

HONOURS AND ARMS: LEGAL AND CONSTITUTIONAL ASPECTS OF PRACTICE CONCERNING HERALDRY AND ROYAL HONOURS IN NEW ZEALAND

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INTRODUCTION

New Zealand has progressed from colony to dominion to fully independent realm, but several aspects of official practice in relation to symbolic and ceremonial matters appear both to ignore resultant constitutional realities and to be in conflict with the current law of New Zealand.

THE CROWN OF NEW ZEALAND

The Crown on whose behalf the Treaty of Waitangi was signed was the Crown of the United Kingdom¹ and until this century there was only one indivisible Crown in the British Empire. However, the exercise of greater self-government by the dominions and the changes in their relationship to the United Kingdom precipitated by the First World War eroded the validity of the doctrine of the indivisibility of the Crown.

Lord Denning declared in 1982 that by at least 1926 (the year of the Balfour Declaration) the Crown “was separate and divided for each self-governing dominion”;² and the Statute of Westminster 1931³ – despite its preamble which recited that the several dominions were united in their allegiance to one Crown – gave legislative recognition to the reality of separate Crowns for each of the self-governing dominions which adopted the Statute as part of their municipal law, as New Zealand eventually did in 1947.⁴ As early as 1936 there was the curious phenomenon that for a few days there were two Kings in the Empire as the abdication of Edward VIII took effect at different times in different dominions;⁵ and any of the monarchical realms of the present Commonwealth, including the United Kingdom, could vary the succession or even adopt a republican constitution without necessarily affecting the constitution or monarchy of any other.⁶ “they retain the same monarch, but that does not mean the same monarchy”.⁷

The full implications of the division of the Crown have been generally ignored, especially in speeches in the presence of the Sovereign (even if they have been appreciated), and did not begin to be reflected in the Sovereign’s titles in each realm until 1952.⁸

1 The English version of the Treaty styles Queen Victoria “Queen of the United Kingdom of Great Britain and Ireland”; in the Maori version she is simply “Kuiini o Ingarana” (ie Queen of England).

2 H V Evatt, *The Royal Prerogative* (1987) (commentary by L Zines) C25.

3 22 Geo 5 c 4 (UK).

4 By the Statute of Westminster Adoption Act 1947.

5 N Mansergh, *The Commonwealth Experience* (1969) 242; E C S Wade and G G Phillips, *Constitutional and Administrative Law* (9th edn) 395; E C S Wade and A W Bradley, *Constitutional Law* (8th edn 1970) 442. The South African government took the view that the abdication took effect on 10 December 1936 when the Instrument of Abdication was signed; United Kingdom legislation on 11 December gave effect to the Instrument in the United Kingdom, Canada, Australia, and New Zealand; an Act of the Irish Free State provided that the abdication should take effect immediately on its passage on 12 December.

6 E C S Wade and A W Bradley, op cit, above note 5, at 451–452.

7 L Zines, *Constitutional Change in the Commonwealth* (1991) 28.

8 The titles to be adopted in each realm were agreed upon at the Commonwealth Prime Ministers’ Conference held in London, December 1952 (N Mansergh ed, *Documents and Speeches on British*

A proclamation under New Zealand's Royal Titles Act 1953 defined the Queen's titles as "Elizabeth II, by the Grace of God of the United Kingdom, New Zealand and Her Other Realms and Territories Queen, Head of the Commonwealth, Defender of the Faith".⁹ However, the constitutional position was better indicated more than twenty years later when a new act, the Royal Titles Act 1974, revised Her Majesty's titles to "Elizabeth the Second, by the Grace of God Queen of New Zealand and Her Other Realms and Territories, Head of the Commonwealth, Defender of the Faith".

That the phrase "and Her Other Realms and Territories" is merely descriptive (and should not be interpreted as creating an essential link between the Crown of New Zealand and the Crown of the United Kingdom or elsewhere) is given emphasis by its omission, in terms of the Citizenship Amendment Act 1979, from the oath of allegiance prescribed for new citizens; and New Zealand citizens while remaining British subjects in United Kingdom law are no longer so described in New Zealand law.

