



Memo

To: The Right Honourable Justin Trudeau, Prime Minister of Canada

From: Prepared for Citizens for a Canadian Republic by Arjun Hari and Alex Hoare

Subject: Recommendation to create a formalized and publicly accessible document that outlines in detail and makes transparent both the eligibility criteria for and the process of selection of the Governor General of Canada.

Date: 17 December 2021

Executive Summary

On January 21, 2021, Governor General of Canada Julie Payette resigned from her position following an external workplace inquiry. Several confidential allegations of workplace bullying and harassment—including “belittling, berating and publicly humiliating”—had been brought against Payette by employees within the Governor General’s office at Rideau Hall in Ottawa (Burke and Everson, 2021). The review (conducted by an independent consulting firm and presented to the federal government in mid-January 2021) deemed Payette unfit to continue in her role without risking serious damage to her position as Governor General. The inquiry and resignation notwithstanding, it is apparent that Payette will continue to receive compensation that includes an entitlement to benefits of up to \$150,000 annually. Therefore, while public pressure may have forced Payette to step down from her position, we believe that justice was not served.

Within our organization, Citizens for a Canadian Republic, we have long considered the Governor General’s position to be a relic of our colonial past and to have outlived any of its former value. Moreover, as is confirmed by Payette’s recent resignation and the negligence and inadequacies of her successor, Mary Simon (who made light of the discovery of residential school burial sites and has been brought to task over her linguistic shortcomings), we believe that the role’s prolonged lack of accountability and transparency can and will lead to future problems. While our organization recognizes that there is not yet sufficient public support or government incentive for the outright elimination of the position (despite our many years of lobbying for its overhaul), the fallout generated by Payette’s unprecedented resignation has brought to light shortcomings in the procedure of the Governor General’s appointment that are too urgent to ignore.

This has prompted us to submit to you an action plan that, at minimum, aims to prevent any future such actions from causing further harm to Canada’s parliamentary system and damage to the public it serves. Upon our appraisal of the situation, and after significant research into the nature of the role itself, rather than overwhelm the present system we would like to propose two specific amendments to the selection process: firstly, to define with greater specificity the eligibility criteria and process of candidate selection that inform the appointment of the Governor General; and secondly, to increase the transparency with which this selection process is conducted, incorporating into this process a greater degree of public involvement.

Introduction: Background and Problem

Background

The circumstances surrounding Payette's resignation point to the historically fragile and highly mutable nature of the process of selection that has underpinned the Governor General's appointment since 1867. Currently appointed by the Crown on the advice of the Prime Minister (whose suggestion, in turn, is informed by an advisory committee), in the early phase of Canada's history the process of selection was itself controlled entirely by the Crown and, until 1952—with the appointment of the first Canadian-born Governor General, Vincent Massey—the position was filled by members of the British nobility or senior military officers.

Until recently, incumbents had typically been retired politicians belonging to the Prime Minister's own party. The position was therefore often accused of serving as a kind of reward for political service. In an apparent attempt to redress this shortcoming, the last four incumbents have been appointed from outside the world of politics (Canada Guide, n.d.). However, Payette's claim that "[n]o formal complaints or grievances were made during my tenure" (Burke and Everson, 2021) suggests that the role still gives its incumbent significant power: members of Payette's staff felt unable to challenge the authority of an official figure put in place by the top tiers of Canada's government.

In the current procedure, candidates are identified by an advisory committee whose role is to ensure the non-partisan nature of the process. Since 2010, there have been three successive iterations of this committee, composed of between five and six members and revised in each instance according to the specific requirements of the appointment to be made (Feldman, 2021).

Problem

We have identified two fundamental problems with the current procedure of selecting the Governor General, over both of which you as Prime Minister have direct authority:

1. The procedure lacks a formalized structure that outlines in detail the various steps to be taken, including a definitive list of eligibility criteria and a clear and precise description of the process of selection.
2. The procedure lacks transparency and is not publicly accessible.

