

A Mari usque ad Mare:
More Heraldry in the Courtroom

The Hon. Mr. Justice JOHN DEP. WRIGHT¹
Judge of the Superior Court of Ontario

In his article '*Honi Soit Qui Mal y Pense: Heraldry In The Courtroom*', published in the November [2004] issue of *The Advocate*, Murray B. Blok argues that 'The coat of arms displayed in all courts in British Columbia [the *Honi soit qui mal y pense* arms as Blok calls them] is the royal coat of arms of the Queen known as the Royal Arms' and thus are the proper Arms to be displayed about the courts in accordance with statute and custom. He feels compelled to justify use of these Arms in British Columbia because he recognizes that 'those opposed to the use of the Royal Arms (among whom we find many heraldic experts or enthusiasts) maintain that the correct arms to use are either those of Canada or the province, and that continued use of the Royal Arms is improper'.

As a judge of the Ontario Superior Court, a monarchist and a longstanding member of The Royal Heraldry Society of Canada, I find myself aligned with the 'many heraldic experts and enthusiasts' (I am on the 'enthusiast' side of the House) who maintain that the continued official use of the *Honi soit qui mal y pense* arms in the courts of BC is not only improper but embarrassing.

Mr. Blok argues that the *Honi soit* arms are the personal arms of the Queen and that it is fit and proper that the courts should display a symbol that refers directly to the monarch and is not used by other organs of government. Of course this argument overlooks the fact that those arms are used by many organs of government but they are English organs of government. The fact that they are not used by other Canadian organs of government might give him pause for reflection.

(As an aside, one wonders why a judiciary in search of a distinctive symbol would embrace a symbol to be found on every post box in a foreign country, one whose use must be approved by a foreign official, the English Home Secretary.)

I accept that s. 7 of the current Supreme Court Act prescribes that the Supreme Court should have and use 'a seal bearing Her Majesty's Royal Arms.' I also agree that the Royal Arms are the appropriate arms for use in courtrooms. I disagree with his identification of what is meant by the term 'Royal Arms' in this context.

Mr. Blok refers to the *Honi soit* arms as The Royal Arms, (which I shall refer to as the "English Royal Arms"), the "*A Mari Usque Ad Mare*"

¹ The Honourable Mr. Justice John de P. Wright of the Superior Court of Ontario. Published in Vol. 63 *The Advocate* (Vancouver Bar Association) p. 353 (May 2005)

arms as the arms of Canada, and the “*Splendor Sine Occasu*” arms as the provincial arms, and he maintains that only the English Royal Arms can be meant by the statute’s reference to Royal Arms.

In fact all three coats of arms (or armorial achievements) constitute Royal Arms. The *Honi soit* arms are properly styled the Royal Arms of the Queen in right of the United Kingdom as used in England, Wales and Northern Ireland.² The “*A mari*” arms are the Royal Arms of the Queen in right of Canada, and the “*Splendor sine occasu*” arms are the Royal Arms of the Queen in Right of British Columbia.

The Queen has other Royal Arms as well. If Mr. Blok’s thesis is correct, that all judges deriving their authority from the Queen should sit under the English Royal Arms, then one would expect the English Royal Arms to be a common sight in Scottish courtrooms. Such is not the case. A Scots judge would be uncomfortable finding himself sitting under these Royal Arms. The Queen has another version of her Royal Arms for use in Scotland.

Mr. Blok is correct in assigning a certain historic precedence to the English Royal Arms. He is correct that in the past they have served a function as “Imperial” Arms and have been used in other realms. As Sir Conrad Swan, then York Herald of Arms and later Garter Principal King of Arms in the English College of Arms, wrote in his book *Canada: Symbols of Sovereignty* on page 5:

‘. . . what are frequently termed the English and then the British Royal Arms are ensigns for the general purposes of government and have been and are borne and used in all the sovereign’s realms and territories, wherever they may be, **for which particular arms have not been assigned....**’ [emphasis mine]

But particular arms *have* been assigned to the sovereign in right of Canada, and also to the sovereign in right of British Columbia. It is true that at one time the English Royal Arms were the proper Royal Arms to be displayed about Canadian courts. The British North American colonies imported the English law, procedure and court structure together with the trappings of those institutions. But nations evolve and grow up. In recognition of that evolution the king assigned distinctive armorial ensigns to Canada in 1921, the earliest version of the *A Mari Usque Ad Mare* arms.

