

To Proclaim or Not to Proclaim:
The Effect of the *Union with Ireland Act 1800*
on the Grant of Canada's Armorial Achievement
in 1921

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1. Introduction: The Grant of 1921

Following the 1867 Confederation of the Dominion of Canada, the four founding provinces of Ontario, Quebec, Nova Scotia, and New Brunswick were each granted a coat of arms by way of Queen Victoria's royal warrant addressed to the Deputy Earl Marshal declaring the designs of these arms and requiring that the Queen's 'concession and declaration' of these arms be recorded at the College of Arms.¹ This warrant set out the arms of the four provinces and provided that the seal of the new Dominion of Canada be formed of the arms of the four

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¹ Buckingham and Chandos to Monk (14 October 1868) published in 22(3) C.Gaz. 2 (27 November 1868). The warrant was dated 26 May 1868.

provinces, quarterly.² While the 1868 warrant did not grant the new Dominion its own coat of arms,³ a shield of the arms of the four provinces was subsequently used as the *de facto* arms of Canada.⁴ No other armories were granted by this act, leaving both the four provinces and the Dominion without either a crest or supporters.

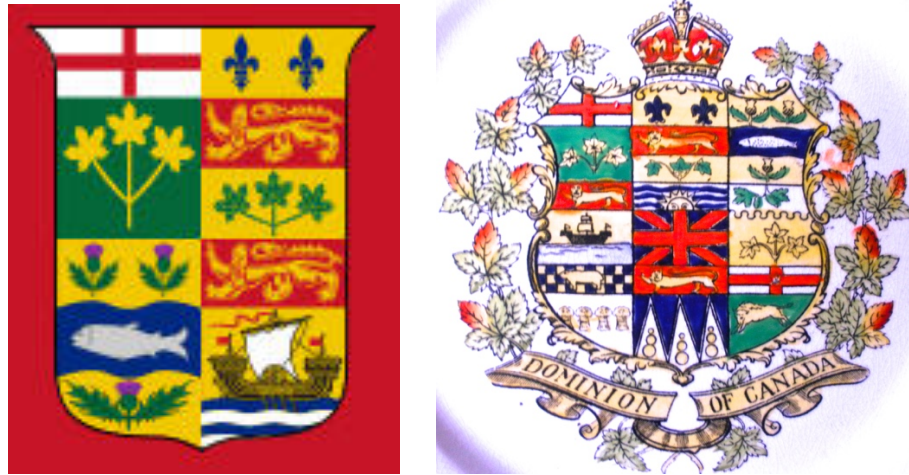


Fig 1. The quarterly arms, made up of the provincial and territorial arms used as the arms of dominion in Canada between 1867 and 1921

² Interestingly, when the Great Seal for the Dominion of Canada was actually created in 1869, it did not incorporate the arms of the founding four provinces of the new Dominion but rather included the Royal Arms in Right of the United Kingdom (Imperial Arms) instead (Library and Archives Canada (LAC) 1979-058 PIC 00015, 2894524).

³ Despite the mischaracterization of Queen Victoria's 1868 warrant by the Secretary of State for the Colonies in his despatch to the Governor General of Canada as 'Her Majesty's Warrant of Assignment of Armorial Bearings for the Dominion and Provinces of Canada', it is clear from the plain language of the warrant that no arms were lawfully granted to the Dominion. Indeed, the warrant itself is labeled by Albert Woods, Lancaster Herald and Registrar of the College of Arms, as: 'Warrant granting Armorial Bearings for the Provinces of Ontario, Quebec, Nova Scotia, New Brunswick, and a Great Seal for the Dominion of Canada'.

⁴ As new provinces joined the Dominion and obtained their own arms, these were unofficially added as quarters to this *de facto* arms of Canada. By the time that an official grant of arms to Canada itself was being considered in 1919, this *de facto* coat had grown to include the arms of nine provinces.

