

# The Canadian Law of Arms

## Part II: The Provinces<sup>1</sup>

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Previously in this journal I described the process by which Canada received its armorial law from England.<sup>2</sup> Yet as the former Lord Lyon King of Arms, Lyon Blair, observed:

‘The legislation creating the Canadian heraldic office allows them to create arms which are subject to “the law of Canada”. Now, Canada has a series of differing laws, emanating from each province, some based on French legal principles, and others on English legal principles...’<sup>3</sup>

The question then arises, does this series of differing laws affect the law of arms in Canada?

To answer this question, I will first examine just what laws of arms the provinces of Canada have received. Having determined this, I will detail what effect these provincial laws have upon Canada’s heraldic system as administered by the Canadian Heraldic Authority [the Authority].

Before proceeding, it is worthwhile to review the constitutional structure of Canada, as this structure supports the relationship between

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<sup>2</sup> Christopher S. T. MACKIE, ‘The Canadian Law of Arms: Part I: English Origins’, *Alta Studia Heraldica* 2 (2009), pp. 71-86.

<sup>3</sup> Robin BLAIR, ‘Address’ (Lecture presented to Heraldry Australia Inc., December 2003) in *Heraldry News* 34 [2004], p. 9.

the Dominion (or Kingdom) of Canada and her provinces.<sup>4</sup> Canada is a federal state, rather than a unitary state like the United Kingdom. In a unitary state, a single, central authority exercises the state's governmental power. In a federal state, however, a central authority exercises only part of the state's governmental power (the part that extends throughout the country), while regional authorities exercise the other part of the state's governmental power (extending only through their regions); and neither authority is subordinate to the other (as a local authority in a unitary state would be subordinate to that state's central authority). In many spheres, the powers of both authorities in a federal state may overlap, but when the resulting laws conflict, the law of the central authority prevails. Every individual in a federal state is subject to the laws of both the central authority and a regional authority.<sup>5</sup>

While the legislative powers of Canada's central authority (the Dominion, regnal, or federal government) and regional authorities (the provinces) are divided, their justiciary powers are unified. Though every province has her own courts, these courts are not restricted to deciding strictly provincial matters: a province can empower her superior courts (whose judges are appointed by the Crown in right of the Dominion or Kingdom) to decide matters arising from both provincial and federal law.

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<sup>4</sup> Writers on Canadian constitutional law continue to use Dominion to distinguish the central authority from the provinces: 'Canada' is ambiguous, as the central authority is not the same as the nation as a whole [Peter HOGG, *Constitutional Law of Canada* (Scarborough: Carswell, 2002) at 111. Prof. D'Arcy Boulton, however, has argued that the specific title 'Dominion' was introduced to indicate a monarchy of the rank of kingdom *within* the British Empire, and *subordinate* to its Government: the situation of Canada between the first Act of Confederation of 1867 and the Statute of Westminster of 1931. As the latter act made the Crown and Government of Canada *independent* of the Crown and Government of the United Kingdom, the title 'Dominion' should then have been replaced by that of 'Kingdom', as that was and is the normal title in English for a sovereign and independent state with a monarchical form of government and a monarch who bears the title 'king' or 'queen', or their equivalents in other languages. As the adjective meaning 'pertaining to a kingdom' is 'regnal', this, in Boulton's view, is the word that should be used (in contrast to provincial) to indicate a relationship to the central authority in Canada. (See D'A. J. D. BOULTON, 'Towards a More Canadian Royal-Regnal Achievement: An Historical and Semeiotic Analysis of the 1921 Achievement, with Proposals for Modifications of its Elements. Part I. The Emblematic Elements', *Alta Studia Heraldica* 2.1 (2009), pp. 127- 172, esp. p. 127.

<sup>5</sup> HOGG 1985, pp. 79ff. While in Canada most of the powers of each authority are exclusive, some are expressly concurrent, e. g. both the Dominion and her provinces have concurrent power to make laws regarding agriculture and immigration, per s. 95 of the Constitution Act, 1867 (U.K), 30 & 31 Vict, c. 3, reprinted in R.S.C. 1985, App. II, № 5. There is also an impliedly concurrent power of taxation exercised by both the Dominion and her provinces [HOGG 1985, p. 337]. It may be that the power to grant honours is another such impliedly concurrent power (see more below).

Thus, there is no need for a separate system of federal courts in Canada to decide federal matters. The Supreme Court of Canada, though technically a federal court, is more accurately a national or regnal court, as it may hear appeals from any of the provinces' courts of appeal; and as such, it unifies the administration of justice across the country.<sup>6</sup> Therefore, where the discussion below touches on the jurisdiction of a given province's superior courts to decide matters of armorial law, any such jurisdiction would be over both provincial and federal laws of arms (where the former are shown to exist).

Finally, mention below of the dates of reception of armorial law is really only relevant in regard to statutory law: any legislation of the U. K., Scottish or English parliaments enacted before the date of reception would have been received into the province in question, while any legislation enacted after the date of reception would *not* have been received. As for non-statutory armorial law, the dates of reception are immaterial, as reception is a continual process.<sup>7</sup>

### 1. The Reception and Administration of Armorial Law in the Provinces<sup>8</sup>

Given that this journal is aimed at an international audience, it will be useful to preface my account of the origins and nature of provincial jurisdiction in Canada with a brief survey of the origin of the ten provinces that currently exist, of their entry into confederation with the others in what was originally called the 'Dominion' of Canada at dates between 1867 and 1949, and of their absorption of territories not originally included in their boundaries. This involves a sketch of the history of British North America, for the Dominion of Canada came to include all of the provinces and territories of the British Empire in North America north of the line of partition established by the Treaty of Paris of 1783.<sup>9</sup> This treaty not only legalized the *de facto* independence of the

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<sup>6</sup> HOGG 1985, pp. 134f.

<sup>7</sup> HOGG pp. 24f.

<sup>8</sup> In respect of Canada's three territories (the Northwest, Yukon, and Nunavut), Royal Prerogatives there (which include the prerogative to grant arms) appear to remain vested in the Crown in right of Canada [Paul LORDON, *Crown Law* (Markham: Butterworths Canada, 1991) at 11]. England's legislated law of arms as of 1870 would have been received into the Northwest Territories, as well as Nunavut and the Yukon [North-West Territories Amendment Act, S.C. 1886, c. 25, s. 3]. As for administering this law, the Dominion or Kingdom has established federal courts for the territories: Northwest Territories Act, R.S.C. 1985, c. N-27, Part II; Yukon Act, S.C. 2002, c. 7, ss. 38-44; Nunavut Act, S.C. 1993, c. 28, ss. 31-36 [Peter HOGG, *Constitutional Law of Canada, student edition* (Scarborough: Thomson, 2007) at 43 & 217 [HOGG 2007]].