Mr. Blok argues that these are not Royal Arms, that they are the arms of ‘Canada’. In a sense they are the arms of Canada, just as the English Royal Arms are the arms of England, Wales and Northern Ireland.

² “The Royal Arms of Her Majesty Queen Elizabeth II are her arms of dominion in right of the United Kingdom. In the version used by the government and consequently as the official coat of arms of the United Kingdom of Great Britain and Northern Ireland, the crown is shown resting directly on the shield, with the helm, crest and mantling not displayed . . .”.
http://en.wikipedia.org/wiki/Royal_Coat_of_Arms_of_the_United_Kingdom

But the *A Mari* arms are correctly styled and recognized by the authorities in Heraldry, as even Mr. Blok concedes, as Royal Arms being the Arms of the Sovereign in Right of Canada.

As the New Zealand heraldic expert, G.A. Macauley, explains:

'It is axiomatic that a coat of arms may be borne only by a legal entity (either a natural person or a corporation) which is capable of owning property, of suing and being sued, and of being party to contracts. A country is simply an area of land — a geographical entity rather than a legal person — and even a national government in a monarchical realm of the Commonwealth has no existence as a legal corporation: Sir Ivor Jennings has stated authoritatively that 'the formula Her Majesty's Government is not a legal term'. In countries such as the United Kingdom, Canada and New Zealand, the Crown is the legal owner of all that is loosely referred to as Government Property and in a useful assessment of the national, provincial and colonial arms of the Commonwealth, Dr. (now Sir) Conrad Swan³ states that the arms "are in fact arms of the Sovereign in the right of the territory concerned. Considerations of the armorial bearings of the governments of the dominions and colonies or of such arms as merely a special type of corporate arms make little constitutional, legal or logical sense".⁴

In his book, Sir Conrad Swan notes that the Royal Arms differ from other arms in that they do not identify a person but a sovereignty which is embodied by the monarch. In 1921, in recognition of Canada's new position in what was then known as the Empire, King George V assigned the *A Mari* arms to Canada. These bore the Royal Helm and, as Swan says, "When assigned in 1921 they were the royal arms of the sovereign in right of Canada." Particular arms having been assigned, use of the English Royal Arms for domestic purposes became improper in Canada just as their use was improper (and still is) for domestic purposes in Scotland. After 1921 the English Royal Arms might be used for external purposes, external relations still being a matter for the Imperial government.

This changed ten years later, with the passage of the Statute of Westminster. Canada became an independent realm and the *A Mari* arms became the proper symbol of the Canadian monarch internationally as well.⁵

³ Sir Conrad Swan is a native of Canada who achieved a high position in the English College of Arms, the English heraldic authority. His book, *Canada: Symbols of Sovereignty* is the leading text on official Canadian Arms.

⁴ In an article 'The Arms of the Commonwealth', *The Double Treasure*, No. 16, pp. 12-13, quoted in *Heraldry in Canada* 30.2 (1996), p. 32

⁵ "... following the statute of Westminster and the formal recognition of Canada as a sovereign state, the arms [of 1921] became the expression of this characteristic and so arms of supreme rule, that is to say of dominion, and of self determination, that is to say of sovereignty. In other words, they had become royal arms of

As for the provincial arms: "They are the arms of the sovereign in right of Saskatchewan, Manitoba, and so on, in accordance with the federal Constitution of Canada whereby certain powers are reserved exclusively for provincial exercise." (p. 8)⁶ Once one accepts that the '*A mari*' coat of arms is The Royal Arms of the Sovereign in right of Canada⁷ and that the provincial coat of arms is the Royal Arms of the Sovereign in right of the province, then one must accept that the English Royal Arms have been supplanted and that continued official use of the English Royal Arms has become improper.

At this point, it should be clear that whatever Arms are referred to as the Royal Arms in the *Supreme Court Act*, the English Arms are no longer a legitimate option. The taboo against the official use of the English Royal Arms in Canada is even stronger than the taboo against its use in Scotland. Because she is the Queen of the United Kingdom the Queen has the same status in both Scotland and England and her English Arms, being used internationally, have *some* status in Scotland. This is not true when comparing England and Canada.