It was on 10 May 1921 that the Governor General of Canada, the Duke of Devonshire,⁵ transmitted to the Secretary of State for the Colonies – one Winston Churchill⁶ – a copy of a decision of Canada's Privy Council⁷ which included a request that the King direct the College of Arms to record the 'device' (or design) described therein as 'the Arms of the Dominion of Canada'.⁸

On the following 21 November, King George V issued a proclamation formally declaring his assignment of a full armorial achievement for his Dominion of Canada, including in the arms the three quarterings of his arms as King of Great Britain and Ireland.⁹ This was a departure from past practice, as no other British dominion had received their grant by way of a grand and dignified royal proclamation but solely by way of a standard royal warrant.¹⁰ Why were the arms of His Majesty in Right of Canada deserving of either the *substance* or the *manner* of the King's proclamation? The answer lay with a requirement set out in a law already over a hundred years old in 1921: the *Union with Ireland Act 1800*.

The interpretation of this requirement maintained by Sir Henry Burke,¹¹ Garter King of Arms, was in opposition to that held by the Colonial Secretary, Winston Churchill. In this article, I would like to briefly examine the aforementioned requirement and how it affected the final chapter of Canada's journey to obtain its own armorial bearings.

2. The Union with Ireland Act 1800

The United Kingdom of Great Britain and Ireland was created on 1 January 1801 further to parallel acts passed by the Parliament of Ireland and the Parliament of Great Britain in 1800.¹² At the time their enactment

⁵ Victor Christian William Cavendish, 9th Duke of Devonshire, 11th Governor General of Canada (1916–1921).

⁶ Winston Leonard Spencer-Churchill, Colonial Secretary (February 1921–October 1922) and the future Prime Minister of the United Kingdom (1940–45, 1951–55).

⁷ P.C. 1496 (30 April 1921). This decision by Canada's federal cabinet was in substitution of an earlier decision (P.C. 1604 (13 July 1920)) which had approved a different design that would have placed the emblem from the third division in the first so that the three maple leaves would have been at the top of the shield. This led to objections, as described below.

⁸ Devonshire to Churchill (10 May 1921), UK National Archives (UKNA) File PC 8/931 (formerly 126,378).

⁹ 32525 Lond. Gaz. 9242 (22 November 1921); 55(27) Can. Gaz. 2 (31 December 1921).

¹⁰ For example, Australia's arms (those granted in 1908 and in 1912) were granted by royal warrant as were those of New Zealand (1911) and South Africa (1910).

¹¹ Henry Farnham Burke, Rouge Croix 1880, Somerset 1887, Norroy 1911, Garter 1919.

¹² In Ireland: 40 Geo. 3, c. 38. In Great Britain: 39 & 40 Geo. 3, c. 67.

was being debated in the British House of Commons, Prime Minister Pitt referred to the first article of the then proposed Acts as follows: ‘...the first article merely relates to the name of the United Kingdom, upon which I apprehend no difference of opinion can subsist’.¹³ However, of heraldic relevance, the first article also sets out a requirement in relation to the ‘ensigns’ of the United Kingdom and its dependencies. Article one provides as follows:

That it be first article of the union of the kingdoms of Great Britain and Ireland, that the said kingdoms of Great Britain and Ireland shall, upon the first day of January, which shall be in the year of our lord one thousand eight hundred and one, and for ever, be united into one kingdom, by the name of “the united kingdom of Great Britain and Ireland,” and that **the royal stile and titles appertaining to the imperial crown of the said united kingdom and its dependencies, and also the ensigns, armorial flags and banners thereof, shall be such as his Majesty by his royal proclamation under the great seal of the united kingdom shall be pleased to appoint.** (*Relevant text boldfaced*)

In relation to the ‘ensigns’ of the United Kingdom, proclamations were made pursuant to that statutory authority in 1801, 1816, and 1837. On 1 January 1801, King George III issued a proclamation declaring the ‘**arms or ensigns armorial**’ of the United Kingdom to be

Quarterly; First and Fourth, England; Second, Scotland; Third, Ireland; and (...) borne therewith on an Escutcheon of Pretence the Arms of Our Dominions in Germany, ensigned with the Electoral Bonnet.¹⁴

On 8 June 1816, the Prince Regent issued a proclamation replacing the Electoral Bonnet above the Escutcheon of Pretence with the Hanoverian Royal Crown to signify the conversion of the former Electoral Principality into a Kingdom.¹⁵

The Hanoverian escutcheon and its crown were finally removed completely from the arms of the United Kingdom by a proclamation of 26 July 1837, when Queen Victoria — who had been prevented from inheriting the Kingdom of Hanover by its Salic succession law that

¹³ *The Speeches of the Right Honourable William Pitt in the House of Commons* (3d) (London: Longman, Hurst, Rees, Orme, and Brown, 1817), p. 163.