<sup>9</sup> The text of the Treaty of Paris, 1783, which ended the Civil and Revolutionary War in British North America, is published online at [www.earlyamerica.com/earlyamerica/milestones/paris/text.html](http://www.earlyamerica.com/earlyamerica/milestones/paris/text.html)

southern provinces that had unilaterally seceded from the Empire in 177, but ceded to the new republic the part of the Province of Quebec south of the partition line.

British North America north of the line of partition of 1783 evolved from no fewer than six distinct and originally isolated nodes or regions of settlement or control, most of which underwent significant expansion and one or more partitions during the course of their histories.

(1) The oldest and most isolated of these, but the last to enter confederation, was the far north-eastern province of **Newfoundland**, possibly discovered in 1497 by the Venetian Zuan Caboto (in English called 'John Cabot') in the service of King Henry VII of England; formally claimed for England by Sir John Gilbert in 1583; and erected into a English province in 1610. A rival French province was established at **Plaisance** in 1655, however, and the French came to control much of the island until they were finally ousted by the Treaty of Utrecht in 1713.<sup>10</sup> Newfoundland has since then been subject first to the British Crown, then to the Canadian. In 1854 the Province of Newfoundland was given responsible government within the British Empire, and was erected into an autonomous dominion in 1907. It was unable to sustain this condition, however, and finally voted to enter confederation with Canada in 1949, when it became the tenth province. In acknowledgement of its continental territory of Labrador, it was given the new name **Newfoundland and Labrador** by a constitutional amendment of 2001.

(2) The second oldest node of settlement was the French Province of **New France**, also called **Canada**, which was founded in the St. Lawrence Valley in 1608, and grew to control, through a network of trading-posts, much of the watershed of that river and the Great Lakes that drained into it. It was conquered by British forces in 1759, however, and formally ceded to the British Empire by the Treaty of Paris of<sup>11</sup> 1763, which guaranteed its retention of French civil law, language, and culture. In 1774 the Province of **Quebec** (as it had had come to be called, after its capital) was given new formal boundaries, including the whole watershed of the St. Lawrence, but in 1783 (as noted above) the half of its territory south of the Great Lakes was ceded to the United States, where that detached half constituted the original 'Northwest Territory'.

In 1791, in order to permit the Loyalist refugees who had settled in its thinly-populated western parts to live under English law, the Province of Quebec was further truncated through the partition of her

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<sup>10</sup> The Treaty of Utrecht, which took the form of several distinct treaties signed by the belligerent powers in the War of the Spanish Succession, was concluded in March and April 1713. The relevant texts are published online at [www.heraldica.org/topics/france/utrecht.htm](http://www.heraldica.org/topics/france/utrecht.htm). Its effects in North America are described in W. Stewart WALLACE, ed., *The Encyclopedia of Canada*, Vol. VI, Toronto, University Associates of Canada, 1948, 398p., p. 224.

<sup>11</sup> The Treaty of Paris 1763 is published online at [www.Yale.edu](http://www.Yale.edu). The relevant parts are published at [www.en.wikipedia.org/wiki/Treaty\\_of\\_Paris\\_\(1763\)](http://www.en.wikipedia.org/wiki/Treaty_of_Paris_(1763))

remaining territory at the confluence of the Ottawa River with the St. Lawrence into the new Provinces of **Lower Canada** (which retained French law) and **Upper Canada** (which received English law). The two provinces persisted in their original form until 1840, when they were temporarily reunited in a new Province of Canada; but in 1867 the latter was again partitioned along the same boundary into provinces thenceforth called **Ontario** and **Quebec**, which by the same act were subjected to the government of the new Dominion of Canada (along with the already established provinces of Nova Scotia and New Brunswick). The territories of both Ontario and Quebec were later extended far to the north through the cession to them of parts of the former Territory of Rupert's Land, governed by the Hudson's Bay Company before 1870.

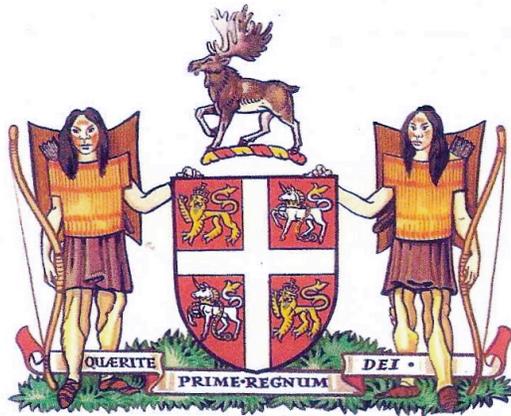
(3) The third node of settlement from which the modern Canadian provinces evolved was the maritime region to the east of Canada proper, around the Bay of Fundy and the peninsula to the west of it. Two rival colonies were established in this region, each claiming, and sometimes controlling, most of its area. The older (effectively established by French settlers after 1613 in succession to failed colonies begun as early as 1604) came to be called **Acadie** (or in English 'Acadia'); the newer, established by an act of the Scottish Crown in 1621, was called **Nova Scotia** (i.e., 'New Scotland'). The newer colony (though long more a theoretical than an effective entity) finally absorbed the older in 1710, and at the conclusion of the Seven Years War in 1763, annexed in addition the surviving French maritime colony of **Isle-St-Jean** or **St. John's Island**. The latter, however, was made a separate province in 1769, and retained that independence thereafter (from 1798 under her current name '**Prince Edward Island**'). Nova Scotia was again partitioned in 1784 when her western region was erected into a new Province of **New Brunswick** to accommodate the Loyalist refugees, and her other northern island was given the same status as the Province of **Cap Breton Island**. The province, however, was reabsorbed into Nova Scotia in 1820, leaving the region divided among its three current provinces of Nova Scotia, New Brunswick, and Prince Edward Island: all of which represented divisions of the originally French province of Acadia - and of her British successor the Scottish Province of Nova Scotia. The first two of these entered confederation with the newly-divided Province of Canada in 1867, thus forming part of the original Dominion of Canada, while the third joined as the seventh province in 1872.

(4) The fourth region of settlement and control from which the current provinces of Canada were partly or wholly carved was the vast drainage basin of Hudson's Bay (which from 1670 to 1870 was under the authority of great British trading company that took their name from that bay) and was officially called **Rupert's Land**. As the company had been chartered and continued to be based in England, the laws of this territory were derived from those of England. Rupert's Land suffered no division until after her cession to the newly-created Dominion of Canada in 1870, when it was also united with the simultaneously-ceded North-West

Territory to the west of it. Almost immediately, however, the southern half of the new North-west Territories began to be carved up, both *into* new and *among* existing provinces. This process (completed only in 1912, when what remained of them was officially renamed the **Northwest Territories**) gave rise to the new Province of **Manitoba** in 1870 — the first to be created within the existing territory of the Dominion, and the fifth of her provinces — and to **Saskatchewan** and **Alberta** (the eighth and ninth provinces) in 1905.