Canada is an entirely separate kingdom. This was confirmed by the Statute of Westminster in 1931. The Queen of the United Kingdom is a 'foreign monarch' in Canada, and the display of her British symbols officially in Canada is the display of the symbols of a foreign monarch. The Queen as Queen of Canada is a different persona.

We must not be misled by the fact that the same individual sits upon both thrones. And we must not be beguiled by the concept that apart from being a sovereign the Queen is a person who has personal arms which may be used by Canadian courts. In the first chapter of his book Sir Conrad Swan explains that the Royal Arms are *sui generis*, they are NOT

dominion and sovereignty as borne by the sovereign in right of Canada. (SWAN, *Symbols of Sovereignty*, p. 8)

⁶ Also: 'All of these arms are in fact arms of the sovereign in right of Nova Scotia, Newfoundland and so on, for the particular purposes of administration, in connection with the governing of certain areas. For the sake of brevity and convenience, we frequently referred to such arms as the 'arms of Nova Scotia' and the like, but it will be appreciated that they identify public authority and not a geographical area, let alone even the inhabitants subject to that public authority.' (*Ibid.*, p. 6)

⁷ 'The arms of Canada are the arms of the Sovereign; they signify national sovereignty or ownership. They are used by Canada on federal government possessions such as buildings, official seals, money, passports, proclamations, publications, etc.; as well as rank badges of some members of the Canadian Forces. ... Permission to use the arms of Canada in commercial activities may be obtained by writing to: Manager, Ceremonial and Canadian Symbols Promotion, Canadian Identity Directorate, Department of Canadian Heritage, Ottawa, Ontario K1A 0M5'.

<http://www.globalseek.net/CoNTiNeNTs/NAMeRiCa/CaNaDa/arms.html#anchor582860>

the personal arms of the Queen but are the arms of the Queen in right of a particular sovereignty.

Trying to explain the position of the Queen and the role of the Crown in our constitutional law is not easy. In law, the Queen is not so much a person as an institution. We call that institution 'The Crown'. The great Canadian teacher of political science, Dr. McGregor Dawson, in his textbook 'The Government of Canada' used a homey tale to try to explain the transposition of the Queen into the Crown:

The personal King of history has thus been in large measure displaced by or transformed into the modern Crown, the formal institution; and while the powers of the old English King have in one sense remained to a material degree unchanged, they have now become the powers of the Crown, not exercisable by the sovereign in person but through responsible officials speaking and acting in his name. The Crown is thus the institution apart from the incumbent of the moment: kings may come and kings may go, but constitutionally and legally the Crown goes on forever, relatively undisturbed by the impermanence of sovereigns. 'Once upon a time', runs the fairy tale, 'there was a King who was very important and who did very big and very important things. He owned a nice shiny crown, which he would wear on especially grand occasions; but most of the time he kept it on a red velvet cushion. Then somebody made a Magic. The crown was carefully stored in the Tower; the King moved over to the cushion and was transformed into a special kind of Crown with a capital letter; and this new Crown became in the process something else, no one knows exactly what, for it is one thing today, another thing tomorrow, and two or three things the day after that. The name given to the Magic is Constitutional Development.'⁸

This explains the apparent anomaly in the comment of Chief Justice Bora Laskin of the Supreme Court of Canada. In his 1969 Hamlyn Lecture 'the British Tradition in Canadian Law' at p. 119, Laskin said 'the Crown is the personification of the state'.

In Canada Her Majesty is the Queen of Canada, not the Queen of the United Kingdom. While confusion may arise because there are several thrones occupied by the same individual the trappings used in one realm are not appropriately displayed in another realm where distinctive trappings exist. As Sir Conrad Swan notes, the Royal Arms are not personal to The Queen, they are annexed to the office of the Queen in right of a particular jurisdiction.

