

'More than Ordinary Understanding'

*The Heraldic Identity of British Columbia's Judges*¹

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As both a heraldist and a lawyer, I am intrigued by the arms that courts in my province display. A coat of arms hanging in a courtroom must be ripe with significance to be prominent in such a grave setting. As one writer has argued: 'The ritual character of proceedings in court have, first, an obvious material character in the higher courts in the form of... emblazoned royal arms on and frequently above the judicial seat or throne.'² This 'obvious material character' can make a definite impression upon those participating in courtroom proceedings. See the following *mise en scène*:

The courtroom itself is an inspiration to the imagination: it has a mystic atmosphere, as if it held somewhere out of sight the spirits of its departed litigants. A voice sounds full and reverberant as if it came from a tunnel. The persons present move on tiptoes and communicate with each other in the lowest whispers. The windows are diamond-paned, sometimes leaded or moulded, and are veiled as with crepe by the soot which the rain has washed upon them. The open rafters of the roof are oaken, and the walls are panelled in with the same wood. There are heavy hangings of drapery, and the whole effect of the

¹ The substance of this article originally appeared as 'The Arms of the Queen on the Bench: Constitutional Confusion over Heraldic Display in British Columbian Courtrooms' VII *The Coat of Arms* 57 (2011). A much-abridged version was published as "'Manisty, You Fool": Constitutional Confusion over Heraldic Display in British Columbian Courtrooms' (2010) 68 *The Advocate* 683.

² P. GOODRICH, 'Modalities of Annunciation: An Introduction to Courtroom Speech', in *Law and Semiotics II* (New York: Plenum Press, 1988), 149, cited in John Gibbons, *Forensic linguistics: an introduction to language in the justice system* (Wiley-Blackwell, 2003), p. 79. Reference to the judicial 'throne' is not an overstatement: originally, judges sat in the king's actual throne, e. g. 'Within the Chancery court the Chancellor appears to have used the marble table and chair reserved for the king on state occasions... it seems likely that at Winchester too the judges occupied the king's apartments and his seat in the hall, emphasizing their quasi-regal role' (Clare GRAHAM, *Ordering law: The architectural and social history of the English law court to 1914* (Ashgate Publishing, Ltd., 2003), p. 19).

chamber is so dark that the blazonry of the royal arms glows over the bench like a fire.³

While the architecture of modern British Columbian courtrooms may no longer inspire the imagination, courtrooms are still 'places of solemnity and deliberation, sanctuaries where the spoken word of written law has a powerful impact' and so they 'must reflect the importance of this space in the administration of justice.'⁴ Simply put, they are places where 'people go free, pay a fine or go to jail' and therefore must convey an appropriate solemnity and significance.⁵ Through their design and furnishings they must promote a sense of dignity; and they must promote the importance and stability of the judiciary and our Canadian legal system.⁶ As heraldic display in these courtrooms is a part of their design and furnishings, it contributes to their dignity, solemnity and importance. Therefore, arguing for proper heraldic display in British Columbian courtrooms is not (as one writer called it) a mere 'idle debate'.

Such arguments were made several years ago by two Canadian magistrates, District Registrar Blok (as he then was) and Mr. Justice John Wright.⁷ The two writers diligently canvassed the issue, with Blok feeling that the arms of the United Kingdom are properly displayed in British Columbian courtrooms, and Wright determining that the arms of Canada and British Columbia ought to appear instead. The issue, however, did not seem settled (in part because Blok wrote his second article, insisting Wright was incorrect). After examining the arguments of both authors, evidently there is only one fundamental question, *viz.* (to paraphrase Wright): not what arms ought to appear in British Columbia courtrooms, but *whose* arms?

To answer this, I begin by setting out the facts that both writers accept surrounding the issue, and then consider the relevant protocol by asking what is the convention of heraldic display in courtrooms; and what is meant by 'royal arms'? Next, by applying this protocol to the issue at hand I determine whose authority a coat of arms in British Columbian courtrooms is meant to represent. Finally, if confusion persists, I suggest how this issue might be more conclusively resolved.

³ William RIDEING, 'English Lawyers and Law Courts', *Lippincott's Magazine*, XXIX (June 1882), 611.

⁴ Barbara A. NADEL, *Building security: handbook for architectural planning and design* (McGraw-Hill Professional, 2004), 6.19.

⁵ Peter M. TIERSMA, *Legal Language* (University of Chicago Press, 2000), p. 100

⁶ Todd PHILLIPS, Stephen KLIMENT & Michael GRIEBEL, *Building Type Basics for Justice Facilities* (John Wiley and Sons, 2003) pp. 173 & 179.

⁷ M. BLOK, 'Honi Soit Qui Mal Y Pense: Heraldry in the Courtroom' *The Advocate* (2004) 62: 869-77; J. Wright, 'A Mari Usque Ad Mare: more heraldry in the courtroom' *The Advocate* (2005) 63: 353-59; and M. BLOK, 'A Farewell to Arms (A Last Word)', *ibid.* (2005) 63: 361:63.

1. The Facts of the Matter

In order to focus this debate, it is worthwhile to list the matters that are not in contention. There are a number of facts about which neither author argues.

1. *Studies have been made as to which coat or arms is proper:* Blok details several occasions in the last century (i.e. 1965, 1974, 1975, 1980 and 1995) when judges and former judges undertook to determine whose coat of arms ought to be employed in courtrooms here. In 1965 British Columbian judges and government departments discussed the matter – but with whom? Was anyone with heraldic knowledge consulted?

Again in 1974 Mr. Justice Dryer apparently ‘researched the issue’, but there is no information as to how he conducted his research, or what sources he consulted. And Blok concedes that the extent of research done in 1980 ‘cannot now be ascertained’. As for the most recent (1995) investigation, when Martin Taylor wrote his report on the matter: what sources did he consult? What special knowledge of heraldry did he possess? Did he consult the Canadian Heraldic Authority (which was by then in existence)? If not, why not?

It is no embarrassment that judges might misunderstand proper courtroom heraldry. The judges whom Blok lists in his reply must all be well-educated and intelligent people, but it does not follow that they therefore understand heraldry. Judges in British Columbia have completed law degrees and at least ten years experience in legal practice (or academia), yet it is most doubtful that any such experience will have included heraldic studies.⁸ As one advocate argued, to be a judge of heraldic matters ‘is a service that requireth more than ordinary understanding’.⁹ The examples Blok gives of the late Chief Justice McRuer, O.C., and a certain Yukon judge only serve to emphasise this requirement (and the confusion that results when it is not met).

2. *Heralds & heraldists did not participate in these studies:* As alluded to above, there is no evidence that during any of these five investigations did anyone ever consult any heraldists or heralds, and so I assume that there was no active input from anyone versed in heraldry.

3. *The Monarch bears distinctive arms for both Canada & B.C.:* Blok acknowledges that the Sovereign bears arms in right of Canada and in right of British Columbia. The former, appointed by the Monarch in 1921, have been recorded recently by the Canadian Heraldic Authority as the arms of ‘Her Majesty The Queen in Right of Canada’.¹⁰

⁸ Ian GREENE, *The Courts* (Vancouver: UBC Press, 2006), p. 12.

⁹ *Abergavenny Peerage Case* (1588), Collins 71, in G. D. SQUIBB, *The High Court of Chivalry* (Oxford: Clarendon Press, 1959), p. 165.

¹⁰ Note that when construction plans for the provincial courthouse on Georgia Street in Vancouver were finalised, and advice from the College of Arms was

As for British Columbia, the Protocol and Events Branch of the provincial Intergovernmental Relations Secretariat publishes an article by the former Chief Herald of Canada detailing the history of this province's arms. In it Chief Herald Watt writes, 'Our [provincial) Coat of Arms is a symbol of sovereignty as these are the arms of Her Majesty in right of British Columbia...'¹¹

4. English Royal Arms are displayed in British Columbia courtrooms: Both Blok and Wright agree that presently it is the Royal Arms of the United Kingdom as borne in England that are displayed in British Columbian courtrooms (Figure 1).¹² Blok calls these arms simply (but imprecisely) 'the Royal Arms' and Wright calls them (more accurately) 'the English Royal Arms'.¹³ This display is (in Blok's words) a 'long-standing tradition in our courts'.

sought as to the correct display of heraldry in the courthouse, this was in 1907 – about 14 years before the Monarch formally appointed distinct arms in his capacity as Sovereign of Canada. Incidentally, Francis Rattenbury designed this neo-classical courthouse (he also designed the Empress Hotel and the Parliament Buildings in Victoria) (Kasey Wilson, *Best Places Vancouver* (Sasquatch Books, 2002), p. 162). Its lions, sitting guard on the stairway, were modelled after the lions in London's Trafalgar Square (Alison APPELBE, *Secret Vancouver: The Unique Guidebook to Vancouver's Hidden Sites, Sounds, & Tastes* (ECW Press, 2003), p. 201). 'Its atmosphere has always promoted a lot of whispering and subdued conversation. Visitors - even some of the accused - often stand in awe of it' (Ian MACDONALD, Betty O'KEEFE, *Born to Die: A Cop Killer's Final Message* [Heritage Group Distribution, 2003], p. 84).

¹¹ Robert D. WATT, 'The Coat of Arms of British Columbia: A Brief History' <http://www.protocol.gov.bc.ca/protocol/prgs/symbols/coat_of_arms.htm> (accessed 4 April 2010). See also *Canadian Parliamentary Review* X (winter 1987-88).

¹² As the heraldist knows, there is a difference between the arms of the United Kingdom as borne in England and as borne in Scotland: 'In England the three lions *passant*, occupy the first and fourth, which are the most honourable quarters; the lion *rampant*, the second; and the harp the third. In Scotland this order is reversed, the lion rampant being quartered in the first and fourth; the three lions second; as the harp in the third.' (Ellen J. MILLINGTON, *Heraldry in history, poetry, and romance* [Chapman and Hall, 1858], pp. 4 ff.)

¹³ I adopt Wright's phrasing for this article. The New Zealand Ministry of Justice demonstrates Wright's accuracy when they refer to an example of Blok's 'Royal Arms' displayed on the Old High Court Building (built 1881, and restored in 2009 as a heritage site) as, 'an intricately-crafted *English* coat of arms' [emphasis added; 'Supreme Court of New Zealand' (Wellington: Ministry of Justice, 2010), p. 2, <<http://www.justice.govt.nz/publications/global-publications/s/supreme-court-of-new-zealand/Publication>> (accessed 15 May 2010)]. Confusingly, Blok also refers to 'the motto of the sovereign', *i.e.* what Fox-Davies correctly describes as 'the English Royal motto, "*Dieu et mon Droit*" ' (Arthur Charles FOX-DAVIES, *A Complete Guide to Heraldry* [New York: Bonanza Books, 1978], p. 452). What Blok means to write is 'motto of the sovereign of England'. Of course, the motto of the sovereign of Canada is '*A mari usque ad mare*'.



