

The Emergence Of A Canadian Monarchy: 1867-1953

Dr. Stephen Phillips

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Professor
Stephen Phillips

2003 marks the fiftieth anniversary of the Coronation of Elizabeth II, the first monarch to bear the title Queen of Canada.

This historical landmark has attracted less attention than it deserves, despite the reasonably extensive coverage that the Golden Jubilee has received in the news media. All too often, Canada is described, erroneously, as having a British monarch as its head of state. Likewise, in the recent debate over changes to the oath of allegiance sworn by new citizens, it has been reported, inaccurately, that Canadians owe allegiance to the Queen of the United Kingdom rather than to the Queen of Canada.

Republicans are wont to scoff at the concept of a Canadian monarchy. If Canadians fail to understand the difference between Her Majesty's role as Queen of Canada and her role as Queen of the UK, surely it is because the distinction is a meaningless abstraction. There is no doubt that most Canadians have a tenuous understanding of the status of the Crown in Canada and of its historical evolution. In an Ekos Research poll taken last year, only 5% of respondents correctly identified the Queen as Canada's head of state. Fully 69% named the Prime Minister while another 9% named the Governor General. However, Canadians' limited knowledge of the monarchy says less about the abstruseness of the Crown than it does about the low level of civic literacy that prevails in the country—a lamentable condition of which we are reminded every July 1st weekend when the Dominion Institute publishes the results of its annual questionnaire on key events in Canada's political history.

Those who deny the existence of a Canadian monarchy, separate and distinct from the British monarchy, betray a poor understanding of Canada's constitutional development. A careful study of Canada's political and legal history discloses that the adoption in 1953 of a unique Canadian style and title for the Queen was an event of profound importance. It signified nothing less than the final stage of a long process by which an Imperial monarchy was finally transformed into a Canadian monarchy. This article describes the main phases of that transformation, with an emphasis on the period from Confederation to the accession of Elizabeth II.

Evolution of the Maple Crown: The Pre-Confederation Era

The evolving role of the "Maple Crown" is central to the history of Canada's constitutional and political development. After Montcalm's defeat on the Plains of Abraham in 1759, the clerical leaders of New France found it relatively straightforward to transfer their allegiance from a Bourbon King to a

Hanoverian one. That choice was made easier in the mid-1770s by the political concessions granted by the Crown under the Quebec Act of 1774 and by the clergy's deep and abiding disdain for the republican doctrines then being espoused by the American colonists to the South.

From the 18th century to the middle of the 19th, Britain's North American colonies were governed by appointed Governors who exercised executive power in the name of the Sovereign. The Governors were advised by local notables appointed to the Executive Council. The establishment of elected assemblies in Nova Scotia in 1758, PEI in 1773, New Brunswick in 1784, and Upper and Lower Canada in 1791, introduced representative government but not responsible government. That is to say, colonists who sat in the Assembly were free to express their grievances but the Governor was not bound to act on them. The failure of Governors in Upper and Lower Canada to redress the grievances of reform-minded Assemblies in the 1830s sparked the rebellions of 1837-38. The rebellions were not actuated by a desire on the part of most of the colonists to throw off British rule and to establish independent republics, notwithstanding the republicanism espoused by William Lyon Mackenzie and by certain followers of Louis-Joseph Papineau. The real target of discontent in the colonies was not the Crown *per se* but the excessive influence wielded by entrenched elites who had the ear of the Governor. What was required, and what ultimately was delivered in 1848, was a system of responsible government under which the Governor General's advisers would be drawn from the ranks of the elected Assembly.

With the advent of responsible government, the Governor General acquired a dual role. In matters internal to the colony, as the representative of the Crown, he was to follow the advice of his colonial ministry; external matters, however, remained the responsibility of the Imperial government and Parliament. Yet the Governor General was also an Imperial officer, appointed and instructed by the British Government and reporting to it through the Colonial Office. Colonies, like the Province of Canada, that had been granted self-government in internal affairs were still subject to the overarching authority of the Imperial Government. Thus, the Queen could disallow any colonial legislation, on the advice of her UK ministers, and the Imperial Parliament could pass laws binding on the colonies, even in matters of domestic policy.