In short, there is no supranational Crown in the Commonwealth.¹⁰ The Queen is but one natural person who holds a number of different 'offices' concurrently as Head of State of the several countries in the Commonwealth of which she is Sovereign: the concept of 'one Queen, many Crowns' has been aptly described as "a new Athanasianism",¹¹ and "it is clear that the former one and indivisible Crown is now disintegrated into its various national components".¹²

ARMORIAL ENSIGNS FOR NEW ZEALAND

The separation of the Crowns of the United Kingdom and New Zealand has yet to be given satisfactory recognition in legal enactments in New Zealand concerning Royal and national emblems.

The Union with Ireland Act¹³ of the Parliament of Great Britain (part of the statute law of New Zealand until at least 1947 and possibly until the passage of the Imperial Laws Application Act 1988) includes the following:¹⁴

... the royal stile and titles appertaining to the imperial crown of the said United Kingdom [of Great Britain and Ireland] and its dependencies, and also the ensigns, armorial flags and banners thereof, shall be such as his Majesty, by his royal proclamation under the great seal of the United Kingdom, shall be pleased to appoint.

Accordingly, the arms of the Sovereign of the United Kingdom, with their familiar lion and unicorn supporters, took their present form by proclamation in 1837.¹⁵ These arms by definition relate only to the United

Commonwealth Affairs 1931–1952, vol II, (1953) 1293.

⁹ Proclamation dated 28 May 1953 and published in *The New Zealand Gazette*, 29 May 1953.

¹⁰ E C S Wade and G G Phillips, op cit, above note 5, at 400.

¹¹ "Yet while the divisibility of the Crown was no longer to be disputed, the Commonwealth of sovereign, equal states found its creed of unity 'in a new Athanasianism of many crowns in one monarchy' [the phrase is that of Mr Percival Spear]". N Mansergh op cit, above note 8, vol I, at xxxviii.

¹² L Zines, op cit, above note 7, at 31. A curious corollary of the division of the Crown is that none of those in the line of succession to the Crown of New Zealand are its subjects; the Prince of Wales has neither New Zealand citizenship nor even the automatic right of residence in New Zealand. The best current account of the constitutional role of the Crown in New Zealand, including a treatment of the divisibility of the Crown, is to be found in P A Joseph, *Constitutional and Administrative Law in New Zealand* (1993).

¹³ 39 & 40 Geo 3 c 67.

¹⁴ From the First Article of the Union.

¹⁵ *The London Gazette*, 1 August 1837, 2001, proclamation issued shortly after the accession of Queen Victoria; previous versions of the Royal arms included reference to her predecessors' status as

Kingdom and its dependencies and are thus clearly not the arms of the Sovereign of New Zealand. As no other arms have been explicitly defined for the Sovereign of New Zealand, it is not clear what “the Coat of Arms of Her Majesty” is which was given statutory protection by New Zealand’s Flags, Emblems, and Names Protection Act 1981.¹⁶

A different section of the same act protects a number of “State emblems” including “the Coat of Arms of New Zealand”.¹⁷ That term presumably refers to the device first defined by Royal Warrant in 1911 with ‘Zealandia’ and a Maori chief as supporters.¹⁸ However, a Royal Warrant is not a proclamation so the arms would appear to be a legal nullity, not having been brought into existence by the means prescribed by statute.¹⁹

Since 1911 there have been two developments of significance in the use of the arms of New Zealand. The first was in 1956 when the arms were redrawn in their present form (with a crown rather than a demi-lion crest above the shield and *New Zealand* rather than *Onward* as the motto beneath the shield) and the second in 1962 when it was announced that the Queen had ‘adopted’ a ‘personal flag’ for use in New Zealand (a banner of the New Zealand arms with the addition in the centre of a crowned ‘E’ within a wreath of roses).²⁰

The 1962 ‘personal flag’ has been flown as a banner during Her Majesty’s visits to New Zealand in 1963 and subsequently, in place of the banner of the Royal arms as used in England (often but incorrectly called ‘the Royal standard’) which was used during the Royal Visit of 1953–54. A banner is a rectangular flag bearing the design of a shield across its whole surface, and a shield bearing the design of the 1962 flag is attached to the roof of the Queen’s car during Royal visits.