(5) The fifth and last distinct node of settlement was situated on the western coast of North America, far from all the others. As a result of early exploratory voyages, the British Crown had by 1791 come to claim the whole coast and its offshore islands north of California. In 1818 the Empire had extended its claim far into the interior when it proclaimed the Territory of **Oregon** (bordering Mexican California in the south, the northern United States and Rupert's Land to the east, and an unorganized British North-Western Territory to the north). In 1846, however, the portion of Oregon south of the 49<sup>th</sup> Parallel — which had long served as the boundary between British North America and the United States to the east — was ceded to the U.S.A, and the northern rump was erected into the Province of **New Caledonia**. Three years later, in 1849, **Vancouver's Island** was erected into a separate province, but the two western provinces were reunited by an act of 1858, which also extended the northern boundaries of the province to her current line, and gave her her current name of **British Columbia**. British Columbia, thus constituted, entered confederation as the sixth province in 1871.

Now I shall turn to a consideration of the nature of armorial law in each of the ten provinces that have formed part of the Canadian confederation since the last was admitted in 1949, examining them in the order of their foundation.

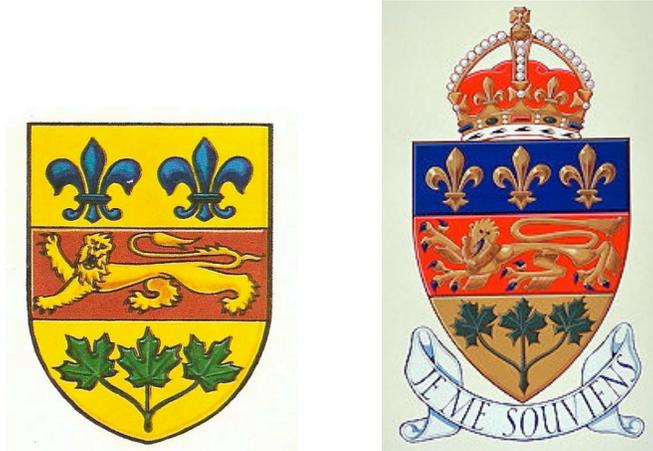


**The Arms of the Monarch in Right of Newfoundland  
Granted by Garter King of Arms in 1638 and Revived in 1928**

### 1.1. Newfoundland and Labrador

As we have seen, Newfoundland, though founded in 1610, did not enter into confederation with Canada until 1949, but the province received England's armorial law as other English colonies in Canada had, with a reception date fixed at 1832.<sup>12</sup>

Whether the judicature of Newfoundland and Labrador (as it is now called) can exercise armorial jurisdiction is, however, unclear.<sup>13</sup>



**a. The Arms of the Monarch in Right of Quebec as Granted in 1868 and  
b. as Modified by Order in Council in 1939 (with the Crown and Motto)**

### 1.2. Quebec

The Province of Quebec (or Québec in French) is the principal successor of the French colony of New France. Significantly, in the present context, it originally had not only its own legal system but its own honours system: the colonial governor awarded honours on behalf of the French king, after having received permission from the latter to do so. And sometimes the king himself would award an honour to a New Frenchman without consulting the governor.<sup>14</sup> As for coats of arms, the king did not (as his English counterpart did) delegate his prerogative to grant these particular honours: a corporate body of heralds existed in France, but it only drafted the arms after the king had granted them in response to a petition directly to his person.<sup>15</sup> Nevertheless, lawful arms appeared in

<sup>12</sup> *Young v. Blaikie* (1822) 1 Nfld. L. R. 277, 283 (S. C. Nfld).

<sup>13</sup> Mackie, 'The Canadian Law of Arms: Part I...', p. 84.

<sup>14</sup> Christopher MCCREERY, *The Canadian Honours System* (Toronto: Dundurn Press, 2005) at 21f.

<sup>15</sup> L. G. PINE, *The Story of Heraldry* (London: Country Life, 1963) at 34 [Pine, The Story] and L. G. PINE, *International Heraldry* (Newton Abbot: Davis & Charles, 1970) at 148 & 154 [PINE, *International Heraldry*].

the colony: officials began displaying the French Royal Arms there in the early sixteenth century (*e. g.* with the landing of Jacques Cartier in 1534, who erected a cross bearing the Royal Arms); and colonists displayed their personal, inherited arms since at least the seventeenth century (*e. g.* the arms of the Duke of Montmorency engraved in the foundations of Champlain's second *Habitation* in 1623). And beginning at the latest in the next century, the king did grant new arms to his Canadian colonists, *e. g.* the Barons de Longueuil, François Hertel, René Godefroy de Tonnancourt, and others of similar importance.<sup>16</sup>

Great Britain conquered New France in 1759, and France ceded it by the Treaty of Paris 1763.<sup>17</sup> Yet even after that conquest, the Kings of France (Louis XV and Louis XVI) continued down to as late as 1790 — when Revolutionary acts abolished nobility and all related honours in France itself<sup>18</sup> — to bestow honours upon Canadians (*e. g.* a grade of knighthood in the Order of St Louis), usually in belated recognition of services rendered prior to the conquest.<sup>19</sup>

English law held that a conquered colony retained its private law [the law of arms being essentially private law], but its *public* law was replaced with English law.<sup>20</sup> Initially, King George III issued a proclamation that appeared to exclude all French law from the colony, but a decade or so later, section VIII of the *Quebec Act, 1774* (which assigned to the province the whole watershed of the St. Lawrence) restored pre-conquest French civil law as the law of Quebec, providing

<sup>16</sup> Alan BEDDOE, *Beddoe's Canadian Heraldry* (Belleville: Mika Pub., 1981) at 40-44.

<sup>17</sup> Treaty of Paris, 1763, s. IV, in William HOUSTON, *Documents Illustrative of the Canadian Constitution* (Toronto: Carswell, 1891) at 61.

<sup>18</sup> On the abolition of nobility and related honours, including armigery, by the French Crown by letters patent of 19 June 1790, see Hervé baron PINOTEAU, *Le Chaos français et ses signes: Étude sur la symbolique de l'État français depuis la Révolution de 1789* (La Roche-Rigault, 1978), p. 45

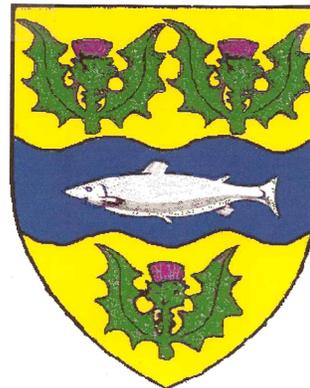
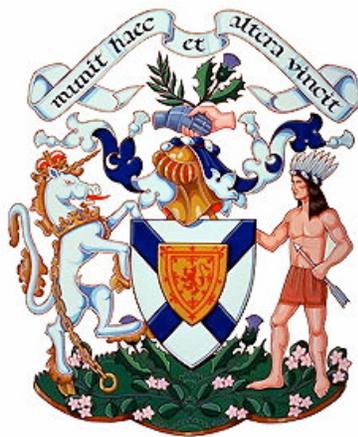
<sup>19</sup> Christopher MCCREERY, *The Canadian Honours System* (Toronto: Dundurn Press, 2005) at 23. 'King Louis XIV. established the Ordre Royal et Militaire de Saint-Louis in April 1693. For subjects of New France, this was the most familiar honour' [*ibid.* at 22].