Figure 1. The Arms [more properly the 'Great Achievement'] of the Queen of the United Kingdom of Great Britain and Northern Ireland, as used in England,

2. The Protocol

1. Heraldry in Courtrooms: From where did we derive this 'long-standing tradition'? Blok traces it to an order in council of 1856.¹⁴ In reality, however, the tradition goes back much further to medieval England (the nation from which British Columbia inherited her legal system). At an early point in that country the convention arose that the arms displayed in a courtroom signify the authority exercised in that courtroom.¹⁵

As any heraldist knows, in the era during which coats of arms originated most people could not read, and thus symbols such as arms

¹⁴ This order mandated a seal for the Supreme Court of the colony of Vancouver Island, bearing 'Her Majesty's Royal Arms'. Note that it made no reference to the display of arms in courtrooms of that colony. Conventionally, court seals display royal arms. Compare one of the earliest surviving seals of England's Court of King's Bench, from the reign of King Henry VIII: its reverse depicts a shield of the arms of France, quartering England, supported by a crowned lion rampant guardant and a wyvern, all on a field of roses and fleur-de-lis, and in base a scroll inscribed, '[S]IGILLVM] PRO BREVIIVS CORAM NOBIS 1543.' (W. de G. BIRCH, *Catalogue of Seals in the Department of Manuscripts in the British Museum* (London: Trustees of the British Museum, 1887), p. 116).

¹⁵ The 'first clear evidence we have of the courts' appearance... shows the judges sitting on an elevated bench, below shields with the arms of (left to right) Edward the Confessor, France and England, and England... the superior status of the judges being very literally indicated by their elevated seat' (GRAHAM, *op. cit.*, pp. 19 ff.; figure A). The pattern persisted centuries later in Canada: compare the 1885 description of a courtroom in Niagara, which was 'of the old conventional pattern' with the 'throne of justice' extending half way across the room (John Charles DENT, *The Story of the Upper Canadian Rebellion* (C. B. Robinson, 1885). p. 10).

became important in identifying significant individuals, particularly kings. People of that time thought in symbolic or allegorical terms:¹⁶

In a secular society which was largely illiterate, and in which great significance was attached to outward trappings and social display, arms, banners and badges, often loaded with deep-seated significance but readily discernible to most, were swiftly enlisted in the war to win hearts and minds... They might openly speak of authority, presence ...¹⁷

Coats of arms spoke of the authority of, and of the *presence* of, the persons who rightfully bore them. Thus it was that when a magnate of import sat in judgement, he would employ his arms to speak of his authority and presence.

In that time 'court' was the name for an assembly of those who exercised powers delegated by the king (especially his power of justice). The word referred to the *entourage* of the king, which gave him help and advice in making his decisions and in administering his justice.¹⁸ But there were courts other than the king's: there were also, in early stages, feudal and manorial courts, which rivalled the king's court.¹⁹ An example is the court of the first Earl of Chester, Hugh d'Avranches – 'the Wolf' (dom. 1071/7-1101): when he sat in court, he is said to have sat beneath his coat of arms, which spoke of his authority and presence (see figure 2): *Azure, a*

¹⁶ John P. D. COOPER, *Propaganda and the Tudor state: political culture in the Westcountry* (Oxford University Press, 2003), p. 35

¹⁷ Adrian AILES, 'Heraldry in Medieval England: Symbols of Politics and Propaganda' in Peter R. COSS, Maurice Hugh KEEN, (eds.), *Heraldry, Pageantry and Social Display in Medieval England* (Woodbridge: Boydell Press, 2003), p. 82.

¹⁸ 'court, royal', *Encyclopedia of the Middle Ages* (2000). *Entourage* is a French word, coming from the verb, 'to surround.' Originally, a courtroom was simply a space (called the 'well') enclosed by four benches, occupied by delegates, while suitors gathered outside the benches – the backs of which formed the 'bar' of the court, *i.e.* 'the point at which its business was transacted.' This was the origin of the inner bar. At first lawyers stood outside it, but from the sixteenth century certain barristers were appointed King's Counsel, and 'were called 'within the bar' in recognition of their quasi-official status.' Law courts in England were held in such temporary settings until the seventeenth century, when buildings began to be erected to permanently 'house the ceremonies of the law in some splendour' (GRAHAM, *op. cit.*, pp. 315 & 318).

¹⁹ Gary SLAPPER & David KELLY, *The English legal system* (New York: Routledge Cavendish, 2006), pp. 5 ff. Some members of the king's *entourage* who helped the king by appearing on his behalf before these feudal and manorial courts in matters that concerned the king, became known (from 1243) as the King's Attorneys (*i.e.* agents). While initially such agents were appointed to represent the king on specific matters, later some were appointed to represent the king generally, in all matters. Therefore, they became known as 'general attorneys', or 'attorneys general'. In 1399, the king appointed one man to handle all his general matters, and in 1461, this post was entitled the Attorney General of England. British Columbia had her first Attorney General in 1859 (Philip STENNING, *Appearing for the Crown* (Cowansville: Brown Legal Publications, 1986), pp. 17 ff. & 59).

wolf's head erased Argent (figure 3).²⁰ Indeed, the authority with which his arms spoke was such that, when the city and county borough of Chester were granted armorial bearings in 1580, they received as a supporter a wolf Argent (figure 4).

This tradition of a local, judicial body displaying the arms that spoke of its authority persisted into more recent times, e.g. at the eighteenth-century headquarters of the East India Company in London (i.e. the East India House), the arms of the company hung in the Directors' Court Room (figure 5).²¹ And even today in England the arms of the Duchy of Lancaster (a dominion now attached to but not absorbed into the demesne of the Queen of the United Kingdom) hang in the chancery courtroom in Liverpool to 'grace the space above the judge's head' (no doubt as Liverpool used to be part of the County Palatine of Lancaster: see figure 6).²²

The era of many of these private courts was circumscribed. During the reign of King Henry II, his court (or *entourage*) began to specialise in legal business and to act in a judicial capacity – in the name of the king. The king sent these specialists out into the counties as his delegated, travelling justices, asserting royal authority in regions that had hitherto been subject to local baronial courts. As members of the king's *entourage*

²⁰ Charles James VYNER, *Vyner, family history* (n.p: 1885), p. 7. [In fact, Hugh lived and died long before the emergence of the earliest emblematic arms, attested only from the late 1130s, and even *longer* before arms were used in civil settings of this sort. But it is likely enough that his successor, Ranulph de Blundeville, seventh Earl Palatine of Chester (1188-1232), displayed his arms in this fashion. (Ed.)]

²¹ The arms of this company were *Argent, a cross Gules, in the dexter chief quarter an escutcheon of the arms of France and England quarterly the shield ornamented and regally crowned Or*. Crest: *A lion rampant guardant Or, supporting between the forepaws a regal crown proper*. Supporters: *Two lions rampant guardant Or, each supporting a banner erect Argent charged with a cross Gules*. Motto: *AUSPICIO REGIS ET SENATUS ANGLIÆ*.

²² Martin DAVIES, 'Court Heraldry', *The Heraldry Gazette* 95 (March 2005) <<http://www.theheraldrysociety.com/publications/gazette/2005-Mar.pdf>> (accessed 24 June 2010). These arms are England, with a label of France, and greyhound supporters. (Adrian AILES, 'Heraldry in Medieval England: Symbols of Politics and Propaganda' in *Heraldry, Pageantry and Social Display in Medieval England*, ed. Peter R. COSS, Maurice Hugh KEEN (Woodbridge: Boydell Press, 2003), p. 87) These arms derive from the Palatine Earldom of Lancaster, created for Edmund, second son of King Henry III (Archibald Barrington, *A Familiar Introduction to Heraldry* [London: H.G. Bohn, 1848], p. 191). The greyhound was a badge of John of Gaunt, second Duke of Lancaster. Legend, however, has it that the greyhound may have been adopted as a supporter by John's son, Henry of Bolingbroke, Duke of Lancaster (and later King Henry IV). King Richard II had a greyhound called Math, which, upon a meeting between Richard and Henry, uncharacteristically went to Henry and greeted him with the kind of affection it normally reserved for the king. At this, Richard remarked that one day Henry would be king instead of him, as the hound naturally had the knowledge of who was king; and Richard gave the hound to Henry, which ever after remained with him. (Dorothy Yamamoto, *The Boundaries of the Human in Medieval English literature* [Oxford: Oxford University Press, 2000], p. 91).

travelling in circuit, these royal delegates held 'circuit courts' as 'justices in eyre' (*eyre* being French for journey).²³

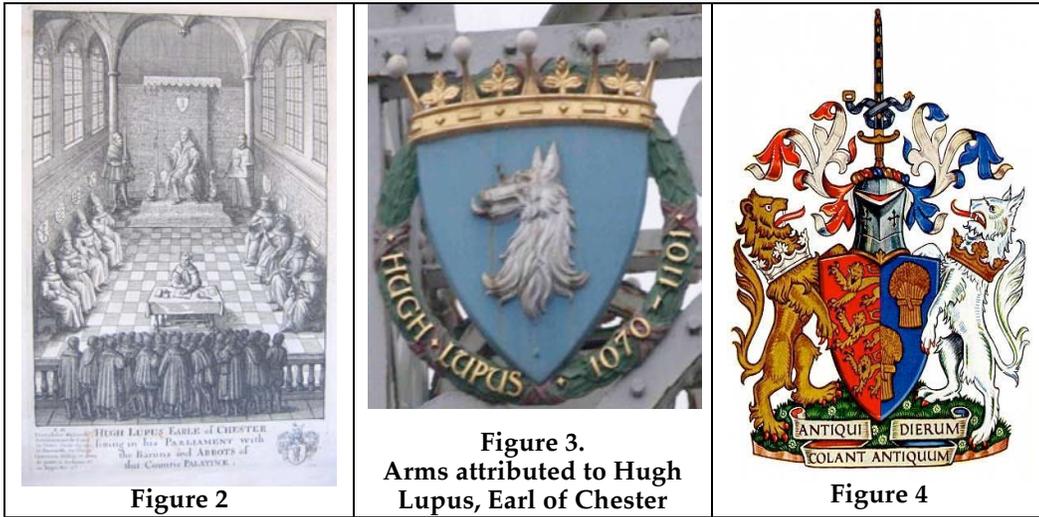


Figure 2

Figure 3.
Arms attributed to Hugh
Lupus, Earl of Chester

Figure 4



Figure 5 East India Company



Figure 6 Duchy of Lancaster

This system persists in British Columbia today, with 40 some circuit-court sites throughout the province. And the Sovereign today is still properly known as the 'judge ordinary' of the whole of Canada and her provinces, while all others who administer justice in her name are her 'judges delegate'.²⁴ These judges derive their authority from the Queen's

²³ Slapper & Kelly, *op. cit.*, pp. 5 ff. Curiously, a surviving seventeenth-century seal of an English justice in eyre is that of John, Baron of Hurley, Chief Justice and Justice in Eyre of Royal Forests (1670-1693). His seal as a justice in eyre bore his personal arms, *viz.* Gules, on a chief indented Sable, three martlets Argent (for Lovelace of Hurley), quartering Azure, on a saltire engrailed Argent, five martlets Sable (for Lovelas) (BIRCH, *op. cit.*, pp. 129 ff).