¹⁴ 15324 Lond.Gaz. 2 (30 December 1800 to 3 January 1801).

¹⁵ 17149 Lond.Gaz. 1237 (29 June 1816).

prohibited its transmission in the female line — issued a proclamation to that effect.¹⁶

3. The Design of the New Arms (recte “Achievement”) of Canada

The evolution of the design of what was to become in 1921 the arms of His Majesty the King in Right of Canada has been comprehensively researched and set out by Auguste Vachon¹⁷ and thoroughly analysed by D’Arcy Boulton.¹⁸ In summary, in 1919, Canada’s federal government created a committee¹⁹ chaired by the Under Secretary of State for External Affairs, Sir Joseph Pope,²⁰ tasked with having a coat of arms granted to the Dominion. Pope liaised with York Herald at the College of Arms, Gordon Lee,²¹ on design ideas.

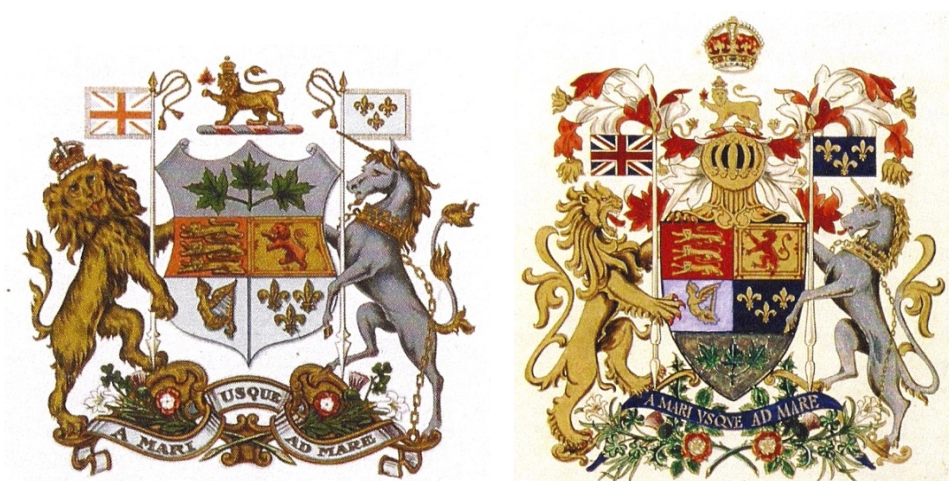


Figure 2. Official renderings of the first and final proposals for the new Royal Arms and Achievement of Canada, 1921

¹⁶ 19529 Lond.Gaz. 2033 (4 August 1837); see also Noel Cox, ‘The Law of Succession to the Crown in New Zealand’ [1999] ALRS 1; (1999) 7 Waikato Law Review 49-72.

¹⁷ ‘Canada’s Coat of Arms – Defining a Country within an Empire’, available online at the site <http://heraldicscienceheraldique.com/canadarsquos-coat-of-arms-defining-a-country-within-an-empire.html> (accessed 5 June 2023).

¹⁸ D’A. J. D. Boulton, ‘Towards a More Canadian Regal-Regnal Achievement: An Historical and Semeiotic Analysis of the 1921 Achievement, with Proposals for the Modifications of its Elements’, *ASH* 1-2, 2008-2009, pp. 169-222.

¹⁹ By Order-in-Council, P.C. 668 (26 March 1919).

²⁰ Under Secretary of State, 1896-1909, Under Secretary of State for External Affairs, 1909-1925.

