliament is in session, and the letters exchanged on resignation are usually made public.

6. A minister who resigns normally has the opportunity to explain his decision in Parliament. Because of his Privy Councillor's oath and the collective responsibility of Cabinet ministers for advice to the Crown, the permission of the Governor General should be obtained through the Prime Minister* before matters discussed in Cabinet are disclosed. This applies equally to explanations or announcements the Prime Minister may make in the House or elsewhere.

7. Ministers who resign individually are not normally received by the Governor General to take their leave. In the case of a retiring Registrar General it would be correct for him to call upon the Governor General to return the Great Seal which was given into his custody on taking office.

Resignation and Dismissal II—BACKGROUND

1. Although the constitutional position clearly requires the Governor General's approval of a recommendation from the Prime Minister before a minister's resignation is effective, this has on occasion been overlooked and ministers have purported to resign by public declaration or by letter addressed to the Governor General or to the Prime Minister. In support of the constitutional requirement Lord Aberdeen declined to accept resignations sent direct to him in 1896 and insisted that they go to the Prime Minister whose recommendation he required before he would act.

2. When the Government resigns ministers are not required to resign individually in writing or otherwise. The Prime Minister's resignation includes theirs.

3. A minister defeated in an election need not resign if he intends to seek another seat, since membership in Parliament is a conventional not a legal qualification. General McNaughton was appointed Minister of National Defence in November 1944 and remained minister after having failed to win a seat at a by-election in February 1945. He only resigned when defeated a second time in the general election in June 1945.

4. The advice of the Prime Minister may be oral but for the purpose of record it is convenient to embody it in a written instrument* submitted for the Governor General's approval.

5. A minister holds office during pleasure, so action by a minister is not necessary for the termination of his appointment. The Prime Minister has authority to recommend a minister's replacement or removal without regard to the minister's views. Nevertheless political considerations usually make it desirable to obtain a letter* of resignation. On one occasion, however, when a minister (Tarte) had made public statements at variance with Government policy the Prime Minister (Laurier) was at some pains to claim the initiative in the minister's removal.

6. There has been no consistency in the procedure for recommending, approving and recording the resignation of ministers. Until 1888 no special document was used. Then an order in council was first employed for recommending the acceptance of the resignation and continued to be used from time to time until 1930 when the practice became fairly regular until 1949. After 1949 a document became the exception. However, in 1959 the instrument of advice came into general use for this purpose although there were still exceptions where no document was used.

7. Changes in the Government are traditionally announced* or reported to Parliament. If they have arisen because of differences of view on policy,

explanations are usually given. The Prime Minister has the responsibility of recommending* to the Governor General whether the retiring minister may be absolved from his Privy Councillor's oath in order to explain his position and the extent to which he may refer to Cabinet discussion without endangering the public interest. In practice considerable latitude has been accorded or claimed and it has been difficult to enforce strict adherence to the rules. For example, statements in Parliament at the time of Mr. Ralston's resignation as Minister of National Defence over conscription brought out more than would otherwise have been revealed since it was judged that efforts to limit the information which could be disclosed would be ineffective as the minister had already issued a public statement.

8. When a Government resigns or is dissolved the Governor General traditionally receives the ministers together. It has not been the custom in Canada for individual ministers to be received to take leave on resignation. This should be reviewed. An exception to the existing arrangements should in any event be made in the case of the Registrar General into whose care the Great Seal has been formally and personally placed. The ministerial responsibility for custody of the Great Seal on behalf of the Governor General appears to have been treated casually in some instances but its legal and historical significance should be recognized by having a retiring Registrar General personally return the Seal to the Governor General from whom he received it.

Resignation and Dismissal III—PROCEDURE

1. A minister's intention to resign should be communicated to the Prime Minister, usually in writing*, with the request that the resignation be submitted to the Governor General for approval.
2. The Prime Minister's advice to the Governor General regarding the resignation should be submitted by instrument of advice* although it can be given orally. A photostat copy of the letter of resignation or, where it was addressed to the Governor General but sent to the Prime Minister, the original letter should accompany the advice. The recommendation should include the effective date of the resignation.
3. The Prime Minister should write* to the Governor General to seek his permission to disclose privileged correspondence and Cabinet discussion to the extent he considers desirable in the public interest in any public explanation of the resignation by him or the former minister.
4. The Prime Minister's Office issues a press release* regarding the ministerial resignation. This should make it clear that the resignation is accepted or approved by the Governor General on the recommendation of the Prime Minister.

1. When the Government is resigning the Governor General receives the ministers who are leaving office together at Government House. Arrangements are made by Government House. In the case of individual ministerial resignations it is not the custom for the resigning minister to be received by the Governor General.

2. Upon resignation the Registrar General should personally return the Great Seal of Canada to the Governor General.

MINISTERS

Resignation and Dismissal APPENDICES

Draft letter of resignation from minister to Prime Minister

Reply of Prime Minister to letter of resignation from minister

Instrument of advice recommending acceptance of ministerial resignation

Announcement made in House of Commons regarding ministerial resignation

Press release regarding ministerial resignation

Letter from Prime Minister to Governor General asking permission for disclosure of privileged correspondence and Cabinet discussions for explanation of ministerial resignation

Governor General's reply to above letter

Death I—POSITION

1. When a minister dies the Clerk of the Privy Council should see that the Prime Minister is informed immediately. The Governor General will also be informed through his Secretary. Government House will in turn advise the Queen.
2. The Clerk will assure that the prescribed arrangements regarding flying the flag at half-mast, which are the responsibility of the Department of Public Works, are implemented.
3. The Prime Minister will convey his condolences to the minister's family by calling personally or sending messages as appropriate.
4. The Prime Minister will make an announcement* immediately in Parliament if the House is in session, otherwise by press release*.
5. A State funeral will be proposed and, if the family accept, arrangements will be put into the hands of the Secretary of State.
6. If the family decline to have a State funeral, modified official participation can be worked out. The Prime Minister should place this in the hands of the Secretary of State.
7. The Prime Minister will take an interest in arranging ministerial and parliamentary attendance at the funeral having regard to its location. The Governor General should be represented.
8. If the funeral is held at a distance from Ottawa, or under circumstances that make adequate ministerial and parliamentary participation impossible, a memorial service may be held in the capital, particularly if Parliament is in session. The Prime Minister should ask the Secretary of State to make the arrangements.
9. The appointments of acting ministers are now valid when the portfolio becomes vacant and the designated minister will take over from the deceased minister without oath or other formality.
10. The deceased minister's appointments to Boards, Committees or Commissions should be reviewed to determine where immediate action to appoint replacements may be necessary.
11. The delegations of authority made by the deceased minister to members of his department remain valid.
12. The deceased minister's personal staff appointments lapse 30 days after his death.

Death II—Background

1. The regulations for flying the flag at half-mast are contained in regulations promulgated by the Secretary of State in 1965 and no special decision is necessary when a minister dies.

2. It is recognized that a minister who dies in office is entitled to a State funeral which is proposed to his family. If they accept the offer the Government bears the expenses for the funeral. If the family do not want a State funeral the Government should meet the expenses involved in another form of official participation and assist in the arrangements. In the past the Secretary of State has only been responsible if a State funeral is held, but there would be advantage in having the Secretary of State organize Government participation whatever its extent.

3. Since the deceased minister held office under a commission issued by the Governor General and as such was, in constitutional terms, directly responsible to him as a Minister of the Crown, the Governor General or a representative attends the funeral or memorial service. The Prime Minister also attends or arranges to be represented.

4. As the deceased minister's personal staff appointments lapse 30 days after his death a list should be prepared showing the position and date of appointment of members of his staff so that reassignment according to the *Public Service Employment Act* may be applied.

Death III—PROCEDURE

1. The Clerk of the Privy Council will immediately inform the Prime Minister of the death of a minister and insure with the Department of Public Works that flags are being half-masted. The Secretary to the Governor General should also be informed.
2. The Prime Minister will convey his condolences to the deceased minister's family and announce* the death in Parliament if in session. Messages and a press release* are prepared as required.
3. A State funeral will be proposed to the late minister's family. If it is declined a decision will be made on another form of Government participation in the funeral. If circumstances make it desirable a memorial service may be held in Ottawa. In all cases the Prime Minister should ask the Secretary of State to handle the arrangements.
4. The Prime Minister arranges to be represented if he cannot attend the funeral or memorial service. The Prime Minister will also insure that his wishes are met regarding official attendance at the ceremony.
5. The acting minister appointed under the standing order in council will assume the deceased minister's departmental and other responsibilities until a new minister is appointed. The deceased minister's appointments to committees and other Government bodies will be reviewed.
6. A list of the late minister's personal staff will be prepared for purposes of reassignment.

Death IV—CEREMONIAL

1. The arrangements for the State funeral of a minister who dies in office are described in the appendices for the section on *Funerals and Memorial Services.*

MINISTERS

Death APPENDICES

Announcement made in House of Commons regarding death of minister

Press release regarding death of minister

Responsibilities I—POSITION

1. A minister has the responsibility to give open support to the Prime Minister on whom he is dependent for his appointment and his continuation in office.
2. A minister cannot remain in office against the wishes of the Prime Minister who may ask for his resignation, dismiss him or replace him by appointing someone else to his portfolio.
3. On a change in Government a minister's tenure of office ends with the resignation of the Prime Minister but he remains responsible for the administration of his department until a new Government takes over.
4. If a Prime Minister is replaced by a member of his own party the resignations of all ministers are regarded as being at the disposal of the new Prime Minister.
5. A minister is responsible for advising the Prime Minister on appointments the Prime Minister will recommend in the minister's department or in agencies under his jurisdiction.
6. It is a minister's responsibility to assure that the Prime Minister is informed of matters within the minister's department which have implications for the Government as a whole.
7. A minister's responsibilities to Cabinet are based on the principle of Cabinet solidarity and his oath of secrecy. As a consequence he must give public support to all Cabinet decisions and must not reveal differences of view which may have been expressed in Cabinet.
8. A minister shares in the collective responsibility for Government policy which he must support or leave the Government.
9. He is required to attend Cabinet meetings and to serve on committees and to act for one or more other ministers in their absence.
10. He is responsible for keeping the Cabinet informed of all developments in his department which would be of concern to other departments or the Government.
11. In addition to his departmental responsibilities he advises the Cabinet on matters affecting the sector of the electorate which he represents as a Cabinet minister.
12. In Parliament a minister is responsible for defending the policies and actions of his department. In so doing he must take responsibility for the actions of his officials unless they have been guilty of insubordination.

13. A minister must defend his department's Estimates in Parliament and is responsible before Parliament for legislation arising within the jurisdiction of his portfolio.

14. A minister is responsible for the policies and the operation of his department subject to the terms of the pertinent statutes.

15. A minister's identification with the Government is absolute and inalienable as long as he remains a member of the Administration. He may be called upon to represent the Government at conferences and public functions.

16. No conflict should exist or appear to exist between a minister's private interests and his public duties. Upon appointment to ministerial office he is therefore expected to arrange his private business in a manner that will prevent conflicts of interests from arising. This may mean the abandonment of certain company directorships.

17. A minister retains his responsibilities as a member of Parliament, in particular with regard to his constituents.

Minister without Portfolio I—POSITION

1. Ministers without portfolio are members of the Government who have no predetermined responsibilities and in particular are not responsible for a department.

2. Their number and the functions assigned to them are at the Prime Minister's discretion.

3. Their general responsibilities and their rights and privileges are the same as those of other ministers with whom they take precedence according to the order in which they are sworn to the Privy Council.

4. Ministers without portfolio have been appointed Acting Prime Minister, and acting ministers, and as such have presented departmental Estimates in the House of Commons. They have been in the House of Commons and the Senate.

5. The expression "Member of the Administration" which had been introduced in 1953 as an alternative to the title "Minister without Portfolio", has now been discontinued in favour of the original title.

Minister without Portfolio II—BACKGROUND

1. From Confederation until 1930 ministers without portfolio were not regular members of the Government. They were sworn as Privy Councillors and attended Cabinet on the invitation of the Prime Minister.

2. In 1926 Senator Dandurand who was a Privy Councillor and Leader of the Government in the Senate joined the Government as a minister without portfolio. To make this intention clear the order in council* recommended that he be appointed to "be a member of the Administration as Minister of State without Portfolio".[1] Since then ministers without portfolio have always been regular members of Cabinet.

3. The phrase "Member of the Administration", descriptive of this intention, was used as a title as well as in the instrument* of appointment, the commission* and the oath* of office instead of the traditional title "Minister without Portfolio" during the period 1953-1967. It was found, however, that the new description was pleonastic since all ministers are of course members of the Administration. In 1968 it was therefore decided to return to the traditional "Minister without Portfolio" title as a description of the office and to re-introduce it in the related documents. Except for the short period mentioned above this title has been consistently used in Canada since 1867.

4. Ministers without portfolio are ministers of the Crown and are paid as such under a title "Minister without Portfolio" in the Privy Council Estimates.

[1] *See* order in council P.C. 1451 of 25 September, 1926.

Minister without Portfolio APPENDICES

Instrument of advice for appointment as a Privy Councillor and a minister without portfolio

Oath of office as minister without portfolio

Order in council for appointment of Senator Dandurand as minister without portfolio (1926)

Minister in Senate I—POSITION

1. The constitutional convention that Cabinet ministers must be in Parliament is met by membership in the Senate*. However it is now regarded as politically unsatisfactory for ministers in charge of departments not to be in the House of Commons.

2. The practice since 1935 has been for senators in the Cabinet to be ministers without portfolio and Leaders of the Government in the Senate. With one short-lived exception none has been named to head a department.

Minister in Senate II—BACKGROUND

1. Senators have been members of every ministry since Confederation with the exception of Meighen's Government in 1926. Two senators have been Prime Minister and several have been heads of departments. One, a minister without portfolio, was Acting Prime Minister for a period in 1935, while Parliament was in recess.

2. Since 1935 no senator has been in charge of a department except for a two-month period in 1963 while Parliament was dissolved when a senator was Minister of Trade and Commerce.

3. On several occasions in the last century ministers resigned from the Senate and ran for election to the Commons but the resignations were motivated by electoral considerations rather than by any idea of incompatibility between membership in the Senate and ministerial responsibility.

Minister in Senate APPENDICES

List of ministers (including Prime Minister) in Senate since 1867

Associate Minister I—POSITION

1. The technique of appointing an associate minister, of full Cabinet rank, to share the responsibilities for a department has only been used in the Department of National Defence.

2. The *National Defence Act* provides for the appointment* of an associate minister with duties as assigned by order in council*.

3. The associate minister has full Cabinet rank and takes precedence according to his seniority as a Privy Councillor.

4. The associate minister assumes the responsibilities of the minister in the event of his absence or incapacity without being appointed acting minister.

Associate Minister II—BACKGROUND

1. Following the amalgamation of the three Defence departments after the end of the War, it was found desirable to appoint another minister to share the administrative responsibilities, even during peacetime. Statutory authority for the appointment of an Associate Minister of National Defence was retained in the amendments to the *National Defence Act* authorized in the 1967 *Canadian Forces Reorganization Act* which did away with the former provision for the appointment of three additional ministers in an emergency.

2. The Associate Minister is not an alternate or deputy to the minister. He is directly responsible for the duties assigned to him by order in council*.

3. No Associate Minister has been appointed since the 1967 amendment to the *National Defence Act*. Should this be done it is for study whether a new order in council assigning duties to the Associate Minister should also be passed.

1. The procedures for the appointment* and swearing-in of an Associate Minister of National Defence are the same as for other ministers.

1. The swearing-in ceremony for an Associate Minister of National Defence is that followed for other ministers.

Associate Minister APPENDICES

Instrument of advice for appointment of Associate Minister of National Defence

Order in council assigning duties and functions to Associate Minister of National Defence (1953)

Acting Minister I—POSITION

1. An acting minister is appointed when a minister is absent from Ottawa or temporarily unable to carry out his duties, or when a portfolio becomes vacant. An acting minister may also be appointed when the Prime Minister for any reason does not wish to name a minister to a vacant portfolio.
2. Any Privy Councillor, who is a member of the Cabinet, may be appointed an acting minister. The appointment is made by order in council*.
3. An acting minister can exercise all the powers conferred on the minister as such.
4. Acting ministers are now appointed on a continuing basis by a standing order in council* to take over on any occasion when a minister is absent or incapacitated or when the office is vacant. The order usually provides for an alternative acting minister to act if the first named acting minister is absent from Ottawa or cannot act.
5. When the Prime Minister decides not to appoint a minister to a certain portfolio he may appoint an acting minister by special order in council.
6. A minister without portfolio may be appointed an acting minister.
7. An acting minister does not take an oath of office as such and takes over his duties without formality.
8. No allowances are paid in respect of duties performed as an acting minister.
9. An acting minister relinquishes his functions without formality when the minister resumes his duties.

Acting Minister II—BACKGROUND

1. Acting ministers are now normally appointed from within the Cabinet to take over the duties of ministers who are temporarily absent from Ottawa or who are incapacitated.
2. A single order* is now passed from time to time listing all ministers and those who will act for them usually with an alternative. The order remains in force until replaced by a later order. It covers vacancy as well as absence and incapacity.
3. Acting ministers are also sometimes named specifically to take over a vacant portfolio either on the formation of a Government or at some later date when the Prime Minister chooses not to appoint a minister.
4. Ministers without portfolio have frequently been named acting ministers and there is no limitation on their authority.
5. The allowance paid to a minister without portfolio is not increased when he is an acting minister.
6. In keeping with the contemporary practice of having ministers in charge of departments in the House of Commons, it is for consideration whether ministers without portfolio in the Senate should continue to be appointed acting ministers.
7. The second Meighen Administration provided an example of government by acting ministers. In order to avoid the requirement then in effect that ministers must resign from Parliament and seek re-election on appointment to the Cabinet, Meighen appointed only acting ministers*, other than himself, until after Parliament was dissolved.

Acting Ministers III—PROCEDURE

1. The Prime Minister decides on a list of acting ministers and alternatives. The list is revised from time to time as Cabinet changes makes it desirable and incorporated in an order in council*.

Acting Minister APPENDICES

Order in council appointing list of acting ministers and alternatives on a continuing basis

Order in council making a single appointment as acting minister

Composition of Meighen's "Acting Ministry" (1926)

Parliamentary Secretaries I—POSITION

1. The position of Parliamentary Secretary is regulated by the *Parliamentary Secretaries Act.*
2. Parliamentary Secretaries are appointed* by the Governor in Council on the recommendation of the Prime Minister for a period not exceeding 12 months. They must be members of the House of Commons and are eligible for appointment when their writ of election has been gazetted. They may be reappointed and they cease to hold office when they cease to be members of Parliament.
3. Their number is limited to 16 and their salary is $4,000 a year. A minister may have more than one Parliamentary Secretary and a Parliamentary Secretary may be appointed to more than one department.
4. Parliamentary Secretaries are not members of the Cabinet and are not sworn into office or issued with commissions.
5. The resignation of a Parliamentary Secretary is normally submitted by letter and is accepted by order in council*.

Parliamentary Secretaries II—BACKGROUND

1. The position of Parliamentary Secretary has gone through several vicissitudes since the first such appointment was made in 1916.

2. Parliamentary Secretaries were first appointed during World War I when their positions were established by order in council*. These were to last until the termination of the session in which the War ended. Five appointments in all were made before the authority lapsed in July 1920.

3. In 1921 Mr. King appointed an M.P. to be Parliamentary Under Secretary for External Affairs on a voluntary basis as there was no statutory provision for a salary. He told the House that the appointment was made in "an informal way"[1] and that his Cabinet colleagues had not chosen to follow his example by making similar appointments probably because they carried no salary.

4. Nothing further developed until Mr. King started to appoint Parliamentary Assistants in 1943. They were appointed by order in council but took no oath and received no commission. A salary of $4,000 a year was paid from the annual vote in the House of Commons Estimates. They were members of the House and their appointments terminated on dissolution. They were eligible for reappointment. Twenty-six appointments were made up to 1948 and 52 during the period 1948-1958.

5. In 1959 the *Parliamentary Secretaries Act* was passed to regulate the appointments on the present basis, and the original title was restored. For the first time a limit was set on the total number and on the term of office.

6. From 1916 to 1920 Parliamentary Secretaries were described as being "of the Ministry but not of the Cabinet".[2] This arose from the responsibility conferred on them by order in council to represent their minister, and to administer the department, under certain conditions, and amounted, virtually to a two-tier Administration on the United Kingdom pattern. From 1943 there has been no suggestion that Parliamentary Secretaries are "of the Ministry". The function of a Parliamentary Secretary relates purely to the minister whom he has been appointed to assist, not to the ministry as such. Parliamentary Secretaries are given no special precedence.

7. In 1966 arrangements were made on a trial basis for Parliamentary Secretaries to be permitted to attend Cabinet committees by invitation under limited and specified conditions. These arrangements however were short-lived and did not acquire any sanction of practice.

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1 *Can. H. of C. Debates,* April 20, 1943, p. 2343.
2 *Guide to Canadian Ministries Since Confederation* (Ottawa, 1957), p. 34, footnote (38).

8. Parliamentary Secretaries are not in the Cabinet and they have been given no special precedence. They are not bound by the principle of Cabinet solidarity.

9. There have been several occasions when the extent to which Parliamentary Secretaries are affected by the concept of Cabinet solidarity has arisen in Parliament. In 1944 at the time of the conscription debate Mr. King expressed doubts that the Parliamentary Secretary to the Minister of National Defence need resign when his minister did. He also expressed the view that a Parliamentary Secretary need not resign in order to present an amendment to a motion on Government policy. In 1959 the then Prime Minister took the definite stand without qualification that Parliamentary Secretaries were not junior ministers, and were not bound by the doctrine of collective responsibility. On the other hand misgivings have been expressed in Parliament about Parliamentary Secretaries making statements on Government policy outside the House, or performing certain functions in the House usually reserved to ministers, since they might infringe the principle of Cabinet solidarity by which they are not bound but by which they might appear to be bound in some sense. It emerges that although Parliamentary Secretaries are outside the scope of the constitutional rules which regulate the behaviour of ministers, it is recognized that it would be difficult for a Parliamentary Secretary to continue to be effective if the basis of confidence which underlies his selection and his relationship with his minister were damaged by the adoption of a different position on departmental or governmental policy.

10. The duties of a Parliamentary Secretary depend in large part on the wishes of the minister to whom he is appointed. His functions are essentially parliamentary and he frequently replies to questions. There has, however, been criticism on occasions when Parliamentary Secretaries have made statements of Government policy or become too closely involved in performing functions which are normally reserved for members of the Government.

11. Parliamentary Secretaries have frequently been reappointed to the same or another minister. There have been cases of three and one of four terms. The appointments are to the minister by function not by name and are not affected by changes in portfolio. In one instance a Parliamentary Secretary was appointed to a minister without portfolio, this time by name as there were two ministers without portfolio in the Cabinet.

12. Parliamentary Secretaries may be, but are not necessarily, apprentice ministers. In recent years new ministers brought into the Government after its initial formation have in many cases been selected from amongst Parliamentary Secretaries but there have also been many exceptions in which ministers have been appointed quite apart from the group of Parliamentary Secretaries. A Prime Minister retains complete freedom to recommend whomever he pleases for a Cabinet appointment, although precedent gives some ground for expectations that Parliamentary Secretaries may get priority consideration.

13. When a Parliamentary Secretary resigns during his term of office, to be appointed to the Cabinet, or as a Parliamentary Secretary to another minister or to leave office, his resignation is accepted by order in council*. A letter of resignation is customary in the last case but is not in either of the first two cases.

14. If a Parliamentary Secretary resigns his seat in Parliament or is expelled no separate action is necessary to terminate his appointment as Parliamentary Secretary. The order in council* appointing his successor would record the cause of the vacancy.

15. The *Parliamentary Secretaries Act* does not provide for removal. A Parliamentary Secretary could however be divested of his office before the expiry of its term by an order in council or by his own resignation.

Parliamentary Secretaries III—PROCEDURE

1. Before the opening of a new Parliament, or before the expiry of the term of office of existing Parliamentary Secretaries, the Prime Minister prepares a list, in consultation with the ministers concerned, of Parliamentary Secretaries for the next 12 months. His recommendation is put before Council and the appointments become effective on approval of the order in council* by the Governor General.

Parliamentary Secretaries APPENDICES

Order in council appointing list of Parliamentary Secretaries

Order in council appointing a Parliamentary Secretary in the place of one whose resignation is accepted.