²⁴ F. POLLOCK & F. W. MAITLAND, *The History of English Law before the Time of Edward I* (Cambridge: The University Press, 1898), p. 515.

commission, for justice in our system 'is said to emanate from Her Majesty.'²⁵ By law, judicial appointments to British Columbia's superior courts are made by the Governor General of Canada in the name of the Sovereign in right of Canada; and appointments to the inferior (*i. e.* provincial) courts are made by the Lieutenant Governor of British Columbia in the name of the Sovereign in right of the province.²⁶

The deference shown to judges in court is 'the modern instantiation of the sovereign.'²⁷ The Sovereign is 'very much the sponsor of the judicial system' and justice in this province is dispensed in her name: British Columbia's courts of justice are actually royal courts; formally we speak of the need to 'keep the Queen's peace', and every breach of it is a transgression against the Queen; she alone has the authority to prosecute criminals and does so through her prosecutors, known as Crown Counsel; when sentence is passed, the Sovereign alone can remit the punishment; and offenders serve their time in Her Majesty's Prisons. Such language is used 'to convey what has been described as "the majesty of the law".'²⁸ As the Department of Canadian Heritage summarises our system:

²⁵ Martin LOUGHLIN, 'The State, the Crown and the Law', in *The Nature of the Crown: a Legal and Political Analysis*, ed. Maurice SUNKIN, Sebastian PAYNE (Oxford: Oxford University Press, 1999), p. 58.

²⁶ Terence MORLEY, 'Administering Justice' in Kenneth CARTY, ed., *Politics, Policy, and Government in British Columbia* (Vancouver: UBC Press, 1996), pp. 192 ff. British Columbia's superior courts are the Court of Appeal (the highest court in the province, *i.e.* 'the effective court of last resort for most litigants and for judicial elaboration of the laws made by the legislature' [*op. cit.* p. 189]) and the Supreme Court, which can hear any type of case, civil or criminal. Though these courts are created by a provincial law, its judges are appointed federally according to the provisions of a national law (*Ibid.*). 'One way of looking at the courts is to say that there are two "levels" of court in Canada: provincial [*i.e.* inferior] courts (whose judges are appointed by the provincial government) and superior courts (whose judges are appointed by the federal government). In B.C., the "Provincial Court" has several divisions: Small Claims, Traffic, Family, and Youth. The "superior courts" include the Supreme Court of British Columbia, the B.C. Court of Appeal, and the Supreme Court of Canada.' (Justice Education Society and Centre for Education, Law, & Society, 'Judges and the Law', Law Connection, <<http://www.lawconnection.ca/index.php?q=content/role-judges-background>> accessed 28 June 2010). 'Most cases coming to the courts in British Columbia are disposed of by the Provincial Court. That court deals with about 90% of the criminal cases, many family cases, and many civil actions under \$25,000. The B.C. Supreme Court hears serious criminal offences, family cases, and many civil matters, including all civil matters involving more than \$25,000. The Court of Appeal reviews decisions made in those lower courts when one of the parties appeals a decision' (*ibid.*).

²⁷ William R. UTTAL, *Human Factors in the Courtroom: Mythology versus Science* (Tucson: Lawyers & Judges Publishing Company, 2006), p. 2.

²⁸ F. N. FORMAN, *Constitutional Change in the United Kingdom* (London: Routledge, 2002), p. 194; LOUGHLIN, *op. cit.*, p. 58. The Queen's peace is quiet behaviour towards the Sovereign and her subjects. It is one of the Crown prerogatives to make peace, as it is to make war. Originally, an indictment concluded with the

As an institution, the Crown is a cohesive force for the three functions of government: legislative, executive and judicial. The legislative function (Parliament/Legislature) is 'The Queen in Parliament' and enacts the laws. The executive (cabinet/governments) is 'The Queen in Council' and executes the laws. The judicial (courts) is 'The Queen on the Bench' and interprets the laws.²⁹

By the later twelfth century, the king's legal specialists had become full-fledged judges, empowered by the king to render judgements themselves even when he was not personally present. They were 'no longer simply a representative of the royal authority of an absent king.'³⁰ Yet their power to judge still sprang from that absent king, as 'all justiciary powers are derived from the king', who is appropriately known as the fountain of justice.³¹ And therefore, with the rise of English legal institutions so closely associated with the rise of royal power, judges became vice-regal figures and accordingly sat beneath regal (or royal) arms (for 'legitimacy is located in the material sign').³² These arms denoted not only the king's authority but also his presence, relying upon 'the concept that arms or the armorial beast directly represented the armiger.'³³ Reminding the reader of the

charge that an offence had been committed *contra pacem Regis*, i.e. 'against the peace of our lord the king.' And in British Columbia, indictments still conclude with, 'against the peace of our Lady the Queen, her Crown and Dignity.'

²⁹ *A Crown of Maples: Constitutional Monarchy in Canada* (Ottawa: Canadian Heritage, 2008), p. 17.

³⁰ James Q. WHITMAN, *The origins of reasonable doubt: theological roots of the criminal trial* (Yale University Press, 2008), p. 145.

³¹ POLLOCK & MAITLAND, *op. cit.*, p. 514; LOUGHLIN, *op. cit.*, p. 60. Though the Monarch is fountain of justice, 'at least since the reign of Henry III the Monarch has not been able to disturb the fountain or divert the stream from its proper channel, except through the agency of her judges.' (LOUGHLIN, *op. cit.*, p. 58).

³² Lee PATTERSON, *Chaucer and the Subject of History* (London: 1991), p. 186; YAMAMOTO, *op. cit.*, p. 79; GRAHAM, *op. cit.*, p. 327. Compare the judge's seat (or 'throne') situated beneath royal arms in the courtroom with the royal throne in St James' Palace: there, at the western end of the Throne Room, stands the Royal Chair of State, upholstered in rich scarlet velvet and centred 'with a royal coat of arms containing jewels and miles of gold thread', the whole under a canopy also emblazoned with the English Royal Arms (Jack SWIFT, *Below Stairs* (Lulu.com, 2008), p. 30; Frederick SAUNDERS, *Memories of the great metropolis: or, London from the Tower to the Crystal palace* (G.P. Putnam, 1852), p. 77).

³³ Daniel BIRKHOLZ, *The King's Two Maps: Cartography and Culture in Thirteenth-Century England* (London: Routledge, 2004), p. 22. The courtroom at the trial of Mary, Queen of Scots, dramatically depicts this idea of the absent king at a judicial proceeding (figure B): 'At the upper end sat a chair on a dais beneath a cloth of state emblazoned with the royal arms of England. This symbolised Elizabeth's throne and was left empty throughout the proceedings.' (John Guy, *Queen of Scots: The True Life of Mary Stuart* [Boston: Houghton Mifflin Co, 2005], p. 472). To this day in Canadian courtrooms, barristers bow upon entering and leaving. This is not to the judge, but to the arms: as the Jury Central Summoning Bureau of England

historical context: 'In an age of widespread illiteracy, the political significance of royal buildings, heraldry, and iconography potentially outweighed that of written instruments in disseminating the "presence" and authority of the monarch throughout the realm.'³⁴

A mere written sign above the king's judges, reading 'King', would have been worthless, as most people coming before the judges could not read the sign. But most people could 'read' the royal arms, as there had developed a 'widespread heraldic literacy.'³⁵ And so it came to be that royal judges sit beneath royal arms when holding court. And so the convention persists today: a 2002 'architects' handbook' records of English courthouses that 'An important supplement to the architectural form, symbols reinforce the recognition of the courthouse... The Royal Arms are prominently and permanently incorporated in the fabric of the building and are mandatory features in all courts.'³⁶

When the Crown extended its power across the seas to colonise other lands, its delegate judges followed, and so did the royal arms.³⁷ Even during colonial times, when literacy was more widely spread than formerly, the use of royal arms in a courtroom had its effect: 'The trappings of Crown authority – red robes, wigs, royal coat of arms – were intimidating, especially in a colonial situation...' (Figure 7.³⁸) Consider the

and Wales emphasises: Why do the barristers and court officials bow to the judge when they enter the room? They are not bowing to the judge. They are bowing to the Queen's coat of arms above the judge to show respect for the Queen's justice (Criminal Justice System of England and Wales, 'Being a juror' <<http://juror.cjsonline.gov.uk/faq/>> [accessed 2 April 2010]).

³⁴ John MORRILL, ed., *The Oxford Illustrated History of Tudor and Stuart Britain* (Oxford: Oxford University Press, 1996), p. 221.

³⁵ BIRKHOLZ, *op. cit.*, p. 22.

³⁶ Quentin PICKARD, *The Architects' Handbook* (Wiley-Blackwell, 2002), p. 64.

Though there was never any formal requirement that courtrooms display the royal arms, they have become standard in modern courtrooms (GRAHAM, *op. cit.*, p. 327).

³⁷ The use of the term 'Crown' in Canada has many manifestations and meanings, including as a symbol of national unity throughout the country; a symbol of kingship and Canadian sovereignty; a dignified emblem for our judicial system and its judges; and a reminder that the Sovereign remains Commander-in-Chief of the armed forces (FORMAN, *op. cit.*, p. 193). Recall that officers of the Canadian Forces are commissioned and impose discipline in the Queen's name (Christopher VINCENZI, *Crown Powers, Subjects and Citizens* (London: Pinter, 1998), p. 66). Heraldically, the Crown as it appears atop the royal arms is a symbol for the power of the Canadian state and its civil servants (particularly as our common law never really recognised the concept of the state) (FORMAN, *op. cit.*, p. 194).