<sup>20</sup> Patrick Monahan, *Constitutional Law*, 2nd ed. (Toronto: Irwin Law, 2002) at 35 [Monahan 2nd ed]. Private law is the law dealing with private interests, where the legal system must resolve essentially private disputes, *e. g.* estate law, property law (*i. e.* law concerned with legally-recognised rights attached to ownership and possession of *realty* (such as coats of arms) or *personalty*). Public law is administrative, constitutional, criminal, and taxation law: *i. e.* those areas of law in which public interest is primarily involved [G. Gall, *The Canadian Legal System*, 5th ed. (Scarborough: Thomson, 2004) at 26]. If the public law of Quebec is English, then such elements of English armorial law that could be considered public, *e. g.* a cause-of-office proceeding in response to someone assuming arms, might hold sway in Quebec over comparative French practice [see Thomas WOODCOCK, Somerset Herald, and John Martin ROBINSON, Maltravers Herald Extraordinary, *The Oxford Guide to Heraldry* (Oxford: Oxford University, 1988) p. 144 [Oxford Guide]].

that 'in all matters relative to property and civil rights, resort shall be had to the laws of Canada' (*i. e.* the civil law of France that prevailed before conquest).<sup>21</sup>

Sir Conrad Swan, England's York Herald of Arms (as he then was), appears to have argued for the persistence of French armorial law in Quebec when he wrote that England would confirm the arms emanating from the French Crown and inherited by Canadians on the basis that the British Crown undertook to guarantee its new subjects (and their descendants) their rights, privileges, and property (including arms) according to their pre-conquest laws and customs. He based this on articles 37 and 42 of the Articles of Capitulation of Montreal (*viz.* 'the Canadians... (and) the French... shall keep the entire peaceable ownership and possession of their property... movable and immovable...') and 'The French and Canadians shall continue to be governed according to the custom of Paris, and the laws and usages established for this country'); and article IV of the *Treaty of Paris, 1763* (which conceded sovereignty); and section VIII of the *Quebec Act, 1774*.<sup>22</sup> Indeed, in an apparent recognition of the validity of French armorial law in Quebec, Sir Conrad notes that England's heralds confirmed the French arms of the Québécois Gaspard Chaussegros de Lery in 1763.<sup>23</sup>

Quebec's Superior Court has jurisdiction to administer the province's armorial law as received from France.<sup>24</sup>



**a. The Armorial Achievement of the Monarch in Right of Nova Scotia  
Granted by Charles I in 1625 and revived in 1929**

**b. The Arms of the Monarch in Right of Nova Scotia  
warranted by Queen Victoria in 1868 and used to 1929**

<sup>21</sup> HOGG 1985 at 27; Quebec Act, 1774 in Houston, *supra* at 90.

<sup>22</sup> Articles of the Capitulation of Montreal, 1760 in HOUSTON, *supra* at 33; Treaty of Paris, 1763 in HOUSTON, *supra* at 61.

<sup>23</sup> Ian CAMPBELL, *The Identifying Symbols of Canadian Institutions* (N. p. 1990) pt. I at 184, note 7.

<sup>24</sup> MACKIE, 'The Canadian Law of Arms: Part I...', p. 84.

### 1.3. Nova Scotia

Determining the basis of armorial law in Nova Scotia, one of the Dominion's three original provinces, presents a greater challenge, because its roots are both French and Scottish, and the formerly contested control of its territory was ceded by France in 1713 to Great Britain. According to the English rule noted above, a *conquered* colony (such as Nova Scotia at cession) retained its private law (in Nova Scotia's case, the private law of France).<sup>25</sup> Thus, French armorial law would have persisted in this province, as it would appear it does in Quebec. Yet after authorities expelled French colonists from the province mid-century, the law came to treat the colony as *settled*, not *conquered*, which means that her private law would no longer have been French.<sup>26</sup> But does this mean, then, that Nova Scotia's private law (including her law of arms) is English?

Hogg emphasises that since the union of Scotland and England in 1707, the law that followed British subjects to new colonies such as Nova Scotia was English, not Scottish, law.<sup>27</sup> Indeed, this is supported by a nineteenth-century Nova-Scotia decision, which held that the colony received English law in 1758 when the colonists held their first legislative assembly.<sup>28</sup>

This perspective, however, is not faultless. Before the union of 1707, it is reasonable that Scots and English colonists would each have relied upon their own, distinct legal systems. After the Union, however, the presumption that all British colonists are Englishmen ('the self-referring fiction of the English common law') and the imposition of English law as imperial law, excluded Scots law from the administration of British colonies without explanation.<sup>29</sup>

Yet note how King James VI and I created the colony of Nova Scotia in September 1621 (well before Union) with the following words:

'We, therefore, from our royal attention... to promote the wealth, prosperity and peace, of the natural subjects of our said *Kingdom of Scotland* [emphasis added], have, by the advice and consent of our Cousin and Counsellor, John Earl of Mar, &c. and of the other Lords Commissioners of the said Kingdom [*i. e.* Scotland], given, granted and

<sup>25</sup> Treaty of Utrecht, 1713, art. XII in Houston, *supra* at 3.

<sup>26</sup> HOGG 1985 at 22, note 4.

<sup>27</sup> HOGG 1985 at 23, note 5.

<sup>28</sup> *Uniacke v. Dickson* (1848) 2 N. S. R. 287 (S. C. N. S.).

<sup>29</sup> The Laws of Scotland: *Stair Memorial Encyclopaedia*, vol. 5 (Edinburgh: Butterworths Law, 1987) 'Pretensions of English Law as "Imperial Law"', at 382f & 390 ['Pretensions of English Law'].

transferred... to the said Sir William Alexander... the lands of the Continent and Islands situate and lying in America... all which said Lands shall for the future bear the name of New-Scotland, (Nova-Scotia,)...'30

And this charter was passed under the Great Seal of Scotland, not England.<sup>31</sup> While it is unclear whether this charter was implemented in all its respects, the administrator of neighbouring New England supported this grant, saying the grant of Nova Scotia ought 'to be held by the Crown of Scotland and governed by the law of that kingdom'.<sup>32</sup> The manner of the colony's creation suggests a Scottish (rather than English) legal character. And pertaining to matters armorial, it is perhaps significant that *Scottish* armorial officers appear to have assigned the arms for Nova Scotia (in contrast, for example, with the arms for the equally-venerable colony of Newfoundland, assigned by English officers).<sup>33</sup>

The implication is that Nova Scotia's law of arms could be Scottish in origin. Scottish or English, the law of arms of Nova Scotia is enforceable by the province's Supreme Court, which has original and appellate jurisdiction in both civil and criminal cases.<sup>34</sup>



**a. The Armorial Achievement of the Monarch in Right of Prince Edward Island, the Arms warranted by Queen Victoria in 1868**

<sup>30</sup> 'Extract of the Grant of Nova-Scotia, to Sir Wm. Alexander' [*Registrum Magni Sigilli Regum Scotorum* 1620-1623, № 226] in Thomas Haliburton, *History of Nova Scotia*, vol. 1 (Belleville: Mika Publishing, 1973) at 324f.