Order in council accepting resignation as Parliamentary Secretary

Order in Council regarding Parliamentary Secretary to Minister of Militia and Defence (1916)

MINISTERS

Deputy Minister I—POSITION

1. A deputy minister is a senior official of the Public Service. He is responsible for the operation of a department of which he is the administrative head. He has an important function in the formulation of policy. Because of the continuing nature of his appointment a deputy minister provides an element of continuity at the time of a change of ministers or Governments.
2. The position of deputy minister is established by statute. Two departments, National Health and Welfare, and National Revenue, have two deputy ministers.
3. There is also provision for the appointment of associate deputy ministers in some departments. The associate is given the rank and status of a deputy minister but being under the direction of the deputy minister he is subordinate to him.
4. Deputy ministers and associate deputy ministers are appointed by order in council* on the recommendation of the Prime Minister. Commissions* are subsequently issued.
5. Appointments are at pleasure without term. Deputy ministers are subject to compulsory retirement at 65 but the Prime Minister may approve an extension.
6. There is no record of a deputy minister being dismissed. A decision to terminate an appointment could be implemented by order in council.
7. Deputy ministers have resigned. This is done by letter to the Prime Minister. The order in council* appointing the successor normally includes formal acceptance of the previous incumbent's resignation.
8. The salaries of deputy ministers are set by order in council and are customarily stated in the appointing order*.
9. Acting deputy ministers are designated in writing* by the responsible minister without formality. This can be done when the post is vacant.

Deputy Minister II—BACKGROUND

1. Statutes have little to say about the functions of deputy ministers and their relationship to ministers. The general responsibility of deputy ministers for the operation of the department is understood and a few departmental statutes make some specific allocation of functions. The result is that while the distinction between responsibility of a public servant and that of his minister may be reasonably clear there is no statutory distribution of functions between them. The pattern will vary greatly according to the nature of the department and the relationship between the individuals. In the last analysis the minister must take responsibility for the actions of his deputy, and while his pre-eminence is clear the working relationship is in essence a partnership.
2. The Prime Minister's prerogative to recommend appointees for the positions of deputy minister is recognized. He has available the assistance of selected senior advisors in making his recommendations.
3. The order in council* is the operative document in the appointment. The commission* which is subsequently issued is merely evidence of the appointment and is not necessary to the assumption of office by the appointee.
4. A deputy minister appointed from within the Public Service does not have to take new oaths* of office. If appointed from outside the Public Service he must take the oaths of allegiance and office prescribed in the *Public Service Employment Act.*
5. The retirement of a deputy minister may be delayed past his 65th year if the Prime Minister signs a letter* to Treasury Board approving his continued employment. Such extensions of employment may only be for a period of one year and may be renewed from year to year. This is authorized by section 20 of the regulations under the *Public Service Superannuation Act.*
6. While there is no precedent for the removal of a deputy minister it could be effected by order in council. There is however on record a case in 1933 where a deputy minister was "suspended" by the Prime Minister although there is no evidence of how this was implemented. He was later reinstated, then required to resign.
7. When a deputy minister has resigned it has been the practice to note the acceptance of the resignation in the order in council* appointing the successor. This has not however been considered necessary to the effectiveness of the resignation, but the advisability of accepting the resignation by order in council might be examined.
8. Salaries of deputy ministers are fixed by order in council*, either individually on appointment or subsequently when one or more may be dealt with in a single order.

Deputy Minister III—PROCEDURE

1. An order in council* recommended by the Prime Minister is passed to appoint a deputy minister or an associate deputy minister. It normally specifies the salary and if the previous incumbent has resigned, records the acceptance of his resignation. The Prime Minister issues a press release* announcing the appointment.
2. Although it has not always been done an order in council can be passed accepting the resignation of a deputy minister without appointing a successor.
3. Although there is no precedent, the Prime Minister would presumably likewise recommend the order in council to remove a deputy minister or associate deputy minister.
4. Before a deputy minister's 65th birthday the Prime Minister must sign a letter* of approval which is sent to Treasury Board to authorize his continuation in office past retirement age. This must be repeated each year.
5. The Prime Minister recommends the order in council* revising deputy ministerial salaries.
6. An acting deputy minister is designated in writing* by the minister or acting minister in charge of the department.

Deputy Minister APPENDICES

Order in council appointing deputy minister and fixing salary

Commission issued to deputy minister

Oaths taken by deputy minister

Press release regarding appointment of deputy minister

Order in council revising salary of deputy ministers

Letter signed by Prime Minister approving continued employment of deputy minister who has reached the age of 65

Order in council accepting resignation of deputy minister and appointing successor

Letter signed by minister in charge of department designating acting deputy minister

Ministerial Staffs I—POSITION

1. The *Public Service Employment Act* authorizes a minister to appoint his own office staff. Three positions are recognized by title in the Act but there is no statutory limit on the number who may be appointed.
2. The amount of public funds available to ministers on a monthly basis to pay their office staff and certain regulations regarding terms of employment are fixed by Cabinet directive.
3. The salary to be paid to each employee must be approved* by Treasury Board.
4. A minister's staff cease to be employed 30 days after the minister's death or resignation.
5. A minister's Executive Assistant, Special Assistant or Private Secretary with three years' service or any other employee who was a member of the Public Service before being employed in the minister's office or who qualified for appointment to the Public Service is entitled to be appointed to the Public Service when he ceases to be employed by the minister.
6. The *Public Service Employment Act* provisions regarding ministerial staffs apply to the Leader of the Opposition, the Leader of the Government in the Senate and the Leader of the Opposition in the Senate. They also apply to the Prime Minister.

Ministerial Staffs II—BACKGROUND

1. Cabinet directives regarding ministers' staffs can be modified from time to time and a minister will be responsible to see that his proposed arrangements conform.
2. The maximum amount of public funds fixed by Cabinet directive for the payment of ministerial staffs does not apply to the Prime Minister. The salary of those appointed by the Prime Minister to his staff must however be approved* by Treasury Board.
3. The minister is responsible for assigning duties to his staff.
4. A minister may engage a member of the Public Service for his office staff who will be granted leave of absence from the Public Service to occupy the position.
5. Persons employed in the office of a minister must receive the necessary security clearance.
6. A minister's staff cease to be employed 30 days after his resignation, be this either the minister's individual resignation or that of the whole Government.
7. The *Public Service Employment Act* specifies the conditions under which a former employee of a minister qualifies for appointment to the Public Service. In practice former employees of ministers can generally find employment in the Public Service if they so wish.
8. The statutory and other provisions for ministerial staffs apply to ministers without portfolio.

Ministerial Staffs III—PROCEDURE

1. There are no formalities prescribed regarding the instrument of appointment of ministerial staffs. This is left to the minister in each case.
2. The minister must assure that his plans for his office staff conform to Cabinet directives.
3. The minister must obtain Treasury Board approval* for the salary to be paid to each employee on his staff.

Ministerial Staffs APPENDICES

Submission to Treasury Board for approval of salary of ministerial staff

PARLIAMENT

Summoning I—POSITION

1. The Governor General summons Parliament to session by proclamation* issued on the advice of the Prime Minister.

2. There must be a session of Parliament once in every year (*B.N.A. Act,* section 20).

3. It is customary for Parliament to be on summons when having been prorogued or dissolved. Proclamations* are therefore issued calling Parliament to meet *pro forma* and are renewed every 40 days until summoned "for the despatch of business". In each case the Prime Minister advises the Governor General. This is in fact the mechanism for extending prorogation or for postponing the return of Parliament after an election. (*See* the chapter on "Prorogation" in this section.)

4. There is no fixed period of notice for summoning Parliament for the despatch of business. Practical considerations have governed: the urgency of the meeting of Parliament and the time required for members to reach Ottawa.

5. The Prime Minister decides when Parliament shall be summoned for the despatch of business, usually after consideration in Cabinet. An instrument of advice* is presented to the Governor General.

6. It is customary for the Prime Minister to write to the Leader of the Opposition and to the leaders of other parties informing them of the decision to summon Parliament for business. They are told when the public announcement is to be made and when leaders will speak on the reply to the Speech from the Throne.

7. A speech is prepared by the Government, part in English and part in French, to be read from the Throne at the opening of Parliament. This sets out the causes of summons and until it is presented neither House can proceed with any business.

8. Before the opening the Government appoints, by order in council*, the four members of the Administration who will serve with the Speaker on the Commission of Internal Economy of the House.

9. Before the opening of the first session of a Parliament, an order in council is passed on the recommendation of the Prime Minister authorizing the Governor General to appoint the Speaker of the Senate. (*See* the chapter on "Speaker of Senate" in the *Senate* section.)

10. Before the opening of the first session of a Parliament the Prime Minister selects the nominee he will propose as Speaker of the Commons.

11. At the first session of a Parliament the opening is preceded by a meeting of the Commons and of the Senate to install the Speakers.

12. The Governor General officiates at the opening of Parliament.

Summoning II—BACKGROUND

1. In summoning Parliament the Governor General acts on the advice of the Prime Minister not of Council. It is customary for this advice to be submitted in writing*.

2. The day fixed for the summoning of Parliament may be advanced by a proclamation* calling for it to meet "for business". It is the opinion that this cannot be advanced earlier than the date fixed for the return of writs following an election.

3. Whereas in England the delay for summoning Parliament is fixed by statute at 20 clear days, in Canada there is no fixed delay. In practice, the time required for members to reach Ottawa has been the governing factor. In 1939 the proclamation was issued on September 1 for an opening on September 7. In 1950, the proclamation was issued on August 23 for an opening on August 29. On the latter occasion special transport arrangements were made.

4. The Commission of Internal Economy of the House of Commons, composed of four members of the Government, is appointed by order in council* before the day of opening.

5. Before 1963 the Speech from the Throne was delivered in its entirety in both English and French. Commencing with the opening of 16 May, 1963, it has been delivered only once with alternate passages in each language.

6. No business may be done until the Speech from the Throne has been delivered, but the Senate must install its Speaker and the Commons is commanded to elect its Speaker before the opening. Both Houses normally meet on the morning of the day of opening to do this. The Deputy Governor General calls the Commons to the Senate at 11 a.m. to inform them of this requirement.

7. The appointment of the Speaker of the Senate could be recommended by instrument of advice but the practice of issuing an order in council has been continued since it has been considered desirable to associate Cabinet with the appointment. (*See* the chapter on "Speaker of Senate" in the *Senate* section.)

8. If the Governor General cannot preside at the opening of Parliament the Deputy Governor General may officiate. In 1963, however, it was decided to swear in the Chief Justice as Administrator for the performance of the ceremony so that he could receive the same honours as the Governor General. These honours are not accorded to a Deputy Governor General.

9. The Queen officiated at the opening of the first session of the 23rd Parliament on 14 October, 1957. This is the only time the Sovereign has opened the Canadian Parliament.

Summoning III—PROCEDURE

1. When the decision has been taken to summon Parliament for the despatch of business, an instrument of advice* is prepared for the Governor General's approval.
2. The Prime Minister signs letters to the Leader of the Opposition and to the other leaders giving the date of the opening of Parliament and the date of the leaders' speeches in reply to the Speech from the Throne.
3. The Prime Minister issues a press release or makes a public announcement about the opening.
4. The Speech from the Throne is given to the Governor General as soon as it is drafted, cleared with Cabinet and completed.
5. A copy of the Speech from the Throne is sent* to the Leader of the Opposition and, as the Prime Minister sees fit, to other leaders before the opening. Sometimes it has been sent on the morning of the day of opening, on other occasions not until one-half hour before the opening. This has significance if leaders are to speak early in reply without an interval of several days to prepare their interventions.

Summoning APPENDICES

Opening I—Position

1. The Prime Minister decides when Parliament shall meet and takes the necessary steps to have it summoned for business. The Prime Minister makes a public announcement and orders the arrangements* to be made for the opening ceremony.
2. The Prime Minister selects the candidates who are appointed by the appropriate procedures to the following posts:

   Speaker of the Senate;

   Speaker of the House of Commons;

   Chairman of the Committee of the Whole House of Commons (he is also the Deputy Speaker of the House);

   Deputy Chairman of the Committee of the Whole House of Commons;

   Assistant Deputy Chairman of the Committee of the Whole House of Commons;

   Four Commissioners of Internal Economy.
3. The Prime Minister oversees the preparation of the Speech from the Throne and the arrangements and timing of the debate.
4. The Prime Minister decides whether the House should immediately deal with Supply. He will also decide, in the case of a special session, what priority need be requested for any emergency legislation.
5. The motions the Prime Minister will present to Parliament on the first day are prepared together with a description* of his part in the morning and afternoon ceremonies in the Senate.
6. On second and subsequent sessions of a Parliament no action is required regarding Speakers unless a position has become vacant.

Opening II—BACKGROUND

1. The authority for summoning Parliament is conferred on the Governor General by the *B.N.A. Act* and is exercised on the advice of the Prime Minister. Formerly this advice was tendered by order in council but since 1965 an instrument of advice has been used. It would still be usual for the Prime Minister to consult with his Cabinet colleagues regarding the summoning but constitutionally the decision is his. The Prime Minister would also consult the Governor General to ascertain that the arrangements* will be satisfactory to His Excellency.

2. In choosing the Speakers the Prime Minister will keep in mind the long-standing custom of alternating between English- and French-speaking Speakers within each Chamber and also not having both Speakers of the same language. The language succession is a consideration in selecting the Deputy Speaker of the House of Commons and the Deputy Chairman of the Committee of the Whole House. The Prime Minister will also decide who will second the nomination of the Speaker. This is customarily a Cabinet minister, although on some recent occasions (1953, 1957 and 1958) the Leader of the Opposition was the seconder.

3. Whereas the Speakers of the Senate and the House of Commons and the Deputy Speaker of the House of Commons remain in office for the duration of the Parliament for which they are appointed the Deputy Chairman of the Committee of the Whole House, the Assistant Deputy Chairman of the Committee of the Whole House and the Commissioners of Internal Economy must be appointed at the beginning of each session.

4. The Speaker has always belonged to the Government party and consultation with the opposition is not usual in his selection. It could be expected that the customary information which the Prime Minister gives in advance to opposition leaders regarding the selection of his nominee would be amplified in the case where an opposition leader is asked to second the motion.

5. The Speakers of the House and Senate continue in office for the duration of a Parliament. When a vacancy in either speakership occurs a new appointment is immediately made. If the vacancy in the Commons occurs while the House is adjourned or prorogued the appointment is made as soon as the House reconvenes. The *Standing Orders of the House of Commons* also provide that in the case of a vacancy in the office of Deputy Speaker "the House shall proceed forthwith to elect a successor".[1]

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[1] S.O. 52(3).

6. The arrangements and timing of the Speech from the Throne require decisions on when the debate will begin and who will move and second the reply in the Commons. The Prime Minister will also want to approve the selection by the Leader of the Government in the Senate of the mover and seconder in that Chamber.

Opening III—PROCEDURE

1. The Prime Minister assures that the normal arrangements* for the opening are being made by Government House and the Gentleman Usher of the Black Rod and that any modifications which special circumstances might make necessary are in accordance with his wishes.
2. The Prime Minister will personally inform the candidates for the several positions of their selection and ascertain their willingness to serve.
3. The Prime Minister makes sure that the letter* to opposition leaders with the advance text of the Speech from the Throne and information about the debate is delivered to them before the opening.
4. The Prime Minister will have the texts of the motions he is to present at the first sitting of the House. He will also select those who are to second these motions.

1. When the Deputy Governor General attends the morning meeting of Parliament on the day of the opening of the first session of a new Parliament the Prime Minister greets him on arrival at the Parliament Buildings, accompanies him to the Senate Chamber and takes leave of him as he departs. The Prime Minister then goes into the Commons where the House, under the chairmanship of the Clerk, is awaiting his arrival to elect the Speaker. Detailed orders for the ceremony* in the Senate are issued on each occasion from Government House.

2. For the opening of Parliament the Prime Minister, accompanied by his wife, greets the Governor General on his arrival at Parliament. The Prime Minister's wife then takes her place in the Senate Chamber. The Prime Minister enters the Chamber in the Governor General's procession. The Prime Minister and his wife take leave of the Governor General as he leaves the Parliament Buildings. Detailed orders for the ceremony* are issued on each occasion from Government House.

PARLIAMENT

Opening APPENDICES

Order of business at opening of first session of new Parliament

Ceremonial for morning meeting with Deputy Governor General at opening of first session of new Parliament

Ceremonial for opening of new session of Parliament by Governor General

Press release regarding mover and seconder of address in reply to Speech from the Throne

Memorandum on actions taken by Prime Minister in connection with opening of first session of a new Parliament; of second or subsequent session of a Parliament; or of a special session of Parliament

Letter from Prime Minister to Leader of Opposition enclosing advance copy of Speech from the Throne

Adjournment for Recess I—POSITION

1. Adjournment is by a separate motion* in each House. Adjournment beyond the next sitting day, for a specified recess, is proposed by the Leader of the Government in the House of Commons rather than by the Prime Minister, or by a minister on the latter's behalf. In the Senate the motion is proposed by the Government Leader.

2. In order to assure non-contentious acceptance of the motion to adjourn the Government House Leader customarily consults opposition House leaders and the Government Leader in the Senate consults the Senate Opposition Leader. Cabinet then approves the date of adjournment and the length of the recess.

3. It is customary for both Houses of Parliament to be in recess at the same time although their adjournment action need not be identical. If recess is to be preceded by Royal Assent both Houses usually adjourn on the same day. The date set for recall of the Senate may be later than that for the Commons.

4. The motions of adjournment are the only necessary formalities. No proclamation is issued.

5. A 48-hour notice of intention to move adjournment for recess is required but this notice may be dispensed with if the House gives its unanimous consent. Senate rules call for a one-day notice but the Leader of the Government customarily asks the unanimous consent of the Senate to dispense with notice.

6. Adjournment suspends but does not terminate proceedings in either House which are continued at the same stage when Parliament reconvenes.

7. The Commons' motion* for a lengthy recess now usually provides for the earlier recall of the House by the Speaker if he is satisfied, after consultation with the Government, that public interest requires it.

8. The authority for early recall of the Senate is given the Speaker in a resolution* traditionally passed at the opening of each session. It is not necessary for the Senate to reconvene on the same day as the Commons, but it usually does so in an emergency, particularly if legislative action is likely.

9. The Government advice favouring early recall does not require an order in council. The Speaker's notice* is published in *The Canada Gazette* and communicated by him to members by telegram or letter. Practical considerations govern the length of notice which could probably not be less than 48 hours.

10. A recess cannot be extended beyond the date for the recall of the House which must be stated in the motion. Parliament may, however, be prorogued or dissolved while on recess.

11. The Senate may adjourn for recess independently of the Commons. The motion is preceded by consultation between the Leaders of the Government and of the Opposition in the Senate, and Cabinet is advised to determine that the need for legislative action by the Senate is not foreseen during the period of recess.

Adjournment for Recess II—BACKGROUND

1. While adjournment is a decision of each House, not of the Government, the Government, being responsible for directing the business of Parliament, is responsible for proposing adjournment for recess.
2. The Leader of the Government in both Houses consults opposition parties through their House leaders and suggests the date and length of the recess to Cabinet for approval.
3. In co-ordinating the dates for adjournment, Cabinet will have in mind the need for both Houses to be present if Royal Assent is to be given.
4. Since adjournment does not terminate proceedings before both Houses but allows business to be continued without formality as soon as the session is resumed, adjournment for recess can be a useful alternative to prorogation particularly in times of emergency when it is desirable to have Parliament readily on call. This technique was used in 1950 at the time of the Korean War, although the regular business of the session had been completed. The necessity of a proclamation and the formalities which attend the opening of a new session following prorogation could thereby be avoided. Parliament was in fact recalled at the request of the Government before the recess ended, immediately prorogued, and a new session was begun without delay.
5. Parliament cannot be recalled early from recess unless the motion* of adjournment so provides. This has now become customary in lengthy adjournments. The decision and action are the Speaker's but he is customarily required by the terms of the motion to consult the Government. Any member may make representations to the Speaker for early recall. A Government request for early recall is conveyed to the Speaker by the Prime Minister or a minister acting on his behalf. No order in council is necessary.
6. Under this provision Parliament was recalled early from recess in 1944 at the request of the Government to discuss the resignation of the Minister of National Defence over the question of compulsory overseas service.

Adjournment for Recess APPENDICES

Motion for adjournment of House for recess

Motion for adjournment of Senate for recess

Resolution providing for early recall of Senate during adjournment for recess

Notice by House Speaker recalling House during adjournment for recess

Prorogation I—POSITION

1. Prorogation terminates a session of Parliament. The effect is to suspend all business until Parliament meets again and all proceedings pending at the time are quashed. All bills and other proceedings of a legislative character are entirely terminated, whatever state they are in, and must be commenced anew in the next session precisely as if they had never begun. All committees, standing and select, are dissolved.

2. Prorogation of Parliament is an exercise of the royal prerogative and is carried out in the name of the Governor General, at a ceremony* in the Senate Chamber, attended by the Commons. In such a case no proclamation or other document is issued, the announcement* of the decision suffices to end the session. A Speech from the Throne is read describing the achievements of the session but this is not mandatory.

3. The decision to prorogue is the Prime Minister's. Usually there is consideration by Cabinet. It is not the custom to discuss the intention with opposition leaders as is done for adjournment, although a special parliamentary situation might lead to consultation.

4. It is not the custom in Canada to submit written advice to the Governor General regarding prorogation. The Prime Minister informs the Governor General personally or has the information transmitted through his staff.

5. It has been the practice, consistent since 1939, to have the Deputy Governor General rather than the Governor General perform the prorogation ceremony. The Prime Minister's staff and the Governor General's staff make the arrangements with the officers of Parliament and the Supreme Court.

6. It is the custom for Parliament to be on summons and therefore it is always prorogued to a certain stated date, even if there is no firm intention that it meet on that date. If no date for meeting for business is selected, Parliament is prorogued for a period of 40 days and summoned *pro forma* to meet on a stated date at the termination of that period. The period of prorogation is extended by issuing proclamations* for periods of 40 days. When it is desired to open a new session a proclamation summoning Parliament to meet on a stated date "for the despatch of business" is issued.

7. Parliament can be prorogued by proclamation*, without ceremony.

8. Prorogation is usually immediately preceded by the ceremony of Royal Assent to bills.

9. Prorogation need not precede dissolution, although this has been the usual practice here.

10. Prorogation ends on the day Parliament has been summoned to meet for business.

Prorogation II—BACKGROUND

1. It is not the custom to put on paper the advice to the Governor General to arrange for Parliament to be prorogued. The casual procedure has probably developed because Parliament is usually prorogued on short notice. On 11 April, 1957, Cabinet discussed whether a written record of the decision and advice should not be made and the then Prime Minister decided to continue the informal procedure.

2. An interesting and perhaps unique exception in Canada occurred in 1873 when Lord Dufferin met with the Privy Council to ratify the advice that ministers had commissioned the Prime Minister, Sir John A. Macdonald, to give orally. This information is from the Governor General's despatch to London and there is no record of the form this formal advice took.

3. When Parliament was to be prorogued in 1939, the Governor General was absent from Ottawa and the Prime Minister decided that ". . . this was an opportunity to break with precedent and have Parliament prorogued by the Chief Justice".[1] There is no indication why a "break" with precedent was considered desirable and, in fact, on several earlier occasions the Deputy Governor General had presided at prorogation. The change, which may have been influenced by the fact that the Sovereign has not attended in person to prorogue Parliament in England since 1854, did not constitute a meaningful constitutional development and the Governor General could, if the Government wished, resume this duty.

4. In 1940, the Secretary to the Governor General enquired regarding the Government's intentions and Cabinet discussed the matter on 25 July, 1940, and decided again to have the Deputy Governor General prorogue. In letters from the Prime Minister to the Deputy Governor General and from the Clerk of the Privy Council to the Secretary to the Governor General, it was stated that the King did not attend prorogation in England and that "While it is not intended to establish any fixed precedent in Canada", it was decided that "for this session"[2] the Deputy should act. Since that time, the Deputy Governor has continued to perform the ceremony of proroguing Parliament.

5. It had been planned that King George VI would prorogue Parliament when in Ottawa in 1939. This had been agreed in principle but the business of Parliament was not sufficiently advanced and the ceremony was limited to Royal Assent to bills.

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[1] Sir Shuldham Redfern, Secretary to the Governor General, reported in a letter dated 20 July, 1940 from F. L. C. Pereira, Assistant Secretary to the Governor General, to A. D. P. Heeney, Clerk of the Privy Council, on P.C.O. file P-26.

[2] From letter by A. D. P. Heeney, Clerk of the Privy Council, to Sir Shuldham Redfern, Secretary to the Governor General, dated 31 July, 1940, on P.C.O. file P-26.

6. Since prorogation will bring the session of Parliament to an end it is customary to have a final ceremony, immediately before prorogation is declared, to give Royal Assent to remaining bills which have passed both Houses.