³⁸ Robert Blair ST GEORGE, *Possible Pasts: becoming Colonial in Early America* (Cornell University Press, 2000), p. 339. Yet still during the seventeenth century more than two-thirds of men and four-fifths of women could not write their own names (David CRESSY, *Literacy and the Social Order: Reading and Writing in Tudor and Stuart England* [Cambridge: Cambridge University Press, 2006], p. 59). A judge's robes, however, are less about intimidation, and more about highlighting his or her role and de-emphasising the judge's persona (Kwai Hang NG, *The Common Law in Two Voices: Language, Law, and the Postcolonial Dilemma in Hong Kong* [Stanford: Stanford

following passage, describing the importance of royal symbols to the courts established in the North American colonies:



Figure 7

In the mid-eighteenth century Englishmen on both sides of the Atlantic made new efforts to embellish royal authority. Since the colonial courts were hardly awesome by English standards, every little effort was made to dignify the king's dispensing of justice... In 1764 the New York Supreme Court, in emulation of the mother country and several other colonies, ordered the judges and the counsel appearing before them to don robes or gowns and bands in order to advance the 'Dignity Authority Solemnity and Decorum of the Court'.

John Adams recalled that in the early 1760s the Massachusetts authorities had likewise introduced new 'scenery' in the supreme court in order to create a more "theatrical" and "ecclesiastical" setting for the doing of justice.³⁹

University Press, 2009], p. 87). The wigs of barristers originated with the clergy. Until the time of King Henry III, it was the tonsured clergy who (by and large) appeared in court as advocates. Early in Henry's reign, however, the Bishop of Salisbury determined that clergy (*i.e.* 'clerks') should not appear in court, unless on their own causes. Yet many clergy still endeavoured to appear, and so hid their telltale tonsure under wigs. This eventually became the mark of an advocate (William FORSYTH, *Hortensius: or, The advocate, an historical essay* [London: J. Murray, 1849], p. 311). The royal crown served as the crest of the arms of New York City until the revolution, and a colonial Governor of New York, Thomas Dongan, sent images of the royal arms to be put up in each aboriginal 'castle' in order to display royal authority 'in the northern wilderness'. (Brendan MCCONVILLE, *The King's Three Faces: the Rise & Fall of Royal America, 1688-1776* [Chapel Hill: University of North Carolina Press], pp. 235 & 237).

³⁹ Gordon S. WOOD, *The Radicalism of the American Revolution* (Random House of Canada, 1993), pp. 16 ff. An 'ecclesiastical' setting for the doing of justice is not fanciful: originally the English courthouse was built as a parallel to the parish church (W. Wesley PUE, David SUGARMAN, *Lawyers and Vampires: Cultural Histories of Legal Professions* [Oxford: Hart Publishing, 2003], p. 158). And heraldically, from the time of King Edward VI churches in England displayed the royal arms of

Thus the colonial courtrooms became 'more uniformly anglicised, and the courts sat in the monarch's name.'⁴⁰ This theatrical setting 'for the doing of justice' included the royal arms of the monarch in whose name the courts sat. These arms 'decorated courtrooms in many colonies, reinforcing the power of courts by linking them to the human embodiment of the empire', *i.e.* the king.⁴¹ For examples, Bostonian officials put up the royal arms in the town's courthouse in the mid-1670s as the 'visualisation of royal authority'; in 1739 a county in Virginia 'paid a visiting English artist 1,600 pounds of tobacco to paint the king's arms on the side of their new courthouse, to remind them of the king's power and justice'; and in a courtroom in Niagara:

The Royal Arms of George III were prominent in a painting that hung above the judicial bench, and the lion in this painting actually looked out on the courtroom, glowering fiercely, as if he personally embodied the awful might of the law.⁴²

England to signify acceptance of the settlement of the Crown in the Tudor line – in other words, a pledge of loyalty (particularly after the restoration in 1660). They also displayed these arms simply to decorate what had become bare walls after the removal of roods from the churches – or perhaps even to express reverence arising from a newfound religious conviction: *le nouveau Messie, c'est le Roi* (Norman John GREVILLE POUNDS, *A History of the English Parish* [Cambridge: Cambridge University Press, 2000], pp. 497 ff): 'Royal iconography filled the vacuum left by iconoclastic attacks when images of monarchs and royal heraldry inherited the veneration that statues of the Virgin and Child, saints' images, and other cult objects had acquired by the late Middle Ages.' (John N. KING, *Tudor Royal Iconography: Literature and Art in an Age of Religious Crisis* [Princeton, 1989], p. 17). This display was a convention, not law (akin to standing at the playing of the national anthem) (POUNDS, *ibid.*). And this convention was maintained in the North American colonies (S. Scott ROHRER, *Wandering Souls: Protestant Migrations in America, 1630-1865* [Chapel Hill: University of North Carolina Press, 2010], p. 65). To this day, 'A law court is like a church, in that it is a setting for a solemn ritual, designed to reinforce our beliefs in the myths that uphold society' (GRAHAM, *op. cit.*, p. 317). The bands Canadian barristers still wear today originated with the white neck-cloth worn by English clergymen in Tudor times, which later became 'falling-bands' in the time of King Charles I. These soon became standard for a barrister's costume: 'after the Restoration, a barrister would as soon have thought of appearing at the King's Bench without his gown as without his band' (George S. TYACK, *Historic Dress of the Clergy* (London, W. Andrews & co, 1897), p. 76; John Cordy JEAFFRESON, *Pleasantries of English courts and lawyers: a book about lawyers* [New York: J. Cockcroft, 1876], pp. 301 ff.).

⁴⁰ MCCONVILLE, *op. cit.*, p. 149.

⁴¹ *Ibid.*

⁴² MCCONVILLE, *op. cit.*, pp. 34 & 130; David MURRAY, *Colonial Justice: Justice, Morality, and Crime in the Niagara District, 1791-1849* (University of Toronto Press, 2003), p. 151. Note the legend that the heraldic lion of the kings of England (prophesied by Merlin to be the 'Lion of Justice') commemorates the 'foundation of the administrative and legal system by the organisation of the *curia Regis* for financial and judicial business, the establishment of itinerant justices to carry the King's law throughout the realm, and the strengthening of the popular courts of

And so it is today in British Columbia. As Blok writes, 'The judiciary has taken the view that judges dispense the Queen's justice, acting on behalf of the sovereign herself, and thus it is the arms of the sovereign under which judges should sit.'⁴³ The only – yet crucial – wrinkle is that currently the arms these judges sit under are those that, as Blok puts it, 'can be traced back to colonial times'.

1. What are Royal Arms?: As the reader has learned, 'the judges on their benches still sit beneath the Royal Arms to remind them that the sovereign is the "fount and source of justice".'⁴⁴ But just what are 'Royal Arms'? It is this question that has so perplexed Blok.

As noted above, feudal and manorial courts displayed the arms of those who wielded power there, as royal courts displayed the arms of the king. There is, however, an important distinction between the two types of display: usually the arms appearing in manorial courts were personal arms, while those in royal courts were not.

Consulting Brook-Little's authoritative *An Heraldic Alphabet*, one reads under the entry 'Royal arms' the following definition: 'The royal arms as borne by the monarch are arms of sovereignty or dominion rather than family arms', *i. e.* rather than personal arms. Another source emphasises, 'The Royal arms have long ceased to be personal arms. They are the sovereign arms of dominion.'⁴⁵ This is consistent with, for example, the definition of royal arms in the New-South-Wales legislation to which Blok refers.⁴⁶ It reads, '*Royal arms of the United Kingdom* means the arms of sovereignty and dominion borne by Her Majesty Queen Elizabeth II in her capacity as Queen of the United Kingdom of Great Britain and Northern Ireland...'

And what is meant by 'arms of sovereignty or dominion'? Consulting again *An Heraldic Alphabet*, under 'arms of dominion' one learns,

shire and hundred to resist the encroachment of feudal franchises' (C. Wilfred SCOTT-GILES, *The Romance of Heraldry* [London: J. M. Dent & Sons, 1957], pp. 46 ff.). This Lion of Justice persists as the dexter supporter of the Canadian Royal Arms.

⁴³ Sadly, it appears that the judges of the Ontario Superior Court of Justice no longer sit under the arms of the Sovereign, but under arms granted (strangely) to the court itself (see below).

⁴⁴ Brian BARKER, *The Symbols of Sovereignty* (Newton Abbot: Westbridge Books, 1979), p. 8.

⁴⁵ J. H. & R. V. PINCHES, *The Royal Heraldry of England* (Rutland: Charles E. Tuttle, 1974), p. xv.

⁴⁶ This legislation determined that, 'Whenever after the commencement of this Act, in a Parliament building, a courthouse, an office or official residence of the Governor or a Government office, in any other building or place, or on any official seal or document, or in any other connection, arms representing the authority of the Crown or the State are to be used for any official purpose, the State arms are or a State symbol is to be used, and not the Royal arms of the United Kingdom [emphasis added]' (*State Arms, Symbols and Emblems Act 2004* [N. S. W], s. 4 (1)).

These, which are also styled "arms of sovereignty", are those borne by a sovereign in respect of the territories he rules rather than his own family arms. The royal arms are arms of dominion; the Queen's arms of descent would be those of her branch of the House of Saxony.

While royal arms are borne in respect of a territory (and not of a family or individual), they are not national arms, in the sense of signifying the country of Canada and her people; rather, they signify the Crown: [royal arms] are not the national arms... They are the Arms of The Sovereign alone.⁴⁷

The arms of the Sovereign for Canada are the arms King George V appointed in 1921 – as Blok concedes, Canada's 'royal arms of dominion and sovereignty'. As other writers more thoroughly described them, they are the 'Arms of Dominion and Sovereignty of Her Majesty the Queen in Right of Canada, or the Royal Arms of Canada for short, are the Queen's Arms as Queen of Canada'.⁴⁸

As for the arms of the Sovereign for British Columbia, these are the arms King Edward VII warranted in 1906, which Blok acknowledges as the 'arms of the sovereign in right of the province'.⁴⁹ Thus they are royal arms, for the coat of arms of the sovereign is a royal coat of arms.⁵⁰ Looking to the Oxford English Dictionary for the definition of 'royal', one reads, 'Of or pertaining to a sovereign, or the dignity or office of a sovereign... So of insignia or emblems of royalty... Pertaining to the king (or queen) as civil or military head or representative of the state.'⁵¹ One understands now that the arms of Canada and of British Columbia are:

- borne by the Sovereign in respect of these two territories over which she rules, *i.e.* they are arms of sovereignty and dominion;
- *not* the family arms of the Sovereign; and

⁴⁷ Rodney Dennys, *Heraldry & the heralds* (London: Jonathan Cape, 1984), p. 166. Even the Canadian Heraldic Authority has not grasped this: in their official record of the symbolism of the Royal Arms of Canada, they record, in part, 'On the bottom portion of the shield is a sprig of three Canadian maple leaves representative of Canadians of all origins.' (CANADIAN HERALDIC AUTHORITY, 'Registration of the Arms and Supporters of Her Majesty The Queen in Right of Canada', The Public Register of Arms, Flags and Badges of Canada, <<http://archive.gg.ca/heraldry/pub-reg/project-pic.asp?lang=e&ProjectID=461&ProjectElementID=1555>> [accessed 2 June 2010]). No portion of the Royal Arms of Canada represents Canadians: the Royal Arms represent the Sovereign.