In its current form the procedure is not open to the public, who are therefore unaware of its details and unable to gain access to information about its parameters. The specific details of the qualifications required for the position of Governor General as well as the steps according to which the candidate is selected are inaccessible to members of the public. This lack of transparency is also compounded by an additional problem that concerns the public: an absence of public input into the process of selection itself.

Our own attempts at conducting research have revealed both the lack of specificity in the available documentation and the significant challenges entailed in uncovering these details. The only documentation available to the public consists of the following:

- 1) A private member's bill (Bill C-569, "An Act respecting the procedure for the appointment and removal of the Governor General"), which outlines in very broad strokes the jurisdictions and authorities of the parties involved in the appointment process (in particular, the Prime Minister, the monarch, and the advisory committee) and does not include any specific reference to or details concerning the actual criteria or process of selection. As a private member's bill, Bill C-569 is a document susceptible to certain limitations, including a lack of substance and a lack of provision for engagement on the part of stakeholders and interested members of the public.
- 2) Publications by journalists, political theorists and commentators, and members of the public who have conducted research into the subject and uncovered some (but not all) information relevant to the procedure.

The available documentation reveals the eligibility criteria to be exceptionally broad and vague, articulated as a single overarching consideration that is proposed to the advisory committee by the Prime Minister and intended to be used as a general guide in the committee's decision-making process when selecting potential candidates. These documents also tell the public nothing about the process of selection itself.

Creating a formally structured and transparent procedure will help to justify the position of Governor General and ensure that an appropriate candidate is chosen for the role—one who best represents Canada and its goals for the 21st century. To do otherwise presents a number of risks: the prospect of another problematic candidate; a continual loss of public trust (both in the role's own constitutional value and in the stability and credibility of governmental procedures more generally); the introduction of additional unpredictable obstacles that impede the effective performance of the role's key responsibilities; and potential further injury to Canada's effective parliamentary operation.

As champions of a Canadian Republic—a country governed not by a monarch and his or her representative in the form of the Governor General but, instead, by a publicly-elected representative—our ultimate ambition is to achieve one of two goals: to remove the tie between the monarch and the Governor General, or to replace the office of Governor General with a new role that more accurately reflects our country's modern condition: a land with a uniquely diverse cultural identity that is devoid of (and increasingly aware of the need to shed) early colonial associations; an independent, evolved, and politically mature nation capable of operating autonomously and outside the antiquated boundaries of a constitutional monarchy; and a country that should be led (at every level of government) by a publicly-elected official. We recognize that all of these ambitions are unlikely to be achieved in the short term, and that the desire to

entirely remove or replace the office of Governor General is not one currently shared by all of Canada and its peoples. At this juncture, however, and in light of the recent scandal surrounding the last incumbent, we propose a set of strategic recommendations that will help to stabilize the position itself, enhance its relevance to a modern Canada, and amplify the degree of public involvement in and knowledge of the appointment and its mechanisms. These recommendations articulate a set of practicable steps toward our ideal vision for Canada as a parliamentary republic—a vision that redefines the Governor General as a publicly-elected head of state rather than a representative of the monarch.

Our strategic recommendations are therefore to create a publicly-accessible, published document that outlines in detail a list of eligibility criteria and the process of candidate selection. This document is to be used in conjunction with Bill C-569 as the basis for any future selection of the Governor General.

The remainder of this memo will outline our research method and the current state of documentation, an analysis of the key issues at stake, our proposed solutions and strategic recommendations, the limitations that may impact upon our recommendations, and an analysis of the costs versus the benefits of putting our recommendations into action.

Methods

Our research method has consisted of a thorough exploration, collection, and review of a range of documents, including: acts, policies, bills, and other forms of government legislation and documentation; publications by political analysts and scholars in the form of peer-reviewed articles; and journalistic and news media publications including press releases and news articles. We failed to find any significant publicly available research into the set of problems and issues specifically outlined in this memo, which suggests that our recommendations are all the more relevant and timely. We were also unable to gain access to the legal documents produced in connection with the workplace inquiry conducted prior to the resignation of former Governor General Payette.