⁸ DAWSON: *The Government of Canada*, 3 ed. (1957 University of Toronto Press) p. 169

If the British abolished the monarchy the Queen would still continue to be the Queen of Canada⁹. At her coronation the Parliament of Canada bestowed a style of address upon her independently.¹⁰

Some find it difficult to grasp that the Queen of the United Kingdom is a distinct persona from the Queen of Canada. The Queen of the United Kingdom can sue the Queen of Canada or declare war upon her. The King of the United Kingdom declared war upon the Axis Powers on September 3 1939 but the King of Canada did not do so until September 10, 1939. In law these monarchs are quite different 'individuals'. The property of one does not belong to the other. Arms are a species of property.

Canadians, above all others, should be comfortable with the concept that the Queen is a different persona in different jurisdictions with different symbols and different powers. Decisions of the Judicial Committee of the Privy Council in such cases as Attorney General (Ontario) v. Mercer¹¹ and the Queen's Counsel Reference¹² have forced an awareness upon Canadians that the Queen in right of a Province is quite distinct from the Queen in Right of Canada. The one can, and often does, sue the other.

This is not to say that the answer to the question: 'what are the appropriate Arms to be used in and about BC courts?' is self evident. For example, while Section 7 of the Supreme Court Act refers to the use of 'Royal Arms' and while, in law, such a reference since the *Statute of Westminster* can only refer to a Canadian version of the Royal Arms this still leaves two versions of the Royal Arms which might appropriately be displayed in British Columbia depending upon the context: her Arms as Queen in Right of Canada (the *A mari* Arms) and her Arms as Queen in Right of British Columbia, (the "*Splendor sine occasu*" Arms).

Mr. Blok asks 'how the issue [between the English Royal Arms and the Canadian Royal Arms] could be conclusively decided is an open question'. He playfully suggests that the only solution might lie in a resort to Trial By Battle.¹³ The answer to this question is clear. Since 1988 Canada

⁹ As for the issue of Abdication see BANKS: "If the Queen Were to Abdicate: Procedure Under Canada's Constitution" [1990] vol. 28 *Alberta Law Review*, p. 535

¹⁰ By the British Royal Titles Act, 1953, the title for the Queen for use in the United Kingdom and its territories is "Elizabeth II by the Grace of God of the United Kingdom and Northern Ireland and of her other realms and territories Queen, head of the Commonwealth, Defender of the Faith." See WADE & PHILLIPS *Constitutional Law* (6 ed.) (London, 1960) p. 162. On May 29, 1953, four days before the Queen's Coronation the Canadian Parliament approved the following style: '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.' See DAWSON, *The Government of Canada* (3 ed., Toronto, 1957), p. 63

¹¹ [1882-82] 8 A.C. 768.

¹² [1898] A.C. 247

¹³ Trial by Battle, generally, was last demanded and allowed in an action for homicide (*Ashford v. Thornton*, 1 Barnewall and N. Alderson 457) but no battle eventuated. Its continued existence having been affirmed, The British Parliament acted in 1819 to abolish it.

has had a civilized forum for the determination of such questions. In 1988 Canada 'repatriated' the last residual prerogative power from Britain: the power to grant arms in the name of Her Majesty. Just as the English look to the College of Arms for authoritative direction on the proper usage of arms and the Scots look to the Lord Lyon for the same direction, Canadians now look to The Canadian Heraldic Authority within the Office of the Governor General. This Authority is presided over by The Chief Herald of Canada, Robert Watt, Esq., an erstwhile resident of British Columbia who is supported by other Heralds of Arms.¹⁴

The real question to be decided is not whether the English Royal Arms should be displayed but what Canadian version of the Royal Arms should be displayed: The Arms of the Queen in Right of Canada or the Arms of the Queen in Right of the Province? Again, the answer is not simple. An heraldic achievement is used by a person to identify his or her property or institutions. Arms may also be used to confirm the authority exercised by a retainer.

It seems to me that the seal referred to in the Supreme Court Act which is impressed upon court documents to authenticate them should bear the Royal Arms of the Queen in Right of British Columbia, the '*Splendor sine occasu*' arms. The Supreme Court of British Columbia and the Provincial Court of British Columbia are both provincial courts, functioning under the authority of the Queen in Right of British Columbia and staffed by provincial employees. The sovereign in right of BC is entitled to be identified with those courts. Similarly courthouses accommodating these courts may be identified by the use of the 'Provincial Arms' for the same reason.