⁴⁸ Arthur BOUSFIELD & Garry TOFFOLI, *Fifty Years the Queen: a Tribute to Her Majesty Queen Elizabeth II on her Golden Jubilee* (Toronto: Dundurn Press Ltd., 2002), p. 146.

⁴⁹ Queen Elizabeth II augmented these arms on 15 October 1987 at the Vancouver Law Courts (BOUSFIELD & TOFFOLI, *op. cit.*, p. 189).

⁵⁰ Rachel MINAY, ed., *Kings & Queens* (Hampshire: Jarrold Publishing, 2004), p. 5; Charles BOUTELL, *English Heraldry*, 3rd ed. (London: Cassell Peter & Galpin, 1875), p. 279.

⁵¹ *The Oxford English Dictionary*, 2nd edn., s. v. 'royal'.

- pertain to the Sovereign and her office as head or representative of Canada and of British Columbia.

Clearly, these coats of arms are *royal* arms. Even the Royal Household at Buckingham Palace refers to the Canadian arms as the 'Royal Arms of Canada'.⁵² One cannot deny, therefore, that royal arms in Canadian and British Columbian contexts are respectively the arms of Canada ['Canadian Royal Arms'] and the arms of British Columbia ['B.C. Royal Arms'].



Figure 8. The Arms (or more properly the Great Armorial Achievement) of the Queen of British Columbia

3. Application

Thus, there are three royal coats of arms pertinent to Blok and Wright's debate: the English Royal Arms; the Canadian Royal Arms; and the B.C. Royal Arms. And as detailed above, the convention is that a judge of a realm sits beneath the arms of the sovereign of that realm as his *locum tenens*, his representative. Such representation explains the famous anecdote of Baron Huddleston (1815-1890), judge in England's Court of Exchequer: he and Mr. Justice Manisty were guests at a banquet and 'when the health of the Queen was proposed the latter loyally stood up, like the rest of the company. Huddleston, however, the story goes, remained seated, and pulling the sleeve of his brother Judge whispered, "Sit down, Manisty, you – fool! We are the Queen."⁵³

⁵² WEBSITE TEAM OF BUCKINGHAM PALACE, 'Queen and Canada: Symbols and ceremonies', Buckingham Palace, <<http://www.royal.gov.uk/MonarchAndCommonwealth/Canada/Symbolsandceremonies.aspx>> (accessed 12 May 2010).

⁵³ Frederick PAYLERM, *Law Courts, Lawyers, and Litigants* (Littleton: F. B. Rothman, 1980), p. 119.

If judges are the Queen, the question for judges in British Columbia is, which Queen are they? Which sovereign does a British Columbian judge represent? If one can answer this, one can determine under which royal arms he or she must sit.

1. Do judges in B.C. represent the Queen of Canada, of B.C., or of the U.K.?: The determination of which sovereign in British Columbia a judge has been delegated to exercise her judicial authority is more of a constitutional exercise than an heraldic one.

Blok seems to have gone astray in his understanding of our Canadian monarchical structure; and in doing so, he may have fallen prey to a common beast of misapprehension, which has its victims believe that 'the Queen of England' is our head of state. But as one writer (in the context of New Zealand) emphasises:

As a matter of constitutional law, "the Queen of England" does not exist. There is a Queen in right of the United Kingdom of Great Britain and Northern Ireland, but she has nothing to do with New Zealand; New Zealand's Head of State is the Queen in right of New Zealand. Same person, different hats...⁵⁴

As Blok and Wright agree, presently it is the arms of the Queen in right of the United Kingdom of Great Britain and Northern Ireland that are displayed in British Columbian courtrooms. But in the twenty-first century these arms have nothing to do with contemporary British Columbia.⁵⁵ As Wright points out, these British arms were appropriate while the Monarch had not assumed distinct royal arms for Canada or British Columbia.⁵⁶ As dependence upon the United Kingdom waned, however, the Monarch *did* assume distinctive arms for these realms, and at that stage it was no longer proper to display the English Royal Arms to denote the Monarch of Canada or of British Columbia, who was becoming a separate, distinct monarch from that of the United Kingdom. Consider the following historical narrative (pertaining to Australia, but parallel to Canada):

Her Majesty the Queen of Australia is legally separate and distinct from Her Majesty as monarch of her other realms. In the 19th century

⁵⁴ Andrew TOWNEND, 'The Strange Death of the Realm of New Zealand: the Implications of a New Zealand Republic for the Cook Islands and Niue', *Victoria University of Wellington Law Review* XXXIV, no 3 (2003), <<http://www.austlii.edu.au/nz/journals/VUWLREv/2003/34.html>>.

⁵⁵ Blok doesn't respond to Wright's point that if 'all judges deriving their authority from the Queen should sit under the English Royal Arms' then so would the judges of Scotland. Scotland's judges, however, sit beneath the Scottish Royal Arms (Margaret McDAVID, Scottish Court Services, private e-mail message to the author, 14 June 2010).

⁵⁶ The order in council of 1856 that Blok mentions of course referred to the arms used by the Sovereign at the time, *i.e.* 1856. These arms were identical in blazon to those presently borne by Queen Elizabeth II in right of the United Kingdom.

it was accepted that the Crown was one and indivisible throughout its dominions... Obviously, this theory of indivisibility could only exist while all of the colonies were legally dependent upon the United Kingdom... It can now be accepted that the Crown is no longer one and indivisible throughout the former Empire. The Crown in right of the Commonwealth of Australia is independent from the Crown in right of the United Kingdom and has been independent for many years... As between sovereign nations, the Crown is separate and divisible: the Queen of the United Kingdom is a separate and distinct constitutional entity from the Queen of Australia, even though the same person wears the Crown.⁵⁷

The concept alluded to previously with the phrase, 'same person, different hats' is in a legal context a 'corporation sole'. Our Sovereign is, in law, a corporation of one, *i.e.* a corporation sole: 'The monarch has two capacities; one a natural body which is subject to death; the other a body politic which is a corporation sole and in this capacity the monarch is esteemed to be immortal.'⁵⁸ Corporations sole, such as the monarchy,

share the fundamental trait that they may for many useful purposes be conceived of as artificial legal "persons." (This observation is true even of the English monarchy though not, of course, of any individual English king or queen.) Each of these entities is thought to possess, in the eyes of the law, a personality... that is separate and distinct from the human beings who serve as the entity's office holders, directors, employees, or other agents.⁵⁹

Is it Blok's *point d'appui* that a courtroom's coat of arms represents the human being – the 'natural body' – of the reigning Monarch? If it is, one must not fault Blok too harshly, for 'it is the *person*, the Queen and her family, that provides the real focal point of the constitution.'⁶⁰ Even so, we must not forget that

Canada is not ... choosing the sovereign of England to be, *ipso facto*, her sovereign. That person actually occupies several separate jobs, being sovereign, separately, of each of the nations that so acknowledges him or her. It is a simple and understandable

⁵⁷ Bradley SELWAY, *The Constitution of South Australia* (Sydney: Federation Press, 1997), pp. 21 ff. The 'Crown' has come to mean the Government, rather than the Monarch in her personal or official capacity. 'Monarch' and 'Sovereign' have come to indicate the *office* of the head of state. The 'Queen' normally indicates the flesh-and-blood person. Their 'relationship can be roughly compared to that of a Russian doll, with "the Crown" as the outer skin, the monarch or sovereign as the inner one, and the Queen, the human individual, at its heart.' (VINCENZI, *op. cit.*, pp. 64 ff.)

⁵⁸ SELWAY, *op. cit.*, pp. 26 & 166, citing *Calvin's Case* (1609) 77 ER 377 at 388.

⁵⁹ Christopher C. NICHOLLS, *Corporate Law* (Toronto: Emond Montgomery Publication, 2005), p. 2.

⁶⁰ VINCENZI, *op. cit.*, p. 65.

process... Any citizen can appreciate this arrangement who has been president of several organizations at the same time.⁶¹

If Blok would have British Columbian judges sit beneath the personal arms of Queen Elizabeth II, they would be sitting under 'a most complicated shield containing the various coats borne by her paternal family of Saxe-Coburg-Gotha' (figure 11).⁶² But judges' authority stems from the *office* of the Sovereign, not her person. As Wright notes, royal arms 'do not identify a person but a sovereignty'. In the words of another heraldist, 'The Royal Arms are not simple family arms: they are arms of dominion, even arms of office...'⁶³ So what are the arms of the 'office' of the Queen of Canada? They are Canada's arms of dominion, *i.e.* 'The armorial insignia of a reigning Sovereign, borne by him or her in right of regal office and as the symbols of supreme authority and power.'⁶⁴ Certainly, they are not the English Royal Arms, as now employed in British Columbian courtrooms:

The Royal Arms of the UK are used by the United Kingdom monarchy and are the arms of dominion and sovereignty of the United Kingdom of Great Britain and Northern Ireland. They are not the personal arms of Queen Elizabeth II.⁶⁵

If these English Royal Arms somehow represented the Sovereign's authority, one might expect that Her Majesty's Great Seal would depict those arms. Yet the Great Seal – Canada's 'emblem of sovereignty' – instead depicts, 'Elizabeth II crowned, holding sceptre and orb and enthroned above the Royal Arms of Canada'.⁶⁶ Clearly, the Canadian Royal Arms (not the English Royal Arms) typify our Queen of Canada.

Blok asserts that Queen Elizabeth II, when travelling outside Britain, uses stationery that bears the English Royal Arms. He does not mention,

⁶¹ Frank MACKINNON, *The Crown in Canada* (Calgary: Glenbow-Alberta Institute, 1976), pp. 78 ff.

⁶² J. P. Brooke-Little, 'Coats of Arms' in Antonia Fraser, ed., *The Lives of the Kings and Queens of England* (Los Angeles: University of California, 1999), p. 15.

⁶³ Julian FRANKLIN, *Shield and Crest: An Account of the Art and Science of Heraldry*, 3rd ed. (London: MacGibbon & Kee Ltd, 1967), p. 363.