We conducted a number of interviews with professionals, politicians, journalists, and commentators whose occupations are either directly implicated or affected by the recommendations outlined in this memo or whose research touches upon key elements we wish to address. Our interviewees included the current Secretary to the Governor General, Ian McCowan; the royal commentator Richard Berthelsen, an experienced journalist who has served four Governors General and Lieutenant Governors and has participated in the organization of Royal Tours and ceremonies in Canada since 1978; and Stephanie Feldman, Analyst in Constitutional and Parliamentary Affairs at the Library of Parliament. Of particular value to our research and to our strategic recommendations are the insights Berthelsen provided in a 2021

article, “How to Find the Next Governor General” (Berthelsen, 2021), and the information provided by Feldman in a 2021 article, “The Evolution of the Selection and Appointment of the Governor General” (Feldman, 2021).

We also approached the current Governor General who was unfortunately unavailable for comment.

Issue Analysis

There are three principal issues underpinning the problem outlined above:

A lack of publicly available information

The lack of available information is a significant factor contributing to the problems we identify in this memo. Our research has shown that the bulk of information available to the public about the eligibility criteria and process of selection takes the form of scholarship and journalistic publications rather than official government documentation or legislation. Much of this information is also extremely limited in its detail and quantity. This also means that the public, who should be prioritized as key stakeholders, are denied their rightful access to a precise, detailed, and transparent communication about the most essential, first-stage mechanisms underpinning the selection of the Governor General.

The nature of the advisory committee’s formation and procedure

Two additional factors contributing to the problem concern the advisory committee: the constitution of the committee itself, and the procedure of candidate identification that the committee implements. Our research shows that committee members have historically been chosen “ad hoc,” in order to serve the purpose of an imminent appointment. While some are drawn from outside government (not all members are politicians or hold government positions), they typically belong to an intellectual elite and are not representative of the broad scope of Canada’s peoples (in terms of ethnicity, socio-economic status, gender, age, etc.). Some members have served on multiple committees (as in the case of the 2010 and 2012 committees), introducing the potential for bias and limited viewpoint. Some effort to amend these shortcomings was made during the creation of the 2021 committee, its members “selected for the diverse perspectives” they would bring to the task and “their expertise on issues relating to the government and the Crown in Canada” (Havard, 2021). The members of this committee, however, were expressly chosen on the basis of their links to or interest in the office of the Governor General. Our recommendations for revisions to the makeup and procedure adopted by the advisory committee (expanded upon under Strategic Recommendations, below) will include the addition of a public focus group.

The past selection of unsuitable candidates

The appointment in July 2021 of the current incumbent, Mary Simon, represents an important step toward implementing the kind of eligibility criteria we would like to see put in place: as a candidate who possesses a number of the qualifications we identify in our recommended list of criteria, Simon stands as a (partial) corrective to the fallout generated by Payette's disgraceful departure. But lingering fault lines remain. Simon's own qualifications for the role have since been brought into question, specifically in regard to linguistic ability (the unofficial but presumed requirement that the Governor General speak both of Canada's national languages) and an inadequate acknowledgment of the newly discovered residential school burial sites. The specific eligibility criteria we outline in this memo will help to solidify a more robust, transparent process of selection, to be put into action by the Canadian government (specifically, you as Prime Minister) and informed by a greater degree of public involvement.

Proposed Solutions

We have identified two possible solutions:

Solution 1:

Create a unified, formalized document that provides the necessary rigor to the process of candidate selection. This document, to be published and made publicly accessible, should make transparent every aspect of the process by which the candidate is identified and selected. It is to be used in conjunction with Bill C-569 as the basis for any future selection of the Governor General. The document should include: 1) a specific list of eligibility criteria (based but expanding significantly on prior criteria) to be used by the advisory committee as part of the candidate-identification stage of the process; 2) a detailed outline of the selection procedure to be followed by the Prime Minister and the advisory committee (in collaboration with a focus group that consists of members of the public, chosen by lottery to ensure a fair and diverse representation), including a thorough candidate screening process; and 3) an outline of the qualifications according to which the members of the advisory committee have been chosen.