<sup>31</sup> Conrad SWAN, *York Herald of Arms, Canada: Symbols of Sovereignty* (Toronto: University of Toronto, 1977) at 121.

<sup>32</sup> 'Pretensions of English Law' at 382f.

<sup>33</sup> SWAN, *supra* at 85 & 121.

<sup>34</sup> *Judicature Act R.S.N.S.* 1989, c. 240, s. 4 (1).

#### 1.4. Prince Edward Island

As we have seen, the province originally called St. John's Island was transferred from New France to Nova Scotia in 1763; separated from the latter again in 1769; given its current name in 1798; and admitted into the Dominion in 1873. The province could have received armorial law as early as 1763, since Nova Scotia had presumably done so when it held its first legislative assembly in 1758.<sup>35</sup> As in New Brunswick, however, there is a question as to what law of arms this province received, for given the above regarding the law of Nova Scotia at that time of its annexation to it, it may well have included the law of arms of Scotland.<sup>36</sup>

Prince Edward Island's Supreme Court is legislated to have jurisdiction '*historically* exercised by courts of common law and equity in England and Prince Edward Island [emphasis added]': and historically this court possessed 'original and appellate jurisdiction in civil and criminal cases'.<sup>37</sup>



#### b. The Armorial Achievement of the Monarch in Right of New Brunswick, the Arms warranted by Queen Victoria in 1868

#### 1.5. New Brunswick

As we have seen, this province was created by the partition of Nova Scotia in 1784, and along with Nova Scotia, Ontario, and Quebec, was one of the four original provinces of the Dominion. Yet because Nova Scotia at the end of the Seven Years' War had annexed the territory that would

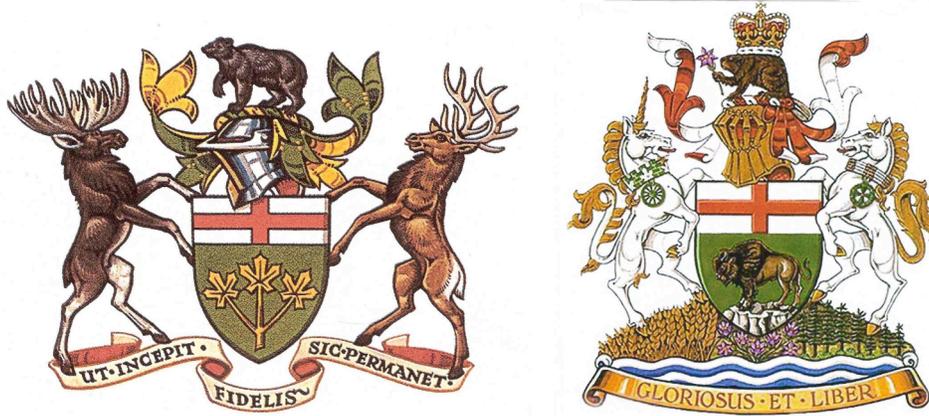
<sup>35</sup> Hogg 1985 at 33.

<sup>36</sup> Hogg 1985 at 22, note 4; Treaty of Utrecht, 1713, art. XII in Houston, *supra* at 3.

<sup>37</sup> Supreme Court Act, R.S.P.E.I. 1988, c. S-10, s. 2 (1) and Judicature Act, S.P.E.I. 1925, c. 7, s. 3.

be included in New Brunswick that it had not already been ceded to it in 1713, the future province, like that of Prince Edward Island, would have received Nova Scotia's law as it existed at that time (*i. e.* 1763), which may, as I suggest above, have included the law of arms of Scotland.<sup>38</sup> Curiously, however, the New Brunswick courts have fixed the reception of *English* law into the province at 1660 (at the Restoration of the Stuart kings).<sup>39</sup>

Thus, as with Nova Scotia, New Brunswick may have received the Scots law of arms. Scots or English, her courts are empowered to administer armorial law.<sup>40</sup>



- a. The Armorial Achievement of the Monarch in Right of Ontario, the Arms warranted by Queen Victoria in 1868
- b. The Armorial Achievement of the Monarch in Right of Manitoba, the Arms warranted by Edward VII in 1905

### 1.6. Ontario

The Province of Upper Canada, created through the partition of Quebec in 1791, would have officially received England's armorial law as of 1792, when its legislative assembly was established.<sup>43</sup> It eventually gave rise to Ontario in 1867, created through the second partition of the Province of Canada, and entered confederation at the same time as one of the original

<sup>38</sup> Hogg 1985, at 22, note 4; Treaty of Utrecht, 1713, art. XII in Houston, *supra* at 3.

<sup>39</sup> Scott v. Scott (1970) 15 D.L.R. (3d) 374 (N.B.A.D).

<sup>40</sup> MACKIE, 'The Canadian Law of Arms: Part I...', p. 84.

<sup>43</sup> Stats Upp. Can. 1792 (32 Geo. III), c. 1, s. 1. Courts initially deemed the reception of English law by Canadian jurisdictions to have occurred on the date of the first settlement of the colony, but the courts later determined that reception occurred on the date of the institution of a local legislature in the colony [Peter HOGG, *Constitutional Law of Canada* 2nd ed. (Toronto: Carswell Company Ltd, 1985) at 23 & 30 [Hogg 1985]].

provinces. The addendum to Part I of this article details how Ontario has established courts that can administer the law in question.<sup>44</sup>

### 1.7. Manitoba

Canada created Manitoba from part of the territory of Rupert's Land in 1870, and subsequent legislation fixed the reception of English law (which includes the law of arms) for the same year.<sup>45</sup> Thus this province too derives her law of arms from England, and has courts to administer it.<sup>46</sup>



**The Armorial Achievements of the Monarch in Right of Saskatchewan and Alberta, the Arms warranted by Edward VII in 1906 and 1907 respectively**

### 1.8. Alberta and Saskatchewan

Canada simultaneously created these two provinces out of a portion of the Northwest Territories in 1905, but subsequent legislation fixed the reception of English law — implicitly including the Law of Arms — at 1870, when the territory of Rupert's Land was transferred to the new Dominion of Canada.<sup>47</sup>

If a provincial Law of Arms were to be recognized in either of these provinces, the provincial Court of Queen's Bench would have jurisdiction to administer it.<sup>50</sup>

<sup>44</sup> MACKIE, 'The Canadian Law of Arms: Part I...', p. 84.

<sup>45</sup> Queen's Bench Act, S.M. 1874, c. 12, s. 5 – assuming that coats of arms could be a matter within provincial jurisdiction.