²¹ Gordon Ambrose de Lisle Lee, York 1905, Norroy 1922, Clarenceaux 1926. Lee had successfully worked on several grants of arms to colonies.

With input from the committee, Lee proposed a design which closely approximates what was finally in the King's proclamation in November 1921. However, this design did not meet with the approval of Garter King of Arms, Sir Henry Burke. In a letter to the Under Secretary of State for External Affairs, Lee wrote:

Garter, however, is very strongly of the opinion that no sort of variation of the Royals' (sic) Arms is permissible or practicable and is not prepared to recommend any such design for His Majesty's approval. He suggests that Arms on the lines of those of other Dominions, e.g., New Zealand or South Africa, should be adopted and that, rather than the Royal Arms, the Royal Badges – Rose, Shamrock, and Thistle, with the Fleur de lys for France and the maple leaf – should be drawn upon for inspiration – with perhaps the Imperial Arms as a sort of centre.²²

Politicking ensued, and Canadian officials were able to secure the King's personal approval of their proposed design, despite Garter's objections, with one caveat. As the then Colonial Secretary, Viscount Milner,²³ reported to the Governor General of Canada in 1920:

I am given to understand that the King will gladly give his consent to the proposed incorporation of portions of the Royal Arms into these Armorial Bearings. He does, however, take exception to placing the Arms of the Sovereign under a Chief with Maple Leaves and considers that the position should be reversed so that the arms come above the leaves.²⁴

The design was revised and approved by the Canadian Cabinet in April 1921.²⁵

3. Conferral by Proclamation or Warrant?

On 10 May 1921, the new Colonial Secretary Winston Churchill advised the Governor General of Canada that the King had approved the design of the new arms.²⁶ However, the King did not issue his proclamation until November. While the record during this period is limited, this delay suggests bureaucratic reticence in moving the project

²² Lee to Pope (22 March 1920), LAC RG6, A1, Vol. 210, File 1156, Pt 1.

²³ Alfred Viscount Milner, Colonial Secretary (January 1919-February 1921).

²⁴ Milner to Devonshire (19 November 1920), LAC RG6, A1, Vol. 210, File 1156, pt 2.

²⁵ *Supra*, note 7.

²⁶ Churchill to Devonshire, (10 May 1921) LAC RG6, A1, vol. 210, file 1156, pt 2.

along, and the record suggests this is due to a legal objection raised by Garter.

Garter argued that the proposed arms for Canada were a variation of the Imperial Arms, as these were being altered by adding fleurs de lys and maple leaves. Any alteration of the Imperial Arms was subject to the *Union with Ireland Act 1800*, which required a royal proclamation for any changes to the 'ensigns' of the United Kingdom.²⁷ Therefore, the proposed arms for Canada could not be granted by way of a royal warrant.

The Colonial Office did not share this view and expected that the College of Arms would follow the usual practice and prepare a royal warrant for the King's signature.

In response, Garter appears to have simply refused to prepare the requested warrant. In August 1921, in response to an inquiry from the Colonial Office, Garter wrote 'I am not yet in a position to say when the Warrant will be ready for submission to His Majesty'.²⁸

Perhaps as a means of settling this dispute, on 21 October 1921, the Clerk of the Privy Council, Sir Almeric FitzRoy,²⁹ wrote to the Law Officers' Department explaining that:

...questions of law have arisen in connection with the proposed armorial insignia for the Dominion of Canada, owing to the fact that the form submitted is that of the 'ensigns armorial' of the United Kingdom (...) with considerable modifications, e.g., the fleur de lys of France in the 4th Quarter and the addition of a third division bearing the Canadian Maple Leaf.³⁰

The Attorney General of England, Sir Gordon Hewart,³¹ was asked by FitzRoy to answer the following question:

Is the proposed grant to Canada of ensigns armorial, containing a modification of the Arms of the United Kingdom, affected by or

²⁷ Conrad Swan, *Canada Symbols of Sovereignty* (Toronto: University of Toronto Press, 1977), p. 63, citing Burke to Lee (24 January 1920), Papers of the Office of Garter King of Arms (G14/91).