⁶⁴ J. S. MILBOURNE, *Heraldry for Amateurs: A Handbook for Beginners Including Concise Instructions Regarding the Tracing of Pedigrees* (London: Foyle, 1950), p. 118.

⁶⁵ Ron DYER, chair, 'Report on the proposed State Arms Bill' (Sydney: Standing Committee on Law and Justice, 2002), p. 15

⁶⁶ '[The Great Seal] is considered the emblem of sovereignty, — the *clavis regni*, — the only instrument by which on solemn occasions the will of the sovereign can be expressed.' (John Lord CAMPBELL, *Lives of the Lord Chancellors of England* [Philadelphia: Blanchard & Lea, 1851], II, p. 55; BOUSFIELD & TOFFOLI, *op. cit.*, p. 105)

however, that when Her Majesty travels inside Canada, she flies her personal flag, which bears the Canadian Royal Arms – not the English.⁶⁷



Fig. 9. The Great Seal of Canada



Fig. 10. The Personal Flag of The Queen of Canada

Royal arms connote sovereignty, the Crown. Certainly, the concept of the Crown is a multifaceted one (as a corporation sole): 'Apart from the material Crown, the concept [of the Crown] could refer to the King alone, the King as head of the body politic, the body politic itself, the inalienable rights of that body or those jointly responsible for it.'⁶⁸ Blok is concerned that for a court to use the Canadian or B.C. Royal Arms it would identify itself with the body politic (*i.e.* the government of Canada or of British Columbia) as litigant. One wonders if he also frets that courts in England using the English Royal Arms identify themselves with the government of England as a litigant.

Elements of royal symbolism have been connected with the propagation of public authority for centuries, and their use in the absence of the Sovereign made them into 'vectors of state power'.⁶⁹ The Crown became a dignified emblem for the government of the day and its agencies, and it is therefore natural that in formal terms we refer to 'Her Majesty's Government' and that it is the Sovereign's representative who reads the

⁶⁷ This flag (adopted in September 1961) consists of a banner of the Canadian Royal Arms, defaced with a variant of Her Majesty's Cipher: a blue disc with a crowned initial 'E', within a chaplet of golden roses. Sometimes this flag is mistakenly called the Royal Standard of Canada (*The Flag bulletin* XIX [1980], 323). It is (by virtue of the Royal Cipher) personal to Queen Elizabeth II alone, and no one but she may fly it ('Flags and Standards, Personal' *The Royal Encyclopaedia* [1991]). In June 2011, the Crown granted to Charles, Prince of Wales, a similar banner of the Canadian Royal Arms in recognition of his position as heir apparent to the throne of Canada.

⁶⁸ J. W. F. ALLISON, *A Continental Distinction in the Common Law: a Historical and Comparative Perspective on English Public Law* (Oxford: Oxford University Press, 2000), p. 75.

⁶⁹ John WATTS, 'Looking for the State in Later Medieval England', in Peter R. COSS, Maurice Hugh KEEN, (eds.), *Heraldry, Pageantry and Social Display in Medieval England* (Woodbridge: Boydell Press, 2003), p. 245.

Speech from the Throne.⁷⁰ Blok must agree that 'the Monarch is the titular head of the government and all governmental acts are carried out in the name of the Crown' and that 'All ministers are in law "servants of the Crown" (or of the Queen); civil servants work under the direction of ministers but are themselves also servants of the Crown, not of the departmental minister.'⁷¹ Canadian and British Columbian government departments therefore often make use of the Canadian and B.C. Royal Arms because ministers and their departments are servants and agencies of the Crown.⁷² The royal arms indicate the authority of government, vested in the Sovereign as *mater patriæ*.⁷³

It is well known that judges are independent, and that 'the Crown has no legal right to give them instructions', yet they are still Crown servants: their positions are granted by the Crown, their salaries are paid from Crown revenue, and they are subject to dismissal by the Crown.⁷⁴ The use of royal arms by Her Majesty's judges should give no litigant cause for concern: it is an established principle of our constitution that, as a 'dignified emblem', 'the Crown is of no party. Its apparent separation from business is that which removes it both from enmities and from desecration, which preserves its mystery, which enables it to combine the affection of

⁷⁰ FORMAN, *op. cit.*, p. 194. It is worth reminding oneself that the government is the Sovereign's, and not the Prime Minister's (e. g. it is the government of Queen Elizabeth II, not 'the Harper government'). The Prime Minister is 'a temporary chairman of the cabinet who has limited formal powers' (MACKINNON, *op. cit.*, p. 25). While normally the Governor General is the Sovereign's representative, recall that in the event of the death, incapacity or absence of the Governor General, it is the chief 'judge delegate' of Canada (i.e. the Chief Justice of the Supreme Court of Canada) who represents the Sovereign as the Administrator of Canada. Physically, the Dominion's throne sits in the Senate chamber in Parliament. The Sovereign last sat on the throne personally in 1957, when Queen Elizabeth II 'ascended the low dais and occupied the Throne of Canada' (BOUSFIELD & TOFFOLI, *op. cit.*, p. 16). This account again reminds one of 'the courtroom, with a dais and throne where the judges sat' (Henry ADAM, *The Life of George Cabot Lodge* [Charleston: BiblioBazaar, 2008], p. 80).

⁷¹ Hilaire BARNETT, *Constitutional & Administrative Law* (London: Routledge-Cavendish, 2009), p. 267; Colin TURPIN & Adam TOMKINS, *British Government and the Constitution: Text and Materials* (Cambridge: Cambridge University Press, 2007), p. 348. The Prime Minister too is, of course, a servant of the Crown (MACKINNON, *ibid.*).

⁷² DENNYS, *op. cit.*, p. 166; LOUGHLIN, *op. cit.*, p. 60.

⁷³ Thomas INNES OF LEARNEY, *Scots Heraldry: a practical handbook on the historical principles and modern application of the art and science* (Baltimore: Genealogical Pub. Co, 1971), p. 213.

⁷⁴ Maurice SUNKIN & Sebastian PAYNE, *The Nature of the Crown: a Legal and Political Analysis* (Oxford: Oxford University Press, 1999), p. 309. Note that the Sovereign may only dismiss a judge of a superior court upon receiving an address from Parliament to do so (*Constitution Act, 1867*, (U.K.) 30 & 31 Vict., c. 3, s. 99, reprinted in R. S. C. 1985, App. II, № 5).

conflicting parties'.⁷⁵ A court of law in British Columbia is the Sovereign's court, and 'the king's crown is to do justice and keep the peace.'⁷⁶ The appearance of the heraldic crown in a courtroom, along with other elements of royal arms, reassures litigants that the Queen's justice is being done.⁷⁷

Blok wrote, 'the judiciary has taken the view that its independence must not be compromised on any level, even symbolically.' Blok does not, however, explain how the judiciary's use of these royal arms would symbolically compromise judicial independence. Nor does he explain how British Columbian judicial independence is *not* symbolically compromised by using the symbol of a now-foreign authority, *i.e.* the English Royal Arms. In other former colonies, the potential of such symbolic compromise occasioned by the display of the English Royal Arms in courtrooms has been such that local authorities could no longer abide their use.⁷⁸

During the American Revolution, English Royal Arms in colonial courtrooms suffered an iconoclasm. For example, in New York City 'the king's coat of arms was "tore to Pieces and burnt in the Presence of the Spectators" after the Declaration was published.'⁷⁹ In the courtroom of the State House of Pennsylvania, a mob, after reading out the Declaration of Independence, pulled down the royal arms that hung above the judges' bench and burned it. They replaced it with the arms of Pennsylvania.

More recently, in Hong Kong the emblem of the Special Administrative Region (a stylised bauhinia flower) now hangs behind Hong Kong judges, replacing the English Royal Arms used in courtrooms there for over 150 years.⁸⁰ The Supreme Court of the Commonwealth of the Bahamas (though Queen Elizabeth II is judge ordinary of that country) is replacing the English Royal Arms in its courtrooms with a logotype.⁸¹ In Eire, the Republican Sinn Féin party called for the removal of the English

⁷⁵ Walter BAGEHOT, *The English Constitution* (Boston: Little, Brown & Co, 1873), p. 110.

⁷⁶ POLLOCK & MAITLAND, *op. cit.*, p. 525.

⁷⁷ Recall that the Monarch, in assuming arms for Canada and for British Columbia, assumed them with the Royal Crown; 'a Royal helmet'; and (for British Columbia) 'the royal crest of general purpose of our royal predecessor Queen Victoria differenced for us and our successors in right of British Columbia'.

⁷⁸ This is why in New South Wales the decision was made to display the arms of New South Wales in place of the English Royal Arms: 'In this respect, the Committee believes that as all actions of the State of New South Wales and its various offices and institutions are conducted under its own authority, the arms that most accurately and symbolically represent that authority should be used. The Committee has concluded that the State Arms, as the arms of dominion and sovereignty of the State of New South Wales are the appropriate arms in this regard.' ('Report on the proposed State Arms Bill', p. 44).

⁷⁹ MCCONVILLE, *op. cit.*, p. 309.

⁸⁰ NG, *op. cit.*, pp. 80 ff.

⁸¹ SUPREME COURT OF THE COMMONWEALTH OF THE BAHAMAS, 'About Us: About The Logos', <<http://www.bahamassupremecourt.gov.bs/about.php?id=7>> (accessed 2 April 2010).

Royal Arms from the courthouse in Monaghan when it was being refurbished in 2008. And even in Northern Ireland – part of the United Kingdom – English Royal Arms were removed from the majority of courtrooms there in 2003, as their use was seen as a 'difficult issue'.⁸²



Fig. 11. The Courthouse in Monaghan

As these jurisdictions have determined, the practice that Blok advocates British Columbian courts follow is a colonial one. It must be updated to suit our contemporary sovereignty. I agree with Wright that in British Columbian courtrooms it is not the authority of the Queen of the United Kingdom that is being exercised, but rather:

- a. in a *superior* British Columbian courtroom (*i.e.* the **Court of Appeal** and the **Supreme Court**), it is the authority of the Queen of Canada being exercised; and
- b. in an *inferior* courtroom (*i.e.* the **Provincial Court**), the Queen of British Columbia.⁸³

⁸² THOMAS HARDING, 'Coats of arms removed from Ulster courts' *Ireland Correspondent*, 15 January 2003, <<http://www.telegraph.co.uk/news/uknews/1418924/Coats-of-arms-removed-from-Ulster-courts.html>> (accessed 5 April 2010). This is certainly not applicable to Canada: 'Law has been administered alike in the highest tribunal and in the bench of county magistracy under the heraldic blazonment of the national arms, and it is with a feeling somewhat akin to sacrilegious horror that one observes the judgment-seat in the Royal Courts altogether bereft of the Royal emblem. Surely, where money has been spent with a lavish hand on quaint carvings and elaborate embellishments, it is not too much to expect to find the traditional insignia of justice and appropriate reminder that the Sovereign is, in constitutional theory, its fount.' (*The Law Times* LXXIV [3 February 1883], p. 240).

