A Farewell to Arms
(A Last Word)

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It was with a mixture of pleasure and relief that I read Mr. Justice Wright's rebuttal to my article on courtroom heraldry. Pleasure, because I welcome reasoned debate on the issue: and relief, because now I have proof that someone has actually read my article (and an out-of-province reader at that).

I thank the editor for affording me the opportunity to reply. For the most part I consider that the issue has been joined. Wright J. has set out his position with clarity and I hope I did the same, in my article, in explaining the history and rationale of the British Columbia tradition. Let the readers decide if the case has been made out for a change to our tradition.

I must say, however, that Wright J.'s description of the use of the Royal Arms in British Columbia courts as 'embarrassing'' seems a trifle strong. He must feel that the use of the Royal Arms by the courts of Nova Scotia and Newfoundland and Labrador and by the courts in the Australian states of South Australia and Tasmania, is similarly embarrassing. I would be hard pressed to say that all of the judges of our Supreme Court and Court of Appeals in 1965 were so ill-informed that they could have come up with such an 'embarrassing' decision after careful consideration and years of discussion. Nor would I use such a word to describe the views of Mr. Justice Dryer, or those of Judges Bewley and Mussallem of the Provincial Court, or of Chief Judge Lawrence Goulet (who approved the Royal Arms for use by the Provincial Court in 1980), or of Mr. D. R. Sheppard (Associate Deputy Attorney-General in 1980) or Martin Taylor, Q.C., or even (as we shall see) the views of the former chief justice of my debating opponent's own court. These are some pretty clever people but, according to my opponent, all of them are wrong and embarrassingly so.

I am reliably informed that the Queen when travelling abroad in those countries where she is head of state communicates within those countries using special stationery that bears the Royal Arms but omits her Buckingham Palace address. Evidently the Queen feels that these arms are to be associated with her and not with any particular country. This,

according to Wright J., would be most improper, as she should use the indigenous arms in those countries where arms have been assigned.

Could it be that the Queen herself is guilty of what Wright J. would say is such an obvious protocol gaffe?[1]

Wright J. argues that the Royal Arms are particular to England (although they are also used in those Commonwealth jurisdictions that have not had their own arms assigned). He suggests that the law of arms admits of no uncertainty on the point, but on this very issue a committee of the Parliament of New South Wales concluded that the law of arms was so unclear that it could not even come to a conclusion on it.[2]

Wright J. eludes the troublesome problem of s. 7 of our *Supreme Court Act*, which prescribes the Royal Arms for the seal of our court, by arguing that the Statute of Westminster in 1931 implicitly changed the meaning of 'Royal Arms' in that section from the Royal Arms that had been in use since 1856 to the provincial arms. This seems to be an awful stretch. Apparently, the Supreme Court has been using the wrong seal for the last 74 years. No one told us![3]

Wright J. also falls into difficulty when discussing the arms that should appear in British Columbia courts and on B.C. courthouses. The Provincial Court and the Supreme Court are provincial courts, 'staffed by provincial employees' so, he says, the courthouses for these courts ought to bear the provincial arms.[4] In the courtrooms, the provincial arms should be displayed in Provincial Court because the judges are provincially appointed. In the Supreme Court, the arms displayed should be the arms of Canada because the judges are federally appointed. So far, so good. What about the masters? They are masters of the Supreme Court and sit in Supreme Court courtrooms (for the most part), but they are appointed by the province. What to do? And what would *we* do in, say, Salmon Arm, where there is just one courtroom that serves as both a Provincial Court courtroom and a Supreme Court courtroom that is used by both judges

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[1] [*If what Blok says is true, then unfortunately the Queen would be guilty of such a gaffe, unless she was acting explicitly as the head of state of the U.K. There is some reason to believe that the Palace and related institutions have not fully taken in the fact that, when Her Majesty is functioning as the Queen of Canada, wherever she happens to be, the only correct emblems and titles are those pertaining to her Canadian Crown*. (Ed.)]

[2] See n. 24 of the article '*Honi Soit Qui Mal y Pense*: Heraldry in the Courtroom', above, p. 203.

[3] It must be borne in mind that the Statute of Westminster has absolutely nothing to say about coats of arms or court seals. [*Nevertheless, it did make the former Dominion of Canada a Kingdom wholly independent from and equal to the United Kingdom, and thus converted the old Imperial Achievement of General Purpose into that of a foreign state and monarch. This fact seems to have gone unnoticed by the vast majority of public officials in Canada, but it was true nonetheless*. (Ed.)]

[4] Wright J. is incorrect in his broad statement that the courts in British Columbia are staffed by provincial employees. Many key personnel, such as judicial administrative assistants and trial schedulers are employees of the judiciary not the provincial government, although it is true that most of the registry staff are employees of Court Services, a provincial body.

and masters? One can envision a sort of turntable arrangement above the dais, holding various coats of arms, to be spun around as appropriate. It is this very type of confusion that makes the case in favour of our existing tradition of use of the Royal Arms.

In his rebuttal Wright J. refers to 'provincial bureaucrats' and 'the authorities' and their involvement In the arms to he displayed in British Columbia courtrooms. This suggestion is incorrect. The decision on arms was and is for the courts to make, just as they make decisions on such things as courtroom attire, styles of address and cameras and recording devices in courtrooms. The courts made their own decisions in favour of the Royal Arms: the superior courts of British Columbia in both 1907 and 1965 and the Provincial in 1980.