The Crown and Confederation

Confederation brought about no fundamental change in the system of government under which the four confederating provinces had previously operated. The new Dominion of Canada would remain a colony of the United Kingdom while continuing to exercise wide powers of self-government. The most innovative feature of the new constitutional dispensation was the adoption of a federal form of government, a subject that had occasioned much debate in the conference chambers and colonial legislatures prior to Confederation. One subject on which there was no disagreement was that of the continued role of the monarchy. At the Quebec Conference of 1864, dele-

gates unanimously approved the resolution vesting executive authority in the Queen. Speaking in the Legislature of the Province of Canada in 1865, John A. Macdonald stressed that the decision to maintain the monarchy and the Imperial connection was one for the colonists to make. "If, therefore, at the [Quebec] Conference, we had arrived at the conclusion that it was for the interest of these provinces that a severance should take place, I am sure that Her Majesty and the Imperial Parliament would have sanctioned that severance." He went on to say:

The desire to remain connected with Great Britain and to retain our allegiance to Her Majesty was unanimous. Not a single suggestion was made that it could, by any possibility, be for the interest of the colonies, or of any section or portion of them, that there should be a severance of our connection.

This view was echoed by George-Etienne Cartier and by other French-Canadian leaders. Moreover, none of the opponents of Confederation favoured republicanism, including the redoubtable Joseph Howe of Nova Scotia.

It is significant to note that retention of the monarchy and the maintenance of Canada's membership in the Empire were treated as one and the same in this period. In the 19th century, a severance of the monarchical link necessarily implied the establishment of an independent republic. After all, the Sovereign was deemed to be indivisible. The concept of a divided or "compound monarchy," in which the monarch could serve as a separate head of state for each of a series of sovereign states, was one that would not be fully developed until the 20th century.

First Phase: 1867-1926

The institution of monarchy in Canada and in the other self-governing Dominions was significantly transformed as a result of the Imperial Conference of 1926. However, smaller steps were taken before then towards the Canadianisation of the Crown. In the first decade of Confederation, the Governor General's instructions required him automatically to reserve eight classes of bills for the approval of the Queen and the Imperial Cabinet. The subjects of such bills included divorce, legal tender, and the military. Obligatory reservation was vigorously opposed by Edward Blake during his tenure as Justice Minister and was deleted from the modified instructions issued to the Governor General in 1878. However, the Governor General retained the discretion to reserve bills for "the Signification of the Queen's Pleasure" under the BNA Act. This power, however, soon fell into disuse.

Another change concerning the Governor General had to do with the manner of his appointment. Until the early 1890s, appointments were made by the Monarch on the advice of the British Government, without prior consultation with the Canadian Government. Macdonald staunchly defended this position, taking the view that the Monarch's discretion in making such appointments should be unfettered. Nevertheless, by the time of Macdonald's death, there had developed a custom of informal consultation with Canada on the appointment of new Governors General. Before long, it became a convention. When it was breached in 1916 with the appointment

of the Duke of Devonshire, Prime Minister Borden sent a cable to London "pointing out in strong terms that our approval should have been asked."

The late 19th century saw another noteworthy modification to the role of the Crown in Canada, this one having to do with the office of the Lieutenant Governor. Like the Governor General, the Lieutenant Governors had a dual role: as representatives of the Crown in the provinces and as officers of the Federal Government. However, the status of the Lieutenant Governors was unsettled in the early years of Confederation. Since the Lieutenant Governor was appointed by the Governor General, rather than by the Queen, was it not more appropriate to regard him as a representative of the Governor General in the province? This was the view held by the Dominion Government and the Colonial Office, both of whom regarded the Governor General's position vis-à-vis the Lieutenant Governor to be analogous to that of the Monarch's position vis-à-vis the Governor General. However, in a landmark opinion delivered in 1892 the Judicial Committee of the Privy Council (JCPC) held that the Lieutenant Governors represented the Crown in their own right, notwithstanding the manner of their appointment. As Lord Watson put it: "...a Lieutenant Governor, when appointed, is as much the representative of Her Majesty, for all purposes of provincial government, as the Governor General himself for all purposes of Dominion Government." In a later ruling, the JCPC held that as the Sovereign's representative, the Lieutenant Governor formed an integral part of the Legislature of the Province.

Although federalism establishes a constitutional system of divided or coordinate sovereignty, the Crown is indivisible in Canadian law. That there is one monarchy in Canada, not eleven, is a principle that has been repeatedly affirmed by Canadian courts. A similar doctrine prevailed throughout the British Empire until 1926 in the sphere of international affairs. As Peter Noonan puts it: "The indivisibility of the Sovereign precluded the attribution of an international personality necessary for the Sovereign in right of Canada to take political actions distinct from those of the Sovereign in right of the United Kingdom."