7. Government House and the Prime Minister's Office, in co-operation with officials of the Supreme Court and the officers of Parliament, make arrangements for prorogation by the Deputy Governor General.

8. The customary Speech from the Throne given during the prorogation ceremony* may be dispensed with although it has always been delivered in Canada except when Parliament was prorogued by proclamation.

9. On one occasion, in 1911, when the Senate was adjourned, Parliament was prorogued by proclamation* without ceremony. It was immediately dissolved by a second proclamation.

10. When Parliament is prorogued, the date for the opening of the new session is mentioned during the ceremony. If the intention is to begin without delay, the actual date is announced. If the new session is not to begin for some time, an arbitrary date 40 days hence is given. This is done because of the custom that Parliament should always be on summons.

11. When the arbitrary date mentioned at prorogation draws near and the time for the opening of the new session has not been fixed, a *pro forma* proclamation* is issued to set a new date 40 days hence. These *pro forma* proclamations are issued more or less as a matter of routine without insisting on the provision of an approved instrument of advice.

12. A 40-day period was fixed by the Great Charter of King John as the minimum notice for summoning Parliament, and although this has been modified in England by statute, it has come into Canadian usage as the customary period for *pro forma* prorogation.

13. Since the 1920's, it has not been the custom to prorogue Parliament immediately before dissolution if dissolution is decided upon while Parliament is in session.

Prorogation III—PROCEDURE

1. As a session of Parliament draws to a close, the Prime Minister usually informs the Governor General when prorogation is imminent.
2. The Speech from the Throne, to be read at prorogation, is prepared. Since 16 May, 1963, this is prepared partly in English and partly in French, with no translation given on delivery.
3. When it is decided that Parliament will prorogue, the Prime Minister personally informs the Governor General or has the information conveyed through his staff.
4. The Governor General's and Prime Minister's staffs co-operate in arranging the administrative details of prorogation with the officers of Parliament and the Supreme Court.
5. The Clerk of the Senate is told by the Prime Minister's staff the date to which Parliament is to be prorogued. The Clerk briefs the Speaker of the Senate on the announcement* he will make to prorogue Parliament.
6. An instrument of advice should be prepared for the Prime Minister's signature and sent to the Governor General for his approval so that a proclamation can be issued to summon Parliament either *pro forma* or "for business", as the Government decides. In case of *pro forma* summons the instrument of advice is not always provided.

Prorogation IV—CEREMONIAL

1. Prorogation is now customarily declared at a ceremony carried out by the Deputy Governor General, at which Royal Assent is given to bills. The usual arrangements* are set out in the appendices.

Prorogation APPENDICES

Announcement by Speaker of Senate proroguing Parliament

Proclamation proroguing Parliament

Proclamation extending period of prorogation of Parliament

Description of prorogation ceremony

Dissolution I—POSITION

1. Dissolution ends the existence of a Parliament. It is brought about by the efflux of time or by proclamation*.
2. The life of Parliament is fixed by the *B.N.A. Act* at five years from the date of the return of writs of election. This has once been extended by one year in wartime by a United Kingdom statute* passed on request of the Canadian Government. Under an amendment to the *B.N.A. Act* passed in 1949 the life of Parliament may now be extended by decision of the Canadian Parliament in time of war.
3. A Parliament is automatically dissolved five years from the date fixed in the election proclamation for the return of writs. Parliament has never, in fact, been allowed to end by the efflux of time but has always been dissolved on the Prime Minister's recommendation even if on the last day of its term.
4. The proclamation* to dissolve is issued by the Governor General on the advice* of the Prime Minister.
5. The Governor General retains certain constitutional discretion whether to accept the advice to dissolve.
6. Parliament is usually prorogued before dissolution but this is not necessary. Parliament has been dissolved while in session without prorogation and while adjourned.
7. At the time of dissolution two other proclamations* are issued, one declaring that orders have been given for the issue of writs of election and giving the date for their return, and another setting a date for the *pro forma* summoning of the new Parliament.
8. The Prime Minister makes an announcement regarding the dissolution of Parliament and the calling of an election. Public information regarding the election date depends on this announcement since it is not mentioned in the proclamations.

Dissolution II—BACKGROUND

1. While Parliaments have run almost their full term they have always been dissolved by proclamation* rather than be allowed to come to an end automatically.

2. The argument on the interpretation of section 50 of the *B.N.A. Act* regarding the life of Parliament has never been resolved. At the end of the last century the question did arise as a lively political issue. As the 7th Parliament drew to a close it was debated whether Parliament would be dissolved by the efflux of time on 25 April, 1896, five years from the date for the return of writs in the election proclamation or could run until 3 June, five years from the date of the return of the writ for the election in Algoma which had been delayed by the returning officer in accordance with the terms of the election statute. The point was significant since the Government wished to pass a bill before dissolution and the opposition was anxious to prevent its passage. In the circumstances the Government did not press the point. Sir Charles Tupper, speaking for the Government in the House of Commons, pointed out that those who argued for the longer period wanted the Remedial Bill passed. Those who supported the interpretation of a shorter period wanted it defeated. The Government, therefore, decided to dissolve Parliament on the expiry of the shorter period and not to proceed with the Bill because as Tupper explained, "... if there is any reasonable doubt amongst legal minds as to our power, no advocate of the measure would wish to run any risk".[1] A similar situation would arise if the point were ever again at issue and it is, therefore, unlikely that it will be put to the test. This interpretation has been supported by the action taken to dissolve the 12th, 17th and 19th Parliaments, in each case just before the anniversary of the dates for the return of writs.

3. The life of the 12th Parliament was extended by a United Kingdom statute* at the request of the Canadian Government. The extension was for a stated period of one year from the date proclaimed for the return of writs, thus adding support to the contention that this is the operative date. Following this experience the 1949 amendment to the *B.N.A. Act* gave the Canadian Parliament the power to extend its life in time of war if not opposed by more than one third of the members.

4. The advice* to dissolve is a prerogative of the Prime Minister.

5. The circumstances in which the Governor General would be justified in rejecting this advice have been the subject of searching and inconclusive examination by constitutional authorities, particularly in relation to the

[1] *Can. H. of C. Debates,* March 16, 1896, p. 3625.

Byng-King case in 1926. It can be said nevertheless that discretion does exist; Churchill and Attlee amongst others have both made clear statements on this point.

6. Dissolution leads to a general election with the consequent interruption of the routine of government. So the basic argument is that in certain circumstances the Governor General need not accept the advice if a general election would not be in the public interest. This implies that an alternative Government could be formed which could command a majority in the House of Commons so that the government of the country can be continued without resort to an election, and that no new major issue of national policy has arisen which should be put before the electorate.

7. Since the Imperial Conference of 1926 redefined the position of the Governor General, it has been acknowledged that in exercising this discretionary power the Governor General's position is the same as that of the Sovereign in England.

8. The Byng-King crisis and the subsequent election results did not bring to an end the Governor General's discretion regarding dissolution; it remains to be used in those rare and almost indefinable circumstances when it is necessary for the protection of the constitution.

Dissolution III—PROCEDURE

1. The Prime Minister, generally in person, submits an instrument of advice* to the Governor General recommending dissolution.
2. The Governor General signs a proclamation* which dissolves Parliament. Commissions issued to Deputy Governors General except the power to dissolve Parliament, although the Governor General's Letters Patent permit him to delegate all his powers without limit. An order in council* is passed calling for the issue of writs* of election and fixing the date for the *pro forma* summoning of Parliament but the advice for the latter action is now (since 1965) given to the Governor General by instrument of advice*.
3. A minimum of 54 days is required by statute between the date of the writs of election and polling day. Writs of election normally but not necessarily bear the date of dissolution. To give the Chief Electoral Officer the time to make his administrative arrangements it has been the custom to extend to approximately two months the period between dissolution and election day which, by statute is a Monday. Dissolution is, therefore, usually not later than the Saturday preceding the Monday eight weeks before election day.
4. In order to meet the administrative requirements of the Chief Electoral Officer, it has been customary to allow about two months between election day and the date set for return of writs. On occasion (e.g., 1958) this period has been reduced to 30 days. This date for the return of writs is significant since the life of Parliament is calculated from the date writs are returned. It is normally a Thursday.
5. A date one week after that set for the return of writs is usually selected for the *pro forma* summoning of Parliament. It is customary but not mandatory to select a Thursday, and other days have been used.
6. The proclamations* regarding dissolution, writs of election and the summoning of Parliament are issued on the day of dissolution.
7. The proclamation* declaring that writs are being issued does not mention polling day. This appears in the election writ, and is made public in an announcement by the Prime Minister at the time of dissolution.
8. The wording of the Prime Minister's announcement should reflect the actual stage reached: recommendations tendered by the Prime Minister, advice accepted by the Governor General or proclamations actually issued.

1. There is no ceremony on the dissolution of Parliament.

Dissolution APPENDICES

Proclamation dissolving Parliament

Instrument of advice for issue of above proclamation

Proclamation for *pro forma* summoning of new Parliament

Instrument of advice for issue of above proclamation

Proclamation announcing issue of writs of election

Order in council for issue of writs of election

Writ of election

United Kingdom statute extending life of Parliament of Canada

Speech from the Throne I—POSITION

1. Each session of Parliament opens with a speech in which the Governor General declares the causes for summoning Parliament. Until this is delivered no public business may be transacted by either House.
2. The Speech from the Thone* is prepared by the Government and cleared in Cabinet. The Governor General may be invited to contribute material dealing with his own activities and with royal visits, and some concluding words praying for the well-being of the country.
3. Since 1963 alternate parts of the Speech have been in English and French. Before that the Speech had been delivered in its entirety in both languages.
4. The Prime Minister sends* an advance copy of the Speech to the leaders of opposition parties and indicates when "Leaders' day" will be in the debate on the reply.
5. The text has on occasion been made available in advance to the press, either on a "lock up" basis or on a signed undertaking to respect the stated release time.
6. A Speech from the Throne* is also delivered by the Deputy Governor General at the prorogation ceremony. It is a review of the achievements inside and outside Parliament during the session. The Governor General is not invited to contribute material. The text is approved by Cabinet.
7. The Speech is delivered part in English and part in French.
8. No advance copy of the prorogation Speech from the Throne is sent to opposition leaders.

Speech from the Throne III—PROCEDURE

1. The Prime Minister concerns himself directly with the preparation of the Speech from the Throne*.
2. The Prime Minister assures himself that the Speech, in draft and final form, reaches the Governor General in good time.
3. The Prime Minister signs letters* to opposition leaders transmitting an advance copy of the Speech.

Speech from the Throne APPENDICES

Speech from the Throne opening session of Parliament

Letter from Prime Minister to Leader of Opposition transmitting advance copy of Speech from the Throne and advising of date when he will be able to speak on motion for the address in reply

Speech from the Throne delivered at prorogation of a session of Parliament

Royal Assent I—POSITION

1. Royal Assent is the final stage of an act of Parliament. It is given by, or on behalf of, the Sovereign in the presence of both Houses of Parliament.
2. The ceremony* is now usually conducted by the Deputy Governor General who proceeds to the Senate where the House of Commons is summoned and then signifies Royal Assent to bills which have passed both Houses.
3. Royal Assent is normally carried out immediately before prorogation and at such other times during the session that may be judged desirable.
4. The Government Leader in the House, in consultation with the Prime Minister and the Leader of the Government in the Senate, initiates the decision to give Royal Assent to bills.

Royal Assent II—BACKGROUND

1. The authorities agree that Royal Assent in the presence of both Houses is a constitutional necessity to the legality of an act of Parliament. The ceremony* must, therefore, take place during the session.

   It is an indication of how imperative this requirement is considered to be, that in 1879 the proceedings for giving Royal Assent carried out by the Quebec Lieutenant-Governor after the adjournment of the Assembly were deemed insufficient and were later repeated at the time of prorogation in the presence of both Houses.

2. It has become usual for the Deputy Governor General to officiate at giving Royal Assent, whether at the time of prorogation or otherwise. The Governor General has not performed this ceremony since 1939.

3. During the royal visit of 1939 King George VI officiated at the ceremony of Royal Assent in Ottawa on 19 May, 1939.

Royal Assent III—PROCEDURE

1. The Leader of the House takes the initiative in consulting the Prime Minister and the Government Leader in the Senate regarding Royal Assent.
2. When a decision has been taken he informs the Prime Minister and the responsible Assistant Secretary to the Cabinet of the date and time.
3. The Prime Minister participates in the ceremony or arranges to be represented by another minister.
4. The Assistant Secretary to the Cabinet is responsible for the arrangements in co-operation with the Assistant Secretary to the Governor General*, the Clerks of the House of Commons and of the Senate and the Administrative Officer of the Supreme Court.

Royal Assent IV—CEREMONIAL

1. Royal Assent is essentially a ceremonial occasion. The details* are described in the appendices.

Royal Assent APPENDICES

Letter from Assistant Secretary to Governor General to Speaker of Senate regarding Royal Assent by Deputy Governor General

Extract from *Journals of the Senate* regarding Royal Assent ceremony

Special Sessions of Parliament I—POSITION

1. On several occasions after completion of the required annual session, it has been necessary to summon Parliament to a special session.
2. National or international emergencies have been the cause.
3. The decision to call a special session is taken by the Government. The opposition leaders may be consulted concerning procedure for the introduction and study of emergency legislation in the House of Commons.
4. The procedures are the same as for regular sessions although opening ceremonial* is usually reduced and some Standing Orders of the House suspended* to allow urgent study of the business before the House.

Special Sessions of Parliament II—BACKGROUND

1. The following sessions, being additional to the required annual session and called for reasons of urgency, can be described as "special":

1914	18 August	declaration of war
1919	1 September	peace treaty
1930	8 September	economic crisis
1939	7 September	declaration of war
1950	29 August	railway dispute and Korea
1956-57	26 November	Middle East situation (Suez) and Hungary.

2. The Government is responsible for calling a special session of Parliament and it is therefore not customary for the opposition to be consulted in regard to this decision.

3. The Prime Minister may consider it desirable to send the Leader of the Opposition a personal message* about the special session as was done in 1950 when Mr. Drew was out of the country.

4. Consultations may take place regarding the procedure for dealing with any emergency legislation which may be introduced at the special session.

5. The Government may find it necessary to make special arrangements* for members to travel to Ottawa for the special session. This was done in 1950.

6. The Prime Minister will consult with the Governor General regarding the ceremonial* for the opening of the special session.

Special Sessions of Parliament III—PROCEDURE

1. The Government having decided to call a special session of Parliament the Prime Minister will submit an instrument of advice to the Governor General recommending that a proclamation be issued summoning Parliament for business on the selected date.
2. The Prime Minister will decide how this decision is to be announced and approve any press release* or statement.
3. The Prime Minister will decide whether he should send special messages* to opposition leaders about the session.
4. The Government Leader in the House will plan the business of the special session consulting opposition House leaders as necessary.

Special Sessions of Parliament IV—CEREMONIAL

1. It has been customary to open special sessions with greatly reduced ceremonial*. For this reason and because of the lack of time necessary to make the arrangements the usual official guests are not invited.

Special Sessions of Parliament APPENDICES

Press release regarding summoning of special session

Memorandum on arrangements for opening of special session

Extract from *The Ottawa Journal,* 23 August, 1950, regarding special transport arrangements made for opening of 1950 special session

Message from Prime Minister to Leader of Opposition regarding summoning of 1950 special session

Extract from Government House order regarding opening of 1956 special session

Extracts from official report of House of Commons debates regarding order of business for special session

Addresses of Parliament I—POSITION

1. Addresses are submitted to the Sovereign or the Governor General by one or both Houses of Parliament on subjects covering the full range of government activity and of public welfare.

2. The most important and frequent instances are the address in reply to the Speech from the Throne, addresses of loyalty, congratulation or condolence, addresses to amend the *B.N.A. Act,* and addresses for the production of papers. There is also a provision in numerous statutes requiring an address to remove an appointee.

3. The motion for the address* in reply to the Speech from the Throne is the indispensable method of testing the Government's support. Amendments to the address in reply are used by the opposition to challenge Government policies and performance. A separate address in reply is also adopted in the Senate.

4. The Prime Minister in consultation with Cabinet selects the Government supporters, traditionally tyros, to move and second the motion in the two official languages. The Prime Minister also approves the selection of mover and seconder made by the Leader of the Government in the Senate.

5. Although the motion is subject to the normal rule regarding notice it is traditionally not given.

6. If an opposition amendment is adopted the Government is expected to resign. If it is defeated the motion is adopted unanimously, passed on division or with a recorded vote.

7. When the motion has been adopted the Prime Minister usually moves* that it be engrossed and presented to the Governor General.

8. The Prime Minister selects the Privy Councillors who will present the address in reply and arrangements are made with the assistance of the Clerk of the Privy Council.

9. After the address in reply has been presented the Governor General sends a message* of acknowledgement to each Speaker which is read from the Chair.

10. Parliament passes addresses* of loyalty and affection to the Sovereign on a variety of royal occasions, such as deaths, accession, births, anniversaries, visits to Canada, etc. This may be by a joint address or by separate addresses by each House.

11. The House usually gives unanimous consent to dispense with notice of such a motion*, which is moved by the Prime Minister and seconded by the Leader of the Opposition, and passed without division.

12. The addresses are transmitted by the Governor General to the Sovereign who sends a reply* to the Speaker of each House.

13. On the Queen's birthday a message of loyalty and devotion has been sent direct by the Speaker, either on a motion* by the Prime Minister or raised by the Chair.

14. Parliament conveys its sentiments to members of the Royal Family by message* rather than an address. A separate message from each House is usually sent on each occasion. The procedures are the same as for separate addresses to the Sovereign.

15. It has become the accepted practice to request amendments to the *B.N.A. Act,* in those areas where action is still required by the United Kingdom Parliament, by address to the Sovereign, either joint or separate.

16. Notice of motion is required. It is usually moved by the Prime Minister and debated. There is a division or a recorded vote. The address is then transmitted by the Governor General to the Queen who causes the amendment to be introduced in the United Kingdom Parliament.

17. Statutes providing for the appointment of certain officials stipulate that they can only be removed on an address from both Houses to the Governor General asking that the removal be effected.

18. An address to the Governor General is used to effect the production of papers not in departmental control or other exceptional papers, generally not in the possession of the Government. The motion is made by the member requiring the papers and is usually adopted without debate. Although in the customary form of addresses to the Governor General, these addresses are sent direct to the Secertary of State for action.

19. A provincial legislature may address the Sovereign on matters within its competence. This is transmitted through the Lieutenant-Governor and the Governor General. The advice of the Government is sought on the transmission of the address and the recommendation which should accompany it.

Addresses of Parliament II—BACKGROUND

1. Addresses are submitted only to the Sovereign or the Governor General. Messages are sent to members of the Royal Family.

2. There is no precedent or regulation suggesting a preference between the two forms of address in any particular case. Joint or separate addresses have been used without distinction.

3. The address* in reply to the Speech from the Throne is an essential part of the parliamentary programme giving an opportunity for unrestricted debate followed by a test of the Government's support. It is given priority at the opening of a session unless an emergency makes another arrangement acceptable to the House.

4. The procedure for presenting the address in reply to the Governor General has varied. At one time the Speakers went, accompanied by the Prime Minister. Sometimes the Prime Minister went alone. The general rule, however, which is now usually observed is that the address should be presented by such members of the Houses who are Privy Councillors. This has come to mean one minister from each House, selected by the Prime Minister, without necessarily consulting Cabinet.

5. Addresses* of loyalty and affection are adopted on a wide variety of occasions usually on the initiative of the Prime Minister. They are the opportunity for declarations of loyalty from all parties and are passed *nemine contradicente*. Either joint or separate addresses are used.

6. On 1 July, 1967, during the Queen's centennial visit to Canada, a joint address* of loyalty was read and personally presented to the Sovereign by the two Speakers in the presence of members of both Houses assembled on Parliament Hill at a public ceremony. The presentation was followed by the Queen's reply. The Governor General, the Prime Minister, the Leader of the Opposition, members of Cabinet, officials of both Houses and guests were in attendance.

7. In several instances a less formal procedure has been followed on the Queen's birthday. With the approval of the House, given at the Prime Minister's* or the Speaker's suggestion, the Speaker has sent a message of loyalty and devotion to the Sovereign. A reply has been sent to the Speaker.

8. There are no rules or clear precedents to indicate when messages* are to be sent to the Royal Family. The initiative is usually taken by the Government. The procedure is similar to that for separate addresses of loyalty.

9. Although there is no legal requirement it has become the constitutional practice to request amendment of the *B.N.A. Act* by an address which may

be either joint or separate. This is a legislative procedure which is carried out without ceremonial.

10. Numerous statutes provide for the removal of appointees only on the basis of an address of the Senate and the House. There has yet to be an instance where this procedure has been used. It has up to now been avoided usually by the resignation of the appointee.

11. Addresses to the Governor General for the production of papers is a special parliamentary procedure different in nature from other addresses. It may be used 25 or 30 times a session. Such addresses never in fact reach the Governor General.

12. The Sovereign will only take action on addresses from provincial legislatures on the advice of the federal Government. This does not require parliamentary action although the question may be raised in the House. The Government's advice is conveyed in a communication from the Prime Minister to the Governor General.

13. On nine occasions in the past Governors General returning to England on completion of their term of office have been sent addresses of farewell. It is for consideration whether the practice should be continued for Canadian Governors General on retirement.

Addresses of Parliament III—PROCEDURE

1. The Prime Minister selects "Leaders' day" and informs opposition leaders before the opening when they will be able to speak on the address in reply*.
2. The Prime Minister selects the members to move and second the motion for the address and informs Cabinet. He also approves the selection of a mover and seconder in the Senate made by the Leader of the Government in the Senate.
3. After the address in reply has been adopted the Prime Minister moves* that it be engrossed and presented to the Governor General by members who are Privy Councillors. This means in fact by a minister selected subsequently by the Prime Minister. A similar second motion is presented in the Senate and a senator who is in the Cabinet is selected to present the address.
4. The Speakers sign their respective address in reply, in both languages. The Clerk of each House then sends the address of his House to the Clerk of the Privy Council, who, having ascertained from the Prime Minister which ministers will present the two addresses, co-ordinates the arrangements for the personal presentation to the Governor General.
5. The Governor General sends an acknowledgement* to each Speaker who reads this reply to his House.
6. Before presenting a motion* for an address* of loyalty and affection to the Sovereign, the Prime Minister obtains the agreement of the Leader of the Opposition to second the motion.
7. Similar action in the Senate is co-ordinated by the Leader of the Government in the Senate.
8. Once the address is adopted there is a motion to have it engrossed and another for an address* to the Governor General requesting him to transmit it to the Sovereign.
9. The Speakers sign both addresses in both languagues and they are transmitted by one of the Clerks to the Clerk of the Privy Council.
10. The Prime Minister then sends* the addresses to the Governor General who takes action to transmit the one to the Sovereign.
11. The Governor General does not acknowledge the address directed to him. The Sovereign acknowledges the address in two letters*, one to each Speaker. These are sent to the Speakers by the Governor General and are read to the Houses.

12. This procedure is for joint addresses of loyalty. If separate addresses* of loyalty are adopted by each House there is no second address to the Governor General. Each address of loyalty is simply transmitted by the respective Clerk to the Clerk of the Privy Council who has it delivered to Government House for transmission to the Sovereign. The Speakers, however, may undertake the delivery of the addresses themselves.

13. The procedure for messages* from each House to the Royal Family is similar to the procedure for separate addresses.

14. An address to amend the *B.N.A. Act,* either joint or separate, is not accompanied by an address to the Governor General. It is either presented by the Speakers to the Governor General or is transmitted by the Clerk of the Privy Council.

15. An address to the Governor General for the removal of an appointee would probably be moved by the responsible minister or by the Prime Minister and seconded by another minister. It should be a joint address of both Houses. The Governor General would reply by messages to both Speakers that the requested removal had been effected.

16. The address for the production of papers is signed by the Clerk of the House rather than the Speaker and is sent to the Secretary of State who makes the return. The Governor General is not involved.

17. The Governor General informs the Prime Minister that he has received a provincial address to the Sovereign and requests advice on the action he should take. After consultation with the Cabinet the Prime Minister recommends to the Governor General whether the address should be transmitted and whether the Sovereign should be advised to accede to the request it contains.