In neither 1956 nor 1962 was a Proclamation or Royal Warrant employed, nor does any sort of announcement appear to have been gazetted. However, it may be argued that, as New Zealand was no longer ‘a dependency of the United Kingdom’, especially in consequence of the enactment of the Statute of Westminster Adoption Act 1947 of the New Zealand Parliament and the New Zealand Constitution (Amendment) Act 1947 of the United Kingdom Parliament,²¹ the arms of 1956 and the 1962 ‘personal flag’ and the shield derived from it were new creations under the Royal Prerogative of the Crown of New Zealand.

If the 1956 arms were created *de novo* they are of distinctly subdued design: the Queen initialled only a black and white drawing and not a coloured illustration of the arms.²² If the 1962 flag or shield is to be considered as constituting the arms of Her Majesty as Queen of New

Electors and later Kings of Hanover (proclamations, *The London Gazette*, 3 January 1801, 2, and 10 June 1816, 713).

16 Section 12(2)(a).

17 Section 13(2)(a).

18 Royal Warrant dated 26 August 1911, published in *The New Zealand Gazette*, 11 January 1912, 52.

19 “Nor is any choice allowed to the Crown as to the necessity for an individual expression of consent, or as to the form in which it should be expressed if custom or rules of law requires that the assent should be given in a particular form”. Sir William Anson, *The Law and Customs of the Constitution* vol II (4th edn 1935) 70. In the case of the arms of Canada, assigned in 1921, care was taken to ensure that correct procedures were followed and a Proclamation rather than a Royal Warrant was issued. The background is fully described by C M F Swan, *Canada: Symbols of Sovereignty* (1977) 62–63.

20 Queen’s Personal Flag for New Zealand approved 25 August 1962 (E M C Barrowclough, *Flags of the World* (1969) 240).

21 11 Geo 6 c 4.

22 National Archives of New Zealand, IA 9/31: black and white illustration of New Zealand arms signed ‘Appd ER’.

Zealand it is a very poor device indeed: no exterior additaments such as supporters or crown or motto are defined, and, as the central 'E' refers only to the present Sovereign, it is inappropriate as a symbol for a continuing, hereditary monarchy.

The redrawing of the arms and the invention of the personal flag appear to have been based on the assumption that the arms of New Zealand are a 'Government' rather than a 'Royal' emblem, and are to be used by the Queen's advisers and servants, but not by the Queen herself: the tenor of the Prime Minister's request to Her Majesty in 1956 was that permission was being sought to vary slightly the design of an existing coat of arms belonging to the Government and not that arms for the Queen of New Zealand were to be either altered or defined;²³ and the 1962 personal flag clearly differentiates the Queen's emblem from the device used for most official Government purposes. This is a curious distinction which has no parallel in the United Kingdom, where the same Royal arms are used by both the Sovereign and those who act in her name.

It is of interest that this distinction between 'Royal' and 'State' or 'Government' emblems has been blurred in recent years in one constitutionally confusing case with the undifferentiated 1956 'arms of New Zealand' appearing on the stationery of Government House.²⁴

Another emblem used by the Governor-General is also listed, under "Royal and vice-regal emblems", in the Flags, Emblems, and Names Protection Act 1981: the Governor-General's flag.²⁵ This flag has as its central device the crest of the Royal arms of the United Kingdom as used in England (a crowned lion standing on a crown), which is also used in various New Zealand Army insignia. This use gives the false impression that the Governor-General represents, and the Army owes allegiance to, the Sovereign of the United Kingdom; the symbolic implications are misleading and anachronistic.

New Zealand no longer has a procedure laid down by statute for defining the arms of the Sovereign. Her Majesty could, perhaps, exercise the Royal Prerogative and issue a proclamation defining her arms as Queen of New Zealand for use both by herself and by her representative and Government in New Zealand. Alternatively, a statute similar to the Seal of New Zealand Act 1977 could be enacted specifying the procedure to be followed. Until such action is taken, 'the arms of New Zealand' as normally used appear to have no legal existence – making their use in courtrooms and Parliament particularly inappropriate – New Zealand is symbolically defined as a colony, and meaningless enactments remain on the statute books.