Second Phase: 1926-1952

Canada's journey from colony to nation, in Arthur Lower's felicitous phrase, is well known to students of Canadian government. Less well known is the concomitant transformation of the Crown that occurred in the inter-war period. The origins of this transformation lay in debates of the mid- to late 19th century about how to reconcile the autonomy of the self-governing Dominions with the retention of a unitary monarchy.

One solution that was raised was the idea of Imperial federation. Such an arrangement would have seen the establishment of a federal executive and parliament, with representation from Britain and its overseas Dominions, to make decisions for the Empire as a whole. Supporters of Imperial federation were vocal in Canada in the 1880s and 1890s; indeed, this period saw the establishment of Canadian branches of the Imperial Federation League, a British

organization founded in 1884. However, by the early 1900s the movement for Imperial federation was hopelessly divided. Ultimately, Canada and the other Dominions were unwilling to yield any measure of self-government to a parliament in which they would be outnumbered.

In Britain, Imperial federation was opposed and ultimately defeated by proponents of free trade, who objected to the Imperial trade preferences that federation implied. In the latter stages of the First World War, an alternative arrangement was advanced by Canada and the larger self-governing Dominions. Their scheme entailed the establishment of a commonwealth of Dominions having a full measure of autonomy over both domestic and foreign affairs, while retaining the monarchical link. This new arrangement was formally agreed to at the Imperial Conference of 1926. The Balfour formula defined Dominions as

autonomous countries within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations.

An immediate change effected by the Imperial Conference had to do with the role of the Governor General in Canada. Henceforth, he would cease to be an officer of the Imperial Government and would serve exclusively as the Monarch's representative. As a result, the British Government began to send High Commissioners to Ottawa and the other Dominion capitals to represent British and Imperial interests. Another consequence of the 1926 Conference was that Governors General would be appointed by the Monarch on the advice of the Canadian Ministry, not that of the British Government. Lord Bessborough (1931-1935) was the first Governor General of Canada to be appointed in this way.

Interestingly, although Canada was free, in theory, to recommend the appointment of a Canadian as Governor General, it continued, in common with other Dominions, to choose Britons, usually aristocrats or military officers with distinguished service records. In 1944, Mackenzie King offered the Governor Generalship to a Canadian, General McNaughton, who accepted the offer. However, King later changed his mind, preferring to appoint McNaughton to the cabinet as Minister of Defence. Abandoning the idea of a Canadian appointment, King nominated instead Field Marshall Viscount Alexander, who would serve as the last British Governor General. King's successor, Louis St. Laurent, appointed the first Canadian-born Governor General, Vincent Massey, in 1952.

A final comment about the Governor General concerns the nature and scope of his authority. Before 1947, the Governor General was authorized to act on behalf of the Sovereign in relation to most aspects of the executive government of Canada. Exceptions included the signing and ratification of treaties and the issuance of letters of credence for ambassadors. In these cases, submissions had to be made directly to the Sovereign. In 1947, with issuance of new Letters Patent, George VI authorized the Governor General "to exercise all powers and authorities lawfully belonging to Us in respect of Canada." As a result of this broad grant of authority, virtually the only power still exercised by the

Sovereign in relation to Canada is the appointment (or removal) of the Governor General.

A fundamental implication of the 1926 Imperial Conference was the repeal of the doctrine of the indivisibility of the Crown. If Dominions of the Commonwealth were now to be recognized as sovereign entities, competent to conduct foreign relations and to conclude treaties with foreign states, it followed that the Crown was separate and divisible, according to the territory in which it was sovereign. In August, 1914, when Britain declared war on Germany, the British Empire as a whole was automatically at war. In contrast, Britain's declaration of war against Germany on 3 September 1939 did not affect the Dominions; indeed, Canada did not declare war until 9 September. During this six-day interval, George VI was at war in his capacity as King of the UK but at peace in his capacity as King of Canada. Meanwhile, in his capacity as King of the Irish Free State, His Majesty would remain neutral for the duration of the War!