⁸³ The Queen (or Crown) of British Columbia is short for 'Her Majesty the Queen in right of British Columbia' (*vide Crown Proceeding Act*, R. S. B. C. 1996, c. 89, s. 1). Compare with Britain's *Civil Aviation Act*, 1982 (U.K), c. 16, which employs, 'Her

Therefore, judges in British Columbia who have been delegated by:

- a. the **Queen of Canada** to exercise her authority as judge ordinary [*i.e.* judges of the superior courts (see above)] must sit under the Canadian Royal Arms to signify that authority; and
- b. the **Queen in right of British Columbia** to exercise her judicial authority [*i.e.* judges of the inferior courts] must sit under the B.C. Royal Arms.⁸⁴

2. If doubt persists, look to Her Majesty's heralds. If, after the above revelation, doubt persists as to the proper arms to display in a British Columbian courtroom, whose further advice should one seek? The suggestion that the matter could be resolved by 'knightly combat' is unbecoming. Blok cites a good precedent, however, when in 1907 the construction plans for the Georgia Street courthouse were finalised, and advice from the College of Arms was sought as to the proper use of arms in the courthouse. This is sound practice: *experto crede* and consult the heralds (for 'court fittings [such as arms] have a longer history than court buildings').⁸⁵ Indeed, even the Sovereign herself consults her heralds when seeking guidance in matters heraldic: for example, recall when Queen Elizabeth I, who (though she herself 'spoke the language of heraldry with

Majesty in right of the United Kingdom', when referring to the Queen/Crown of the United Kingdom [s. 92 (5) (b)]. The judges of British Columbia's superior courts 'claim an inherent jurisdiction in supplement to the jurisdiction granted by statute to apply the law and dispense justice as though they directly exercised certain prerogative powers... associated with the sovereign power of a head of state, in this case, the Queen as Queen of Canada' (MORLEY, *op. cit.*, p. 189).

⁸⁴ Blok's anxiety over what arms a master would sit under can be soothed: if a master sits in the Supreme Court, he would simply sit under the arms that would properly hang there, *i.e.* the Canadian Royal Arms. Interestingly, Osgoode Hall decided to resolve such a dilemma by displaying *both* the Canadian Royal Arms and the Royal Arms of Ontario. Following the same reasoning as Wright and this author, it was decided that as the 'arms displayed in a courtroom are symbols of sovereignty and authority... and as the authority would be exercised within the geographical area of Canada by federally appointed judges, the symbol of sovereignty and authority in those courtrooms [in Osgoode Hall] should be that of Canada, notwithstanding that the courts sitting there were created by provincial legislation' (John HONSBARGER, *Osgoode Hall: An Illustrated History* [Dundurn Press Ltd, 2004], pp. 219 ff). Ontario Courts of Justice follow the same practice (ONTARIO JUSTICE EDUCATION NETWORK, 'Handout: Traditions of the Courts', p. 2 <<http://www.ojen.ca/eng/resources/show.cfm?id=176>>). The display of multiple coats of arms in a courtroom is not without historical precedent, *e. g.* the old seventeenth-century courthouse in the town of Malmesbury, England, displayed in its courtroom four coats of arms: the English Royal Arms of 1693; the arms of the borough; and the arms of two prominent burgesses (Richard LUCE, 'The St. John's Almshouse, Malmesbury', in *Wiltshire Archeological and Natural History Magazine* LIII [June 1949], pp. 118-126).

⁸⁵ GRAHAM, *op. cit.*, p. 318.

great fluency') summoned her heralds for their opinion on the import of Queen Mary I of Scotland bearing arms that included those of England.⁸⁶

Judges frequently rely upon the assistance of lawyers to determine what the law is on a particular issue. Why not rely upon the assistance of heralds to discover what the heraldry is on a particular issue? The only guidance a herald might need in aiding this particular discovery is *whose* arms are to appear in a courtroom: the Queen of Canada's arms, or the Queen of British Columbia's arms?

But should British Columbia's judges consult just *any* herald? Blok's reference to Sir Peter Gwynn-Jones, sometime England's Garter King of Arms, as 'the foremost expert on the subject in the world' is unqualified. What is the subject? Heraldry? Or heraldic display in British Columbian courtrooms? Sir Peter's comment to which Blok refers was directed at Australia, not British Columbia. To wit:

Garter King of Arms... maintains that this coat of arms [*i.e.* the English Royal Arms] is the 'Arms of The Queen as Sovereign of Australia: they are used throughout the Commonwealth where The Queen is Head of State'. He adds that Scotland and Canada are *exceptions* [emphasis mine].⁸⁷

Notably, Blok omitted this last sentence. And even in Australia, in the main courtroom of that nation's High Court, it is a banner of the arms of Australia that appears – not of the arms of England.⁸⁸ Blok writes, 'The decision on arms was and is for the courts to make...' but in his first article he conceded that it is the heralds to whom that power has been delegated (though remarkably he asserts that it is the English heralds who hold that power for Canada).⁸⁹

⁸⁶ BARKER, *op. cit.*, pp. 237 ff.

⁸⁷ Sir Peter GWYNN-JONES, letter to Fred Nile, 8 May 2002, cited in R. Mohr, 'Enduring Signs and Obscure Meanings: Contested Coats of Arms in Australian Jurisdictions', in *Contemporary Issues of the Semiotics of Law: Cultural and Symbolic Analyses of Law in a Global Context*, eds. Anne WAGNER, Tracey SUMMERFIELD & Farid BENAVIDES VANEGAS (Portland: Hart, 2005), p. 8 <<http://ro.uow.edu.au/lawpapers/42>>. This letter appears to be Blok's source, as elsewhere Nile refers to it using similar language to Blok's, *viz.* 'In correspondence dated 8 May 2002 the Garter Principal King of Arms, the foremost authority on coats of arms in the world, stated: 'The Royal Arms displayed in Australia are the Arms of The Queen as Sovereign of Australia: they are used throughout the Commonwealth where The Queen is Head of State' (Austl, New South Wales, Parliament, *Parliamentary Debates* (26 September 2006) at 2155 (Reverend Nile) <<http://www.parliament.nsw.gov.au/Prod/parlment/hansart.nsf/V3Key/LC20060926007>>). Nile, however, suffers from the same misunderstanding as Blok regarding the meaning of these arms, *i.e.* he believes the English Royal Arms represent the Queen personally.

⁸⁸ HIGH COURT OF AUSTRALIA, 'The High Court Building', <http://www.hcourt.gov.au/about_04.html> (accessed 25 June 2010).

⁸⁹ Similarly, I suggest it is not for the judges of Her Majesty's Supreme Court of Canada to decide by which title they are to be addressed, for they are only

If it were solely a decision for the courts to make, why did they feel in 1907 that they ought to consult heralds before hanging arms in the new Vancouver courthouse? And why did they not consult them again in 1995, rather than having Mr. Taylor rely upon colonial-era traditions?

When the College of Arms concurred with the use of the English Royal Arms in British Columbian courtrooms in 1907, it did so at a time before the Canadian Royal Arms were in existence [1921] and before the Canadian Heraldic Authority – which is now ‘the delegate of the sovereign for this purpose’ (as Blok phrases it) – had come into being [1988]. While I disagree with Wright that the Authority is a ‘forum for the determination of such questions’, I certainly agree that the judiciary could look to the Chief Herald of Canada for direction as to which arms represent the Sovereign in right of Canada or of British Columbia.⁹⁰

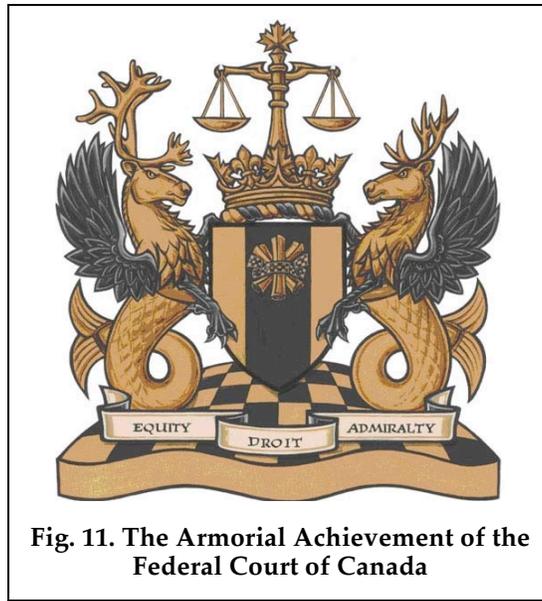
I argue, however, against seeking from the Authority arms *de novo* for use by a court, for the judicial authority heraldically symbolised in a courtroom must be that of the Sovereign, not of the judges themselves, who (as noted above) have no authority other than that delegated to them by the Sovereign. In this way, the arms granted to the Federal Court of Canada in 2007 by the Canadian Heraldic Authority are particularly compromising, even unconstitutional, if displayed in the Federal Court as a symbol of its authority: nowhere in these arms is the Sovereign represented as fountain of Canadian justice.⁹¹ The new arms of Ontario’s Superior Court of Justice are not quite as problematic, as they do at least bear the Royal Crown in chief, apparently to symbolise the ‘concept of the Crown’s justice’ – though they do not signify the Sovereign’s *presence*.⁹² Compare the heraldic badge designed for the new Supreme Court of the United Kingdom:

delegates of the Sovereign as judge ordinary, and it is for the Sovereign to decide how she wishes her judges delegate to be addressed. When Chief Justice Beverley McLachlin proclaimed that, ‘Counsel are asked to refrain from addressing the [Supreme-Court-of-Canada] judges as “My Lord”, “My Lady”, “Your Lordship,” or “Your Ladyship.”’ ... it was really a matter for Rideau Hall to determine (Supreme Court of Canada, ‘Frequently Asked Questions’, <<http://www.scc-csc.gc.ca/faq/faq/index-eng.asp#f10>> [accessed 6 April 2010]).