²⁸ Ibid., citing Burke to the Under Secretary of State for the Colonies, Papers of the Office of Garter King of Arms (G14/153). I have to say, I found Garter's response worthy of Sir Humphrey Appleby.

²⁹ Almeric William FitzRoy, Clerk in Ordinary of the Privy Council (1898-1923).

³⁰ FitzRoy to Chief Clerk, Law Officers' Department (18 October 1921), UKNA File PC 8/931.

³¹ Solicitor General of England (1916-1919), Attorney General of England (1919-1922), and, as Baron Hewart, Lord Chief Justice of England (1922-1940). Upon his retirement in 1940, he was created the Viscount Hewart.

within the scope of the First Article of the *Union with Ireland Act 1800*?³²

The Attorney General's one-sentence reply, sent on October 24, 1921, was to the point:

In my opinion, the proposed grant to Canada of ensigns armorial, containing a modification of the Arms of the United Kingdom, is within the scope of the First Article of the *Union with Ireland Act 1800*, and His Majesty may properly be advised to proceed in the matter by Royal Proclamation.³³

4. Churchill's Response

One might think that a conclusive legal opinion from the Attorney General of England would have put this matter to rest. However, Mr. Secretary Churchill was not quite finished with Attorney General Hewart.

Following the receipt of a copy of the Attorney General's opinion, the Colonial Office decided to place 'the whole of the relevant circumstances (...) within the cognizance of the Attorney General'.³⁴

On 28 October 1921, the Colonial Office wrote directly to the Attorney General and, in four pages, set out why it would be more appropriate for a warrant, prepared by Garter, to be used, 'being the form of instrument by which all existing grants of Arms to the Dominions and Colonies have been made', without requiring a proclamation.³⁵

The case first put to the Attorney General by the Privy Council Office characterized the grant of arms to Canada as a 'modification of the Royal Arms', but here Churchill's department took a different position. The Colonial Office's view was that a grant of arms to Canada, although incorporating a part of the Imperial Arms, would not have the effect of altering the Imperial Arms. Therefore, no proclamation under the *Union with Ireland Act 1800* was required.

³² Supra, note 31.

³³ Papers of the Office of Garter King of Arms (G14/188). This legal opinion, sent to the Privy Council Office on 24 October 1921 was then forwarded by the Clerk of the Privy Council to the Colonial Office on 25 October 1921 (UKNA PC 8/931).

³⁴ James Masterson-Smith, Under Secretary of State, Colonial Office to the Clerk of the Privy Council (28 October 1921), UKNA File PC 8/931.

³⁵ Masterson-Smith to Hewart (28 October 1921), UKNA File PC 8/931. It is curious that this letter was not signed by Churchill himself or in his name.

It was also argued that, given the 'present constitutional position, it would be undesirable to treat Canada as still being a Dependency of the United Kingdom'.³⁶

The Attorney General was then asked to reconsider his earlier advice, but this was couched in the form of a slightly different question:

...whether a Proclamation under the Act of Union authorizing the proposed device is in fact necessary before a Royal Warrant granting the proposed Arms to Canada can be issued, or whether there is no legal impediment to the issue of a Royal Warrant without further formality.³⁷

On November 4, 1921, the Attorney General replied directly to Churchill:

In my opinion, the expression 'United Kingdom and its Dependencies' in the first Article of the Act of Union includes all the colonies and dominions of His Majesty, and, consequently, a Proclamation under that Act is necessary before a Royal Warrant granting the proposed Arms to Canada can properly be issued.³⁸

Both the Privy Council Office and Garter were pleased with the result. The Clerk of the Privy Council wrote to Garter stating:

³⁶ Ibid. Although still a decade away from the *Statute of Westminster*, this may have been a reference to the evolving relationship between the UK and its colonies as reflected in one of the resolutions of the 1917 Imperial Conference. Resolution IX of that conference provided in part that

The Imperial War Conference (...) deem it their duty, however, to place on record their view that any such Readjustment [of the constitutional relations of the component parts of the Empire], while thoroughly preserving all existing powers of self-government and complete control of domestic affairs, should be based upon a full recognition of the Dominions as autonomous nations of an Imperial Commonwealth and of India as an important portion of the same, should recognise the right of the Dominions and India to an adequate voice in foreign policy and in foreign relations, and should provide effective arrangements for continuous consultation in all important matters of common Imperial concern and for such necessary concerted action, founded on consultation, as the several Governments may determine.