Addresses of Parliament APPENDICES

House of Commons address in reply to Speech from the Throne

Motion for engrossing of above address and for presentation by Privy Councillors

Governor General's message to Commons Speaker acknowledging address in reply

Joint address of Senate and House of Commons expressing loyalty to Sovereign

House of Commons motion for adoption of above address

Joint address of Senate and House of Commons to Governor General requesting Governor General to transmit joint address of loyalty to Sovereign

Letter from Prime Minister to Governor General transmitting joint address to Governor General together with joint address of loyalty to Sovereign

Sovereign's message acknowledging address of loyalty

Joint address of loyalty presented to Sovereign on occasion of her centennial visit to Canada

Separate address of House of Commons to Sovereign expressing sympathy and loyalty on death of late Sovereign

Message from House of Commons expressing condolence to member of Royal Family

Motion by Prime Minister for transmission of message of loyalty by Commons Speaker on Sovereign's anniversary

Approval of International Treaties and Agreements I—POSITION

1. The negotiation and conclusion of a treaty by Canada is legally an exercise of the royal prerogative. The signature and ratification of international agreements is binding on Canada in international law without parliamentary approval. Moreover there is no statutory obligation to refer international agreements to Parliament prior to their conclusion. Nevertheless it has been the practice for some time to bring all important treaties to the notice of Parliament in one way or another.

2. The approval of Parliament is normally sought before authorization is given to ratify important treaties involving:
   (*a*) military or economic sanctions;
   (*b*) large expenditures of public funds;
   (*c*) political considerations of a far-reaching character; and
   (*d*) obligations, the performance of which will affect private rights in Canada.

   This is usually obtained by means of a joint resolution* of both Houses.

3. Other treaties, the implementation of which requires the enactment of domestic legislation, will normally be brought to the attention of Parliament at the time such legislation is introduced.

4. Treaties in other categories are generally tabled in Parliament subsequent to their conclusion.

5. It is for the Government to decide whether treaties will be submitted to Parliament and how and when this will be done. Parliamentary action in respect of treaties is normally undertaken by the Secretary of State for External Affairs or other minister responsible.

Approval of International Treaties and Agreements II—BACKGROUND

1. The practice of obtaining the approval of Parliament before authorizing the ratification of important treaties is based on a resolution adopted in 1926, which was to the effect that "... before His Majesty's Canadian ministers advise ratification of a treaty or convention affecting Canada, or signify acceptance of any treaty, convention or agreement involving military or economic sanctions, the approval of the parliament of Canada should be secured".[1] Speaking on the same subject in the House in 1928 the Prime Minister said "... parliamentary approval should apply where there are involved matters of large expenditure or political considerations of a far-reaching character".[2]

2. The practice of bringing treaties to the notice of Parliament by one means or another has become so consistent that despite the absence of any legal requirement it is now expected for all agreements of any significance.

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[1] *Can. H. of C. Debates,* June 21, 1926, p. 4759.
[2] *Can. H. of C. Debates,* April 12, 1928, p. 1974.

Approval of International Treaties and Agreements APPENDICES

Joint resolution of Senate and House of Commons for approval of international treaty

Privileges of Parliament I—POSITION

1. Privileges of Parliament are to protect the Houses and their members from interference so they can carry out their functions.
2. The legal basis of privileges is found in the *B.N.A. Act* and the *Senate and House of Commons Act*. They are nowhere enumerated but cannot exceed those enjoyed by the House of Commons of the United Kingdom. No new privileges may be created.
3. Privileges are of two types; those personal to members of each House to permit them to carry out their parliamentary duties without interference and those pertaining to each House as a whole, breach of which is analogous to contempt of court.
4. Parliament determines and protects its own privileges which are enforced by the Speakers.

Privileges of Parliament II—BACKGROUND

1. The *B.N.A. Act* states that the privileges, immunities and powers to be held and exercised by the Senate and House of Commons and by the members thereof shall be those that are defined by act of the Parliament of Canada but so that these do not exceed the privileges, immunities and powers held by the United Kingdom Commons at the time of the passing of the Canadian act. The *Senate and House of Commons Act* repeats the above but adds that the Canadian privileges, immunities and powers include those held and exercised by the United Kingdom Commons at the time of the passing of the *B.N.A. Act* so far as they are consistent with and not repugnant to the latter Act.

2. Erskine May defines the privileges of Parliament in the United Kingdom as follows:
"Parliamentary privilege is the sum of the peculiar rights enjoyed by each House collectively as a constituent part of the High Court of Parliament, and by members of each House individually, without which they could not discharge their functions, and which exceed those possessed by other bodies or individuals. Thus privilege, though part of the law of the land, is to a certain extent an exemption from the ordinary law."[1]

3. The recognized parliamentary privileges and immunities include the right of each House to compel the attendance and testimony of witnesses, the right of a member of either House to speak on any subject without fear of legal responsibility for what he may say, the freedom from arrest under civil process while the House is in session and the exemption during the session from duty as a witness or juror. It is also a breach of privilege to molest a member of either House on account of his conduct in Parliament.

4. The immunities which a member of the House of Commons or Senate enjoys do not include freedom from arrest for an indictable offence, even during a session. This was demonstrated by the arrest of Fred Rose in 1946.

5. Each House takes exclusive cognizance of matters arising within its precincts and may punish breaches of its privileges by censure or imprisonment. The latter procedure has been used once by the House of Commons and the offender committed to the Carleton County Jail until prorogation.

6. The precincts of Parliament within which the rules and orders of each House are enforced consist of the Centre Block for the Senate and of the Centre and West Blocks for the House of Commons.

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[1] Erskine May, *Treatise on the Law, Privileges Proceedings and Usage of Parliament*, 17th edition (London, 1964), p. 42.

7. In Canada it is not the practice for Parliament to try and punish those who commit offences within its precincts. On the authority of the Speaker the R.C.M.P. is summoned to take charge of the prisoner and lay charges. A report on subsequent proceedings is made to the Speaker.

8. Acts of violence for the purpose of intimidating Parliament constitute an indictable offence under the *Criminal Code* and are punishable by 14 years of imprisonment.

PRIME MINISTER

PRIME MINISTER

Appointment

1. The appointment of a Prime Minister becomes effective when, in response to the invitation, he informs the Governor General that he is in a position to form a Government. This is usually conveyed orally without formality.
2. Before the new Prime Minister takes office the outgoing Prime Minister may instigate consultation on the details and timing of the transfer of responsibility.
3. An announcement* is made from Government House when the Prime Minister-designate has informed the Governor General that he is able to form a Government.
4. If he is not already a Privy Councillor, the new incumbent is summoned to the Privy Council by the Governor General.
5. On five occasions Prime Ministers have taken an oath* of office as Prime Minister although there is no legal requirement for this.
6. It has become the custom for the Prime Minister to send a message* of loyalty to the Sovereign on the day he assumes office.
7. The Clerk of the Privy Council, with the approval of the outgoing Cabinet, sends a letter* to the new Prime Minister asking his agreement to the customary arrangement regarding access to Cabinet records. The new Prime Minister replies* accepting the arrangement.
8. The outgoing and incoming Prime Ministers will consult about the arrangements for the Prime Minister to occupy the official residence.

Appointment II—BACKGROUND

1. The formal initiative in selecting a new Prime Minister is with the Governor General. Except in most unusual circumstances there will be no doubt as to the person to be called since the parliamentary situation or an electoral result will have made the designation clear. However, if it is not clear, a Governor General may consult possible candidates as he sees fit. Even when the composition of the House of Commons leaves no doubt which party controls the House the leader of that party should await an overture by the Governor General before taking any public action in the role of Prime Minister-designate.

2. The outgoing Prime Minister may decide to confer with his successor regarding the timing of the transfer of responsibility. This is desirable since ministers continue to be responsible for the operation of their departments, even after the resignation of the Prime Minister, until their successors are installed. In 1957 Mr. St. Laurent invited Mr. Diefenbaker to his office for consultation before he went to Government House later in the same day to tender his resignation. His formal resignation and Mr. Diefenbaker's installation took place four days later. In 1963 Mr. Diefenbaker asked Mr. Pearson to discuss the changeover two days before he offered his resignation which was effective one week later.

3. The announcement* that the Prime Minister-designate has formally accepted the invitation to form a Government will give the composition of the new Government if it is known at that time.

4. In the past Prime Ministers have passed orders in council recommending their own summons to the Privy Council. This is now recognized as unnecessary. The Governor General arranges for a new Prime Minister to be sworn to the Privy Council immediately after formal acceptance of the invitation to form a Government.

5. It was not originally the custom for Prime Ministers to take an oath* of office as Prime Minister and there is no legal requirement for one. Five Prime Ministers have, however, done so: Mr. Meighen in 1920, Mr. King in 1921, Mr. Diefenbaker in 1957, Mr. Pearson in 1963, and Mr. Trudeau in 1968.

6. The message* of loyalty to the Queen has been transmitted through the High Commissioner in London to Buckingham Palace but it is for consideration whether Government House would not be the more correct channel of communication.

7. The arrangements whereby records of Cabinet discussions would not be available to the new Government only became necessary after records began

to be kept in 1940. The arrangements were first formulated and accepted in 1957 when the new Prime Minister satisfied himself that the suggested procedure was consistent with the practice in the United Kingdom. In 1963 letters proposing and accepting similar arrangements were exchanged by the Clerk of the Privy Council and the new Prime Minister.

8. Under a provision in the Table of Titles for Canada approved by the Queen in 1968 the Prime Minister is designated "Right Honourable" for life from the moment he assumes office.

Appointment III—PROCEDURE

1. The new Prime Minister will wish to assure himself that the text of the announcement* to be issued by Government House is satisfactory.
2. The Prime Minister will decide whether he wishes to take an oath* of office as Prime Minister.
3. The Prime Minister will approve the text of a message* of loyalty to the Sovereign and decide how it is to be transmitted.
4. The Prime Minister will reply* to the letter* from the Clerk of the Privy Council accepting the arrangement regarding access to Cabinet papers.

Appointment IV—CEREMONIAL

1. There is no ceremonial connected with the Prime Minister's appointment which becomes effective when he informs the Governor General that he is in a position to form a Government. However the subsequent swearing-in of the new Administration, including the Prime Minister if he wishes to subscribe to an oath* of office, usually takes place at Government House shortly afterwards. The arrangements for this latter ceremony are described in the appendices for the "Formation of New Ministries" chapter in the *Government* section.

PRIME MINISTER

Appointment APPENDICES

Government House announcement regarding acceptance of invitation to form a Government by new Prime Minister

Oath of office as Prime Minister

Message of loyalty from new Prime Minister to Sovereign

Letter from Clerk of Privy Council to new Prime Minister regarding Cabinet records of former Government

Prime Minister's reply to above letter

List of Canadian Prime Ministers with respective dates of office

Incapacity, Death or Resignation I—POSITION

1. A Prime Minister's term is brought to an end by his resignation or death.
2. If he resigns for personal reasons while his party still retains control of the House of Commons the Governor General has virtually no alternative, in choosing his successor, but to select the new leader of the Government party, whom the outgoing Prime Minister is invited to recommend.
3. If a Prime Minister resigns because of defeat in elections, the Governor General must seek a replacement who will undertake to form a Government. The outgoing Prime Minister may, in these circumstances, be asked for his recommendation, but it is not binding on the Governor General even if solicited.
4. In either of these eventualities it is not the modern practice for the Prime Minister's resignation to be given formal effect until his successor is ready to take over. Cabinet ministers remain in office for the conduct of routine and necessary business until the new Government is formed.
5. If Parliament is in session adjournment is moved by or on behalf of the Prime Minister shortly before his formal resignation is submitted to the Governor General. Parliament reconvenes when the new Prime Minister is ready to announce the formation of his Government.
6. If a Prime Minister dies the ministry is dissolved and the Governor General must find a successor. If Parliament is in session the senior Privy Councillor in the House of Commons moves* adjournment. Former ministers remain in charge of their departments until the new Government is formed.
7. If the Prime Minister should be permanently incapacitated and be either unable or unwilling to resign, the Governor General would, after consultation with the Acting Prime Minister and the acting leader of the Government party, invite a replacement to form a new Government.

Incapacity, Death or Resignation II—BACKGROUND

1. Two Prime Ministers, Sir John Macdonald and Sir John Thompson, have died in office, the others resigned.

2. The death of the Prime Minister brings about the dissolution of his ministry. When the new Prime Minister has been designated he recommends the members of the new Government for the approval of the Governor General.

3. Five Prime Ministers have resigned for reasons other than defeat at the polls or in the House. Sir John Abbott, who had been chosen to form a Government on Macdonald's death, resigned after 17 months in office to make way for Thompson. Parliament was not in session at the time.

   Sir Mackenzie Bowell resigned in favour of Sir Charles Tupper after Parliament had been dissolved on expiry of the five-year term.

   Sir Robert Borden resigned for reasons of health while Parliament was prorogued.

   Mr. King resigned while Parliament was in session some three months after his successor as leader of the Liberal Party had been chosen.

   Mr. Pearson also resigned in favour of his successor as leader of the Liberal Party two weeks after the latter had been chosen.

4. None of these resignations resulted in a change in the Government party. Abbott recommended that Thompson succeed him. Bowell made no recommendation. Borden consulted with the Governor General in the selection of Mr. Meighen. Both King and Pearson recommended that their successors as leader of the Government party, Mr. St. Laurent and Mr. Trudeau respectively, should replace them as Prime Minister.

5. Until Borden's resignation in 1920 the Government vacated office when the Prime Minister resigned, without waiting until the Governor General had found a replacement willing to succeed. This left the country without a Government until a new Prime Minister accepted office. Ministers, however, remained in charge of their departments until formation of the new Government.

6. When Borden resigned for ill health he announced his intention to the House of Commons which then prorogued on 1 July. The Prime Minister then informed the Governor General but remained in office and consulted with the Governor General in finding a successor, a process which took until 10 July as first Sir Thomas White and then Mr. Meighen were invited. Borden then resigned formally the day Meighen was sworn in. In all subsequent cases it has been the practice for the outgoing Prime Minister not

to present his formal resignation until his successor is ready to be sworn in, thus not leaving the country without a Government, whereas in former days there could be a period of several days between Governments.

7. There is record of a Governor General's refusal to accept a Prime Minister's resignation. Bowell attempted to resign in January 1896 and eventually remained in office until April of that year.

8. The Prime Minister's own resignation for whatever reason brings about the resignation of the whole Government. In 1948 Mr. King*, wishing to retire from political life, took action to have a party convention choose his successor as party leader. Some three months later Mr. King submitted his resignation as Prime Minister to the Governor General, who on the same day invited Mr. St. Laurent to form a new Government. The same procedure was followed by Mr. Pearson in 1968.

9. On two occasions a Prime Minister has resigned for political reasons and brought about a change in Government while Parliament was in session; Macdonald in 1873 and King in 1926. In 1873 Mr. Mackenzie was invited to succeed Macdonald the same day and his Government was sworn in three days later. In 1926 Meighen was called in the same day King resigned and sworn the day after.

10. On other occasions resignations have followed defeats in general elections and have taken place between Parliaments. It has now become the practice in this situation also for the outgoing Prime Minister to remain in office following his offer to resign until his successor is ready to take over on the installation of his Government.

11. In 1957 and in 1963 no party gained an absolute majority in the general election but the Government on each occasion elected fewer members than the former opposition party. The Prime Minister of the day resigned without waiting to call Parliament to see whether he could get sufficient support from third parties to hold a majority. This latter course had been followed by King after the October 1925 elections but in circumstances in which there was a real probability that the third party would support him, as proved in fact to be the case. Clearly, a Prime Minister would be in danger of serious criticism if he remained in office with a minority of members in order to meet Parliament unless the expectation of third party support in the House was real and substantial. In the last analysis, however, it is the situation in the House of Commons on which the life of a Government depends, not the formal arithmetic of individual party standings and definitely not the totals of electoral votes.

12. In no instance has a Prime Minister, permanently incapacitated by illness, hampered the operation of government by remaining in office. The provisions for an Acting Prime Minister and the Governor General's constitutional responsibility to assure the existence of a Government provide the safeguards in such a situation.

Incapacity, Death or Resignation III—PROCEDURE

1. The Prime Minister's resignation is usually tendered to the Governor General orally and without formality. The procedures for the resignation of a Government described in the *Government* section apply.
2. The Prime Minister's resignation is announced by Government House and usually by the Prime Minister* as well.
3. On the death of the Prime Minister the member of Cabinet who would normally act as Acting Prime Minister should take immediate action to inform the Governor General who in turn will inform the Sovereign.
4. This Cabinet minister will also take responsibility for supervising the arrangements for a State funeral made by the Department of the Secretary of State.
5. In the case of the Prime Minister's incapacity the Acting Prime Minister will assume the duties of the ailing Prime Minister until the latter recovers or a permanent successor is recognized by the Governor General.

Incapacity, Death or Resignation IV—CEREMONIAL

1. There is no ceremonial connected with a Prime Minister's resignation.
2. A State funeral is given to a Prime Minister who dies in office.

PRIME MINISTER

Incapacity, Death or Resignation APPENDICES

Announcement made in House of Commons regarding death of Prime Minister

Motion for adjournment of House of Commons on death of Prime Minister

Announcement of intention to resign made by Prime Minister in House of Commons

Announcement of resignation of ministry made by Prime Minister in House of Commons

Acting Prime Minister I—POSITION

1. The Prime Minister decides which minister shall perform his functions, as Acting Prime Minister, during his absence or incapacity. There is no established position of Deputy Prime Minister nor any established order of selection.
2. The designation is normally made by order in council. This may take the form of a standing order* or may be a specific order* covering a stated occasion or period.
3. There is no constitutional limitation on the powers of an Acting Prime Minister. Discretion and political considerations will indicate where action should normally be left for the Prime Minister.
4. An Acting Prime Minister assumes and relinquishes his duties without formalities.

Acting Prime Minister II—BACKGROUND

1. In recent years it has been usual to appoint the senior available Privy Councillor in the Cabinet to be Acting Prime Minister. There have however been frequent periods when the Acting Prime Minister was not selected on the basis of seniority as a Privy Councillor. Moreover no portfolio carries any particular entitlement to be selected as Acting Prime Minister. Thus in the absence of any consistent practice the selection of Acting Prime Minister remains a matter of judgement for the Prime Minister.

2. Since 1957 the seniority rule has been followed and the senior available Privy Councillor in the Cabinet and a member of the House of Commons has been Acting Prime Minister. The two preceding Prime Ministers made their choice on other bases, not always appointing the same minister nor the most senior. On one occasion a minister without portfolio in the Senate was appointed Acting Prime Minister.

3. The practice of making the appointment by order in council is not founded on any legal requirement. It is essentially a matter for decision by the Prime Minister to be approved by the Governor General and could therefore be done by instrument of advice without the intervention of Council.

4. The standing order* is now generally used, the Acting Prime Minister appointment being included in the document dealing also with acting ministers. On at least one occasion a special order was passed naming someone other than the minister who would have assumed the duties under the standing order which was in force.

5. While there are no legal limitations on the powers of an Acting Prime Minister there would be areas of decision and influence where he would not wish to act while temporarily at the head of the Government unless he were satisfied that the Prime Minister would not wish action to be withheld until his return, or the public interest required immediate action.

Acting Prime Minister III—PROCEDURE

1. The Prime Minister takes action by order in council* or otherwise to specify who will be Acting Prime Minister in the event of his absence or incapacity.
2. In anticipation of any intended absence the Prime Minister should satisfy himself that the standing arrangements for the assumption of responsibility by an Acting Prime Minister are in accordance with his current wishes.
3. If the Prime Minister plans to be absent he should inform the Governor General regarding who will be the Acting Prime Minister either under the standing arrangement or by special designation.

Acting Prime Minister APPENDICES

Order in council appointing list of acting ministers (including Acting Prime Minister) and alternatives on a standing basis

Order in council appointing an Acting Prime Minister for a stated period only

PRIME MINISTER

Position in Government I—POSITION

1. The position of the Prime Minister has developed through the evolution of the constitution. Its foundation is conventional rather than statutory so its attributes are not immutable but are subject to the influences of political change.
2. The Government is identified with the Prime Minister and cannot exist without him. He alone is responsible for recommending who will be appointed ministers. He can recommend their replacement or dismissal and he can bring about the resignation of the whole Government by his own resignation.
3. The powers which attach to the Prime Minister's position rest on the fact that he is normally the leader of the party able to control a majority in the House of Commons and as such has been given by the Governor General the responsibility of leading a Government.
4. On some matters the Governor General is advised by the Prime Minister individually, as head of the Government, on others by ministers collectively.
5. The Prime Minister's influence on, and in some cases exclusive control over, Government appointments is most important to his position.
6. There is no statutory statement of the qualifications of a Prime Minister but it is now firmly established by convention that he must be able to get elected to the House of Commons. He must also be summoned to the Privy Council.

PRIME MINISTER

Position in Government II—BACKGROUND

1. The Prime Minister's power, not being conferred by statute, rests largely on the facts of political power (his leadership of a party or group that has the confidence of Parliament) and, in his office, on the authority he enjoys by convention over the composition and life of the Government, the summoning and sittings of Parliament, the order of business in both the Cabinet and the House and the selection of appointees to Government positions.

2. A Cabinet minister cannot remain in office against the Prime Minister's wish and his resignation will only be accepted by the Governor General on the Prime Minister's recommendation.

3. The Prime Minister himself can decide when his Government will resign and his resignation effectively disbands the Government.

4. The Prime Minister personally is responsible for recommending the summoning, prorogation or dissolution of Parliament.

5. The Prime Minister controls the agenda for Cabinet through the Clerk of the Privy Council, and controls the discussion in Cabinet as chairman.

6. Matters on which the Prime Minister acting alone may tender advice are not listed in any statute. They include advice concerning the choice of the Governor General, the composition of the ministry and the life of Parliament. Furthermore, where action is taken collectively by order in council there are matters where the Prime Minister has the prerogative of making the recommendation to Council.

7. Beginning in 1896 and continuing until 1935 new Governments usually passed an order in council listing the prerogatives of the Prime Minister. The effectiveness of purporting to confer prerogatives on the Prime Minister by order in council is questionable. The order should probably be regarded as declaratory rather than legislative. Moreover its continuing applicability is open to question. The requirement that it be attached to the commissions of appointment of ministers is no longer followed. Copies of the 1935 order* have, however, been circulated to ministers from time to time, in relation to appointments.

8. Apart from his exclusive responsibility for the appointment of ministers which gives him control of the composition of the Government, the Prime Minister is responsible for many senior appointments either through his traditional right to make the recommendation to the Governor General or to Council or through the influence he exercises as head of the Government or the party. This is of immense significance in party circles outside as well as inside the Government.

9. In the conduct of Government business the Prime Minister can require to be consulted by ministers on all important policy decisions affecting their departments, even if they do not require Cabinet consideration. The Prime Minister may decide that a proposed course should go to the Cabinet if he considers that it is of sufficient importance or sensitivity. As the Prime Minister is the head of the ministry, with a special responsibility for its conduct and policy, he is entitled to expect to be consulted by ministers, whether he has so directed or not, if it is reasonably apparent in a particular case that a course of action could create criticism or difficulty or could otherwise be important for the Prime Minister or the Government as a whole.

10. For his part the Prime Minister is the Governor General's chief advisor on Government policy. Moreover the Prime Minister alone can make recommendations to Council for any department.

PRIME MINISTER

Position in Government APPENDICES

Order in council P.C. 3374 of 25 October, 1935 regarding prerogatives of Prime Minister

Appointments within Prime Minister's Prerogative

1. It has been recognized that the Prime Minister has special prerogatives in regard to appointments. Some are made directly on his exclusive recommendation, others are recommended by him for action by Council either with or without previous ministerial consultation, and for some appointments recommended to Council by the responsible minister the Prime Minister is consulted in advance.

2. There is an order in council* of 1935 which *inter alia* indicates the appointments which are within the Prime Minister's prerogative but the list is incomplete. Moreover the continuing applicability of the order is open to question particularly in so far as it purports to confer authority on the Prime Minister in regard to appointments listed, in which area it should probably only be regarded as declaratory. There is no doubt that his prerogative extends to many positions not listed in the order.

3. The practice in regard to appointments depends essentially on the wishes of the Prime Minister, particularly in regard to consultation with or by ministers or with Cabinet, and can therefore vary with each Administration.

4. It is essentially for the Prime Minister to decide the extent to which he wishes to exercise his prerogative on appointments. The practice has therefore varied and it is impractical to attempt to draw up a definitive and comprehensive list of appointments recommended by the Prime Minister or of ones on which he is to be consulted. Certain appointments can be identified as ones traditionally made by the Prime Minister, but for others the degree to which the initiative or the decision may be left to a minister or to Cabinet has varied.

5. In cases where the salary of Public Service officials or of members of Government agencies is fixed by order in council the Prime Minister may choose to make the necessary recommendation to Council for the provision of salary in each case.

