

Insulating from the Inevitable: The Butler-Pitfield Principles
Independence in Canadian Honours

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2018 Honours & Heraldry Symposium

Lester B. Pearson Building
O T T A W A

31 May 2018

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Thank you for that very kind introduction and for the privilege of speaking at this conference. It is also a privilege to be amongst so many colleagues and friends.

I will have to start off with the usual disclaimer – I am not here representing the views of my Lieutenant Governor, the Government of Nova Scotia or as an advisor to the Government of Canada – I am here as an independent scholar and policy wonk. This sort of grey status allows me a bit more latitude to comment on some of the nuances, realities and challenges that the Canadian honours system – writ large – is facing.

I have been studying and writing about honours for more than twenty years now, and would like to think that my views have matured and tempered over that period. From a rather bombastic presentation which I made at the Commonwealth honours conference held at Government House Regina in 2006, and working on the 2004 UK honours review, to undertaking for the Privy Council Office, the most comprehensive review, to date, of the Canadian honours system in 2011 -- my own understanding of the honours system, how it has come to develop and function, has evolved.

That being said, I have a greater respect for the pivotal role that honours administrators play in the operation of the honours system. I know from direct experience the difficult decisions and positions you can be placed in by those in authority over you. I also realize that for many jurisdictions there is a paucity of resources to support your mandate and to meet the expectations that are attached to recognising worthy citizens at the highest level of achievement. If I seem critical, it is most often on account of the invidious position that administrators and Advisory Councils can be placed in due to inherent weaknesses that have been built into certain aspects of our honours system. Naturally, I am speaking not about the structure of honours in Canada, but the level of independence accorded to the operation of national and provincial honours.

OPENING COVER SLIDE STILL

Many of you are likely asking why I have titled this presentation on the Independence of Canadian honours “Insulating from the Inevitable; The Butler-Pitfield Principles” This is because of the overwhelmingly important role that the independence of the honours system from executive interference has, upon ensuring the continued legitimacy and positive public perception of all official honours which are conferred by the various parts of the divisible Crown in this country.

It is inevitable that from time to time executive actors, be it a Governor General, Prime Minister, Lieutenant Governor, or Premier will try to exercise influence over different honours – in this case I am speaking specifically of the Order of Canada and various provincial Orders. Great effort and thought has gone into refining the way in which the Order of Canada functions to insulate the Order and its Advisory Council from this sort of inevitability, and much of this was mapped out and defined by two eminent Canadian public servants Esmond Butler and Michael Pitfield.

The Order of Canada and broader Canadian honours system derives its legitimacy and acceptance from a trio of factors -- well beyond simply being an institution established by the Government of Canada – these three factors are; 1) honours as emanating from the source of legal authority, which is the Crown, 2) the development of honours lists as being drafted independent from the ministry/government of the day by an arms-length advisory council that reviews grass roots nominations, and lastly 3) the high-calibre of those recognized by the honours conferred.

Where the independence of the honours system is of particularly crucial importance is to preserving the integrity of the Order of Canada and also in terms of the continuing development of the provincial Orders. The provincial honours are after all imperfect replicas of the Order of Canada, and in their early days, drew heavily upon the symbolic capital and legitimacy of the national honours system to legitimate a now well established provincial role and presence in the overall Canadian honours system.

There is a fundamental weakness in the way in which the Provincial Honours systems are structured and insulated – this is not the fault of the honours administrators, but rather the way legislation is worded and Advisory Councils structured,

I say imperfect for the simple reason that there is significant latitude and equally significant evidence to show that over the past twenty five years executive actors – be it Premiers

or Lieutenant Governors – have meddled in the process surrounding selections and other details – thereby violating the independence that is necessary to preserve the impartiality and appearance of non-partisan selections.

We have had Premier's restructure advisory councils in a fit of partisan pique, we have had Premiers announce THEY are conferring a provincial honour without it being approved, we have had Premier's refuse to allow their provincial Order to be conferred upon a recipient in their home province so that the recipient in question had to be invested overseas. We also have Premier's taking an active role in investiture ceremonies which in at least four jurisdictions the Head of Government feels is THEIR ceremony to preside over. Only in Quebec is this the legal reality. On the vice-regal end of things there has been a pervasive reluctance to resist the encroachments outlined above – and Lieutenant Governors have also been occasionally prone to attempting to expedite or delay appointments or have attempted to advance personally selected nominees, lobbied to have their spouses recognized etcetera.