23 National Archives of New Zealand, IA 9/31: Mr Holland to HM the Queen, 11 July 1956. The full text of the request is:

Mr Holland, with his humble duty to The Queen, has the honour to request Your Majesty's permission to the use of the Royal Crown above the shield in the Coat of Arms of New Zealand. The purpose of this change is to symbolise the fact, in which your New Zealand subjects rejoice, that Your Majesty is Queen of New Zealand. Mr Holland submits a revised design incorporating the Royal Crown. It has been prepared by Garter King of Arms and has his approval.

24 During Sir Paul Reeves's term of office; the current stationery carries a Royal crown on a blue roundel.

25 Section 12(2)(d); the flag was one of a series of similar flags for Dominion Governors-General introduced in 1931 – the year the Statute of Westminster was enacted.

THE LAW OF ARMS AND HERALDIC AUTHORITY IN NEW ZEALAND

Other than for certain official emblems, New Zealand has never had its own system for the granting, recording, or protection of coats of arms or other heraldic devices.

It used to be possible to argue that the law of arms of England applied in full or in part in New Zealand, in terms of the English Laws Act 1908.²⁶ By 'law of arms' is meant the law governing "the use of arms, crests, supporters and other armorial insignia ... [which] ... is to be found in the customs and usages of the [English] Court of Chivalry",²⁷ "augmented either by rulings of the [English] kings of arms or by warrants from the Earl Marshal [of England]".²⁸ The Earl Marshal and Hereditary Marshal of England is the English Great Officer of State responsible for State Ceremonies and with jurisdiction over the English officers of arms and matters of heraldry, honour, and precedence in England; the office of Earl Marshal has since 1672 been hereditary and is held by successive Dukes of Norfolk.

The claims, as far as New Zealand is concerned, to an "imperial [sic] jurisdiction"²⁹ of the Earl Marshal of England and the English kings of arms (who may not grant arms without a warrant in each case from the Earl Marshal) are difficult to support either from a plain reading of their warrants or commissions of office³⁰ or on the basis of important negative evidence: no assertion is ever made that any English Great Officer of State other than the Earl Marshal has any role or authority in New Zealand; no Earl Marshal has ever ruled on any matter concerning precedence in New Zealand; no Earl Marshal has ever organised a State Opening of Parliament, a State Funeral, or any other State Ceremony in New Zealand; the Earl Marshal has never been included in any official order of precedence in New Zealand; the English kings of arms have never taken official or public action to prevent the use of assumed arms³¹ in New Zealand (widespread amongst local authorities and schools) or to prevent arms assigned by the Scottish Lord Lyon King of Arms from being either granted or used in New Zealand.³²

In spite of this state of affairs, negotiations between Garter King of Arms (the chief English officer of arms) and another English herald (York Herald), and the Secretary of the Cabinet and Mr P P O'Shea (also a public servant), acting on behalf of the New Zealand Government, led to the appointment in 1978 of Mr O'Shea as 'New Zealand Herald of Arms Extraordinary'.³³ However, the essential validity of this appointment – by Royal Warrant of the Queen of *New Zealand* addressed to the Earl Marshal

26 The central provision of the Act was that "The laws of England as existing on the fourteenth day of January one thousand eight hundred and forty, so far as applicable to the circumstances of New Zealand, and in so far as the same were in force in New Zealand immediately before the commencement of this Act, shall be deemed to continue in force in New Zealand".

27 *Halsbury's Laws of England* vol 35 (4th edn 1981) 476.

28 J P Brooke-Little (Norroy and Ulster King of Arms), in *A New Dictionary of Heraldry*, ed S Friar (1987) 212.

29 T Woodcock (Somerset Herald) and J M Robinson (Fitzalan Pursuivant Extraordinary), *The Oxford Guide to Heraldry* (1988) 48.

30 Issued by the Queen as Sovereign of the United Kingdom; Garter is created "Principal King of English Arms"; commissions appointing Alexander Colin Cole Garter King of Arms, 2 October 1978, and John Philip Brooke Brooke-Little Norroy and Ulster King of Arms, 7 July 1980.