Appointments within Prime Minister's Prerogative

1. The following appointments amongst others have been recognized as being within the exclusive prerogative of the Prime Minister, who makes the necessary recommendation to the appointing authority:

   Governor General
   Privy Councillors
   Ministers of the Crown
   Acting Ministers
   Parliamentary Secretaries
   Lieutenant-Governors
   Members of committees of Cabinet and of the Privy Council (including the Treasury Board)
   Speaker of the House of Commons (nomination for election by the House)
   Commissioners of Internal Economy, House of Commons
   Senators
   Speaker of the Senate
   Leader of the Government in the Senate
   Chief Justice of Canada
   President of the Exchequer Court
   Chief Justices of provincial trial and appeal courts
   Deputy Heads of Departments
   Secretary to the Governor General (in consultation with the Governor General)
   Parliamentary Librarian
   Crown appointments in both Houses of Parliament.

2. Where the governing statute has not specifically provided otherwise the Prime Minister may also choose to recommend the appointment of the President, Chairman, etc., as the case may be, of Government agencies such as Government Boards and Corporations. These appointments may alternatively be left to the recommendation of the minister responsible for the particular agency.

3. In the case of Government agencies for which he has been designated the responsible minister the Prime Minister makes the recommendation for the appointment of all members.

4. It is not possible to indicate the degree of consultation which may precede any particular appointment. For some appointments, such as those of the

Governor General and ministers, the recommendation is recognized as being the exclusive responsibility of the Prime Minister. For others the Prime Minister may consult either individually or in Cabinet or ask for suggestions. Appointments made on the recommendation of ministers are prepared in consultation with the Prime Minister where this is judged desirable.

5. The Prime Minister is responsible for recommending the salaries paid to Deputy Ministers and other senior Public Service officials. The Prime Minister has also in the past recommended the salaries to be paid to heads and members of Government agencies.

Appointments within Prime Minister's Prerogative

III—PROCEDURE

1. Where necessary an order in council* or instrument of advice* regarding the appointment is prepared. In the case of a salary revision an order in council* providing for the revised salary only is prepared.
2. Where the recommendation for the appointment is made by a minister it may be judged desirable to consult the Prime Minister.
3. In certain cases the Prime Minister may wish to inform the Governor General before presenting the formal instrument of appointment to him for approval.

Appointments within Prime Minister's Prerogative

Order in council P.C. 3374 of 25 October, 1935 regarding prerogatives of Prime Minister

Instrument of advice from Prime Minister to Governor General recommending appointment of Privy Councillor

Order in council for appointment of head of Government agency

Order in council for revision of salary of members of Government agencies

Order in council for revision of salary of Deputy Ministers

Prime Minister and Leader of Opposition

I—POSITION

1. In some circumstances it may be considered desirable for the Prime Minister to depart from normal parliamentary practice and to consult the opposition for the purpose of presenting a common policy or of avoiding a contentious parliamentary debate.
2. Consultation may only amount to the provision of information to explain the basis of Government policy without attempting to develop a non-partisan position.
3. Cases where consultation might be justified include national emergencies and situations involving security and intelligence questions.
4. Consultation may also be expected to precede the presentation of Government motions which the opposition is to second, such as loyal addresses.
5. Traditionally the opposition is given advance information about the Speech from the Throne.
6. The Government's intention regarding some appointments such as the selection of a Governor General or the nomination of a Speaker may also be conveyed to the opposition in advance of the public announcement.

Prime Minister's Office I—POSITION

1. The Prime Minister's Office is responsible for matters which relate to the position of the Prime Minister as a minister and member of Parliament.
2. Authorization for the Prime Minister's Office is the provision of the *Public Service Employment Act* dealing with ministers' offices. There is no special statutory foundation for its positions nor its functions.
3. The Prime Minister's Office is administratively part of the Privy Council Office.
4. The Prime Minister's Office has a functional identity by reason of the responsibilities attached to the positions in the office.
5. The Prime Minister's Office is responsible for assisting the Prime Minister in any aspects of his work as Prime Minister, political or otherwise. It screens the demands made on the Prime Minister and facilitates the handling of those which are accepted.
6. The Prime Minister's Office is personal to the Prime Minister in the same way that a minister's office is to him. In the same way, it normally has personal, political and administrative functions to discharge. The role of the office can be extended or limited, depending on the wishes of the Prime Minister, and its organization is entirely a matter for his decision.
7. Prime Ministers have normally maintained a distinction between the functions of a governmental nature that are their responsibility as Prime Minister and those that are theirs in the strict capacity of leader of a political party. The line of demarcation is obviously difficult to draw, but the functions of leader of a party as distinct from the public functions of Prime Minister, however political, are usually handled by and within the structure of the party.

Prime Minister's Office II—BACKGROUND

1. The Prime Minister's Office first emerged as an identifiable unit in the early 1920's with the appearance of a staff performing other than clerical functions. In 1938 with the appointment of a Principal Secretary it took more definite form, although it was for the purpose of administration and estimates connected with the Department of External Affairs. In 1947 the Privy Council Office was made responsible for the administration of the Prime Minister's Office. Further precision was given to the arrangement in 1963 when the administrative responsibility for both the Prime Minister's Office and the Privy Council Office was placed on the Director of Administration of the Privy Council Office. The financial needs of the Prime Minister's Office are covered in the Privy Council Office Estimates and the Privy Council Office administrative units serve both offices. Part of the personnel in the Prime Minister's Office may, in accordance with the wishes of the Prime Minister, be taken from the Privy Council Office establishment.

2. The division of responsibility between the Privy Council Office and the Prime Minister's Office is not always clearly evident. The political aspects of the Prime Minister's position, as a member of Parliament, and as the leader of the party forming the Government (although not his purely "party" functions) are the concern of the Prime Minister's Office, while the Privy Council Office serves the Prime Minister in respect of his duties and responsibilities as constitutional head of the Government.

3. The number and title of positions in the Prime Minister's Office have varied. Latterly Prime Ministers have appointed:
   (a) a Principal Secretary charged with liaison with the Prime Minister's colleagues, policy matters, and general supervision of the office;
   (b) an Executive Assistant responsible for parliamentary, constituency and party matters;
   (c) a Press Secretary;
   (d) a Correspondence Secretary; and
   (e) a Personal Secretary.

4. Certain special offices may be attached to or within the Office of the Prime Minister if for any reason they do not readily fit with any other department or agency, or if the Prime Minister feels that his personal direction or authority may be important.

5. The assimilation, in a general way, of the Office of the Prime Minister to that of a minister, but with some modest increase in scale, may no longer fit the steadily growing responsibilities of the Prime Minister in co-ordinating and directing the many functions he has to perform. It may be that a larger and more diversified structure will in future be found necessary.

Prime Minister's Office III—PROCEDURE

1. Appointment to positions in the Prime Minister's Office is made under section 37 of the *Public Service Employment Act* which provides that "A Minister may appoint his Executive Assistant and other persons required in his office". An order in council is no longer required and no instrument of appointment is necessary although a submission to Treasury Board regarding the payment of salary must be signed by the Prime Minister. These appointments cease 30 days after the Prime Minister's resignation or death.

2. The Prime Minister may also select departmental public servants to serve in positions in his office. In these cases no action is necessary for the provision of salary which continues to be that attached to the rank held in the Public Service.

PRIVY COUNCIL

Privy Councillors: Appointment I—POSITION

1. Privy Councillors are appointed by the Governor General on the recommendation of the Prime Minister submitted by instrument of advice*.
2. Privy Councillors are sworn in before the Governor General. No document of appointment is necessary for those who are not joining the Government although they are issued with a commission*.
3. The appointment is without any stated term and is considered to be for life. There is no instance of an accepted resignation. The *B.N.A. Act* provides in section 11 for their removal by the Governor General but this has never been done.
4. Privy Councillors carry the title "Honourable" for life.
5. There is no limitation on those who may be made members of the Privy Council but they must be in a position to take the necessary oath* of allegiance and Privy Councillor's oath*.
6. Privy Councillors are in two main categories: members of the Government and former Cabinet ministers; those who have been appointed as an honour but who have never been Cabinet ministers. The second category has included the Heir to the Throne, a Royal Consort, a Governor General on retirement, Commonwealth Prime Ministers, Chief Justices, former Speakers of both Houses, the Leader of the Opposition and distinguished Canadians, military and civilian.

Privy Councillors: Appointment II—BACKGROUND

1. Originally Privy Councillors were appointed by the Governor General on advice tendered by order in council. This form was even used for recommending the appointment of a new Prime Minister (Borden) although there was no quorum of the Council to approve the order. Since 1953 the instrument of advice* has been used although the advice does not have to be in writing. In the one instance since then when the incoming Prime Minister (Diefenbaker) was not already a member of the Privy Council, he was summoned to the Council without written advice being submitted to the Governor General.

2. A Privy Councillor's appointment is effective on being sworn.

3. Originally the oath* was administered to Privy Councillors at a formal meeting of Council but the practice was gradually abandoned in favour of a ceremony which despite the presence of the Governor General was not presented as a meeting of Council. There have however been recent exceptions. Lord Alexander* was sworn as a Privy Councillor after his retirement as Governor General in 1952 at a meeting of Council at which the Administrator presided. Prince Philip was made a Privy Councillor in 1957 at a meeting of Council with the Queen presiding.

4. Neither the *B.N.A. Act* nor the Letters Patent make provision for a Privy Councillor to make affirmations instead of swearing the usual oaths. Affirmations are accepted in the United Kingdom.

5. The commission* issued to a Privy Councillor who is not appointed a member of the Government is simply "in testimony" of his appointment.

6. The appointment to the Privy Council being without a term is "at pleasure" and has, since the beginning of Confederation, been treated as a life appointment unlike that of pre-Confederation Executive Counsellors. This interpretation was put into effect in October 1867 when Hon. A. G. Archibald tendered his resignation as Secretary of State and Privy Councillor. His resignation as a Privy Councillor was declined by the Governor General on the advice of the Prime Minister.

7. There is no record of anyone ceasing, while still alive, to be a member of the Canadian Privy Council. The opinion has been expressed that when the Prince of Wales succeeded to the Throne as Edward VIII his membership in the Privy Council which had been conferred on 2 August, 1927 lapsed by operation of law. His name, like all others, remains on the list without qualification.

8. There are cases where senators who were Privy Councillors have resigned from the Senate because of criticism but in no case have they ceased to be Privy Councillors.

9. The Table of Titles for Canada approved by Queen Victoria in July 1868 conferred the title "Honourable" on Privy Councillors for life. The suggestion of the Prime Minister supported by Lord Monck that they should be called "Right Honourable" was turned down. Since then the idea of amending the title has been re-examined but no new request has been put to the Sovereign.

10. At the outset the only Privy Councillors were the members of the Cabinet. With the resignations of Galt and Archibald as members of the Government a body of Privy Councillors "not of the Cabinet" was recognized in official publications. Until 1891 all Privy Councillors were either Cabinet ministers or former Cabinet ministers. In that year for the first time Privy Councillors were created and not made members of the Government when two former Speakers of the House of Commons and three former Speakers of the Senate were sworn into the Privy Council. In 1896, Sir Donald Smith was sworn to the Privy Council on being appointed High Commissioner to London. In 1912, two long-time Conservative members of Parliament were appointed to the Privy Council without being made members of the Cabinet. In 1916, Hughes, Prime Minister of Australia, was the first Commonwealth statesman to be appointed to the Privy Council. In 1917, the first "civilian", Sir H. Laporte, was sworn to the Privy Council. In 1964, M. J. Coldwell, former leader of the C.C.F. Party was named Privy Councillor.

11. In 1967 the provincial Premiers of Canada then in office were summoned and sworn to the Privy Council at a ceremony* at Government House. The significance of the occasion was marked by the presence of the Queen who signed the Privy Councillors' oath book and roll. This was the second instance of an induction to Council before the Sovereign. Prince Philip had been sworn before a meeting of Council attended by the Queen in Ottawa in 1957.

12. In 1960 there is a recorded decision of Cabinet that membership in the Canadian Privy Council could not be conferred upon the Governor General so long as he was in office. Mr. Massey and Mr. Michener were Privy Councillors having been summoned some years before appointment as Governor General.

13. The custom of honouring retiring Speakers by naming them to the Privy Council has been continued since 1891. This is usually done just before or just after retirement. In three cases it was left to succeeding Governments to make the appointments. George Black, Speaker of the House of Commons in 1930-1935, and James Bowman, Speaker in 1935, were appointed to the Privy Council in 1949; and Senator White, Speaker of the Senate in 1962, was appointed to the Privy Council in 1964.

Privy Councillors: Appointment III—PROCEDURE

1. It is customary for the Prime Minister to inform Cabinet of the recommendation he intends to make to the Governor General to appoint a Privy Councillor.
2. The Prime Minister then informs the Governor General of his intended recommendation and obtains his informal approval. No written advice is necessary but it is customary for the Prime Minister to sign an instrument of advice* which is submitted for the Governor General's approval at the ceremony* when the oath* is administered.
3. A public announcement may be made by the Prime Minister once the Governor General's informal approval is obtained.
4. After the oath has been administered the Registrar General issues a commission* on the basis of a copy of the instrument of advice transmitted to him by the Clerk of the Privy Council as evidence of the appointment. If the Privy Councillor is also appointed a minister at the same time, he receives one commission appointing him minister in which he is described as a Privy Councillor.

Privy Councillors: Appointment IV—CEREMONIAL

1. Privy Councillors are inducted at a ceremony* where the oath* is administered by the Clerk of the Privy Council, traditionally in the presence of the Governor General at Government House. The Prime Minister is normally present.

2. During the first years of Confederation the oath was administered at a meeting of the Privy Council, as is still done in the United Kingdom. This has not been the practice here for many years, although both Lord Alexander* in 1952 and Prince Philip in 1957 were sworn in at Council meetings presided by the Administrator and the Queen respectively. The intent of the *B.N.A. Act* (section 11) which specifies that Privy Councillors shall be "chosen and summoned by the Governor General and sworn in as Privy Councillors" is met by performing the ceremony in his presence. In the absence of the Governor General the ceremony has been performed before the Administrator or Deputy Governor General.

3. There is one case where it is recorded that the oath was administered at Vancouver presumably without the Governor General being present. The oath book is nevertheless signed by the Governor General under a notation that the arrangement was at the Governor General's "special request".

4. In the case of one Privy Councillor who was ill the Governor General, accompanied by the Prime Minister, went to the appointee's residence to administer the oath.

5. A typical ceremony would run as follows:

   (1) The Clerk of the Privy Council arrives at Government House 20 minutes before the time of the ceremony with the instrument of advice, oath books and bibles. These are arranged in the Governor General's study;

   (2) The Prime Minister is received by the Governor General in his study. The Privy Councillors-designate are shown to the Drawing Room;

   (3) The Secretary to the Governor General conducts the Privy Councillors-designate to His Excellency's study and presents them;

   (4) The Prime Minister submits the instrument of advice recommending appointment, which His Excellency signs;

   (5) The Clerk of the Privy Council then hands a bible to the first Privy Councillor to be sworn, who stands facing him and takes the bible in his right hand;

(6) The Clerk reads aloud the oath of allegiance and the Privy Councillor's oath, in English or French whichever is the mother-tongue of the appointee. The Privy Councillor replies, "So help me God" or "Ainsi Dieu me soit en aide" to each oath;

(7) The Privy Councillor returns the bible to the Clerk and signs the Privy Councillor's oath and oath of allegiance book and the Privy Council roll;

(8) The Governor General is then asked to sign both books. There is no requirement for the Prime Minister to sign these books and although Prime Ministers have in the past done so it is not the current practice;

(9) The procedure for administering the oath is repeated for each appointee in order of precedence as recommended by the Prime Minister.

6. It is the current practice for the Clerk of the Privy Council to send* the Privy Councillor the bible on which he took his oath, signed by the Governor General, Prime Minister and Clerk of the Privy Council, and a copy of the Privy Councillor's oath.

Privy Councillors: Appointment APPENDICES

Instrument of advice for appointment as a Privy Councillor

Commission issued to a Privy Councillor who is not appointed a member of the Government

Oaths taken by Privy Councillor

Outline of arrangements for swearing-in of Lord Alexander as a Privy Councillor (1952)

Letter from Clerk of Privy Council to Privy Councillor transmitting bible on which latter took his oath

Extract from arrangements for induction of provincial Premiers into Privy Council in 1967

Privy Councillors: Termination of Appointment I—POSITION

1. The *B.N.A. Act* (section 11) provides that members of the Privy Council "may be from time to time removed by the Governor General".
2. There is no record of anyone having been removed from the Privy Council except by death.
3. Removal, like appointment, would fall within the prerogative rights of the Governor General and could be brought about by the approval by the Governor General of a recommendation from the Prime Minister submitted by instrument of advice.
4. Removal could be effected without the intervention of the Sovereign. However the Council is the *Queen's* Privy Council for Canada and removal would be without precedent in Canada. For these reasons it should be considered whether, as a matter of courtesy, the Queen should be consulted or informed on any action for removal.

Privy Councillors: Termination of Appointment II—BACKGROUND

1. It may be that the section establishing the Privy Council provides for removal since the Council was at that time envisaged to be the Governor's real political advisors, the Government of the day. At the outset of Confederation steps were taken (October 1867), to treat the Privy Council of Canada "... both as to title and tenure exactly like the Privy Council of the United Kingdom".[1] In 1868 the tenure was recognized by Queen Victoria as being for life. Members of the first Government who resigned did not have their resignation as Privy Councillors accepted, only as ministers.

2. Ministers and senators holding Privy Councillorships have resigned from the Government or Senate for personal reasons, for health, or because of criticism. In no case have they resigned from the Privy Council. Likewise there is no evidence of pressure in public or political circles for resignation from the Privy Council although it must be recognized that continuing membership in the Privy Council does not attract public notice.

3. The view has been expressed that the Duke of Windsor, who was sworn to the Privy Council when Prince of Wales, ceased "by operation of law" to be a member of the Privy Council on his accession to the Throne.[2] Nonetheless, he has continued to be listed as a member. Similarly both Mr. Massey and Mr. Michener, who were appointed in 1925 and 1962 respectively, remained members throughout their term of office as Governor General although a Cabinet decision of 1960 expressed the view that membership in the Canadian Privy Council could not be conferred upon the Governor General so long as he was in office.

4. It is clearly established in United Kingdom practice, although apparently unstated, that a Privy Councillor may be "removed from the list". He cannot resign in the strict legal sense, that is, a unilateral declaration does not of itself suffice to divest a Privy Councillor of that quality. Requests by a Privy Councillor for his own removal have, however, been granted and in contemporary times, i.e., Profumo. This is done by order in council.

5. There is no modern case in the United Kingdom of a Privy Councillor being removed by the Government although this has been done in the past for reasons which then attracted the Sovereign's displeasure but which today might not move a Government to recommend removal. Fox, for example, was removed in 1792 on the recommendation of Pitt and restored in 1806 on Grenville's advice.

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1 Macdonald Papers, vol. 75, Monck to Macdonald, 11 October, 1867.

2 *See* "Note on the Privy Councillorship of an Heir to the Crown", dated 17 February, 1936, signed by "L.C.C.", on P.C.O. file G-1-9(c), 1968.

Privy Council and Committee of Privy Council

I—POSITION

1. Section 11 of the *B.N.A. Act* states that "There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada . . . " All those who have been sworn as Privy Councillors are members of the Queen's Privy Council for Canada.

2. Usually only those Privy Councillors who are members of the Government are invited to meetings of a committee of Council or of Council.

3. A Council is a meeting of Councillors with the Sovereign or her representative present or conceptually present through subsequent approval of the advice tendered as a result of the meeting. A meeting of Council is considered to take place when the Governor General approves orders recommended by a committee which are worded so as to reflect his actual presence at an earlier point in history.

4. A committee of Council is any group of Councillors meeting not in the presence or supposed presence of the Sovereign or her representative. A meeting of a committee of Council takes place when members of the Government of the day who are Privy Councillors meet to recommend orders for the Governor General's approval.

5. Cabinet transforms itself into a meeting of a committee of the Privy Council when making formal recommendations to the Governor General. It is then known as the Committee of Council or the Committee of the Privy Council.

6. The Treasury Board and the Committee of the Privy Council on Scientific and Industrial Research are statutory committees of Council.

7. Formal meetings of Council with the Sovereign or her representative in attendance have been held infrequently in recent years, usually for ceremonial occasions.

8. The Special Committee of Council is a quorum of ministers which meets regularly to pass routine or non-contentious recommendations which become orders in council when approved by the Governor General.

9. A quorum of Council or of a committee thereof, including the Special Committee, is considered to be four.

10. Privy Councillors only attend meetings of Council or of a committee of Council on the summons of the Sovereign or her representative, or of the chairman of the committee. There is no record of a Councillor presenting himself unwanted at a meeting.

Privy Council and Committee of Privy Council

II—BACKGROUND

1. In early Confederation days the Governor General met with Council to administer oaths to Privy Councillors and others and also to approve orders. This is no longer the practice.

2. The distinction between a meeting of Council and a meeting of a committee of Council is explained by Anson who says that "Every meeting of the Privy Council from which the King is absent is a Committee even if every member should be summoned and present".[1] This was recognized from pre-Confederation days as evidenced by a report from Sir Edmund Head to the effect that "he either discusses it [a proposed Order] in Council before approving of it or he takes it off the file and returns it for reconsideration by the Committee".[2] The belief that a meeting is only of a committee because only members of the Government of the day attend is therefore ill-founded.

3. A Council is in law a quorum of Privy Councillors summoned to a meeting with the Governor General present, or in Sir John Macdonald's phrase, "supposed to be present".[3] A committee of Council is any group of Councillors meeting not in the presence or supposed presence of the Sovereign or her representative. The Special Committee of Council is by Canadian usage a meeting of the members of the Government of the day who are Privy Councillors for the purpose of making recommendations to the Governor.

4. In 1947 a formal meeting of the Privy Council was held to hear the King's message giving consent to the marriage of Princess Elizabeth. The meeting was summoned by the Governor General on the King's instructions and, in the absence of the Governor General the Deputy Governor General presided. Two Privy Councillors not members of the Government were summoned but could not attend. A formal record* of the meeting was kept.

5. In 1952 a meeting was held to hear the proclamations consequent on the death of George VI and the accession of Queen Elizabeth. Ten Privy Councillors not members of the Government attended on special oral invitation. The Prime Minister presided and the Administrator was not present. This is described as a meeting of the Queen's Privy Council but was in fact a meeting of a committee of Council. In 1957 the Queen held a Council meeting in Rideau Hall at first attended only by members of the Government at which

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1 W. R. Anson, *Law and Custom of the Constitution,* 4th edition, Vol. II, Part I (Oxford, 1935), p. 109.

2 Secret and Confidential Despatches, Colonial Secretary, 1856-1866, Public Archives of Canada G. 10 Vol. 2, Sir Edmund Head to Colonial Secretary Labouchere, 4 March, 1858.

3 Macdonald Papers, vol. 522, Macdonald to Dufferin, 17 February, 1873.

business was transacted. Subsequently the Governor General, a Privy Councillor but not in the Cabinet, joined the meeting and Prince Philip was summoned and sworn to the Council.

6. In 1952 Council met with the Administrator presiding, for the induction of the former Governor General, Lord Alexander, as a Privy Councillor.

7. In 1959 the Queen held a Council in Halifax attended by Privy Councillors* in the Government and transacted business. Prince Philip is listed as also being present.

Privy Council and Committee of Privy Council

III—PROCEDURE

1. Privy Councillors are summoned orally to attend meetings of the Privy Council or of a committee of Council.

Privy Council and Committee of Privy Council

IV—CEREMONIAL

1. Meetings of the Privy Council or of a committee of the Privy Council are essentially business meetings which are held without formal ceremonial.

PRIVY COUNCIL

Privy Council and Committee of Privy Council — APPENDICES

Formal record of 1947 Privy Council meeting regarding King's message giving consent to marriage of Princess Elizabeth

List of Privy Councillors in attendance at 1959 Privy Council meeting in Halifax

PRIVY COUNCIL

President of Privy Council I—POSITION

1. The Presidency of the Privy Council is a Cabinet portfolio which has no defined functions. Responsibilities are assigned as the Prime Minister decides.
2. The portfolio, for long periods associated with the Prime Minister, has frequently been held by another minister and has often been left vacant.
3. There is no consistent practice in regard to the President assuming the chairmanship of the Committee of the Privy Council in the absence of the Prime Minister. Latterly he has acted as Chairman of the Special Committee.
4. The President of the Privy Council has no responsibility for the administration of the Privy Council Office which for purposes of the *Financial Administration Act* has been assigned by order in council to the Prime Minister. Recently the President has defended the Privy Council Office Estimates in the House.