ORIGINS OF THE PRESENT SYSTEM SLIDE ONE

Last year we marked fifty years of success of the Order of Canada and the national honours system – in Canada we have truly developed a culture of honours – this after fifty years as one of the only countries in the world that lacked civilian honours. The fact that Canada went so long with the proverbial tap to the “font of honours” for civilians, firmly rusted shut, is something that we should not lose sight of. One-century and one week ago today, the Crown-in-Right of Canada effectively ceased conferring honours upon civilians. This after an 18 month debate in Parliament, by the general public and in the press – a debate characterized by misunderstanding and misinformation. Nevertheless a necessary debate that helped place Canada at the forefront of greater autonomy within the Commonwealth, the development of Canadianized institutions and symbols and a concept of honours that has come to be focussed on exemplary citizenship and not partisan connection.

In 1934 we had the creation of the first honour by the Crown-in-Right of Canada, the RCMP Long Service Medal, which was in essence the first “Canadian” honour. Established by King George V on the advice of the Canadian Prime Minister R.B. Bennett, it would be the first

honour established in the post-*Statute of Westminster* period, and the first exercise of the divisible Crown's ability to establish honours in various Commonwealth Realms.

This would be followed by the creation of the Canadian Forces' Decoration which was the first honour created following the adoption of the *Letters Patent Constituting the Office of the Governor General, 1947* – about which I have written extensively. The Letters Patent, which essentially constitute the present day Office of the Governor General, outline the authorities and ability of the Governor General to exercise many of the functions of the Sovereign – but it was not a wholesale transfer of authority to the Governor General and the Sovereign has retained the sole authority for being consulted and approving the creation of new national honours. There remains a difference between the office an role discharged by the Sovereign and that discharged by the Governor General and this is also true of honours.

ORIGINS CON'T SLIDE 2

The development of the Advisory Council of the Order of Canada was first proposed by the future Governor General, Vincent Massey as part of the *Report of the Royal Commission on the National Development of the Arts, Letters and Sciences* in 1951. Massey recommended the establishment of a non-titular Canadian order of chivalry, appointments to which were to be made by The King on the advice of a non-partisan, arm's length committee. Massey's proposal would be excised from the report before it was tabled in Parliament, nevertheless he would spend the next fifteen years persistently lobbying for the creation of what would eventually become the Order of Canada.

Massey who played a pivotal part in the establishment of the Order of Canada had lived through the Nickle debates and was keenly aware of Canadian suspicion surrounding honours. He was aware that for Canadians to accept an honours system it had to be made independent from the ministry and only used to recognize the most exemplary citizens, regardless of region, field of contribution, background or gender. The days of recognizing only rich white Liberal and Tory Businessmen, Bureaucrats and judges had to pass into history if honours were to take root in Canada.

We owe much of our modern concept of honours and recognition to the brief revival of civil honours in Canada from 1932-1935. During this period Prime Minister R.B. Bennett

retooled the conferral of British honours upon Canadians. No longer was the honours list coloured by partisan considerations, indeed Bennett went out of his way to recognize those involved in Depression era relief projects, those involved in the arts, culture, science and municipal affairs. Forty eight percent of all honours conferred upon civilians in this period were bestowed upon women, and a number of honours were conferred upon Inuit and Indigenous Canadians – something which aside from Indian Chief Medals and honours for war service -- had not previously been done. While public and press reaction was largely muted, there was no great outcry against the new approach to honours or seeing people like Lucy Maude Montgomery, Sir Frederick Banting, Sir Edmund Wyley Greer or even the young diplomat Lester B. Pearson recognized. Nevertheless Bennett's unceremonious voting out of office and the return of William Lyon Mackenzie King to office saw the flow of honours halted abruptly once again.

The Second World War saw a return of civilian honours in 1943 and again in 1946, however these returned to a more partisan pattern and with the war won, Mackenzie King once again decreed there would be no more honours – other than the Order of Merit he would receive in 1947, and four senior foreign orders which he received in 1948, making him the most honoured Canadian Prime Minister to date— what was good for the goose was not good for the gander.