<sup>46</sup> MACKIE, 'The Canadian Law of Arms: Part I...', p. 84.

<sup>47</sup> North-West Territories Amendment Act, S.C. 1886, c. 25, s. 3.

<sup>50</sup> MACKIE, 'The Canadian Law of Arms: Part I...', p. 85.



**The Armorial Achievement of the Monarch in Right of British Columbia,  
the Arms warranted by Edward VII in 1906**

### 1.9. British Columbia

Canada admitted British Columbia into the Dominion in 1871, and the new province received England's armorial law as it received the rest of English law, with a reception date fixed at 1858.<sup>51</sup> As for the armorial jurisdiction of the province's courts, British Columbia's Supreme Court has 'original jurisdiction and has jurisdiction in all cases, civil and criminal' arising in that province.<sup>52</sup>

PROVINCE	ENGLISH ARMORIAL LAW	SCOTTISH ARMORIAL LAW	FRENCH ARMORIAL LAW
Newfoundland & Lab.	1610/ 1713/ 1832		1655-1713
Quebec	1763 (public)		1608/ 1763-1840/ 1867
Nova Scotia	1758?	3. 1621?	1608 ?
Prince Edward Island	1758?	5. 1758?	1608 ?
New Brunswick	1660	6. 1763?	1608 ?
Ontario	1792-1840/ 1867		
Manitoba	1870		
Saskatchewan	1870		
Alberta	1870		
British Columbia	1858		

**Table 1. The Types of Armorial Law Certainly or Probably Received by the Canadian Provinces, and the Possible or Official Dates of the Reception of the General National Laws of which they were a Part**

<sup>51</sup> The English Law Ordinance 1867, S.B.C. 1867, c. 7.

<sup>52</sup> Supreme Court Act, R.S.B.C. 1996, c. 443, s. 9 (1)



## 2. The Law of Arms of Canada

Thus, as Table 1 indicates, each of Canada's provinces received laws of arms as part of its general reception of the laws of one or more of the founding nations, though it is not always clear which national law or laws were received in the various provinces. Ontario, British Columbia, Manitoba, Saskatchewan, and Newfoundland and Labrador certainly have laws of arms derived exclusively from England's. The province of New Brunswick has a law of arms, but either derived from England's law of arms or from Scotland's. So too with Nova Scotia and Prince Edward Island: both provinces received a law of arms, but perhaps that of Scotland, and possibly, even that of France. And Quebec probably received and has since retained French armorial law in the private sphere.

In light of this revelation, must the Authority navigate a tempest of armorial laws when seeking to grant or regulate arms scattered amongst regional jurisdictions? And must a foreign heraldic authority confront this same host of armorial jurisdictions when considering the status of grants made by the Authority? The answer to both questions is the same, and it is *no*.

Though Canada's constitution does not specifically distribute the prerogative powers (of which the power to grant arms is one) between the Dominion (now Kingdom) and the provinces, courts have held that the prerogative powers follow the comparable legislative powers.<sup>55</sup> But does the armorial (or honours) prerogative fall under provincial or federal legislative powers? The Federal Court of Canada considered that, as the law of dignities (including arms) is akin to realty law, it could be either provincial in scope, or federal:

<sup>55</sup> Hogg 1985 at 11, note 59.

'Possibly argument could be made that dignities are a type of interest dealt with by a law similar to the law of real property and therefore of a local [provincial] nature. The plaintiff would no doubt counter that the law of arms by which much in relation to dignities is determined was intended for more than even national scope and therefore is not local.'<sup>56</sup>

Clearly the 1988 delegation of armorial prerogative to the Governor General of Canada was national in scope, not local or provincial.<sup>57</sup> Thus the Canadian Heraldic Authority operates at the national level, and, in effect, grants *federal* coats of arms, *i. e.* grants armorial property that exists in the federal realm. It is fitting, therefore, that grants of arms made by the Chief Herald of Canada include the phrase, 'all according to the law of arms of Canada.' The courts have considered just what the 'laws of Canada' are, and have settled that the phrase means all federal laws, *i. e.* not *all* laws in force in Canada, whatever their source, but laws existing only in the federal realm.<sup>58</sup> Therefore, the law of arms of Canada is strictly *federal* armorial law (but this does not mean that the provincial laws of arms discussed above are extinguished).

What is this federal law of arms? Comparing the modern composition of Canada's admiralty law (which is closely related to armorial law), I suggest Canada's law of arms comprises (a) armorial law received from England; (b) jurisprudence of Canadian courts before and since reception; (c) federal statute; and (d) principles of civil law and even the common law as the courts may determine applicable 'through a

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<sup>56</sup> Canadian Olympic Assn. v. Great Northern Ticket Services Inc, 71 C.P.R. (3d) 468, 126 F.T.R. 190 at para. 5.

<sup>57</sup> Elizabeth II R. to Governor General Jeanne Sauvé, Letters Patent, 4 June 1988 (37 Eliz. II), C. Gaz. 1988.I.2226. Although the Governor General was able to exercise the Royal Prerogative by which arms are granted by virtue of the Letters Patent constituting the office of the Governor General of Canada, 1947, R.S.C. 1970, Appendix II, № 35 [Alan BEDDOE, 'The Historical and Constitutional Position of Heraldry in Canada' (1969) 3 *Heraldry in Canada* 8], the Government of the day decided that for greater certainty and for publicity, supplemental letters patent would be preferable to establish the Authority [conversation with H. L. Molot, Senior General Counsel, Department of Justice]. For the process of delegation, see Gall, *supra* at 540-542.

<sup>58</sup> Clearest example of a law of Canada is a federal statute, including a regulation or order made under a federal statute [Hogg 2007 at 209]. Blackstone notes that a statute includes all *leges scriptae*, or written laws, of the kingdom [F. A. R. BENNION, *Statutory Interpretation: A Code* (Edinburgh: Butterworths, 2002) at 142]. Canada's federal *leges scriptae* would include the enabling letters patent of 1988, as they were issued by the Queen in her federal capacity, *i. e.* in Her Majesty's right of Canada.

comparative methodology' in an armorial law setting.<sup>59</sup> As Canadian courts have rarely ventured into the 'armorial law setting'; and as both jurisprudence and federal statute applying to armorial law is comparatively thin, one may rely primarily upon English armorial law as an indicator of what Canadian armorial law presently is.<sup>60</sup>

### 3. Conflict between Provincial and Federal Laws of Arms

But what of Canada's provincial laws of arms? Assuming for argument that, for example, French law persists in Quebec, does it not conflict with the federal law of arms? Consider how under French law anyone could assume a shield of arms, crest, motto – even supporters – for himself without reference to state authority (so long as he did not assume arms already lawfully borne by someone else, and so long as he did not bear them with a helm or coronet, or charged with golden fleurs-de-lys on an azure field).<sup>61</sup> This contrasts with federal law, in which no one might bear arms without Crown authority. A Québécois armiger might also transmit

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<sup>59</sup> Compare the sources for Canadian maritime law (i. e. admiralty law, a body of law related to armorial law, and determined to be federal law by the Federal Courts Act, R.S., 1985, c. F-7, s. 22): federal statute; case law, viz. jurisprudence of the English courts until reception; jurisprudence of Canadian courts before and since reception; 'principles of civil law and the common law as may be determined applicable through a comparative methodology in a maritime law setting by the Federal Court'; and maritime law conventions to which the Dominion is party [Edgar GOLD, Aldo CHIRCOP and Hugh KINDRED, *Maritime Law* (Toronto: Irwin Law, 2003) at 117]. As far as the law of arms is a matter of continual interpretation, seeking a precise date for its reception is unnecessary, but if one sought to do so for the purposes of determining the reception of statutory law from England, the confederation of the Dominion in 1867 (which resulted in the establishment of 'a bi-cameral national Parliament') would appear to be the logical moment [see note 4 above].