PRIVY COUNCIL

President of Privy Council II—BACKGROUND

1. The office of President of the Privy Council evolved from that of President of the Committee of the Executive Council of the United Canadas who presided over that body in the absence of the Governor.

2. At Confederation the Governor General's Instructions empowered him to appoint a Privy Councillor to preside in his absence, but these instructions were not repeated as they were inconsistent with the transfer to the Prime Minister of responsibility for heading the Government.

3. In the early stages the post of President of the Privy Council was filled by a minister, although it was often left vacant. In 1883 Sir John A. Macdonald was the first Prime Minister to become President and held the portfolio for six years. Abbott and Bowell also held it during their entire ministries. Laurier also became President on forming his Government and with the exception of the Unionist Cabinets (1917-1921) it remained a Prime Minister's portfolio until near the end of Mr. St. Laurent's regime. Mr. Diefenbaker left it vacant for the first time since 1891 and after assigning it to another minister for a period took the portfolio himself in the closing months of his Government. Since 1963 it has been filled by ministers.

4. The pre-Confederation significance of the post as indicating the member of the Executive Council to preside in the Governor's absence was lost with the emergence of the position of Prime Minister. With no defined responsibilities attaching to the portfolio, it had little meaning as an adjunct to the position of Prime Minister, particularly when it ceased to be exceptional for a Prime Minister to take an oath of office as such.

5. In the early years of Confederation the portfolio was used to round out the representation in the Cabinet without assigning specific responsibilities. Later development of appointing ministers without portfolio to full Cabinet membership decreased the significance of the post in the Cabinet-making process. However as government responsibility increased in areas that could not be conveniently brought within the compass of existing ministries, the portfolio of President of the Privy Council began to be used for the assignment of special responsibilities as circumstances dictated. Developments may now be underway to associate the position with special Council responsibilities distinct from those of the Prime Minister.

President of Privy Council III—PROCEDURE

1. Being a ministerial office the procedure for the appointment of the President of the Privy Council is that used for the appointment of other ministers of the Crown.

PRIVY COUNCIL

Queen with Privy Council I—POSITION

1. The Sovereign has met with the Privy Council on two occasions.

2. Only members of the Government of the day were summoned to these meetings. Prince Philip attended both meetings.

3. The Queen cannot perform those functions which have by statute been made the responsibility of the Governor General or the Governor General in Council. Business was therefore limited to prerogative matters.

4. A formal record of the meetings was kept.

PRIVY COUNCIL

Queen with Privy Council II—BACKGROUND

1. George VI did not meet with the Privy Council during his visit to Canada in 1939. In 1957 Queen Elizabeth II met with Council in Ottawa and in 1959 in Halifax.

2. On both occasions only those members of the Government of the day were summoned to Council. In 1957 the then Governor General came into the meeting after the discussion of business and approved the instrument of advice summoning Prince Philip in accordance with section 11 of the *B.N.A. Act*. He remained to be photographed with the Privy Council, including Prince Philip. Officials were not present during the discussion of business.

3. The meeting was properly described in the programme as a meeting of Her Majesty's Privy Council for Canada. During the first part the meeting was limited to members of the Government. On the installation of Prince Philip it lost this limited character. Mr. Massey, as Governor General, attended the formal meeting of the Council to summon and install Prince Philip in the presence of the Queen. Mr. Massey was, of course, himself a Privy Councillor having been sworn in 1925. In 1959 the Governor General did not attend the meeting, but Prince Philip was present throughout.

4. When the visit of George VI was being planned it was decided that, as it was not contemplated that the King would exercise any statutory powers while here, it was not necessary to pass legislation to permit powers exercised under statute by the Governor General as *persona designata* to be performed by the King. Before the Queen visited Australia and New Zealand in 1953/54 such enabling legislation was passed in both countries. Before the Queen's visit to Canada in 1959 this question was again examined and a "Royal Powers Act"* was drafted. It has however never been introduced in Parliament.

5. Preparatory to the 1957 meeting there was detailed examination with Buckingham Palace of the agenda for the Council. In 1959 arrangements were made just a few days before the meeting and only one item of business was handled.

6. In 1957 there was a general discussion of major questions of Government policy and the Queen then signed an order in council authorizing the signature of a tax agreement with Belgium. Her Majesty also approved an instrument of advice recommending agrément for the new Netherland's Ambassador although action by Council was not involved for this second

item. This part of the meeting took place before the Governor General and Prince Philip attended to be sworn to the Council.

7. In 1959 the one item of formal business was the approval of an order in council authorizing the ratification of a United Nations convention. Prince Philip was present throughout the meeting.

Queen with Privy Council III—PROCEDURE

1. The Prime Minister decides whether to propose that the Sovereign hold a meeting of the Privy Council while in Canada.
2. The Privy Council Office clears the proposed items of business with Buckingham Palace.
3. The meeting is arranged by the Privy Council Office in co-operation with Government House if it is to take place there.
4. It is customary to take a photograph of the meeting.
5. A formal record of the meeting is kept.

Queen with Privy Council IV—CEREMONIAL

1. The arrangements proposed for the meeting in 1957 are set out in detail in a memorandum* dated 12 October, 1957. What actually took place is described in a memorandum* dated 16 October, 1957.

PRIVY COUNCIL

Queen with Privy Council APPENDICES

Draft Canadian "Royal Powers Act"

Memorandum dated 12 October, 1957 regarding proposed arrangements for 1957 meeting of Privy Council with the Queen

Memorandum dated 16 October, 1957 describing 1957 meeting of Privy Council with the Queen

PRIVY COUNCIL

Clerk of Privy Council I—POSITION

1. There is one position which combines the duties of Clerk of the Privy Council and Secretary to the Cabinet.
2. The appointment is made by order in council* on the recommendation of the Prime Minister. According to the *Interpretation Act* the appointment is at pleasure. The *Public Service Employment Act* empowers the Governor in Council to fix the remuneration.
3. The appointment has been terminated by retirement, appointment to another position or resignation.
4. The duties were set out in the order in council of appointment in 1940 but have evolved significantly since then.
5. As the Prime Minister's own senior official, the Clerk is involved in maintaining liaison between Cabinet and its committees and between the Prime Minister and his Cabinet colleagues. He has a role in the development and co-ordination of policy suggestions and in the selection of officials appointed at the deputy ministerial level.
6. The Clerk is recognized as the "Deputy Head" of the Privy Council Office.
7. The Clerk of the Privy Council is issued with a commission* under the Great Seal as evidence of his appointment.
8. The Clerk also receives a commission* under the Great Seal authorizing him to administer oaths as prescribed by the law.
9. The Prime Minister issues a press release* announcing the appointment of a new Clerk.
10. Assistant Clerks are appointed by an order in council* which identifies them as also being Assistant Secretaries to the Cabinet, in which capacity they occupy Public Service positions for which appointments are made by the Public Service Commission. They receive no commission of appointment but do receive commissions authorizing them to administer oaths.

Clerk of Privy Council II—BACKGROUND

1. The position of Clerk of the Privy Council has existed since Confederation as successor to the position of Clerk of the Executive Council of the Province of Canada.

2. In 1940 the functions of Secretary to the Cabinet were recognized and combined with the duties of Clerk.

3. While the Department of Justice have given the opinion (1946) that there is only one position with combined functions and title, the areas of responsibility can be distinguished. The duties of Secretary to the Cabinet have a policy aspect not present in the formal duties of Clerk. It is for consideration whether an attempt should not be made to indicate by using the appropriate part of the title whether a particular action properly falls within the duties of the Clerk or the duties of the Secretary.

4. No pattern has developed to suggest a regular term of office for the position, which since Confederation has varied from one year to twenty-five*.

5. Recently the Clerk has vacated the office on being appointed to another position in the Public Service. On one occasion the Clerk resigned to enter the Cabinet.

6. In the 1940 order in council of appointment, and under the former *Civil Service Act,* the Clerk was designated as a deputy head in relation to the Privy Council Office. Under the 1967 *Public Service Employment Act* an order in council is required to make the designation and to clarify the authority under which he continues to act as deputy head of the Privy Council Office. As such his position is distinguished, in law if not in fact, from that of a deputy minister whose position is established in the statute creating the department.

7. The Clerk's activity and effectiveness in the field of maintaining liaison between the Cabinet and committees and between the Prime Minister and ministers will depend on the relations of the persons involved. In the latter area the relationship has frequently become actively reciprocal with ministers initiating consultation with the Clerk about forthcoming Cabinet business.

Clerk of Privy Council III—PROCEDURE

1. An order in council* is passed appointing the Clerk and Secretary.
2. A commission* under the Great Seal is prepared by the Deputy Registrar General as evidence of the appointment.
3. The Deputy Registrar General also issues the new Clerk with a commission* under the Great Seal authorizing him to administer oaths.
4. A press release* is prepared for the Prime Minister's approval announcing the appointment of the new Clerk.

PRIVY COUNCIL

Clerk of Privy Council APPENDICES

Order in council appointing Clerk of the Privy Council and Secretary to the Cabinet

Commission issued to Clerk of the Privy Council and Secretary to the Cabinet as evidence of his appointment

Commission authorizing Clerk of the Privy Council and Secretary to the Cabinet to administer oaths

Extract from press release regarding appointment of Clerk of the Privy Council and Secretary to the Cabinet

Order in council appointing Assistant Clerk of the Privy Council

List of Clerks of the Privy Council and Secretaries to the Cabinet together with dates in office

PRIVY COUNCIL

Privy Council Office I—POSITION

1. The Privy Council Office is the department responsible for the operation of the Privy Council and the Cabinet Secretariat.
2. The Prime Minister is designated by order in council* as the minister responsible for the department under the *Financial Administration Act*.
3. The Clerk of the Privy Council and Secretary to the Cabinet acts as the deputy head of the department.
4. Administratively the Prime Minister's Office is part of the Privy Council Office but its functions are distinct.

PRIVY COUNCIL

Privy Council Office II—BACKGROUND

1. The Privy Council Office came into being at Confederation as a result of the establishment of the Privy Council by the *B.N.A. Act*. Under section 130 of the Act the Clerk of the Privy Council continued the duties performed by the Clerk of the Executive Council of the Province of Canada. In 1940 the position of Secretary to the Cabinet was created and combined with that of Clerk of the Privy Council.

2. After the *Financial Administration Act* came into effect in 1951 the President of the Privy Council was designated by order in council as the minister responsible for the Privy Council Office. In 1962 this was changed by order in council* to the Prime Minister. Nevertheless the practice has been growing to have the President of the Privy Council present and defend the the Privy Council Office Estimates in Parliament.

3. The responsibility of the Privy Council Office for the formal legal actions of the Government in relation to orders in council, etc., and for the secretarial work of the Cabinet and Cabinet committees has developed into a responsibility for liaison with departments and agencies on matters of interest to the Cabinet. This includes the co-ordinating of advice and recommendations submitted to the Cabinet. In terms of its activities, the Privy Council Office might more properly be called the Cabinet Secretariat since its obligations as the latter are rather wider than its duties in relation to the body which gave it its name.

4. Special secretariats have been added to the Privy Council Office from time to time.

5. The Public Service staff in the Prime Minister's Office are on the strength of the Privy Council Office who look after the general administrative arrangements for the Prime Minister's Office.

PRIVY COUNCIL

Privy Council Office APPENDICES

Order in council designating Prime Minister as minister responsible for Privy Council Office

United Kingdom Privy Council: Canadian Membership I—POSITION

1. Appointments* to the United Kingdom Privy Council are made by the Queen on the recommendation of the United Kingdom Prime Minister. If the appointee is a Canadian* the agreement of the Canadian Prime Minister is sought.
2. The appointment carries the title "Right Honourable" which is assumed when it becomes effective with the administration of the oath at a Privy Council meeting in the United Kingdom. In the case of Canadian appointments the United Kingdom Privy Council has frequently passed an order authorizing the use of the title in advance of induction.
3. Canadian Prime Ministers have been invited to join the United Kingdom Privy Council. Other Canadian ministers have from time to time been members of the United Kingdom Privy Council. Until 1949 the Chief Justice of Canada was made a member of the United Kingdom Privy Council.
4. The appointment is essentially ceremonial and does not involve participation in regular Councils.

United Kingdom Privy Council: Canadian Membership

II—BACKGROUND

1. The United Kingdom Privy Council is incorrectly called the Imperial Privy Council. It was never constituted as a representative imperial council, has never operated as such and membership is exclusively on the advice of the United Kingdom Prime Minister.

2. As of 1963 all Canadian Prime Ministers have been United Kingdom Privy Councillors with the exception of Mackenzie, Abbott and Bowell. The appointments have usually been made within a few months of becoming Prime Minister although that of Tupper came 11 years after he left office.

3. The appointment of Canadian Prime Ministers to the United Kingdom Privy Council was, until 1968, recognized as the procedure whereby the "Right Honourable" title was bestowed on a new Prime Minister. The traditional use of this title by Prime Ministers is an exception to the contemporary disposition against titles for Canadians. In 1968 the Table of Titles for Canada was amended to provide that the Prime Ministers would henceforth be designated "Right Honourable" upon assuming office. Although as a result the Prime Minister of Canada no longers carries the title because of membership in the United Kingdom Privy Council it was stated at the time of the amendment that the new provision was not to be interpreted as a decision regarding the acceptance by Canadians of membership in the United Kingdom Council should the United Kingdom Government be disposed to continue making such recommendations.

4. The Canadian Prime Minister has on several occasions in the past arranged for senior Canadian ministers and others to be appointed to the United Kingdom Privy Council by the recommendation of the United Kingdom Prime Minister. On one or two occasions at least requests for appointments have been turned down by the United Kingdom Prime Minister. Two Canadian High Commissioners in the United Kingdom have been appointed to the United Kingdom Council and Mr. Diefenbaker requested General Vanier's appointment in 1962 after three years in office as Governor General. When the appointment is initiated by the United Kingdom Government the approval of the Canadian Government is sought in advance.

5. Until appeals to the Privy Council were abolished the Chief Justice of Canada was made a United Kingdom Privy Councillor and attended meetings of the Judicial Committee from time to time.

6. Canadians who have established themselves in England have also been summoned to the United Kingdom Privy Council because of their activities there. Such appointments would now only be made with the approval of the Canadian Government.

7. With the exception of the former attendance of the Chief Justice at the Judicial Committee, Canadian members who reside in Canada do not attend meetings of the United Kingdom Privy Council. Mr. Massey did, however, attend a ceremonial meeting of the Council to hear the Queen's accession declaration in 1952.

United Kingdom Privy Council: Canadian Membership APPENDICES

United Kingdom order in council for appointment as a member of United Kingdom Privy Council

List of Canadians who are members of United Kingdom Privy Council

SENATE

Senators: Appointment I—POSITION

1. Senators are appointed by the Governor General on the recommendation of the Prime Minister which is traditionally submitted by order in council*.
2. The qualifications of a senator are set out in section 23 of the *B.N.A. Act.* Senators appointed after 2 June, 1965 retire at 75. Before that date appointment was for life.
3. The appointment is effected by the issue of the instrument* of summons under the Great Seal which is dated the day the order in council recommending appointment is approved. A senator must take the required oaths* before he can occupy his seat.
4. A senator may resign, in writing, to the Governor General or be disqualified for causes enumerated in section 31 of the *B.N.A. Act.*
5. Membership in the Senate is limited to 102 distributed geographically by divisions.
6. There is provision for an exceptional addition of four or eight senators on recommendation of the Governor General to the Queen.

Senators: Appointment II—BACKGROUND

1. There is no legal requirement for an order in council to recommend appointments to the Senate. Although an order in council* has been consistently used an instrument of advice* from the Prime Minister to the Governor General would suffice.

2. The qualifications for a senator are set out in section 23 of the *B.N.A. Act.* It is a special requirement for a senator from Quebec that he shall have his real property qualification in the electoral division for which he is appointed, or shall be resident in that division.

3. In 1962 a special question arose regarding the position of senators where a question was asked in the House about defeated candidates appointed by the Government to positions carrying an emolument. It was considered that a senatorship was not a position to which "an emolument is attached".[1]

4. The Prime Minister normally consults in advance with intended appointees. There are several cases where it has become publicly known that the offer of a senatorship has been declined. In one case the instrument of summons was issued but the appointee declined to take the oath and refused to resign contending that the appointment was against his wishes. He was therefore carried on the roll of the Senate although he never took his seat which was subsequently declared vacant after he became disqualified for non-attendance during two sessions.

5. In the last century there were cases where senators who had resigned were subsequently reappointed to the Senate. One (Carling, 1892) resigned to contest a seat in the Commons and joined the Government. He was reappointed some time after the ministry was dissolved. Two others (Aikins, 1882; Masson, 1882) resigned to become Lieutenant-Governors and were reappointed after their terms ended. One senator (Angers, 1896) who resigned to contest a seat in the Commons was not reappointed.

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[1] From a memorandum by A. M. Hill, Assistant Clerk of the Privy Council, to R. B. Bryce, Clerk of the Privy Council, dated 16 April, 1962, on P.C.O. file G-1-4(b).

Senators: Appointment III—PROCEDURE

1. The Prime Minister selects nominees for the Senate and informs Cabinet after consulting the intended appointee. An order in council* is passed recommending the appointment to the Governor General.
2. Some Prime Ministers sent a personal letter to each newly appointed senator transmitting a certified copy of the order in council recommending the appointment approved by the Governor General. The practice has not been consistent.
3. Letters Patent* under the Great Seal of Canada are prepared by the Registrar General summoning each new appointee to the Senate. These are dated the day the order in council is approved and are the operative document.
4. A new senator is placed on the payroll according to the date of the order in council appointing him without awaiting his swearing-in. He cannot, however, take his seat until he has subscribed to the required oaths*.

Senators: Appointment IV—CEREMONIAL

1. The Senate meets on the morning of the opening of Parliament to install the new Speaker and to swear in new senators. Senators appointed while Parliament is in session are sworn in whenever convenient.

2. The ceremony* takes place on the floor of the Senate Chamber. The new senator presents his summons* which is read aloud. He then takes the oath* and the Speaker invites him to take his seat.

Senators: Appointment APPENDICES

Order in council recommending appointment of senator from Province of Quebec

Order in council recommending appointment of senator from province other than Quebec

Letters patent summoning appointee from Province of Quebec to Senate

Letters patent summoning appointee from province other than Quebec to Senate

Draft instrument of advice recommending appointment of senator from province other than Quebec

Oaths taken by senator

Extract from official report of debates of Senate regarding introduction of new senators

Senators: Resignation I—POSITION

1. A senator resigns by letter* addressed to the Governor General. The seat is considered vacant on receipt of this letter by the Governor General.

2. In the case of incapacity the letter* of resignation can be signed by someone empowered to act on the senator's behalf.

Senators: Resignation II—BACKGROUND

1. Whereas it was at one time the practice for the Governor General to seek the Prime Minister's advice before accepting a senator's resignation, it is now regarded as operative on receipt by the Governor General.

2. Valid resignations have been signed by the committee appointed by a court over the person and estate of the senator, and by a person holding a power of attorney* in a case of incapacity. The opinion of the Attorney General was sought in each case.

Senators: Resignation III—PROCEDURE

1. When the Governor General receives a letter* of resignation from a senator, Government House informs the Clerk of the Senate that the seat is thereby vacant.

2. The Prime Minister is advised* by Government House that the resignation has been received and the Clerk of the Senate informed. The Clerk of the Privy Council is also informed*.

3. When the letter of resignation is not signed personally by the senator it may be referred by Government House to the Attorney General for an opinion on its validity.

4. Government House acknowledges* receipt of the resignation and advises that the Clerk of the Senate has been notified of the vacancy.

Senators: Resignation APPENDICES

Letter of resignation from senator to Governor General

Senator's letter of resignation signed by person holding power of attorney

Letter from Government House to senator acknowledging latter's letter of resignation

Letter from Government House to Prime Minister advising of resignation of senator

Letter from Government House to Clerk of Privy Council regarding resignation of senator

Senators: Disqualification I—POSITION

1. Section 31 of the *B.N.A. Act* enumerates the circumstances in which a senator would be disqualified and his place become vacant. There is no additional provision for removal.
2. The *Senate and House of Commons Act* provides pecuniary penalties for senators who are parties to contracts under which the public money of Canada is paid or who accept a fee in relation to parliamentary proceedings.
3. Section 23 of the *B.N.A. Act* sets out the qualifications required for appointment as a senator. Senators representing the Province of Quebec must have their specified real property in the electoral division for which they are appointed or be resident in that division.
4. Section 33 of the *B.N.A. Act* provides that any question respecting the qualification of a senator or a vacancy in the Senate "shall be heard and determined by the Senate".
5. Action to declare a senator disqualified is taken by the Senate on a report from the Clerk of the Senate to the Speaker, which is referred to the Senate Committee on Orders and Customs. The recommendation of that Committee is the basis of a resolution* in the Senate to declare the seat vacant or not.
6. The only ground which has been invoked to declare a seat vacant by disqualification is that of non-attendance. This has been used several times.
7. Senators have resigned in the face of allegations which might have given rise to disqualification for other causes enumerated in section 31.
8. Section 39 of the *B.N.A. Act* declares that a senator is not capable of being elected or of sitting or voting as a member of the House of Commons.

Senators: Disqualification APPENDICES

Senate resolution for declaration of vacancy in Senate on ground of non-attendance by senator

Senators: Indemnity I—POSITION

1. A sessional allowance authorized by statute is paid to each senator at the rate of $12,000 per annum. It is calculated from the date a senator is summoned to the Senate, regardless of when he takes the senator's oath. The allowance is paid monthly and is taxable.
2. A non-taxable expense allowance is paid to each senator at the rate of $3,000 per year, in quarterly payments.
3. Each of these allowances is subject to a deduction of $60 for each unjustified day's absence per session in excess of 21.
4. Senators are reimbursed for their return travel expenses to Ottawa once for each session and, in addition, during the session may claim travel expenses for as many return trips to their place of residence as they find desirable. The cost of the commercial economy air fare is however the maximum which can be reimbursed in each of these cases.
5. Senators are entitled under the *Railway Act* to passes for free transportation. This privilege extends to dependents on application for each journey.
6. Certain long distance telephone facilities are provided for senators.
7. Senators are granted a franking privilege for their mail.
8. Senators appointed after 2 June, 1965 are retired at age 75. There is a compulsory contributory pension plan applying to them. It makes provision for widows. The maximum pension for a senator is $9,000 per annum and for a widow, $5,400 per annum.
9. There is also provision for a pension equal to two thirds of the sessional indemnity, to be paid to a senator appointed before 2 June, 1965 who retires within one year of attaining 75 years of age. There is also provision for his widow.
10. Senators may benefit from revenue from other sources not prohibited by the *Senate and House of Commons Act.*
11. There is no special medical insurance plan available to senators. They may however participate in the plan provided for the Public Service.

Senators: Indemnity II—BACKGROUND

1. The sessional indemnity and expense allowance of a senator are calculated from the date of the instrument summoning him to the Senate. They are not dependent on his taking the required oath as a senator.

2. The rules of the Senate determine what constitutes attendance in calculating whether the fines for absence are exigible.

Table showing remuneration of persons holding parliamentary office in Senate

Speaker of Senate I—POSITION

1. The Speaker of the Senate is appointed by the Governor General on the recommendation of the Prime Minister, transmitted by order in council*.
2. The Speaker traditionally holds office throughout a Parliament, being appointed before the opening of the first session. His term ends on the appointment of his successor.
3. The Speaker need not already be a member of the Senate but may be summoned to the Senate at the time of his appointment as Speaker.
4. There is no Deputy Speaker appointed to the Senate on a continuing basis as in the Commons. In the Speaker's absence the Senate selects an Acting Speaker.

Speaker of Senate II—BACKGROUND

1. The recommendation to the Governor General does not have to be by order in council*. An instrument of advice* from the Prime Minister would suffice. This form has however not been adopted. It has been advanced that the appointment being in Parliament and carrying a salary should have the sanction of Cabinet.

2. The fact that the Speaker of the Senate is appointed on the recommendation of the Government rather than being elected by the Senate probably reflects the position in England where the Speaker of the House of Lords is the Lord Chancellor, a member of the Administration. In Canada however the Speaker of the Senate is not normally a member of the Administration although exceptionally during Macdonald's 2nd Administration two successive Senate Speakers were concurrently ministers without portfolio.

3. There is no fixed term for a Speaker but by convention he holds office during a Parliament and is replaced by a new appointment being made before the opening of the first session of the following Parliament. Three Speakers have remained in office for a second successive Parliament and one served in three successive Parliaments. Speakers have resigned the office for reasons of health.