One final point: Wright J. refers to the anecdote told in my article about Chief Justice McRuer of the High Court of Ontario, who refused to sit beneath the arms of the province of Ontario and insisted that they be replaced with arms he thought proper. Wright J., says I was 'somewhat careless' in suggesting that the arms that McRuer C.J.H.C. would have thought proper were the Royal Arms, indicating instead that the arms McRuer C.J.H.C. would have been used to, and would have insisted upon, would have been the arms of Canada. I note, however, that a book on historic Ontario courthouses published in 1983 (that is, before the 1992. change in the arms of the Ontario Superior Court, shows photographs of the Royal Arms in numerous courthouses and courtrooms in various towns and cities, including Milton, Simcoe, Picton, Cobourg, Brantford, St. Catherines, and even Osgoode Hall in Toronto.[5] And, of Course, the Royal Arms were used by the Ontario Court of Appeal until 2002. Lest it be thought that these are just examples of pre-1931 courtrooms, such modern courtrooms as those located at 361 University Avenue in Toronto also display the Royal Arms (or at least did until very recently). So it seems obvious that the arms that McRuer C.J.H.C demanded were the Royal Arms. But the last word on this belongs to Mr. Justice E.F (Ted) Ormston,[6] of the Ontario Court of Justice who in writing about the same anecdote, said: 'In fact it would appear that what Chief Justice McRuer wanted were the Royal Arms he was accustomed to seeing, in Ontario Courtrooms, the Royal Arms of England: the *'Honi soit qui mal y pense - Dieu et mon droit* version.'[1]

Thus even the esteemed former chief justice of Wright J.'s court felt that the Royal Arms were the proper arms to use.

But enough of this idle debate. Martin Taylor had the right idea for resolution of this conflict. I say let the issue be determined in the ancient manner — trial by battle. By my reckoning, Moose Jaw. Saskatchewan. is halfway between Vancouver and Thunder Bay (where Wright J. presides). Let it be quill pens at dawn in Moose Jaw!

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[5] Marion MACRAE, *Cornerstones of Order* (Toronto: Clarke Irwin, 1985).

[6] The Hon. E. F. ORMSTON, 'Materials prepared and distributed for Ontario law courts education', unpublished.

English summary of the argument between Mr. Blok and Mr. Wright *(pp. 192-214):*
*Mr. Blok in his first article argued that, on the basis of long usage, the natural interpretation of the expression 'Royal Arms' in the laws and regulations governing the furnishing of courthouses in Canada is 'the Royal Arms [*recte *Achievement] used in England and throughout the Empire before 1931' (in which the escutcheon of the Royal Arms proper is surrounded by the device of the Order of the Garter bearing the motto* HONI SOIT QUI MAL Y PENSE*), so the proper emblem to be set over the judge's bench in Canadian courtrooms to this day is the Arms [*recte *Achievement] so described. Mr. Justice Wright in his rebuttal argues that Mr. Wright has failed to recognize the fact that the Royal Arms specified in the various laws and regulations must be that of the King or Queen in right of Canada, for which distinct Royal Arms (and a distinct Achievement) were assigned by a Warrant of King George V in 1921 (including the motto* A MARI USQUE AD MARE*). He then points out that from 1931, when the Statute of Westminster made Canada a wholly independent kingdom equal in dignity to its mother country, the monarch of the United Kingdom as such became a foreign monarch in Canada, and his or her armorial bearings as such became foreign emblems. He finally argues that because Canada is a federal monarchy with ten co-sovereign provinces, each of which has been assigned its own distinctive Arms (and Achievement), when the monarch acts as the sovereign of a province, the correct form of Royal Arms (and Achievement) representative of his or her authority as such is that of the province in question. This rule, he goes on to say, applies to courtrooms, in which the choice of royal emblem to display should be determined on the basis of the level of the federation on which the monarch's appointment of the judge was made. In his rebuttal, Mr. Blok essentially reiterates his original position, justifying it further on the basis of the opinions on the issue stated by a number of distinguished Canadian judges.*

Sommaire français des arguments de M. Blok et M. Wright *(pages 192-214)*:
M. Blok argumente dans son premier article que, basé sur l'usage traditionnel, et l'interprétation naturelle de l'expression 'armoiries royales' dans les lois et les règlements qui gouvernent l'ameublement des palais de justice au Canada, l'emblème correct à afficher dans les salles judiciaires sont les armoiries royales utilisées en Angleterre et dans l'Empire britannique en général avant 1931 (dans lesquelles se trouve la devise de l'ordre anglais de la Jarretière avec son mot HONI SOIT QUI MAL Y PENSE*). M. le président Wright argumente au contraire que M. Blok a négligé de noter que depuis l'indépendance du Canada après la Loi de Westminster de 1931, l'emblème qu'on doit afficher dans les salles judiciaires sous le nom de 'armories royales' du Canada est celui assigné au Dominion en 1921 (ave le devise verbale* A MARI USQUE AD MARE*), qui représente uniquement l'autorité du roi ou de la reine du Canada en tant que tel(le), et non celle du souverain du Royaume Uni — dorénavant étranger au Canada. Wright argumente de plus que, à cause de la condition fédérale du royaume canadien, de la co-souveraineté des dix provinces, et de l'existence d'armoiries distinctes appartenant à la couronne de toute province, la forme correcte des armoiries royales à afficher dans les salles judiciaire dépend d'abord du niveau de la fédération, et ensuite (si ce n'est pas fédéral) de l'identité particulière de la couronne provinciale dont la cour ou le juge tient son autorité. M. Blok n'a que réitéré son opinion original, citant cette fois les opinions de plusieurs juristes éminents.*

[1] [In keeping with normal usage, I have replaced all but the first capital in motto quoted here, except in the title to his first article. (Ed.)]