Solution 2:

Maintain the existing criteria of eligibility (in the form of a broad key consideration and the requirement that the candidate have Canadian nationality) and process of candidate selection, refraining from the creation of a detailed and formalized document and keeping the process both publicly inaccessible and devoid of substantial public input. Retain the existing "ad hoc" formation of advisory committees (typically of five or six members), selected by the Prime Minister to "assist with the identification of potential candidates to fill the vacant office" and officially mandated by the Prime Minister to deliberate on and submit a shortlist of outstanding

candidates for the Prime Minister's consideration, allowing for bias through repeated tenure and insufficiently reflecting the diversity of peoples living in Canada. Continue to invite comments and suggestions (from any interested party, including members of the public) for the committee's consideration. Retain the existing procedure whereby the Prime Minister makes a final candidate selection on the basis of the advisory committee's recommendations, and in turn makes the final recommendation to Her Majesty for official appointment.

The key stakeholders who will be impacted by our proposed solutions include: members of the public (including our organization, Citizens for a Canadian Republic), the Prime Minister, members of the advisory committee, and the appointed Governor General.

Each of these stakeholders will benefit from Solution 1 in the following ways:

- 1) Providing the public with an opportunity to become more fully participatory in the selection process, as well as granting us complete access to a detailed explanation of this process, will help to justify the Governor General's position and secure public faith in the role's value as part of Canada's parliamentary system. These steps will also help to ensure the choice of a suitable candidate who better represents the public the Governor General serves.
- 2) A formalized document that outlines in detail both eligibility criteria and the process of selection will provide the Prime Minister and the advisory committee with a clear and straightforward set of guidelines to follow, making the procedure more robust and minimizing the future likelihood of an incorrect choice.
- 3) The appointed Governor General will be more assured of their qualifications for the role, and confident in their ability to uphold the position's responsibilities.

A number of arguments may arise against the recommendations proposed here. Monarchists and advocates for the process of selection of the Governor General in its current form may object to the restrictions that a new set of eligibility criteria and a revised selection process will impose. An increased public involvement in the process of selection may also be perceived as a threat to the authoritative status of the monarch within Canada's constitutional system. The introduction of a specific list of eligibility criteria will also prompt controversy and disagreement, and careful consideration will need to be given to the specific qualifications that warrant priority. Government officials accustomed to exercising significant control over what is, in its current form, a clandestine procedure (and one that serves their interests above all) will also likely object to the creation of a publicly accessible, formalized document that directly impacts upon the implementation of a private members' bill.

Strategic Recommendations

Our strategic recommendation is to implement Solution 1. This will require that the following specific actions be taken:

1. Create new selection guidelines, in the form of a publicly accessible document, to be used in conjunction with Bill C-569 as the basis for any future selection of the Governor General. This document should include:

i. A specific list of eligibility criteria that draws from but significantly expands upon prior criteria. These should be determined by the Prime Minister in consultation with a public focus group (a diverse and randomized group of members of the public, formed through lottery selection), and should be used by the advisory committee as the basis for compiling their shortlist of prospective candidates. These criteria should prioritize the following: Canadian citizenship; demonstrable achievement and excellence (in the form of education, awards, hours of public service, or career achievements); meaningful representation of Canada's cultural diversity (an individual who can effectively represent the lived experience of our diverse, multi-ethnic country); an advanced level of proficiency in Canada's two national languages; several years of experience in government and an exceptional knowledge of Canada's parliamentary policies and procedures; and demonstrated evidence of commitment to public service.

ii. A detailed outline of the procedure to be followed for a thorough candidate screening and selection process, to be carried out collaboratively by the Prime Minister, the advisory committee, and the public focus group.

iii. A detailed summary of the qualifications according to which each member of the advisory committee has been chosen.

2. Publish the above document and make it publicly accessible. It should be published in conjunction with Bill C-569, included on the Governor General's website, and made available upon request from the Prime Minister's office. The end goal is for this document to be easily discoverable by any member of the public.