We know a bit about public expectations surrounding honours over the past sixty years. From the proceedings of the Massey Commission, and national polling undertaken in the period mainly in relation to flags, we know that a broad cross section of Canadian society was curious about honours and wanted to see recognition accorded to worthy citizens. Various ethnic societies, veterans organizations, academic and artistic associations regularly wrote to all manner of officials seeking news of when the Canada Medal, which had been established in 1943 yet never awarded, would be conferred, while others called outright for the establishment of a full Canadian honours system.

As one would expect the lead up to the Centennial celebrations in 1967 saw a spike in interest in honours and a number of major Canadian dailies carried editorials calling for the creation of some sort of national medal to recognize citizens. There was widespread recognition that Canada had a proverbial honours vacuum. By 2012 when Ipsos undertook its survey “The

New Canada and its Regal Relevance” it was found that 68% of Canadians found the conferral of awards to recognize special achievement to be important or highly important

FOUNDING PRINCIPLES SLIDE 3

When the Order of Canada was established in 1967 four key founding principles were outlined by then Prime Minister Pearson.

The first was an acknowledgement of the pre-existing prerogative of the Crown in relation to honours. That is the ministry would remain the formal source of advice for the creation of honours and honours policy, including matters related to foreign honours and wearing of honours, and that the Sovereign would remain the font of all honours – that is The Queen’s approval and consent had to be obtained in order to create a new honour and all official national honours would be conferred in the name of and on behalf of The Queen of Canada.

The four principles appended to the font of all honours were as follows:

- Nominations for the Order of Canada would come from the grass roots/general public;
- While the development of honours policy remained within the purview of the Ministry, under the direction of the Prime Minister, the nomination and selection process would be conducted independent of the ministry and honours lists – that is the Advisory Council would take the place of the Ministry in tendering formal advice to the Governor;
- The Advisory Council of the Order of Canada would serve as the sole source for drawing up the honours list, with recommendations being submitted to the Governor General for approval and then the Queen’s approbation;
- A small secretariat would serve as the bureaucratic arm for administering the nuts and bolts of the honours system – this role would become refined over the first 5 years of the Orders operation and result in the establishment of the Chancery of Canadian honours and by 1972 would be located within the Office of the Secretary to the Governor General and not a federal department – therefore the independence of the administration was made more distant from the government of the day.

BUTLER & PITFIELD SLIDE 4

While it may have been Vincent Massey and Lester Pearson who ensured the establishment of the Order of Canada it was Esmond Butler and Michael Pitfield who would oversee Order's first fifteen years of operation – that very delicate period when success was by no means guaranteed. Butler had served in the RCNVR during the Second World War and eventually came to Rideau Hall as Vincent Massey's Press Secretary, the first Press Secretary to a Canadian Governor General. Following the 1957 Royal Tour he was seconded to Buckingham Palace as the Assistant Press Secretary to The Queen, where he would remain until 1959 when he was appointed Secretary to the Governor General. From 1959-1985 he served in this role and from 1967-1985 he was Secretary General of the Order of Canada. Butler along with his No. 2, Carl Lochnan helped officials in Australia set up the Order of Australia and Australian Braver Decorations in 1975.

Michael Pitfield was born into a wealthy Montreal family would spend a brief period of time at West Point and then move on to a short career in the RCN, from there he moved to the Privy Council Office as the Governor General's Attache – a person serving as liaison between the Governor General and the Privy Council Office and the Department of External Affairs. He would then become a senior advisor in the Privy Council Office, rising to the role of Clerk of the Privy Council from 1975 to 1982, aside from a brief period, and in 1982 he was appointed to the Senate of Canada where he would serve until 2010.

BUTLER PITFIELD PRINCIPLES SLIDE 5

For those of you interested in a more refined discussion of the nuances of the Butler-Pitfield Principles, you can find them on pages 194-202 of *The Order of Canada; Genesis of an Honours System*, which was released by University of Toronto Press last month.

