The Monarchy in Canada: God Save the Queen?

The History of the Crown

For many Canadians the very notion of a Queen as our head of state is puzzling. She is an individual who is born in another country, gains her position by birth, and, as our Monarch, is meant to embody the very essence of our political system. How did we come to have such a position within our constitutional framework?

In 1763, Britain gained control of Canada after the Seven Years War with France, and we became a British colony headed by the (then) King of Great Britain, George III.[1] King George III and his successors were subsequently represented by a series of individuals appointed to serve as Governor of the colony and to run it in the King's name. By virtue of their office and the great distance from 'Mother Britain', these Governors had immense power and influence – too much for many Canadians to handle.

After a great deal of civil and political unrest which ended in violent uprisings in 1837 and 1838, it was recommended that these Governors defer instead to the wishes of the elected assemblies that had been established in the Canadian colonies.[2] The concept is sometimes called "responsible government" and had begun in Great Britain years earlier. The idea was that the Monarch or his or her representatives would not use their powers but would instead agree to do what the representatives of the people had decided upon. In other words: the Monarch would reign, but would not rule.

Canada left many official powers in the hands of the Monarch when it became a country in 1867. Indeed, the *Constitution Act, 1867*[3] explicitly recognizes the Queen's powers, which (at least in theory) are exercised through the offices of her representatives the Governor-General of Canada and the Lieutenant-Governors of the Provinces.[4] The Governor-General acts as the head of the Armed Forces,[5] appoints members of the Senate,[6] has the power to veto or withhold consent from any piece of legislation passed by Parliament,[7] is able to dissolve Parliament, can call new elections at his or her discretion,[8] and may appoint or dismiss the members of Cabinet, including the Prime Minister.[9] Much of the same is true of the Lieutenant-Governors as they appoint the Premier and Cabinet of each province,[10]approve and proclaim all pieces of legislation, and appoint the members of the provincial judiciary, among other powers.[11] Of course, in reality, these powers amount to little more than window dressing at state ceremonies – they are essentially symbolic. The Queen, Governor-General, or Lieutenant-Governors will generally follow the wishes and advice of their Prime Minister or Premier.[12]

Unlike the United States, which rejected the Monarchy entirely when it gained independence, Canada has retained the Monarchy but gradually cemented its own self-perception as a separate nation. Various events have contributed to this perception; for

example: Confederation, the building of the Canadian Pacific Railroad, our recognized bravery at Vimy Ridge and Normandy, our leadership in the founding of the United Nations, and the patriation of our Constitution from England in 1982. However, since 1867, we have retained the British Monarch as our symbolic head of our state. Why is this?

The symbol of the Monarch is deeply woven into the fabric of our institutions. When the Governor-General opens Parliament in the Queen's name, he or she summons the Members of the House of Commons to the Senate to give the Speech from the Throne – as in the Queen's throne. Our entire criminal justice system is enforced in the Queen's name: the government as a party is named *Regina* (Latin for the Queen)[13] and the prosecution is referred to as the 'Crown'. Indeed, for the most evident example of the extent of the Monarch's symbolic presence one need only reach in one's pocket and look at a coin.

For those people who support the continued presence of a Monarchy in Canada, these examples demonstrate that this institution is firmly entrenched in our culture as a nation. To rid ourselves of it would uproot a great deal of history, and would require a massive change in our country's institutions – notably, our Constitution. What is more, it would be a massively expensive venture to, for example, replace all of our money, stamps, passports, and military titles. However, for people who oppose the Monarchy, the symbols which represent the Queen are simply reminders of a massive and ever present national embarrassment that is manifested in multiple ways.

Constitutional Amendment and the Crown

The powers of the Queen were maintained when Prime Minister Pierre Trudeau and his provincial counterparts agreed to amend the Constitution in 1982.[14] Rather than alter the office of the Queen or the Governor-General, the *Constitution Act, 1982* maintained the *status quo* and kept Queen Elizabeth II as our Head of State. However, they did leave the door open to the possibility of change.

The Prime Minister and Premiers agreed to a new amending formula to govern future changes to the Constitution.[15] Most changes would require the consent of at least 7 of the 10 provinces, and those 7 provinces would have to have a combined population of more than 50% of the total population of the country. However, the formula also set out certain parts of our constitutional scheme that could only be amended with the agreement of every province and the federal government. One of these is "the office of the Queen, the Governor General and the Lieutenant Governor of a province".[16] In other words, it would be possible to abolish or replace the Monarchy in Canada, but every province and the federal government would have to agree.

Obviously, this is a high threshold to reach. Indeed, as any student of Canadian politics can attest, it is sometimes difficult to imagine the First Ministers of Canada agreeing on anything let alone an issue so central to our national identity. Further, current poll numbers do not support a desire by Canadians to abolish the Monarchy. There appears little evidence of an appetite for the major constitutional change that would be required for the removal of the Queen as our head of state.

As Canada prepares for the 150th anniversary of its Constitution in 2017, it will be important for Canadians to understand the role that the Monarchy plays in our constitutional structure and to perhaps seriously consider whether a change in our constitutional architecture is desired or warranted.

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[1] The British gained military control of Canada in 1760 and France gave up any claim to Canada with the *Treaty of Paris* in 1763.

[2] At the time of the Rebellions in 1837 and 1838, Canada was made up of several separate colonies: Upper Canada (which was part of what is now Ontario), Lower Canada (part of present day Quebec), Nova Scotia, New Brunswick, Prince Edward's Island, Newfoundland, and British Columbia were also separate colonies.

[3] *Constitution Act, 1867* (UK), 30 & 31 Vict, c 3, s 9, reprinted in RSC 1985, App II, No 5.

[4] *Ibid*, s 10.

[5] *Ibid*, s 15.

[6] *Ibid*, s 24.

[7] *Ibid*, s 55.

[8] *Ibid*, s 50

[9] *Ibid*, s 12.

[10] *Ibid*, ss 63 & 64.

[11] *Ibid*, s 65.

[12] There are occasions where the Governor-General is required to use some discretion. For example, during a parliamentary crisis in 2009 where the government's financial agenda was poised to be defeated by a majority of members of the House of Commons, the Prime Minister asked the Governor-General to end the parliamentary session early to avoid the defeat. The Governor-General then found herself with a difficult choice: to follow the advice of the Prime Minister or to obey the wishes of a majority of the House of Commons. See: Kenneth Munro, "The Turmoil Surrounding the Prorogation of Canada's 40th Parliament & the Crown" (2009) 18:1 Const Forum 13.

[13] For example: *Regina v Turpin*, [1989] 1 SCR 1296.

[14] With the exception of Quebec, who did not sign on to the Constitution Act. Although, of course, the Constitution still governs that province.

[15] *Constitution Act*, 1982, s 38(1), being Schedule B to the *Canada Act, 1982* (UK), 1982, c 11.

[16] *Ibid*, part V, s 41.