31 Unlawful in England; G D Squibb, *The Law of Arms in England* (revised edn 1967) .

32 Eg by the Dunedin City Council and the University of Otago.

33 P P O'Shea, 'The office of the New Zealand Herald of Arms' (1982) 20 *The New Zealand Armorer* 7-8. Remarkably, neither the warrant of appointment of New Zealand Herald, nor any other mention of the existence of the position, has ever been gazetted in New Zealand.

of *England* without the Sovereign of the United Kingdom interposing authority to the Warrant – is open to serious question.³⁴

A Herald Extraordinary is not a member of the English College of Arms³⁵ (hence ‘Extraordinary’ in contradistinction to the officers of arms ‘in Ordinary’ who are members) and so has at most an advisory role with respect to the Chapter of the College and the Kings of Arms who make heraldic policy. New Zealand Herald has no autonomous power to grant armorial ensigns, so the authority by which he alone approves certain badges is not clear;³⁶ there is provision in the commission of Garter King of Arms for his authority to be delegated, but the nature and extent of any such delegation to New Zealand Herald has never been made public.

New Zealand Herald wears a tabard of the United Kingdom Royal arms and a collar of SS at official ceremonies in England in attendance on Her Majesty in her capacity as Sovereign of the United Kingdom.³⁷ In New Zealand he does not wear the English tabard but nevertheless wears the collar of SS and an English Royal Household badge of the United Kingdom arms.³⁸ In view of the separation of the Crowns of the United Kingdom and New Zealand, the use of these insignia is appropriate only for a servant of the Crown of the United Kingdom: the United Kingdom arms, whether in the full splendour of the tabard or discreetly on the badge, are the chief emblem of the Sovereign of only the United Kingdom and its dependencies, and not of the Sovereign of New Zealand. If there is no supranational Crown there can be no supranational Royal symbols or servants. New Zealand Herald (despite his title) seems to be an English herald, whose appearance at State openings of the New Zealand Parliament and elsewhere, wearing exclusively English regalia, but in attendance on the Sovereign (or her representative) acting in right of New Zealand alone, is inappropriate.

It is of interest that since the appointment of New Zealand Herald letters patent issued by the English Kings of Arms granting arms to New Zealanders and New Zealand institutions have had their English character de-emphasised: the Duke of Norfolk is no longer described as “Earl Marshal and Hereditary Marshal of England” but simply as “Earl Marshal”, and the Sovereign’s titles are recited in the form defined by New Zealand rather than United Kingdom statute.³⁹ The Royal Arms of the United Kingdom still appear at the head of the letters patent, however, so it is not clear if it is the Royal prerogative of the Queen of New Zealand or of the United Kingdom which is being exercised, or indeed if the grants have any validity in either realm.

It should be mentioned that no Lord Lyon has ever accepted the English claim of an exclusive ‘imperial’ jurisdiction⁴⁰ and Scottish grants of arms have consistently been made to those of Scots descent, and corporate bodies with Scottish associations, in New Zealand and elsewhere – and even New Zealand Herald has said publicly that “a New Zealand citizen [may seek] a Grant or Confirmation of Arms from Her Majesty’s Court of the Lord

34 M R Innes of Edingight, ‘NZ Herald of Arms Extraordinary’ (1979) 13 *Heraldry in Canada* 34–36.

35 Mr O’Shea’s letterhead nevertheless states that he is “Representative in New Zealand of Her Majesty’s College of Arms”; “Her Majesty” here is of course, and of necessity, the Queen of the United Kingdom in right of England.

36 Eg the badge of the New Zealand Artificial Limb Board, approved 31 March 1988.

37 Eg at Garter Service, St George’s Chapel, Windsor Castle, 16 June 1980.

38 Illustrations in (1980) 83 *The Heraldry Gazette* 237, and in (February 1990) *North and South* 16.

39 Compare wording of letters patent granting arms to the Timaru High School Board, 3 December 1964, and to the Borough of Kawerau (properly the Kawerau Borough Council), 11 April 1984.