As previously covered, a key aspect of how the Order of Canada operates, and to a degree how the provincial Orders function, is that the Ministry in each jurisdiction – has agreed to give up its authority over drawing up on honours lists, and placed it into the hands of an Advisory Council which is intended to operate independent of the government of the day.

From the time of Sir Robert Walpole in Britain (in office from 1721-42), the Sovereign's control over the flow of honours, including precisely just who was being recognized, was gradually transferred from the person of the monarch to that of the head of government.

In the years following the establishment of the Order of Canada precedents continued to be made as the institution continued to evolve. During the first decade of the Order's operation it was a transitional period when the Governor General, Advisory Council and what would become the Chancellery, were each clarifying their roles and relationships with one another.

Three transitional principles were adopted in this period (1967-1974);

- 1) the GG's right to call worthy candidates to the attention of the Advisory Council;
- 2) the GG's right to alter decisions of the Advisory Council in extraordinary instances (moving people from one level to another)
- 3) the Order's non-partisan nature and insulation from political interference.

The first Chancellor of the Order, the Rt. Hon. Roland Michener was closely associated with the development of the Order during his formative service as the Order's first Chancellor. His successor, the Rt. Hon. Jules Leger, who had worked in the honours field as Under-Secretary of State and as an early member of the Advisory Council prior to his appointment as GG, opted to take a more circumspect approach. While he promoted the non-partisan nature of the Order of Canada and Canadian honours, he never involved himself in the decisions of the Advisory Council. He found such an involvement to be inappropriate and unnecessary.

By 1982 the provisional principles had been thoroughly refined and came to more closely resemble Walter Bagehot's famous principles of constitutional monarchy; the Sovereign's right to be consulted, to encourage and to warn.

We should never lose sight of the fact that, within our system of democratic government, the Head of Government and Cabinet serve as the sole legitimate source of binding advice to the Queen, Governor General or a Lieutenant Governor – nevertheless the Crown is free to seek views and informal advice from other quarters – however this outside advice is not binding. This mechanism for selecting honours recipients in Canada is one of the rare instances where Cabinet has in effect relinquished an element of the Royal Prerogative that it had previously attained and exercised, and given it to an external body.

In place of the democratic principle that proverbially nourishes the relationship between the Governor General and the Advisory Council is the mutual goal of ensuring that worthy citizens are recognized. The creation of the Advisory Council as a mechanism to provide recommendations to the Crown recognizes the necessity of finding a non-partisan manner to administer honours nominations. This new method at once placed the decision at arm's length

from the ministry, while militating against the difficulty of personally endowing a Governor General, or the Office of the Secretary to the GG, with the responsibility of personally vetting and choosing recipients of honours. The Governor General's custodial duties in relation to the Crown's prerogative to grant honours, required that not all the decision making authority be transferred to the Advisory Council – it is after all the Advisory Council not the Decision Council.

In 1982, shortly after The Queen patriated the Canadian Constitution, the Advisory Council of the Order of Canada met and the resulting decisions would be as significant for the administration of honours in Canada as the new Canadian Constitution was for the country.

The Advisory Council recommended to the Governor General, Ed Schreyer an honours list that came near to filling the maximum membership for the Companion level of the Order. To the list given to the Governor General, Chancellery staff appended marginal comments on a number of the proposed appointments. This was the first time such comments had been provided.

Herein lay a problem; the administrative branch of the honours system was treading into the decision-making role of the Advisory Council. Upon reflection Schreyer took pen to paper and directed that the Advisory Council make a host of changes – various people were moved from Officer to Companion or their appointments delayed, and the appointment of another Officer was delayed and Schreyer also wanted one individual elevated from Member to Companion! A Governor General had not done this since pre-Confederation times, in a long past era when honours were controlled by the Colonial Office, which was in essence the GG's boss.

The ensuing correspondence between the Secretary General of the Order, Esmond Butler and the Clerk of the Privy Council, Michael Pitfield resulted in the development of what we call the Butler-Pitfield principles and they have application to all Canadian orders and any official honour that involves an Advisory Council.