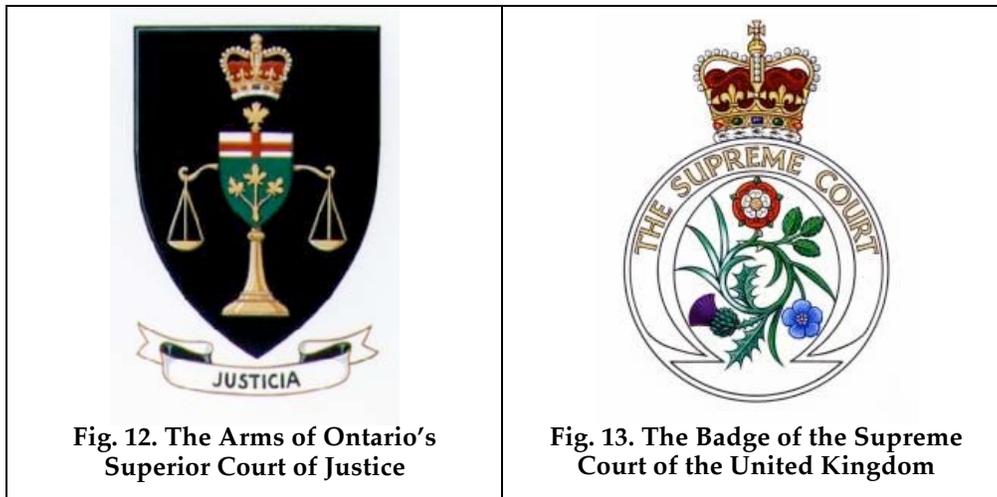
⁹⁰ The Chief Herald of Canada (but not the Canadian Heraldic Authority) is empowered to ‘maintain a heraldic system for Canada’ (Commission of the Chief Herald of Canada, C. Gaz. 1988.I.4050).

⁹¹ FEDERAL COURT, ‘The Federal Court’s Coat of Arms’, <http://cas-ncr-nter03.cas-satj.gc.ca/portal/page/portal/fc_cf_en/CoatofArms> (accessed 1 June 2010). There would be no obstacle, of course, to the Federal Court displaying its arms to identify itself or its property, *e.g.* buildings.

⁹² Robert WATT, ‘The Arms of the Ontario Court of Justice’ in *Heraldry in Canada* XXVII (June 1993), p. 12. Apparently these arms are displayed in the corridors of some Ontario courthouses in order to identify Superior-Court-of-Justice courtrooms, which certainly would be proper display.



while it too bears the Royal Crown, apparently it only appears at the front entrance of the new courthouse, while a *crowless* version appears in the courtrooms, replacing the royal arms. As one British parliamentarian commented: 'I can understand the Supreme Court having its own Supreme (emblem) but it should not be superior to the royal coat of arms... It should be prominently displayed in every court. For the Supreme Court not to have that then it is clearly a breach (of tradition).'⁹³



⁹³ 'Crown sidelined from new Supreme Court', Telegraph Media Group, 7 October 2009, <<http://www.telegraph.co.uk/news/uknews/law-and-order/6266742/Crown-sidelined-from-new-Supreme-Court.html>> (accessed 20 August 2010).

Blok concludes his reply to Wright by again referring to Chief Justice McRuer's predilection: 'Thus even the esteemed former chief justice of Wright J's court felt that the [English] Royal Arms were the proper arms to use.' Indeed 'felt' is the appropriate word, as it appears that the late Chief Justice McRuer relied upon his *feeling* as to what arms ought to be employed – not upon an informed survey of heraldry, or upon the advice of those whose occupation it is to study and regulate these matters, *i.e.* the heralds. Courtrooms across the province may have displayed the English Royal Arms for decades now, but just because heraldically-uneducated persons practice bad heraldry does not mean that they have established a precedent worth following.

3. Conclusion

Historically, courtroom fittings such as arms 'were used to define the participants' roles, and so to ensure these [legal] problems were resolved fairly, decisively and with dignity.' For this reason, these furnishings 'continue to characterize the modern courtroom... even if they have been considerably adapted over time to accommodate alterations in the nature of the proceedings and the roles of the various participants.'⁹⁴ Certainly such adaptations have occurred in British Columbia over the years, but the role of the judges as representatives of the Sovereign as fountain of justice, has not altered. What *has* altered is the identity of the Sovereign of Canada and of British Columbia as distinct entities from the Sovereign of the United Kingdom. This cannot be overemphasised.

As these identities have altered, so has the significance of the coats of arms assumed by them in relation to this dominion and this province, with the result that distinct royal arms – as heraldic insignia representing the Sovereign – now exist for Canada and for British Columbia. Adhering to the long-standing convention in this province that royal arms are to be displayed in a courtroom in order to symbolise the sovereign whose authority is exercised in that courtroom, it is now the Canadian Royal Arms and the B. C. Royal Arms that are proper to display in British Columbian courtrooms: not the English Royal Arms that now appear.

Sadly, this is not understood by those with responsibility for the furnishing of British Columbia's courtrooms. It is beholden upon any dedicated member of our Society to impress upon the Attorney General the necessity for heraldic change in British Columbia's courtrooms.⁹⁵ I encourage our membership to make this impression, by writing to:

⁹⁴ GRAHAM, *op. cit.*, p. 318.

⁹⁵ While advocating for such change, one would not wish to have removed historical emblems that are parts of the province's architectural heritage. The New-South-Wales legislation provides for the retention and preservation of the English Royal Arms in that state as heritage (*State Arms, Symbols and Emblems Act 2004* (N. S. W), s. 5). Even Cromwell's iconoclasm did not extend to the royal arms (*Ordinance for demolishing superstitions images, etc.... 1643*, Acts and Ordinances of the Interregnum, 1643).

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A courtroom, 'intended to house the solemn procedures of the law [is] generally expected to achieve the necessary dignity and authority by drawing on an ornamental vocabulary derived from history and symbolism.'⁹⁶ As heraldists, we must ensure that the courtroom's 'ornamental vocabulary'— *i.e.* its heraldic emblems — accurately reflects both the history of armorial display in court and the symbolism of royal arms in order to achieve the necessary dignity and authority of British Columbia's justice system. Formalities maintained in this justice system, such as the distinctive clothing of the judge and barristers; the central position and elevation of the judge's bench; the decorum to which observers must adhere; and the 'insignia of power and authority (seals, coats of arms...)' emphasise the seriousness of court proceedings; their separateness from ordinary life; and 'the venerable and authoritative character of the court.'⁹⁷ The author's hope is that this seriousness, separateness and venerable character of British Columbian courts will be properly emphasised by correct heraldry in the courtroom.

Summary: Mr. Mackie takes up the argument between Messrs. Blok and Wright over the correct sense of the expression 'royal arms' in Canada from the perspective of a lawyer who is also a heraldist, and can deal with the roots of the problem with the authority of his expertise in the latter field. He begins by agreeing with the earlier authors that courtrooms should be characterized by solemnity, dignity, and authority (in particular that of the Crown), and responds to their arguments by substituting for the question of what arms should be displayed to achieve these goals, but whose arms. He then poses four questions that must be answered if the issue is to be settled in a proper manner: (1) What is the origin of the convention governing the use of the 'royal arms' (recte 'royal' or 'regal achievement') in the judicial courts of England and North America? (2) What is meant by the phrase in this context?; (3) Whose authority are such emblems meant to represent in the courts of British Columbia? and (4) Whose expertise should be solicited to answer the question of which of the several distinct 'royal arms' should be employed in those courts? He answers the first question by tracing the history of the use not only of royal achievements but of the other trappings of judicial status in court as visual representations of the doctrine that judges are the embodiments of the judicial authority of the monarch. He answers the second question by arguing that 'royal arms' are essentially emblems of 'dominion and sovereignty', or in other words signs of the authority of a king or queen within a particular sovereign territorial entity, and the third question by arguing that the correct emblem to display in a courtroom is the one that best represents the particular territorial sovereignty from which the court derives its authority. In British Columbia since 1931 the sovereignties in question are those of the Dominion (or Kingdom) of Canada and the Province of British Columbia, for each of which the sovereign had acquired by that time a wholly distinct achievement. In consequence, the achievement of the former should be displayed in the superior courts of the Province, whose judges are appointed by the

⁹⁶ *Ibid.*, p. 254.

⁹⁷ Peter TIERSMA, *Legal Language* (Chicago: University of Chicago Press, 2000), p. 154.

Governor General of Canada as the deputy of the Queen of Canada, and the latter in the inferior courts, whose judges are appointed by the Lieutenant Governor of the Province as her deputy on the provincial level. Finally he argues that the determination of such matters should be made, not by judges, but by the heralds of the Canadian Heraldic Authority, who are both the true and the only officially-sanctioned experts.

Sommaire français: *M. Mackie reprend la discussion entre MM. Blok et Wright à propos du sens correct de l'expression 'armoiries royales' au Canada, du perspective d'un avocat qui est aussi héraldiste. Il est d'accord avec les premiers auteurs que les salles judiciaires doivent avoir un atmosphère de solennité, de dignité, et d'autorité (surtout celle de la Couronne). Puis il pose quatre questions auxquelles on doit répondre pour arriver à une solution du problème de quelles 'armoiries royales' peuvent s'utiliser dans les salles judiciaires de la Colombie britannique aujourd'hui: (1) Quelle est l'origine de la convention gouvernant l'affichage des armoires royales dans les chambres judiciaires anglaises et nord-américaines? (2) Que veut dire la phrase 'armoiries royales' en ce contexte? (3) Quelle est l'identité de l'entité représentée par cette espèce d'emblème en ce contexte? et (4) Quel type d'expert doit-t-on consulter afin de déterminer ces questions-ci? Mackie répond à la première question en traçant l'histoire de l'utilisation, non seulement des armoires royales, mais des autres ornements de statut judiciaire, comme signes visuels de la doctrine que les juges sont l'incarnation de l'autorité judiciaire du monarque. Il répond à la deuxième question en constatant que la phrase 'armoiries royales' veut dire 'armoiries de la souveraineté d'un roi ou d'une reine dans une entité territoriale particulière'. Puis il répond à la troisième en constatant que l'emblème correct à afficher est celui de la souveraineté territoriale particulière dont la cour dérive son autorité. En Colombie britannique depuis 1931, les souverainetés sont celle du royaume du Canada et celle de la province — dont chacune possède d'armoiries royales distinctes. Par conséquent, ce sont les armoires du royaume qu'on doit afficher dans les salles des cours supérieures, dont les juges sont désignés par le gouverneur général, et celles de la province dans les salles des cours inférieures, dont les juges sont désignés par le lieutenant-gouverneur. Enfin, il constate que sur de telles questions on doit consulter surtout les héralds d'armes de l'Autorité héraldique canadienne.*

**Figure 14. The Great Armorial Achievement of the Queen of Canada
(often loosely called 'the Arms of Canada')**