4. There is no fixed time for the appointment of a Speaker but it should be sufficiently in advance of the opening of Parliament to permit him to familiarize himself with his duties and acquire the wardrobe. The period has varied from six weeks to a few days before the opening of Parliament.

5. It is not unusual for the Speaker to be appointed from outside the Senate, being summoned to the Senate and appointed Speaker the same day.

Speaker of Senate III—PROCEDURE

1. The Prime Minister informs Cabinet of his selection for Speaker of the Senate and an order in council* is passed recommending his appointment by the Governor General. This recommendation could be made by instrument of advice*, but this procedure has not been adopted.
2. A commission* under the Great Seal of Canada is issued to the Speaker of the Senate.

Speaker of Senate IV—CEREMONIAL

1. The Prime Minister does not participate in the ceremonial* of the installation of the Speaker of the Senate.

Speaker of Senate APPENDICES

Order in council recommending appointment of Speaker of Senate

Draft instrument of advice recommending appointment of Speaker of Senate

Commission of appointment as Speaker of Senate

Press release regarding appointment of Speaker of Senate

Extract from official report of Senate debates regarding installation of new Speaker

List of Speakers of Senate since 1867

Leader of Government in Senate I—POSITION

1. The Prime Minister selects* the Leader of the Government in the Senate. The position is recognized in the *Senate and House of Commons Act* but no formalities for effecting the appointment are prescribed. The position carries an allowance.
2. The Leader may be appointed to the Privy Council and the Prime Minister may bring him into the Cabinet.
3. The appointment is at the Prime Minister's pleasure and the widely varying practice does not indicate any regular length of tenure.
4. The Leader may designate a senator to assist him as Deputy Leader and to act for him in his absence. The designation is made without formality. The position does not carry any allowance nor require any direct connection with Cabinet.
5. If the Leader and Deputy Leader are absent a senator will normally be selected to be Acting Leader.

Leader of Government in Senate II—BACKGROUND

1. This position is recognized by statute and carries an allowance but the political significance of the appointment depends on the views of the Prime Minister.
2. There have been Leaders who were not members of the Privy Council and others who were called to Council but were not in the Cabinet. Others have been in the Cabinet.
3. No formalities being prescribed for effecting the appointment, varying techniques have been used. Despite the fact that the position is recognized by statute it has, nevertheless, not been the practice to issue a commission of appointment, or even to mention the appointment in any commission which might be issued at the time if the senator is made a member of the Privy Council and/or the Cabinet.
4. The appointment of a Deputy Leader is a matter of administrative convenience for the Leader. No instrument of appointment is issued. The appointment does not imply a Cabinet connection.

Leader of Government in Senate III—PROCEDURE

1. No formalities whatever are required to effect or make known the Prime Minister's selection* of a Leader of the Government in the Senate. The Prime Minister may choose to inform the Clerk of the Senate by letter and this should be done, particularly if no commission is to issue naming the appointee to the Cabinet.

2. The Leader's allowance is paid on the basis of evidence of his appointment judged satisfactory to the Treasury. This may be either a letter from the Prime Minister to the Clerk or a commission of appointment to the Cabinet even if that commission does not mention the appointment as Leader.

3. It is the responsibility of the Leader to appoint a Deputy as and when he sees fit and to announce his decision in the Senate. The same applies in the case of an Acting Leader. The Leader may consult the Prime Minister on these appointments.

Leader of Government in Senate IV—CEREMONIAL

1. In certain parliamentary ceremonies such as the opening of Parliament and the formal reception of visitors the Leader of the Government in the Senate has a place with the Prime Minister as the representative of the Government from the Upper Chamber. Nevertheless he is not recognized in the *Guide to Relative Precedence at Ottawa* in which he is given his place as senator, Privy Councillor or minister whichever is the senior.

Leader of Government in Senate APPENDICES

Leader of Opposition in Senate I—POSITION

1. The position of Leader of the Opposition is recognized in the *Senate and House of Commons Act* which provides for an allowance of $6,000 a year.
2. The Leader of the Opposition is selected by the Opposition caucus of the Senate.
3. Formalities have not been prescribed or adopted for effecting or announcing this appointment.

Leader of Opposition in Senate II—BACKGROUND

1. The Opposition caucus is recognized as being responsible for the selection of the opposition leader in the Senate. No formality attaches to the appointment which becomes known in due course, and the allowance prescribed by statute is paid.

Additional Senators I—POSITION

1. The provision in section 26 of the *B.N.A. Act* whereby the Queen may on the recommendation of the Governor General authorize the exceptional appointment of four or eight additional senators has never been implemented.

2. The Act does not specify any qualifications or restrictions on the use of this power.

3. The Governor General could make the required recommendation on the advice of the Prime Minister although, in keeping with the established practice for senatorial appointments, and because of its unusual character, the advice might take the form of an order in council although this would not be legally necessary.

Additional Senators II—BACKGROUND

1. Section 26 of the *B.N.A. Act* has been regarded as a deadlock clause introduced into the Act by the British Government to provide a means of breaking a deadlock between the Commons and the Senate.

2. In 1873-74 Mackenzie made the only serious attempt to invoke this authority but his request submitted by order in council and approved by Dufferin who recommended the appointment was turned down by the British Government.

3. Mackenzie had argued in a supporting memorandum that "the fair equilibrium" between parties agreed to at Confederation had been seriously disturbed so that the application of the counterpoise provided by the constitution was justified. He also adduced that "The new Administration should have an opportunity of seating some of the prominent supporters of its policy . . . for the purpose of having able advocates of the Government measures in the House".[1]

4. The British Government refused to advise the Queen to act on the Governor General's recommendation on the ground that the power should only be used to break a deadlock and then only if its application would be an adequate remedy. In the circumstances existing in 1874 no deadlock had developed and six new senators would not have given Mackenzie a majority. Mackenzie's reasons for seeking the appointments were not acknowledged.

5. The case was debated in the Senate in 1877 when the Conservatives adopted the position of the British Government that it was exclusively a device for breaking a deadlock while the Liberals advocated a wider interpretation based on the fact that the Act conferred an unrestricted and unconditional power.

6. There are indications that both Laurier and Borden examined the possibility of invoking section 26 but decided against making a recommendation because of the expected negative reaction of the United Kingdom authorities.

7. Today the United Kingdom Government would not become involved. A recommendation from the Governor General would be put before the Queen who would be bound to accede to it.

8. The decision to invoke the clause would rest with the Prime Minister and the Government, who would be responsible for deciding whether the circumstances warranted its use. Since the Act sets no conditions it would be for

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[1] *See* Eugene Forsey, "Alexander Mackenzie's Memoranda on the Appointment of Extra Senators, 1873-4", *The Canadian Historical Review*, Vol. XXVII (1946), pp. 189-194 at p. 194.

the Government to decide whether it should be used in other circumstances than to break a deadlock, the purpose attributed to the United Kingdom drafters of the clause.

9. It has been advanced that a Government must have representation in the Senate able and qualified to present and defend its measures and that the provision could properly be used to overcome such inadequacies.

Officers of Senate I—POSITION

1. The Clerk of the Senate is appointed and his remuneration fixed by order in council* passed pursuant to the *Public Service Employment Act*. He holds office at pleasure.
2. Some of the Clerk's duties are stated in the *Rules of the Senate of Canada.*
3. Pursuant to the *Publication of Statutes Act* the Clerk of the Senate is also Clerk of the Parliaments. As such he has custody of original acts of Parliament and other duties in respect thereto.
4. The Assistant Clerk of the Senate and the Law Clerk and Parliamentary Counsel to the Senate are appointed and their salaries are fixed by resolution* of the Senate.
5. The Gentleman Usher of the Black Rod is appointed and his salary is fixed by order in council*. He holds office at pleasure. His duties are largely ceremonial and traditional and are not specified by statute or in the *Rules of the Senate of Canada.*

Officers of Senate II—BACKGROUND

1. Clerks of the Senate have had long periods in office, there having been seven incumbents* since Confederation.

2. The Clerk of the Senate is the chief officer of the Senate and takes minutes of all the proceedings of the Senate. He reads the commission for the appointment of a new Speaker and administers the oaths to new senators.

3. The Gentleman Usher of the Black Rod has responsibilities connected with the opening of Parliament. He is also responsible for the maintenance of order and for matters of security in the Senate.

Officers of Senate III—PROCEDURE

1. The Prime Minister recommends the order in council* appointing the Clerk and the Gentleman Usher of the Black Rod and fixing their salaries, after consultation in Cabinet if he deems it desirable. The order appointing the Clerk recognizes his concurrent position as Clerk of the Parliaments. Commissions* of appointment are issued by the Registrar General.
2. The Prime Minister would probably wish to issue a press release regarding these appointments and the Speaker announces the appointments to the Senate.
3. The Senate Committee on Internal Economy and Contingent Accounts recommends the appointment and salary of the Assistant Clerk and the Law Clerk. A resolution* of the Senate effecting the appointment follows.

SENATE

Officers of Senate APPENDICES

Order in council for appointment of Clerk of Senate

Commission issued to Clerk of Senate

List of Clerks of Senate since 1867

Order in council for appointment of Gentleman Usher of the Black Rod

Resolution of Senate for appointment of Law Clerk and Parliamentary Counsel to Senate

SOVEREIGN

Constitutional Position of Crown in Respect of Canada I—POSITION

1. The Queen's position as Head of State of Canada is confirmed in the *B.N.A. Act* where the executive authority of Canada is vested in Her Majesty who is declared to be an element of the Parliament of Canada. The succession devolves on the Kings and Queens of the United Kingdom.

2. This situation finds expression in the wording of proclamations and other official documents as well as in a multitude of ceremonial and official usages where reference is made to the Queen of Canada.

3. The Letters Patent governing the office of Governor General empower the Governor General to exercise all the Sovereign's powers without qualification. However at the time the Letters Patent were approved, the Prime Minister gave an undertaking* that the existing practice by which certain powers continue to be exercised by the King would not be altered without prior consultation with or notification to the Governor General and the King, unless exceptional circumstances made it necessary to do so.

4. The practice of making submissions to the Sovereign on the following matters has continued without exception:

   "(a) signature of Full Powers for the signing of treaties in the Heads of States form, and signature of ratifications of such treaties;

   (b) approval of the appointment of Canadian Ambassadors and Ministers to foreign countries, and signature of their Letters of Credence;

   (c) approval of the proposed appointment of foreign Ambassadors and Ministers to Canada (i. e., granting the agrément);

   (d) authorizing the Declarations of War;

   (e) appointing the Governor General of Canada;

   (f) granting of honours."[1]

5. The Queen is kept informed on Canadian affairs by personal reports prepared periodically by the Governor General.

6. When in Canada the Queen is entitled to be kept informed on Canadian questions of concern to the Government although in practice the normal pattern of business carried out by the Governor General is not disturbed.

7. On occasion when in Canada the Sovereign has performed acts* within the realm of the prerogative which are normally performed by the Governor General. These have been undertaken only on advice of the Government.

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[1] From letter by A. E. Gotlieb, Department of External Affairs, to A. S. Millar, Privy Council Office, November 29, 1965, on P.C.O. file R-2-1(a).

8. While in Canada and circumstances permitting, it is usual for the Queen to be attended by the Prime Minister or a member of the Government designated by him, particularly on official occasions.

9. Most prerogative powers are now only exercised on advice although in some areas such as honours, the Sovereign retains a degree of independence.

10. Constitutional evolution has now reached the stage where it is recognized that in respect of Canada the Queen acts only on advice from her Canadian ministers and seeks and receives no other. This was demonstrated in the close consultations with the Palace which preceded recent visits of the Sovereign to Canada.

Constitutional Position of Crown in Respect of Canada APPENDICES

Letter from Prime Minister to King's Private Secretary regarding new Letters Patent of Governor General and continued exercise of certain powers by Sovereign (1947)

Order in council approved by Sovereign in the exercise of her prerogative powers in respect of Canada

Incapacity and Absence of Sovereign I—POSITION

1. The United Kingdom *Regency Act, 1937* which provides for the exercise of the royal functions by Counsellors of State or a Regent when the Sovereign is absent from the United Kingdom, incapacitated or under 18 years of age does not apply to Canada. The Canadian Parliament has not enacted legislation on this matter.

2. In view of the complete delegation of powers to the Governor General in the Letters Patent the conduct of government would not normally be affected by the institution of a Regency or a Council of State in the United Kingdom. The prerogative powers still in practice exercised personally by the Sovereign despite the delegation to the Governor General could then be assumed by the Governor General or the Administrator. The only area not covered would be that dealing directly with the appointment and office of the Governor General. The Administrator however would retain his power to act in the event of the office of Governor General becoming vacant.

3. If the post of Governor General should become vacant during a Regency there should be no difficulty if the Chief Justice of Canada subsequently retired or resigned without his successor having been appointed or if the office of Chief Justice was itself vacant through resignation or retirement when the post of Governor General became vacant. Both resignation and retirement have been interpreted by the Deputy Minister of Justice as being covered by the word "removal" in clause VIII of the Governor General's Letters Patent, thus allowing the next senior judge of the Supreme Court to assume office as Administrator in either of the above situations.

Incapacity and Absence of Sovereign II—BACKGROUND

1. In 1937 the Deputy Minister of Justice subscribed to the opinion* that the Regency Act of the United Kingdom did not apply to Canada and that consequently the Regent who acts in the case of the minority or total incapacity of the Sovereign, or the Counsellors of State who assume office in the event of other illness or absence from the United Kingdom, would have no authority in respect of Canada.

2. Consideration was given in 1937 and in 1941 to the enactment of a Canadian regency act but this was never brought forward. The complete delegation of royal powers to the Governor General in the 1947 Letters Patent has all but eliminated the possible occasions of difficulty in the event of the minority or incapacity of the Sovereign. However, if circumstances permitted, it would be desirable to inform the Palace, in accordance with the agreement* reached in 1947, of the assumption by the Governor General of those prerogative powers which the Sovereign has until now personally exercised in respect of Canada.

3. The possible assumption by the Governor General of those prerogative powers still personally exercised by the Sovereign was explored with the Palace in 1951, during the illness of George VI. Although the King's health improved before a decision was reached, there is some evidence to suggest that the Palace may at that time have had reservations. However the present day constitutional realities leave no doubt that a formal submission of this type would receive the Sovereign's acquiescence should one ever be made by the Prime Minister.

4. The absence of the Sovereign from the United Kingdom has not until now given rise to difficulties for Canada. Business now submitted to the Queen has either been delayed until her return to London or transmitted direct to her wherever she may have been outside the United Kingdom. It would also be possible to have all such business dealt with by the Governor General pursuant to the full powers he holds under the 1947 Letters Patent. In the latter case the Queen should be informed.

5. While the lack of authority of the Regent or Counsellors of State in Canada would preclude the appointment by them of a new Governor General, the arrangements for the Governor General's functions to be performed by the Administrator would in all normal cases meet the requirements of government.

6. In 1968 the Deputy Minister of Justice gave the opinion that the word "removal" in clause VIII of the Governor General's Letters Patent should be interpreted as including both resignation and statutory retirement. Thus a paralysis of government should not arise during a Regency if the Chief

Justice, while acting as Administrator, were to resign or be retired without having previously appointed his successor as Chief Justice, or should a vacancy in the post of Governor General occur when the office of Chief Justice was itself vacant through resignation or retirement. In both cases according to the 1968 opinion, the Governor General's powers would pass on to the next judge of the Supreme Court.

Incapacity and Absence of Sovereign III—PROCEDURE

1. In the event of the Sovereign's incapacity or minority the Prime Minister should consult with the Governor General on the necessary arrangements for the exercise by the latter of all the Sovereign's prerogative powers in respect of Canada. The Prime Minister should, if possible, inform the Palace accordingly.

2. During the Sovereign's absence from the United Kingdom arrangements are made with Government House for the transmission of documents direct to the Queen. Should it be decided to have the Governor General act in her place it would be proper that she be informed of this by the Prime Minister.

Incapacity and Absence of Sovereign APPENDICES

1937 opinion of Deputy Minister of Justice regarding United Kingdom *Regency Act, 1937*

Letter from Prime Minister to King's Private Secretary regarding new Letters Patent of Governor General and continued exercise of certain powers by Sovereign (1947)

Death of Sovereign and Succession to Throne — I—POSITION

1. The Crown, in so far as Canada is concerned, is by the provisions of the *B.N.A. Act* identical with the Crown of the United Kingdom.
2. Succession to the Throne devolves according to the United Kingdom *Succession to the Crown Act, 1707* which does not provide for Commonwealth participation in the process of the application of the Act. Therefore the successor designated by the United Kingdom provisions is, as the law now stands, the successor for Canada.
3. Since the passing of the *Statute of Westminster, 1931* the law touching succession can only be changed by the British Parliament with the consent of the Dominions.
4. On a demise of the Crown a proclamation* is immediately issued on the authority of an order in council* to announce the demise and the accession of the new Sovereign.
5. Canada has also participated in the United Kingdom accession proclamation* through the attendance of the High Commissioner at the Accession Council in London and his signature on the proclamation.
6. Holders of offices under the Crown in right of Canada are by the 1967 *Interpretation Act* unaffected by the demise of the Crown and are not required to be reappointed nor to take a new oath of office or allegiance.
7. The *Senate and House of Commons Act* provides that Parliament is not dissolved by reason of the demise of the Crown and that it may continue to meet and act in the same manner as if such demise had not taken place.
8. The Prime Minister announces the demise in Parliament and moves a joint address* of loyalty and sympathy to the new Sovereign. The Prime Minister also moves that a separate message* of condolence be sent to other members of the Royal Family. The House then adjourns.
9. The Prime Minister issues a press release* on the demise and may make a statement on television. Notice of the demise is also published in *The Canada Gazette* by Government House.
10. The Prime Minister sends a personal message* of loyalty and condolence to the new Sovereign and messages* of sympathy to other members of the Royal Family.
11. The arrangements to be made regarding mourning, funeral and memorial services, etc., are examined in the section on *Funerals and Memorial Services.*

12. The Government must approve the Canadian title for the new Sovereign.

13. The date for the coronation is selected by the Sovereign in consultation with Commonwealth Governments.

14. Cabinet may decide to establish a Coronation Committee to be responsible for Canada's participation in the coronation in London and celebrations in Canada.

15. Canada is also represented on the United Kingdom Coronation Committee by members selected by the Government. The Prime Minister, the Leader of the Opposition in the House of Commons, the High Commissioner in London and the Secretary at Canada House were appointed to the last Committee.

16. Coronation matters requiring decision include the proclamation* of a public holiday, loyal addresses* by Parliament, official representation* at the coronation, a Canadian ceremony*, a gift to the Sovereign, an amnesty, a coronation medal and commemorative stamps and coins.

Death of Sovereign and Succession to Throne II—BACKGROUND

1. The successor to the Throne as determined by the existing United Kingdom provisions is, as Canadian law now stands, the successor to the Throne for Canada without any approval or acquiescence by the Canadian authorities.

2. Parliamentary approval should be obtained for any intended change in the United Kingdom Act of Succession. In 1936 on the abdication of Edward VIII Parliament was not in session and an order in council* was therefore passed embodying the necessary request and consent to the enactment of the appropriate legislation as regards Canada by the Parliament of the United Kingdom. Immediately Parliament met legislation was enacted to give assent to the alteration in the succession.

3. There is no statutory requirement for the accession proclamation* which is issued in Canada to announce the demise and the succession. This is authorized here by order in council*. In 1952 Privy Councillors not in the Government were associated with the proclamation by being invited to join the meeting* of the Committee of Council to be informed of the order which had been passed. It has been decided not to adopt the United Kingdom practice of reading the proclamation in public.

4. Canada has been represented at the Accession Councils held in London to sign the United Kingdom accession proclamation*. The High Commissioner or Acting High Commissioner has attended and signed on behalf of Canada. In 1952 Mr. Massey, a United Kingdom Privy Councillor, also attended and signed. The appropriateness of Canadian participation, in view of the practice of issuing a Canadian proclamation, has been questioned. Since the United Kingdom proclamation is only a traditional observance unnecessary for the legal devolution of the Crown, Canadian participation in the United Kingdom Council should be judged on its ceremonial rather than on its constitutional significance.

5. The Accession Council in the United Kingdom is followed by a meeting of the Privy Council which the Sovereign attends in order to make the accession declaration*. This meeting is attended only by United Kingdom Privy Councillors who sign the declaration. In 1952 Mr. Massey attended in his personal capacity as a United Kingdom Privy Councillor and subscribed to the declaration.

6. The *Interpretation Act* of 1967 removed the previous requirement for a proclamation to maintain Crown appointees in office and for a new oath of allegiance. Section 39 of the Act states that it is not necessary for those holding "office under the Crown in right of Canada" to be reappointed or

to subscribe to new oaths of office or allegiance upon the demise of the Sovereign.

7. It should be determined whether the Governor General is covered by this provision and is thus relieved of the practice whereby he has taken a new oath of allegiance to the new Sovereign.

8. Members of Parliament have in the past taken a new oath of allegiance, although no legal requirement to do so can be established.

9. Privy Councillors have likewise not been required to take a new oath of allegiance but many have done so in the past, following the requirement which, before 1967, applied to ministers. The new statutory provision exempts both Privy Councillors and ministers from the requirement for new oaths of office or allegiance.

10. The joint address* of loyalty and sympathy to the new Sovereign as well as the message* of condolence to other members of the Royal Family are moved in the House of Commons by the Prime Minister, seconded by the Leader of the Opposition. If the House is not in session these motions are presented at the first sitting.

11. The Prime Minister previously took direct responsibility for Canadian coronation plans but in 1952 a Cabinet committee was established under the chairmanship of the Secretary of State.

12. The Prime Minister will wish to concern himself with the selection of the Canadian representatives* for the coronation. Certain representatives are invited as guests of the Sovereign, others are on the official delegation. Cabinet ministers, the Chief Justice, the Speakers, and the Leader of the Opposition have been included.

Death of Sovereign and Succession to Throne — III—PROCEDURE

1. On the recommendation of the Prime Minister an order in council* is passed authorizing the accession proclamation* which is published in *The Canada Gazette*. The Prime Minister will decide whether Privy Councillors not in the Government are to be associated with this action and to what extent.
2. The Prime Minister will decide whether the High Commissioner in London should be instructed to accept an invitation to attend the Accession Council and to sign the United Kingdom accession proclamation*.
3. If it is determined that the *Interpretation Act* of 1967 does not relieve the Governor General from the practice of taking a new oath of allegiance, arrangements will be made by the Privy Council Office for him to be re-sworn at the earliest convenient time. No action is required for the continuance in office of Lieutenant-Governors, Privy Councillors, Cabinet ministers, senators, the Chief Justice of Canada and other judges, and employees of the Public Service of Canada who need not renew their oaths of allegiance and office.
4. The Prime Minister will move the joint address* of loyalty and sympathy and any message* of condolence at the first sitting of Parliament after the demise. He will arrange for the motions to be seconded by the Leader of the Opposition.
5. The Prime Minister will then move the adjournment of the House.
6. The Prime Minister will decide whether to make a statement on television.
7. The Prime Minister will send personal messages* to the Sovereign and to members of the Royal Family.
8. The procedure for approving the Style and Title of the new Sovereign is examined in the chapter on "Royal Style and Title of Sovereign" in this section.
9. The Prime Minister will concern himself with the arrangements regarding the funeral and memorial service for the late Sovereign as outlined in the section on *Funerals and Memorial Services.*
10. The Prime Minister will be involved in consultation to select a date for the coronation and will make an announcement as appropriate.
11. If a Coronation Committee is to be established the Prime Minister will recommend its composition and terms of reference for Cabinet approval.
12. The Prime Minister will recommend for Cabinet approval the composition of Canadian representation* at the coronation.