We request that a final document be completed, published, and made publicly available by January 2023. Although the current Governor General has only just begun her five-year term (on July 6, 2021), the unfortunate experience of her predecessor has shown that a problematic incumbent can be removed from office mid-tenure, leaving the position vulnerable. While our hope is that similar circumstances will not befall the current Governor General, the very possibility means that revisions to both the criteria and process of selection are nonetheless

urgent. The document is to be drawn up by the Prime Minister's office and the advisory committee in collaboration with the public focus group.

We believe that the role's lack of contemporary relevance, coupled with its power and lack of transparency, means that it will cause harm to Canadians in the long run. We have already begun to see such consequences manifest in situations like the resignation of Julie Payette and Mary Simon's lack of candour when discussing the newly discovered residential school burial sites. Over time, without a significant reform of the selection process, the current system is liable to continue to provide us with Governor Generals more likely to harm than to govern. Our recommendations will help to ensure that the candidate appointed for the five-year term has the qualifications necessary to carry out its responsibilities and cope with its specific challenges, and to do so in a manner that justifies our nation's enduring trust in the commonwealth system.

Since they revolve in particular around the Prime Minister's role in the selection process, our recommendations will also aid the Prime Minister in upholding one of his or her core responsibilities as a public servant: to lead an open and accountable government that best represents the public interest (Open and Accountable, 2015).

Our recommendations will also help to better address the increasing requirement that the role of Governor General reflect Canada's cultural diversity. An attempt to expand the makeup of the 2021 advisory committee, combined with the appointment of Mary Simon as the first Indigenous incumbent, show that both the criteria and process of selection are already primed for additional expansion along these lines.

Our recommendations also sustain the trajectory already underway, whereby Canada as a nation holds an increasing agency in the process of selecting the Governor General. An even greater degree of public involvement in the selection process, at both the candidate-identification and selection stages, will help to guarantee that the office better reflects the country's 21st-century identity and future direction.

Limitations

A primary limitation of our recommendations is that they reflect an unawareness of the federal government's procedure for screening prospective candidates. This is a direct result of the lack of clear, publicly available information about (or apparent criteria for) this procedure. It may be the case that many of our recommendations are already being implemented by advisory committees: since we are operating in the dark, we have no way of knowing one way or the other. Moreover, we are also unaware of other problems that the bureaucratic process may present when our proposed reforms are put into action. Because the eligibility and selection criteria are so seemingly shrouded in mystery, ours remains an external perspective—the same

one as the public whose voice and agency our recommendations endorse. We are therefore unable to gauge with any accuracy whether or not our recommendations can provide appropriate solutions to the problem. However, we believe that the steps we advocate represent a necessary direction that future inquiry must follow, even if those steps need to be modified to better fit the circumstances we cannot currently predict.

The secrecy with which Canada's bureaucracy conceals the process of the Governor General's selection remains a critical issue to be addressed, going forward. This vagueness, combined with the fact that the monarchy can exercise decision-making power via a role central to Canada's government, ultimately denies the public any control, leaving our nation open to the possibility of extensive collateral damage if the present monarchical system is left unchecked.

Cost-Benefit Analysis

The recommendations outlined in this memo will require that the government provide a number of additional resources, both logistical and monetary. As mentioned under Limitations, above, it is unclear how extensive these resources need to be. Despite this, we believe that failing to amend the current system would lead to even greater costs in the long term. The maintenance of the status quo would simply lead to more of the same as time goes on. Consider, for example, Julie Payette's present pension plan, valued at almost \$150,000 a year post resignation and following the workplace inquiry that deemed her unfit for office (Feldman, 2021). These additive costs (in both a material and a moral sense) only get worse the more that information about this unfortunate event becomes public and the longer the Canadian government is unable to provide adequate accountability. The prospect of another problematic candidate will perpetuate a continual loss of public trust. An internal fix is necessary to prevent these costs from spiralling out of control. Not only is the reputation of the government at risk but Canada's reputation is itself at risk. Leaving aside the unknown costs of their implementation by the government, which are impossible for us to quantify, we feel confident that our recommendations will represent uphill progress. We therefore conclude that, in the long term, the benefits of putting our recommendations into action will significantly outweigh the initial costs.

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