An armorial achievement is displayed within a courtroom for a slightly different purpose. As Mr. Blok notes, from earliest times the king appointed others to sit in the judgment seat to act and speak on his behalf¹⁵. It was important that those coming before the court recognize that the judge spoke for the king¹⁶ and that his voice was the voice of the king. So

¹⁴ Saint-Laurent Herald, Coppermine Herald, Fraser Herald, Saguenay Herald, Assiniboine Herald and Mirimachi Herald. I suspect that the reason Mr. Blok has not turned to the Heraldic Authority for a definitive determination of his question is that he knows that the answer would not be favourable to his contention. While Mr. Blok thanks Mr. Watt for his 'assistance' in preparing his article, the latter is never quoted as being in support of Blok's thesis and the author makes it clear that the ideas expressed are his own.

¹⁵ And to the exclusion of the sovereign. At the time of *The Case of Prohibitions* Lord Coke informed the King '... that no King, after the Conquest, had assumed to himself to give any judgment in any case whatsoever, which concerned the administration of justice within this realm, but "these were solely determined in the Courts of Justice"; the law being "the Golden Met-Wand" and measure to try the causes of the subjects, and which protected His Majesty in safety and peace'. (*Broom's Constitutional Law* (1866, London,) p. 146)

¹⁶ At first this was almost literally so. In the early days the judges would attend upon the king before going on Assize and would report back to the king upon returning from Assize. To kill such a judge was to commit treason just as it was

the Royal Arms were displayed. In Canada the judges of the Superior Courts, such as the Supreme Court of British Columbia, are appointed and maintained by the Queen in Right of Canada. While they may be considered to be seconded to sit in the courts of the province their authority flows from the Queen in Right of Canada. Mr. Blok describes conflicts in other provinces and territories where federally appointed judges insisted upon the indicia of 'Federal' authority being displayed in their courtrooms.¹⁷ The judges of the Provincial Court, on the other hand, are appointed and maintained by the Queen in Right of the Province and it is only proper that the provincial version of her Royal Arms be displayed in courtrooms within which they are sitting to show the origin of their authority.

This is not to say that, in a fit of orthodoxy, the vandals should be let loose and the courthouses of B.C. stripped of their English Arms. The Courthouses of British Columbia hold many wonderful and different depictions of the English Royal Arms as they have been used during various reigns. It would constitute a crime against historical and artistic sensibilities to remove them. My argument is simply that the English Royal Arms should not be displayed as a matter of official policy. No new ones should be installed. The authorities should concentrate upon using the appropriate Arms.

One can sympathize with the reluctance of provincial bureaucrats to hang the indicia of federal power in their courtrooms, the desire of the Provincial Court judges to display the same symbols as their superior court colleagues and the desire of the Supreme Court judges to display a symbol of authority that differs from that worn by every Warrant Officer. But this is the result of our Constitution.

In summary, the argument that the English Royal Arms should be displayed in British Columbia is met by those conversant with such things with incredulity. It is as if BC were to interpret a statute providing that a portrait of the Queen be displayed in court as meaning that a portrait of Queen Victoria should be displayed.

Summaries: See p. 200.

treason to kill the monarch. The identification of monarch and judge was reflected in the tradition that judges on Assize received traditional gifts and could declare school holidays in the same manner as might be done by the King on a Royal Visit. In a garrison town the judge on Assize assumed command of the troops. On some circuits he did not rise when a toast was proposed to the monarch for, as the experienced Huddleston J. told his less experienced colleague, Manisty, J., "sit down Manisty you damned fool, WE are the Queen".

¹⁷ In referring to these incidents Mr. Blok's enthusiasm as an advocate for his thesis leads him to be somewhat careless. He says "McRuer, C.J.H.C. once refused to commence proceedings in a rural Ontario courtroom that displayed only the Ontario arms until those arms were replaced by the Royal Arms" (insinuating the English Royal Arms.) In fact what Kaplan says in his biography of McRuer at the page cited by Blok, is: 'McRuer refused to proceed until that emblem [the Ontario arms] was replaced by CANADA'S royal insignia'. (emphasis mine.)