<sup>60</sup> Note, however, that in attempting to adopt English armorial jurisprudence, judges in the civil-law courts in England (such as the High Court of Chivalry) did not feel bound by precedent until the end of the eighteenth century [G. D. SQUIBB, *The High Court of Chivalry* (Oxford: Clarendon Press, 1959) at 163].

<sup>61</sup> Ian DE MINVIELLE-DEVAUX, *The Laws of Arms in England, France & Scotland* (N. p: Booksurge, 2007) pp. 39, 79, 106 & 108. Examples of modern Canadian arms that would have been unlawful to assume under French law are the arms of L'Association des Pilon d'Amérique [viz. Az, a chevron between three fleurs-de-lis Or] and the arms of the Association des Lebel d'Amérique Inc. [viz. Az, a chevron wavy between in dexter a carpenter's adze and a double-bitted axe in saltire surmounted in pale by a flail, in sinister three ears of wheat their stems bound, and in base three fleurs-de-lis, on a chief Or, a lion passant guardant Gules]. Under French law, a herald might not grant arms with a helmet or coronet unless the petitioner could prove his noble status [ibid. at 98f]. For other examples of modern Canadian grants that offend French law, see Marc-Philippe VINCENT, 'L'èse-majesté? – the use and granting of heraldic royal symbols' in *Heraldry in Canada* v. 43, no 1-2, 2009, pp. 35-39.

his arms by private conveyance, without Crown approval – something not possible under federal law, except, perhaps under a Royal Licence.<sup>62</sup> Additionally, under French law the arms of executed criminals were destroyed, *i. e.* they could not be inherited by their bearers' descendants (though the descendants could petition the king for a new grant).<sup>63</sup> Thus, in a modern interpretation of the law of arms in Quebec, the descendants of a Québécois armiger whom a court convicts of what formerly were capital offences under the 1970 *Criminal Code* (*viz.* treason, capital murder, and piracy involving murder or attempted murder or an act endangering life) might lose any right to the convicted armiger's ensigns.<sup>64</sup>

And are there conflicts between Scots armorial law (which might, as described above, be in force in Nova Scotia, Prince Edward Island and New Brunswick) and the federal armorial law of Canada? According to Lyon Blair, there are significant conflicts.<sup>65</sup> One major obstacle is that, under Scots law, arms can only pass to a person having the same surname as the original grantee, whereas the federal practice (as proclaimed by the Chief Herald of Canada) is to permit arms granted by the Heraldic Authority to pass regardless of surname.<sup>66</sup> Thus, it may be that, if the law of arms of Nova Scotia is that of Scotland, only those who bear the same surname as the original Nova Scotian grantees of arms may inherit those arms.

It is apparent, therefore, that differences between provincial and federal laws of arms exist. Under Canadian constitutional law, however, a provincial law is only held to conflict with a federal law if compliance with one would involve breach of the other; and where such conflicts between provincial and federal law exist, federal law shall prevail.<sup>67</sup> Thus, while under Quebec law it may be that anyone can assume a coat of arms, complying with federal law by seeking a Crown grant of arms would not involve a breach of the Quebec law, and so no legal conflict exists. Similarly, a Nova Scotian who wished to inherit a coat of arms originally granted to someone with a surname different from his own

<sup>62</sup> DE MINVIELLE-DEVAUX, p. 54.

<sup>63</sup> L. G. PINE, *International Heraldry* (Newton Abbot: Davis & Charles, 1970), p. 151.

<sup>64</sup> *Criminal Code*, R. S. C. 1970, c. C-34, ss. 47 (1), 75 (2) & 218 (1).

<sup>65</sup> Blair, pp. 9f.

<sup>66</sup> Letter from Robin Blair, Lord Lyon King of Arms, Court of the Lord Lyon (23 January 2007); Greaves, *supra* at 37. I write 'federal practice' as it is unclear to this author whether English law is comparable to Scots law in this respect: if it is, then – in absence of new legislation – federal law would also stipulate that Canadian arms can only pass to a person having the same surname as the original grantee, in spite of the current contrary policy of the Authority.

<sup>67</sup> Hogg 1985, pp 354f. While normally this doctrine of 'federal paramountcy' applies to legislation, there is some authority that pre-confederation law (such as the law of arms) in a field of federal jurisdiction will also prevail over a provincial law: *Hellens v Densmore* [1957] S.C.R. 768 at 784; and *Re Broddy* (1982) 142 D.L.R. (3d) 151 at 157 (Alta. C.A.), cited *ibid*, note 7.

could legally change his name to do so, avoiding a breach of provincial law and without offending any federal practice.

As a result, the federal law of arms can still overlap with provincial law; and depending on whether provincial law or federal law is applied, outcomes may differ.<sup>68</sup> Looking at the test created by the Supreme Court of Canada for situations in which a court must determine if a provincial law can apply in an admiralty-tort context, one might theorise that a comparable test for determining if a provincial law of arms can apply to a matter regarding Canada's heraldic system would be as follows:

1. Does a federal law exist (either legislated, or – more likely – received from England) that applies to the facts? In determining the existence of such a federal law, the court could draw on the sources for this law enumerated above to draw forth an applicable 'counterpart principle'.<sup>69</sup>
2. If such an applicable federal law (or counterpart principle) exists, then a provincial law of arms would *not* apply to Canada's national heraldic system. If no such applicable federal law or principle exists, then the court could develop, through judicial reform, the law of arms of Canada to fill whatever gap has been made apparent by the facts.<sup>70</sup>
3. Only where a court could not fill such a legal gap by drawing on the sources of Canadian armorial law outlined above would it then consider the application of a provincial law of arms, and in doing so, would endeavour to prevent the application of the provincial law permitting the indirect regulation of the Canadian heraldic system by a provincial authority.<sup>71</sup>

Accepting these principles, it seems unlikely that any provincial law of arms would be found to affect Canada's federal law of arms.<sup>72</sup> And

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<sup>68</sup> Compare, again, Canada's admiralty law: *Maritime Law*, p 113.