The new constitutional order established by the Imperial Conference of 1926 was given statutory effect in 1931 with the passage of the Statute of Westminster. As Vernon Bogdanor observes, this enactment sought to reconcile the divisibility of the Crown with the need to "[preserve] the unity of the sovereign." Accordingly, in its preamble, the Act stated that any UK legislation altering the law of succession to the throne, or the Royal style and titles, would require the assent of all of the Dominion Parliaments. It was swiftly put to the test in the Abdication Crisis of 1936. During this affair, the British Government solicited the views of the Dominion prime ministers, all of whom shared the British view that Mrs. Simpson was an unacceptable consort for the King, whether or not she became Queen. The King's decision to renounce the throne (rather than Mrs. Simpson) required the UK Parliament to enact legislation to exclude from the line of succession any heirs of Edward VIII and the descendants of such heirs. Since the Canadian Parliament was not sitting at the time, Canada formally signified its assent after the fact, in 1937, with the passage of the Succession to the Throne Act.

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Although the divisibility of the Crown effectively dated from 1926, it was not reflected explicitly in the title of the Sovereign until 1953. Until then, the monarch's title only mentioned Great Britain and Ireland by name. At the Commonwealth Conference of 1952, it was agreed that in each country of which the monarch was head of state, the Sovereign should have a distinctive title, though one that would include certain common elements. Each country would be free to determine the local element of the title, thereby dispensing with the requirement of the Statute of Westminster to secure the assent of the other Commonwealth parliaments. Accordingly, in 1953 Canada adopted the Royal Style and Titles Act, pursuant to which Parliament agreed to the issuance of a Royal Proclamation establishing the monarch's title for Canada as follows:

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.

Speaking in the House of Commons on 3 February 1953, Prime Minister St. Laurent said: "Her Majesty is now Queen of Canada... because she is Queen of the United Kingdom and because the people of Canada are happy to recognize as their Sovereign the person who is the Sovereign of the United Kingdom."

Canadian Citizenship

In one important respect, Canada had already given effect to the divisibility of the Crown. In 1946, with the passage of the Citizenship Act, Canada became the first country in the Commonwealth to establish its own citizenship. The following year, the Commonwealth Conference agreed that citizens of Commonwealth

countries were automatically British subjects (or, as an alternative designation, Commonwealth subjects) and as such owed allegiance to the Queen. As Noonan stresses, Her Majesty's Canadian subjects owe allegiance to her "only in her capacity as the Sovereign of Canada... [not] in any other capacity." This point is underscored by the wording of the oath of allegiance taken by new citizens, who swear allegiance "to Her Majesty Queen Elizabeth the Second, Queen of Canada, Her Heirs and Successors."

Conclusion

As the reign of Elizabeth II began in 1952, the status of the monarchy in Canada was very different from what it had been at the beginning of the reign of her grandfather, George V, in 1910. In the intervening period, Canada acquired its political independence and, as Bogdanor puts it, "the concept of a single Crown uniting the members of the Commonwealth was... replaced by that of several crowns linked by the *person* of the sovereign." In this way, the Monarchy in Canada was fundamentally transformed as the Imperial Crown was superseded by a Canadianised, post-Imperial Crown. Far from being a static institution mired in the past, the monarchy had proved – not for the first time – to be a remarkably versatile institution.

The success of this project can be measured in part by the fact that there has been no movement of any significance in Canada in the past half-century to abolish the monarchy. There are, of course, many reasons for the failure of republicanism to take root in Canada. I propose to address that tantalizing subject in another article.

CANADIAN COURT CIRCULAR

(This listing provides but a few instances of the many Canadian engagements, interests and obligations which occupy members of our Royal Family, even when they are not physically present in the Maple Realm. The May and June homecomings of HRH The Duke of York are covered elsewhere in this issue.)

April 28 – The Duke of Kent, Colonel-in-Chief, The Lorne Scots (Peel, Dufferin and Halton Regiment), received Lt Colonel William Adcock, Commanding Officer, at St James's Palace. In the afternoon HRH attended the Canadian Forces Day Reception at Canada House, Trafalgar Square, to celebrate the Sixtieth Anniversary of the Battle of the Atlantic.

May 7 – The Queen received The Lieutenant Governor of Manitoba and Mrs Peter Liba at Buckingham Palace.

May 13 – The Queen received The Lieutenant Governor of Newfoundland and Labrador and Mrs Roberts at Buckingham Palace.

June 13 – The Queen received in audience Mr David Reddaway upon his appointment as British High Commissioner to Canada.

June 18 – The Earl of Wessex left London for an official visit at the invitation of the Government of Saskatchewan, followed by a private working visit to Ontario. On arrival at Regina, HRH was received by the Hon Dr Lynda Haverstock, Lieutenant Governor of Saskatchewan.



Her Majesty receives The Lieutenant Governor of Newfoundland & Labrador on May 13, 2003

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