One of the key aspects of the Butler-Pitfield principles are the reasons surrounding why it is inappropriate for a Governor General to make nominations. As Chancellor of the Order of the Governor General is responsible for overseeing the Order's integrity and well-being, and he or she is fully entitled to refer back to the Advisory Council for reconsideration of a decision, however to formally initiate a nomination to the Order would place undue pressure on the Advisory Council, for similar reasons the Governor General should not preside over a meeting of the Advisory Council which will discuss or decide the substantive business of the Order. It

would in essence constitute a abuse of the Governor General's position as the custodian of the honours system for him or her to become directly involved in the deliberations – and the mere presence of the ersatz font of all honours would certainly influence the important discussions and deliberations that need to take place.

The Chancellery cannot have a role as intermediation between the Advisory Council and the Governor General as Chancellor. Such a role would place an unfair burden on the Chancellery and place both the Chancellor and the Council in an invidious position; there would inevitably be a danger that the Chancellery would import into its report, an advisory function that the Governor General does not properly have, consequently that the Chancellery's credibility with the Advisory Council it serves would be destroyed.

Involvement of the Governor General would normally arise only in cases where corruption, malfeasance, divergence from the norms of the Councils decision making capacity or scope of responsibility, or on matters of great policy change.

BUTLER-PITFIELD PRINCIPLES CON'T SLIDE 6

The Governor General has the right to seek further clarification from the Advisory Council, his or her ability to ask the Council to re-examine a recommendation, and right, in extraordinary circumstances, to alter the decision of the Council

The role of the Chancellery as a facilitator in the nomination process, not an intermediary or crucial assessor for the Governor General – that is the role of the Advisory Council

The inability of the Governor General to make a nomination to the Order or to preside over the deliberations of the Council

The Right of the Secretary General of the Order to brief the Governor General on the proceedings of the Council and the highly advisable meeting between the Governor General and chair of the Council for the submission of the nominations list.

THE VICE-REGAL ROLE SLIDE 7

The Vice-Regal Role is an import one especially in relation to the conferral of honours as the Crown is the font of official honours.

The Vice-Regals who serve as Chancellors of various Orders are not simply signing machines. They have a right to ask questions of their Advisory Council and to caution against

certain appointments or to advise of their joy or discomfort with certain appointments, but their role is not to interfere with the Advisory Council's recommendations. As with The Queen, there are extraordinary circumstances that can be contrived whereby a Vice-Regal would be entirely right to refuse to approve an honours list. There are implausible but not impossible in a highly bizarre set of circumstances – say the Advisory Council of a Provincial Order proposed to confer an honour upon a sitting Premier or Prime Minister, or less plausible, someone like Vladimir Putin or Robert Mugabe. Those instances would warrant a refusal to approbate an honours list.

As the symbolic and ceremonial role played by the Governor General and Lieutenant Governors is an important one. It is the vice-regal role as a convenor of diverse people and the Crown's function of recognizing excellence that makes up a significant part of the vice-regal role as it has developed in Canada over the past fifty years. This is a direct emulation of the role discharged by the Head of state.

That being said, as the symbolic and ceremonial face of the various Orders, it is of great importance that vice-regals wear their insignia correctly and set a sterling example for the general public.

With Bagehot in mind, it is clear that the vice-regal role does not extend to becoming involved in the creation of honours policy. Honours policy is firmly within the purview of the Government of the Day and it is inappropriate for a Governor General or a Lieutenant Governor to become directly involved in the formulation of policy. It is a fundamental aspect of the system of democratic government that has functioned with aplomb in Canada since 1848, that the responsible minister makes policy, not the Governor. Armed with Bagehot and the weight of our Constitutional custom and history I must address the proverbial elephant in the room.

Unfortunately, and my heart honestly bleeds for those who administer our national honours system at this moment, we have a Governor General at present, who has seen fit at this very conference, in front of a host of distinguished experts from around the globe, to violate a non-statutory instrument, namely Order-in-Council 1998-591 by wearing a variety of unauthorized and un-recognized medals from NASA, a US Government Department – medals that do not conform to any element of Canadian honours policy of the last 50 years. This is not acceptable, and it has the effect of delegitimizing so much of what honours administrators strive to do. It makes exceedingly difficult for us to regulate the wear of unofficial and unrecognized medals when The Queen's representative in Canada, is violating the most

important regulation related to the wear of orders, decorations and medals. You cannot reverse engineer honours policy, not even the wearing rules, starting at the point of breaking the rules. I find it extraordinary that this conference was the stage for this little tragedy and it vividly highlights the importance of executive actors, be it heads of Government or representatives of the Crown understanding and respecting their defined roles and responsibilities.