<sup>69</sup> Compare *Ordon Estate v Grail* (1996), 30 O.R. (3d) 643 (C.A.), *aff'd* [1998] 3 S.C.R. 437 at para. 73 (*Ordon Estate v Grail*).

<sup>70</sup> Compare *Ordon Estate v Grail* at para. 76. In doing so, the court would be restricted to developing the law of arms in response to social change, while being mindful of the interests of uniformity among armorial jurisdictions internationally.

<sup>71</sup> Compare *Ordon Estate v Grail* at para. 80.

<sup>72</sup> Comparing *ITO International Terminal Operators Ltd v Miida Electronics Inc.* (*The Buenos Aires Maru*), [1986] 1 S.C.R. 752, preventing provincial law from effecting the Dominion's armorial law would be to ensure that, as a body of federal law, Canadian armorial law would be consistent across the country, regardless of the local legal systems. Consider, however, *Q.N.S. Paper Co. v. Chartwell*, [1989] 2 S.C.R. 683 at about 697, whereby one could imagine a court

could the federal law of arms ever influence a provincial law? Yes, for federal law is not foreign to the provinces: it is an integral part of the law of each province.<sup>73</sup> But does this mean these provincial laws of arms are effectively moot? Are there no instances in which they would govern coats of arms in Canada? There might be, if such coats of arms were themselves *provincial*.

Lieutenant governors in Canada exercise the Queen's powers in right of the provinces, fulfilling the same rôle for the provinces as the Governor General does for the Dominion or Kingdom, *i. e.* the lieutenant governors are not merely federal officers representing federal interests in provincial affairs.<sup>74</sup> Exercise of the Queen's powers in right of the provinces includes the exercise of the Royal Prerogative, albeit at a provincial level.<sup>75</sup> Yet the provinces are excluded from the federal honours system, *e. g.* lieutenant governors may be asked for comment on nominations of residents of their respective provinces for the Order of Canada, and may present federal medals to such residents, but other than this, the provinces have no involvement in federal honours.<sup>76</sup>

But is there still a provincial honours 'jurisdiction'? Starting in 1925 with Quebec, and continuing into the 1980s, several provinces have established orders of honour.<sup>77</sup> Rideau Hall initially refused to recognise such provincial honours, but in 1991, the Governor General acquiesced and recognised them.<sup>78</sup> Even earlier, the Privy Council held that lieutenant governors may, for provincial purposes, exercise the Royal Prerogative to appoint Queen's Counsel (which appointments are Crown honours).<sup>79</sup> Thus, the provinces do exercise the Royal Prerogative to grant honours, and as the 1988 enabling letters patent were issued in the name of the Queen in right of Canada (not in right of any of the provinces), there does not appear to be any bar to a lieutenant governor granting

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considering the principles of a provincial armorial law where there is no precedent in federal law for the matter at issue.

<sup>73</sup> *The Buenos Aires Maru* at 753.

<sup>74</sup> *Maritime Bank (Liquidators of) v. N.B. (Receiver General)*, [1892] A.C. 437 and *Monahan* 2nd ed, at 80 & 98 note.

<sup>75</sup> *London*, p. 71.

<sup>76</sup> Editorial staff, 'Hope for the Monarchy in Canada: The Provincial Crown', *Canadian Monarchist News* (spring 2005) 12 ['Hope for the Monarchy'].

<sup>77</sup> *McCreery*, pp. 121ff.

<sup>78</sup> 'Hope for the Monarchy' *ibid.* Interestingly, at the national conference preceding the Authority's establishment, two of the provincial chiefs of protocol expressed concerns about Rideau Hall's refusal to recognise provincial honours – concerns which a former president of the Heraldry Society of Canada attending the conference sought to dismiss without explanation [A Canadian Heraldic Authority – National Conference on the Issue, Summary of the Verbal Proceedings, Doc. R11024 (Ottawa: 26 March 1987), pp. 14f].

<sup>79</sup> *A.G. Canada v. A.G. Ontario (Queen's Counsel Case)* [1898] A.C. 247. The Privy Council based this in consideration on ss. 92 (1), (4) and (14) of the Constitution Act, 1867 [*London*, p. 104].

arms without reference to the Authority. Indeed, if the will existed, one sees no legal argument as to why a province could not establish her own heraldic authority to grant provincial (as opposed to Canadian, *i. e.* federal) arms.<sup>80</sup> In certain jurisdictions, this may be desirable. For example, French heralds were not empowered to grant arms as their English and Canadian counterparts are: rather, they only drew the arms of a petitioner who petitioned the king directly, and only after the king had already granted the arms. Thus it may be that a Quebec resident seeking 'Quebec arms' must directly petition the Lieutenant Governor of Quebec, as the Queen's representative for that province, who would grant the arms in the name of the Queen, to then be drawn up by the provincial authority.<sup>81</sup>

If such 'provincial' arms were granted, then it would stand to reason that they would be subject to the particular law of arms of the province in which they were created. Such grants, however, would have no effect on the Canadian (*i. e.* federal) armorial system, particularly on the federal law of arms, by which all arms granted by the Authority are governed. Thus, while Lyon Blair's remark that Canada has a series of differing laws that at first blush might present an armorial conundrum, careful examination from a legal perspective reveals that, in its present and foreseeable state, arms granted by the Canadian Heraldic Authority are governed by a single body of law, and a body of law not far removed from that of England's.

#### **Sommaire français.**

*M. le maître Mackie s'adresse ici au problème posé par le Lord Lyon Blair au sujet d'un conflit possible entre la Loi d'Armes du Canada administrée par l'Autorité héraldique au niveau fédéral à la base de la tradition légale anglaise, et les Lois d'Armes qui pourraient être découvertes au niveau des provinces, et qui pourraient être basées dans les traditions légales de France (en cinq provinces) ou d'Écosse (en trois provinces). Après une étude historique des origines des systèmes légaux de toutes les provinces, et une considération des décisions de la Cour suprême du Canada relatives aux questions de conflit entre les lois fédérales et provinciales, il prononce son verdict: qu'il n'y aura pas de problème de ce type.*

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<sup>80</sup> Notably, during the National Forum on Heraldry, the Chief of Protocol of the Government of Saskatchewan emphasised the desirability of a provincial element in the Authority [Ian CAMPBELL, *The Identifying Symbols of Canadian Institutions* (N. p. 1990) pt. I, pp. 222f]. Were such a provincial authority established, perhaps an arrangement analogous to that existing in England could be made, whereby a grant of arms by a provincial herald could be (in the interests of greater uniformity) made jointly with the Chief Herald of Canada, just as a grant of arms by a provincial King of Arms in England is made jointly with Garter [DE MINVIELLE-DEVAUX, p 34].

<sup>81</sup> Recall that an approach for a grant of arms is an approach to the Queen as Fountain of Honour [Robert GAYRE OF GAYRE AND NIGG, *The Nature of Arms* (London: Oliver & Boyd, 1961), p 63].