This is set out in Comd 8566, Imperial War Conference, 1917, *Extracts from Minutes of Proceedings and Papers Laid before the Conference* (London: HMSO, 1917), p.5.

³⁷ Supra, note 36.

³⁸ Hewart to Churchill (4 November 1921), UKNA File PC 8/931.

It will amuse you to learn that our friends in the Colonial Office[,] not content with the Attorney General's opinion that the grant of arms to Canada could properly be done by Proclamation under the Union with Ireland Act and having got into their ill-informed heads that the Canadian people would object to this the most dignified and ceremonial way of conferring upon them what they want[,] chose to put to Hewart the point (...) whether procedure by Proclamation was necessary and have obtained a short and decided answer in the affirmative.³⁹

In the opinion of this author, Garter's response to the Clerk of the Privy Council is telling:

I am delighted to hear that the Colonial Office have been properly strafed and that they will have to take the responsibility for the probable design.⁴⁰

In Garter's response, you can see that he still remained opposed to the approved design of the arms. However, the legal point having been established, the necessary proclamation was drafted by the Privy Council Office and approved by the Colonial Office.⁴¹

On November 9, 1921, Churchill informed an impatient Government of Canada by telegram that matters were finally moving ahead:

In view of technical difficulties which have arisen relative to bearing of Article one *Union with Ireland Act 1800* on proposed grant of these Arms, it was found necessary to consult Attorney General, who advised proclamation under these Articles. This proclamation is being put in hand.⁴²

Finally, in accordance with the first Article of the *Union with Ireland Act 1800*, the royal proclamation granting the heraldic arms of His Majesty the King in Right of His Dominion of Canada was made on

³⁹ FitzRoy to Burke (15 November 1921), Papers of the Office of Garter King of Arms (G14/189).

⁴⁰ Burke to FitzRoy (16 November 1921), UKNA File PC 8/931.

⁴¹ Henry Lambert, Assistant Under Secretary of State, Colonial Office to FitzRoy (17 November 1921), UKNA File PC 8/931.

⁴² Churchill to Devonshire (9 November 1921), LAC RG6, A1, Vol. 210, File 1156, Pt 3.

November 21, 1921.⁴³ Aside from a small change introduced some thirty years ago,⁴⁴ these arms have remained unchanged, legally.⁴⁵



Figure 3. An artistically improved version of the first official design of the Achievement

⁴³ Supra, note 9.

⁴⁴ In 1987, the Queen authorized the augmentation of these arms with an annulus behind the shield bearing the motto of the Order of Canada, *Desiderantes Meliorem Patriam*, for limited use and then, in 1994, for general use (Hansard, *House of Commons* (Hon. M. Dupuy (Minister of Canadian Heritage); Hon. Herb Grey (Leader of the Government in the House of Commons and Solicitor General), 5 December 1995).

⁴⁵ Except for the addition of the annulus, the blazon remains unchanged from that set out in the King's 1921 proclamation. The blazon describes the colour of the maple leaves as Proper. From 1921 to 1957, this was interpreted as Vert. From 1957 to the present, this has been interpreted more appropriately as Gules.



Figure 4. The new official design of 1987, including the circlet of the Order of Canada

Sommaire en français

Cet article examine comment les armoiries du Dominion du Canada, composés des armoiries octroyées aux provinces de l'Ontario, du Québec, de la Nouvelle-Ecosse et du Nouveau-Brunswick en 1868, furent remplacées en 1921 par les armoiries octroyées au Dominion lui-même. Il explique d'une façon détaillée le processus par lequel ces nouvelles armoiries furent octroyées et les conflits entre les diverses branches du gouvernement impérial au sujet de leur dessein et de la manière de les octroyer.