WHY THIS MATTERS SLIDE 8

So why does ensuring the independence of the honours system matter?

- it is part of the compact agreed to when the Order of Canada and CHS was established
- these principles insulate the Crown from criticism to a significant degree;
- they are intended to prevent the conversation of the honours system into something driven by the personal interests of a particular office holder – Quite simply, the role is to recognize exemplary citizens, not to hand neck badges out to friends or favour a particular interest or sector of a Governor General, Lieutenant Governor, Prime Minister or Premier;
- The independence afforded by an arm's length and independent Advisory Council helps to ensure the integrity of the honours system by keeping it out of the hands of the Ministry – we know from past experience that Canadians do not trust their politicians to hand out high honours, this is why we endured fifty years with no civilian honours;
- All participants in the honours system have a responsibility to respect the unique process that had developed in and which is essential to the continued success and symbolic capital (aka legitimacy and prestige) associated with the Order of Canada and the broader system. If you debase the currency of the system you not only call the whole thing into question, you risk calling many of the thousands of previous recipients achievements into question – or you end up with a situation whereby those people appointed after a certain date are viewed as lesser to those previously appointed. Both of these things have occurred in jurisdictions outside Canada.

CHALLENGES SLIDE 9

Earlier in my presentation I outlined some of the challenges faced by the overall honours system in Canada so I will not revisit all of those here, as they are also referenced on the slide.

One of the greatest challenges faced by honours administrators and vice-regal staff can be the sense of ownership that a vice-regal of Head of Government may feel in relation to honours, the concept of “this is my award to hand out” being the most prevalent. There is often a profound lack of understanding about the necessity for the ministry NOT to attempt to influence the decisions of an Advisory Council in what is supposed to be an arms length and independent process. Also there are jurisdictions where partisan considerations are made in appointing people to Advisory Councils and this is exceedingly problematic.

Vice-Regals may also feel a sense of ownership and want to amend lists and become directly involved in the selection process as Chancellor of the various Orders – as we have seen this is also NOT appropriate or in harmony with the manner in which the various Orders are supposed to function.

There is also the issue of buttons, ribbons and bows, but one which is nonetheless important to consider as it strikes not at the independence of the broader honours system, but its symbolic capital and legitimacy of the Canadian honours system. There is an open challenge to the structure of the Canadian Honours system and the foundational concept that the Crown is the font of all honours. This challenge is paradoxically being posed by all manner of members of a variety of protective services in many parts of this country who are wearing more than thirty-five unauthorized medals with at best constitute a form of dual recognition – and at worst reduce the conferral of honours to a contest for more ribbons and fruit salad on the chest to give off the appearance of achievement and hero status.

The next concern I have is more prescient and imminent than municipalities, peace officers, fire services and police officers who fancy themselves a font of honours equivalent to the Crown-in-Right of Canada. Many of these jurisdictions have opted to create awards that look and feel like regular honours.

Thankfully most of the provincial systems have or are in the process of developing a more robust “due process” based model for the termination of members who have committed some act that brings discredit to a particular provincial order. In this respect the processes used by the Order of Canada and the Order of Australia are the best practice examples for Canadian jurisdictions.

It is inevitable that within the next few years a member of a provincial order will be found to have done something repugnant in the eyes of the general public – be it misconduct of a

sexual, professional or financial nature. We need to be ready for this inevitable development as “everything is connected to everything else” when it comes to honours regardless of the divisible Crown and separate nature of each provincial system from the federal system. The risk is that all honours be it the Order of Canada, Order of PEI, Order of BC etc, will be painted with the same brush and brought into question. There will be questions in Parliament in the provincial legislatures and reporting in the press will almost certainly not reflect the nuances of the multilayered nature of our overall system.

These are the worst case scenarios of course and what I am here today to talk about is the importance of the independence of the Order of Canada, the lessons we might learn from the OC and use as best practices to better secure all elements of the Canadian honours system.

QUESTIONS **SLIDE 10**

I would be happy to take any questions at this point