Death of Sovereign and Succession to Throne APPENDICES

Proclamation announcing demise of late Sovereign and accession of new Sovereign

Order in council authorizing above proclamation

Description of 1952 Committee of Privy Council meeting for approval of above order in council

United Kingdom accession proclamation

Sovereign's accession declaration

Statement made in Parliament by Prime Minister on death of Sovereign, including:

(i) address of condolence and loyalty from Parliament to new Sovereign

(ii) message of condolence from Parliament to late Sovereign's consort

Public statement by Prime Minister on death of Sovereign

Message of condolence from Prime Minister to Sovereign on death of previous Sovereign

Message of condolence from Prime Minister to late Sovereign's consort

Order in Council regarding Canadian request and consent for enactment of United Kingdom legislation altering succession (1936)

Official Canadian delegation at 1953 coronation

Description of coronation ceremony held in Ottawa in 1953

Proclamation declaring coronation day as a public holiday

Address of loyalty to new Sovereign on occasion of his coronation, as moved in House of Commons (1937)

SOVEREIGN

Royal Style and Title of Sovereign I—POSITION

1. The Royal Style and Title of the Sovereign is, in the English language: "Elizabeth the Second, by the Grace of God of the United Kingdom, Canada and Her other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith"; and in the French language: "Elizabeth Deux, par la grâce de Dieu, Reine du Royaume-Uni, du Canada et de ses autres royaumes et territoires, Chef du Commonwealth, Défenseur de la Foi".
2. This was adopted by proclamation* dated May 28, 1953 following passage of an act* of Parliament assenting to the title. This was preceded by Commonwealth consultation culminating at a Prime Ministers' meeting in London.
3. The title differs for each member of the Commonwealth since the varying constitutional position makes the adoption of a single title impossible.
4. The title for Canada can be changed by proclamation which should be preceded by parliamentary assent although this is not a strict legal requirement.
5. To conform to the decision taken at the Prime Ministers' meeting in 1952, all Commonwealth countries should be informed of the intention to change the Royal Style and Title for Canada.
6. The Sovereign should, of course, be kept fully informed in regard to any proposal of the Canadian Government to change the Royal Style and Title.
7. The use of the abbreviated Latin version of the Royal Style on the Great Seal was discontinued when the new Seal was approved in 1956. The Queen is described as "Elizabeth II—Queen of Canada—Reine du Canada".

Royal Style and Title of Sovereign II—BACKGROUND

1. After considerable discussion at the Commonwealth Economic Conference in 1952, it was announced* that it had been decided that each country should use for its own purposes a form of title which suited its own particular circumstances but should retain a substantial element common to all.
2. In the event of a change in title the procedure agreed to in 1952 only provided for Commonwealth Governments to be informed in advance of the intended change. It was not envisaged that other Commonwealth Governments would be required to take any formal action to approve the change in title by any one Government.
3. Although the matter lies within the area of the prerogative any proposed change in the Canadian title would be put before Parliament before proclamation.
4. There is no record that the new title for the Queen used on the Great Seal was communicated to other Commonwealth Governments.

Royal Style and Title of Sovereign III—PROCEDURE

1. When the Government has decided upon a change in the Royal Style and Title the Queen should be informed by the Prime Minister and her approval sought.
2. At that time Commonwealth Governments should be informed. In view of the agreement in 1952 between Australia, New Zealand and Canada to use the same form of title it might be considered desirable to explain any intended change at an initial stage.
3. The Queen's approval obtained, legislation should be presented to Parliament assenting to the change.
4. The new title is announced by proclamation under the Great Seal signed by the Queen.

Royal Style and Title of Sovereign APPENDICES

Act of Parliament assenting to Sovereign's title (1953)

Proclamation regarding Sovereign's title (1953)

Extract from official report of debates of House of Commons for 15 December, 1952 regarding Sovereign's title; together with communique on form of title

Royal Marriages I—POSITION

1. The effects of the *Royal Marriages Act, 1772* which require the Sovereign's consent to marriages of descendents of George II extend to Canada.

2. The United Kingdom Government gives the ministerial advice on consent but it would be consistent with the contemporary constitutional situation for the Governments of other Commonwealth countries to be consulted in the case of a person likely to succeed to the Throne.

Royal Marriages II—BACKGROUND

1. The procedures adopted in 1947 on the occasion of the engagement of Princess Elizabeth, Heiress Presumptive to the Throne, did not constitute consultation with or advice by the Canadian Government in advance of royal consent. The King sent a message* to the Prime Minister informing him that he had given consent to the marriage and asking that a Canadian Privy Councillor attend the meeting of the United Kingdom Privy Council when formal action required by the Royal Marriages Act would be taken. Mr. Mackenzie King replied* acknowledging that as Prime Minister he had been advised that consent had been given to the marriage, and agreeing to send a Canadian to attend the United Kingdom Council.

2. Five days later the Prime Minister sent a message* purporting to convey the consent of the King's Canadian ministers although their prior concurrence had not, in fact, been sought. The records do not indicate that this message was acknowledged.

3. Mr. King also suggested in his message that the formal declaration of consent required by the Royal Marriages Act be made simultaneously in other Commonwealth countries before the Privy Council or comparable body, as an alternative to sending Commonwealth representatives to the United Kingdom Council meeting.

4. In the end, Mr. Howe did attend the United Kingdom Council on 31 July, as did a Privy Councillor from Australia, New Zealand and South Africa, and the same day the Deputy Governor General presided at a Council in Ottawa to receive a message* from the King that the requirements of the Royal Marriages Act had been carried out at a meeting of the United Kingdom Council earlier that day.

5. Canada has not been involved in the procedures for giving consent to marriages of other members of the Royal Family although advice that consent had been given was communicated officially to the Prime Minister in the case of the marriage of Princess Margaret and of the Duke of Kent*. The Queen informed the Governor General of the engagement of Princess Alexandra the day it was announced. A question was asked in the House of Commons in 1967 in connection with the re-marriage of Lord Harewood but Canada did not become involved.

6. In the case of the marriage of a person likely to succeed to the Throne and thus become the Sovereign of Canada, it would appear to be desirable constitutional practice for the Government of Canada to be consulted prior to the giving of consent. Although prior consultation would be consistent with the constitutional realities the legal requirements under the *Royal*

Marriages Act, 1772 can hardly be said to necessitate the attendance of a Canadian at the formal United Kingdom Privy Council meeting or the holding of a Council meeting here. The constitutional implications of these actions suggest that the procedures followed in 1947 should be carefully re-examined should a similar situation arise again. Moreover legislation could of course be passed in Canada to define the responsibilities of the Canadian Government in connection with marriages likely to affect the succession.

7. A gift of silverware and a mink coat were made on behalf of the Government on the occasion of Princess Elizabeth's marriage. A gift of Canadian furnishings was made to Princess Margaret. No action was taken by Parliament in either case although Princess Elizabeth's marriage was announced* in the House by the Prime Minister and in the Senate by the Leader of the Government. Princess Elizabeth's message of thanks for the gift was read in the House by the Prime Minister.

Royal Marriages III—PROCEDURE

1. In the event of the intended marriage of a person likely to succeed to the Throne, the Canadian Government might wish to indicate that prior consultation would be constitutionally desirable before consent is given by the Sovereign. There is no legal requirement for the attendance of a Canadian minister at the United Kingdom Council meeting. The desirability of holding a meeting of the Canadian Council to be informed of the Sovereign's consent should be re-examined.
2. Messages of congratulation to be sent at the appropriate time will be prepared for the Prime Minister, as required.
3. The Prime Minister may wish to make an announcement* in the House regarding the marriage.
4. The desirability of sending a gift on behalf of the Government of Canada should be considered by Cabinet.

Royal Marriages APPENDICES

Message from King notifying Prime Minister that consent to marriage of Princess Elizabeth had been given (1947)

Prime Minister's reply to above message

Message from Prime Minister to King's Private Secretary regarding consent of Canadian ministers to Princess Elizabeth's marriage (1947)

Message from King to Governor General regarding notification to Privy Council for Canada of consent for Princess Elizabeth's marriage (1947)

Message from Prime Minister to King's Private Secretary regarding above notification to Privy Council for Canada

Message from Governor General to Prime Minister regarding Sovereign's consent for marriage of Duke of Kent

Announcement made by Prime Minister in House of Commons regarding Princess Elizabeth's marriage

Royal Births I—POSITION

1. In 1960 and 1964, on the occasions of the birth of the Queen's two children following her accession, the Senate and House of Commons passed an address* to Her Majesty expressing congratulations.
2. The birth of Prince Andrew in 1960 was the first birth of a child to a reigning monarch since Victoria. It was marked, in addition to the joint address*, by the presentation of an official gift of silver.
3. While the Queen was still Heir to the Throne, the birth of her children was marked by messages of congratulation from the Governor General and the Prime Minister. The birth of Prince Charles was mentioned in the Speech from the Throne.
4. The birth of children to other members of the Royal Family has been the occasion for personal messages* from the Governor General and the Prime Minister.
5. On the occasion of the official Canadian observance of the Sovereign's birthday it is customary for the Prime Minister to send a message* of loyalty.

Royal Births II—BACKGROUND

1. Parliament was in session in 1960 and 1964 when the Queen's children were born and joint addresses* moved* by the Prime Minister and seconded by the Leader of the Opposition were passed in each case.

2. Before the birth of Prince Andrew in 1960, a special committee of the Cabinet headed by the Minister of Citizenship and Immigration was formed to consider the form of a gift from the people of Canada to mark the coming birth. There was some informal consultation between the High Commissioner in London and the Queen's Private Secretary, and a cup or piece of plate was mentioned. The committee nevertheless recommended a donation of $100,000 in the name of the baby, to the Queen Elizabeth II Fund to aid in research on the diseases of children, to be announced when the Prime Minister introduced the resolution of congratulations in the House of Commons. The view was expressed to Cabinet that this might encourage others to donate to the Fund. Because the Queen had expressed the hope that the gift would be modest in order not to embarrass other Commonwealth countries, this suggestion was not approved. Instead a set of specially designed silver was made and presented by the Prime Minister when in London for a Prime Ministers' conference.

3. When the Queen's next child was born in 1964 this was considered again and it was decided not to send a present from the Canadian Government.

4. On the birth of children to other members of the Royal Family either House of Parliament can, if it wishes, pass and forward a message of congratulations. In the House of Commons, the motion for this message would be made by the Prime Minister.

5. A message* of congratulations is sent by the Governor General for each royal birth. The Prime Minister would also wish to send a message*, whether or not other Government action has been taken to mark the occasion.

6. The first Monday immediately preceding the 25th day of May has been designated by proclamation the day on which the Queen's birthday is to be officially observed in Canada. It is customary for the Prime Minister to send a message* of loyalty to mark the occasion. He may also move in the House, seconded by the Leader of the Opposition, that the Speaker convey a message* of congratulations on behalf of the House to the Sovereign.

Royal Births III—PROCEDURE

1. The Privy Council Office is responsible for developing Government action on the occasion of a royal birth.
2. Arrangements are made for a joint address* to be presented by Parliament. The Prime Minister will wish to consult the Leader of the Opposition regarding his agreement to second the motion* for the address moved by the Prime Minister in the House.
3. If a presentation is to be made the Prime Minister will assure that an informal approach is made to the Queen before a final decision is taken, to determine that the selected gift would be acceptable.
4. The Prime Minister will decide what publicity* will be given the Government action and arrange for its distribution keeping Buckingham Palace informed.
5. If the House is sitting the Prime Minister may wish to make an announcement regarding the birth. A message* of congratulations from the Prime Minister is prepared.
6. On the occasion of the official observance of the Sovereign's birthday the Prime Minister sends a message* of loyalty.

Royal Births APPENDICES

Motion made by Prime Minister for joint address of Parliament on occasion of birth of child to Sovereign

Joint address of Parliament on occasion of birth of child to Sovereign

Sovereign's reply to above joint address

Press release regarding royal birth

Message from Prime Minister to member of Royal Family regarding birth of child to latter

Message from Governor General to Sovereign regarding birth of child to latter

Message from Governor General to member of Royal Family regarding birth of child to latter

Press release regarding message from Prime Minister to Sovereign on occasion of Canada's official observance of latter's birthday

Extract from official report of debates of House of Commons regarding message from Speaker to Sovereign on occasion of latter's birthday

Visits by Sovereign I—POSITION

1. Visits by the Sovereign are made on the advice of the Prime Minister who suggests the time and the itinerary. Consultation* takes place through the Queen's Private Secretary.
2. The Prime Minister makes the announcements* about the visit, usually in the House of Commons if Parliament is in session.
3. Arrangements have been put in the hands of the Government Hospitality Committee or of some one specially designated. This official has latterly been appointed the Canadian Secretary to the Queen for the period of the tour.
4. Federal authorities retain prime responsibility for plans and arrangements and consult provincial and local authorities as necessary.
5. A partial remission of sentences is no longer granted to prisoners on the occasion of the Sovereign's visit.

Visits by Sovereign II—BACKGROUND

1. The Prime Minister takes a direct interest in the plans and arrangements, discussing them personally with the Sovereign as occasion arises.
2. A preference has been developing for shorter visits for specific occasions in a limited number of centers, instead of long cross-country tours.
3. In 1957 the Queen's short visit to Ottawa was arranged when the Queen had accepted an invitation to visit the United States. Since then the Queen has visited Canada without going to the United States. Given the frequency of royal visits to Canada it is no longer necessary to consider including both countries in each trip.
4. The Sovereign visited Canada in 1939, 1957, 1959, 1964 and 1967* and has participated in parliamentary occasions and has held Councils while here.
5. A partial remission of sentences was granted to prisoners on the occasion of the first three visits of the Sovereign to Canada. However the practice was discontinued for the 1964 and 1967 visits as sentences are now reviewed by the Parole Board.
6. It is customary for the Prime Minister to send a message* of good wishes to the Sovereign on the occasion of an overflight of Canada or of a refuelling stop in Canada. In the latter case Government House will decide whether the Governor General or the Lieutenant-Governor of the province where the stop is made will be present.

Visits by Sovereign III—PROCEDURE

1. Because of the political significance of a visit by the Sovereign the Prime Minister will, from the outset, be directly concerned with the arrangements. He will make the initial proposal to the Sovereign after the Government has decided that a visit would be desirable.
2. When the invitation has been accepted in principle, the Prime Minister will instruct the Government Hospitality Committee or whomever is to be in charge to prepare a suggested programme* which the Prime Minister will clear with the Queen.
3. The Prime Minister will decide when the visit is to be announced* after obtaining the Queen's agreement.
4. The Prime Minister will be represented on any committee planning the Sovereign's visit and all arrangements are subject to his specific approval. Proposed engagements will only be suggested to the Queen after they have been approved by the Prime Minister who will himself normally recommend the arrangements to the Sovereign.
5. In exercising his general responsibility for all arrangements, the Prime Minister will be particularly concerned in deciding the main functions to be included in the programme*, in preparing or approving the content of official declarations to be made to or by the Sovereign, and in selecting the ministers who will in turn be in attendance on the Queen.
6. The Prime Minister will keep the Governor General fully informed.

Visits by Sovereign APPENDICES

Visits by Other Members of Royal Family

1. Proposals to invite members of the Royal Family to visit Canada whether officially or privately must be approved by the Government. The invitation* will be issued by the Prime Minister and transmitted by the Governor General. There is however no enunciated policy regarding which members of the Royal Family are to be recognized as having an official relationship to Canada.

2. The Government assumes full administrative and financial responsibility for an official visit but a separate decision must be taken on these points for every other type of visit.

3. If the Government agrees to a visit the Sovereign's approval* is obtained through the Governor General who then transmits the Prime Minister's formal invitation. The Prime Minister makes an announcement* if he thinks it desirable.

4. The Government Hospitality Committee would normally be responsible for arrangements for the official part of the visit and for approving any private arrangements. This would include determining the Government's financial responsibility and obtaining the Prime Minister's approval of all arrangements.

5. Visits to Canada by members of the Royal Family to fulfil United Kingdom commitments and strictly private visits should also be cleared with the Government. The Government would have to decide in each case what official notice to take of the visit by way of representation at the arrival in Canada, an invitation to visit Ottawa or otherwise.

Visits by Other Members of Royal Family II—BACKGROUND

1. The Government decides whether a member of the Royal Family will be invited to make an official visit to Canada.
2. Any proposal, other than for an official visit initiated by the Government, whether by a provincial or municipal Government, a military or civilian organization, or private individuals, to invite a member of the Royal Family to Canada should be examined by the Government Hospitality Committee which will recommend to the Prime Minister whether the visit should be authorized. Authorization will also include an indication of the extent of the Government's financial and administrative responsibility.
3. In the absence of an enunciated policy the Government will have to decide the extent to which the intended visitor is to be regarded as having an official relationship with Canada as a member of the Royal Family. The only approved indicator is now found in the flag instructions where recognition of the Royal Family is limited to those related in the first degree to the Sovereign. Others farther removed from the Sovereign have however been recognized as members of the Royal Family on visits to Canada.
4. In 1937 Buckingham Palace issued instructions that the Sovereign's approval should be obtained before an invitation is issued to a member of the Royal Family. This would be done by the Prime Minister through the Governor General.

Visits by Other Members of Royal Family III—PROCEDURE

1. The Prime Minister may wish to discuss with Cabinet any proposal to invite a member of the Royal Family to visit Canada, either officially or privately, with particular reference to the extent of the Government's financial and administrative responsibility.
2. If the visit is approved the Prime Minister asks* the Governor General to obtain the Sovereign's agreement. The Prime Minister then issues a formal invitation* which is transmitted by the Governor General.
3. The Prime Minister decides what publicity* should be given to the visit.
4. The Prime Minister is kept informed of the arrangements* which are developed and which are all subject to his approval.

Visits by Other Members of Royal Family

APPENDICES

Communication with Sovereign I—POSITION

1. The Government has direct access to the Sovereign as Head of State.
2. The Prime Minister may send communications* directly to the Queen through her Private Secretary or may ask the Governor General to transmit them.
3. Official communications should normally be channelled through Government House, including submissions* put forward by individual ministers.
4. If direct consultation with Her Majesty is necessary this may be undertaken by the Prime Minister or a member of the Government designated by him. If this is not convenient, or if the matter does not warrant ministerial participation, it may be handled by the High Commissioner in London or by his staff with the Queen's secretariat.
5. The Government does not intervene in the transmission of private communications to the Sovereign unless it is a matter in which the Government is involved as advisor or sponsor.

Communication with Sovereign II—BACKGROUND

1. Constitutional evolution has reached the stage where the direct relationship of the Sovereign to the Canadian Government on matters in which she is involved is completely recognized in practice as well as in theory.
2. The Governor General as the Queen's personal representative in Canada is the normal channel for official communications* with Her Majesty.
3. The United Kingdom High Commissioner who was at times in the past used for transmitting communications on royal matters is no longer normally involved.
4. The Prime Minister has both the right and the duty to communicate with the Sovereign on matters on which Her Majesty should have information or advice from the Government.
5. The Governor General discharges the general responsibility of keeping the Sovereign directly informed on a continuing basis about Canadian affairs.
6. The Queen's Private Secretary, although a United Kingdom appointee, acts on Canadian matters without reference to United Kingdom authorities.

Communication with Sovereign APPENDICES

VISITS OF FOREIGN DIGNITARIES

VISITS OF FOREIGN DIGNITARIES

Visits of Foreign Dignitaries I—POSITION

1. Arrangements for visits by foreign dignitaries and officials vary according to the status of the visitor and the character of the visit.

2. Heads of State may make State, official, unofficial or private visits. Heads of Government, ministers and people in official positions in national or international organizations may make visits in the three latter categories.

3. State visits call for maximum ceremonial accorded a Head of State and a programme* of formal engagements. Official visits include ceremonial giving public recognition to the status of the visitor but formalities in programme* and in individual events may be reduced. In unofficial visits public ceremonial is reduced to the minimum but the host is still largely responsible for the arrangements. In private visits there is no ceremonial and formalities are reduced to the minimum. The arrangements for private visits are essentially the responsibility of the visitor who should, however, assure himself that his plans are agreeable to the host Government whose obligations are limited to providing customary courtesies and such additional facilities as they may wish to offer.

4. The Government takes responsibility for arranging State visits and official visits of Heads of State and Heads of Government. This includes authorizing or issuing the invitation*. For a Head of State the invitation is from the Governor General; for a Head of Government it is from the Prime Minister. Visits by ministers, representatives of international organizations or other dignitaries are the responsibility of the minister concerned who will obtain the approval of the Prime Minister or the Government as necessary before the invitation is issued.

5. The Government Hospitality Committee is normally made responsible for State visits and official visits of Heads of State and Heads of Government and for Government participation in unofficial and private visits of Heads of State and Heads of Government.

6. The Prime Minister must be kept fully informed of arrangements being made for State visits and official or unofficial visits of Heads of State or Heads of Government and must approve the programme* before it becomes final. He should also be kept informed of plans for visits in other categories; it is the responsibility of the minister concerned to assure that all projected visits have the Prime Minister's approval to the extent that he would be involved or interested.

7. A Head of State or Head of Government who might cross Canadian territory en route elsewhere would normally advise the Canadian Government, and, if a stop in transit is contemplated, ask permission and assistance. In keeping with international tradition a message of greeting might be sent to the Governor General or the Prime Minister on entering Canadian territory. An immediate reply should be sent.

Visits of Foreign Dignitaries II—BACKGROUND

1. Canadian experience has not been sufficiently long to develop a firm ceremonial pattern which would indicate the distinction in formalities between a State and an official visit. It is recognized however that a State visit provides the maximum of ceremonial whereas an official visit is intended to be somewhat more modest in its formal arrangements.

2. The distinction between an official and an unofficial visit is also largely a matter of ceremonial which is virtually eliminated from an unofficial visit.

3. The visits in these three first categories are usually initiated by the host country who invites the guest and takes administrative and financial responsibility for the programme which will be developed on the host's initiative in consultation with the guest.

4. Private visits are usually arranged on the visitor's initiative. International practice recognizes that a Head of State, Head of Government or minister should at least inform the authorities of his intention to visit their country. In the first and second categories it is customary to seek assurance that the private visit would be welcomed. The host country would normally make administrative arrangements to facilitate the visit but these would vary according to the circumstances.

5. Visits of ministers and other dignitaries while being the responsibility of the interested minister could well be of concern to the Prime Minister because of political considerations. The minister should be aware of this and assure that the visit itself and all arrangements which would be of concern to the Prime Minister are submitted for his approval.

6. The content of programmes* will vary considerably but the Prime Minister will be particularly concerned about the arrangements which should be made for consultations with the visitor. Some have been invited to meet Cabinet, and occasionally in the past, to address Parliament*.

7. The traditional practice of exchanging messages* when a Head of State or Head of Government crosses Canadian territory is now frequently observed in overflights, even non-stop. When a service stop is made the extent of Government representation and involvement will depend on all the circumstances.

Visits of Foreign Dignitaries III—PROCEDURE

1. The Prime Minister approves the visit of a Head of State after having consulted the Governor General and if he considers it desirable, the Cabinet.

2. For a State, official or unofficial visit of a Head of State the invitation is issued by the Governor General. The announcement* is made by Government House. The Prime Minister may also wish to issue a public comment. For a private visit proposed by a Head of State the Prime Minister must be consulted before approval is given through Government House or diplomatic channels.

3. The Prime Minister will be represented on the Government Hospitality Committee to assure that all details of the arrangements* for the visit are brought to his attention for approval. In the case of private visits the extent of the Government's administrative and financial responsibility will have to be approved by the Prime Minister.

4. Before inviting a Head of Government to visit Canada the Prime Minister would normally inform the Governor General and Cabinet.

5. The invitation* and the announcement* will be issued by the Prime Minister.

6. If a Head of Government proposes a private visit to Canada, the Prime Minister's approval should be obtained. This would normally be sought and conveyed through diplomatic channels.

7. All arrangements* for the visit of a Head of Government must be cleared with the Prime Minister. For a private visit the Prime Minister will approve the extent of the Government's administrative and financial responsibility and specifically any official contacts which may be proposed for the visitor.

8. The minister concerned will be responsible for obtaining the Prime Minister's approval for an official or an unofficial visit by a minister or by other dignitaries whose presence in Canada would be of interest to the Government. The minister concerned will also be responsible for obtaining the Prime Minister's approval, as necessary, of the programme*, in particular any events in which it is proposed that the Prime Minister should be involved.

9. The Canadian Government should be informed of the private visits to Canada planned by ministers of foreign Governments. This would normally be done through diplomatic channels. It would be for the minister concerned to propose the extent to which Canadian authorities should become involved.

10. When there is notice that a Head of State or Head of Government will cross Canadian territory preparations should be made to reply to a possible message from the transient. If a service stop is to be made the Prime Minister must approve the proposed Canadian involvement in the arrangements, in particular the level of Government representation to greet the transient.

VISITS OF FOREIGN DIGNITARIES

Visits of Foreign Dignitaries IV—CEREMONIAL

1. Ceremonial arrangements* must be worked out in detail for each visit and cleared with the Governor General and Prime Minister as necessary.

Visits of Foreign Dignitaries APPENDICES

Letter from Governor General to Head of State regarding State visit to Canada by latter

Government House announcement regarding State visit

Invitation for official visit from Prime Minister to Head of Government

Press release regarding above visit

Programme for Head of State State visit

Programme for Head of Government official visit

Programme for official visit by minister

Address of welcome by Prime Minister on arrival of foreign dignitary

Address to Parliament by foreign dignitary

Distinguished visitors to Canada who have addressed Parliament since 1941

Message from Prime Minister to foreign dignitary overflying Canada