40 Sir Thomas Innes of Learney, *Scots Heraldry* revised by M R Innes (1978) 48–49.

Lyon”.⁴¹ The Scottish position is that both the English and Scottish Kings of Arms may grant arms to Commonwealth citizens outwith the United Kingdom, recognition of such arms being a matter for the private international law of the country in which they are used.⁴²

In New Zealand, however, there is no mechanism for such recognition, or for the recording or protection of arms, and any English claim to such a role was annulled in 1988.

The Imperial Laws Application Act 1988 provides that the enactments and subordinate legislation specified in the schedules to the Act together with the common law of England, insofar as it was already part of the laws of New Zealand, are the only ‘Imperial’ laws inherited from the United Kingdom which are of effect in New Zealand. As “the law of arms is not part of the common law [of England]”⁴³ and is not detailed in any of the scheduled legislation it is clear that the law of arms is not part of New Zealand law, and heraldry and related matters inhabit a legal vacuum in New Zealand today.

In 1975 it was apparently decided that New Zealand should not establish an independent heraldic authority but “utilise ... the expertise of the College of Arms”.⁴⁴ Such a decision was constitutionally insupportable⁴⁵ then and its shortsightedness emphasised by the passage of the Imperial Laws Application Act 1988. For practical, legal, and constitutional reasons, the heraldic interests of New Zealand would be better served by the establishment of an organisation similar to the Canadian Heraldic Authority,⁴⁶ founded in 1988, together with legislation providing for the recording and protection of officially granted armorial bearings.

THE PRIVY COUNCIL

The practice of appointing New Zealanders to the Privy Council and British orders of chivalry has been cited in justification of the appointment of New Zealand Herald,⁴⁷ but the precedents are flawed or have ceased to be relevant.

By a statute of 1707⁴⁸ a new Privy Council for Great Britain superseded the former separate Privy Councils for England and Scotland. The act of 1707 and various other British statutes have defined criteria for the Privy Council’s membership, oaths of office, and related matters,⁴⁹ but they have not all been preserved as part of the laws of New Zealand under the Imperial Laws Application Act 1988: only those enactments and subordinate legislation relating to the Judicial Committee of the Privy Council remain in force in New Zealand.⁵⁰

41 P P O’Shea, op cit, above note 33, at 10.

42 Sir Crispin Agnew of Lochnaw, “The conflict of heraldic laws” (June 1988) *The Juridical Review* 61–76.

43 *Halsbury’s Laws of England* vol 35, 476.

44 P P O’Shea, op cit, above note 33, at 7.

45 The College of Arms is a distinct corporation, within the English Royal Household, whose members are not appointed by or accountable to either the Crown or Parliament of New Zealand and whose records (even those concerning New Zealand citizens and corporations) are not part of the public records of New Zealand.

46 *The Canadian Heraldic Authority* (1988).

47 P P O’Shea, op cit, above note 33, at 8.

48 Union with Scotland (Amendment) Act 1707 (5 Anne c 6) which inter alia provides “that [from 1 May 1708], the Queen’s majesty, her Heirs, and Successors, shall have but one Privy Council in or for the Kingdom of *Great Britain*, to be sworn to her majesty, her Heirs, and Successors, as Sovereigns of *Great Britain*” (italics as in the original act).

49 *Halsbury’s Laws of England* vol 8, 708–711.

50 Those which remain in force are specified in the Schedules to the Act; the fundamental statute of 1707 is not listed.

The legislative role of the Privy Council in Britain is exercised by the Executive Council in New Zealand, and despite the imprecisely – and illogically – worded clause 6(1)(a)(i) of the Imperial Laws Application Act 1988 (which refers to “the Sovereign [necessarily of New Zealand] in his or her Privy Council [ie the Privy Council for Great Britain]” in relation to revisions to Judicial Committee procedure) it is clear that the Privy Council is not an advisory body of the Crown of New Zealand.⁵¹

Privy Counsellors are accorded official precedence in New Zealand⁵² but otherwise they have no role or function in or with respect to New Zealand, unless they are members of the Judicial Committee.

New Zealand Ministers who are created Privy Counsellors are honoured for their service to New Zealand and its Crown with appointments made by the Sovereign of the United Kingdom, on the advice of the Prime Minister of the United Kingdom.⁵³ Such appointments are undoubtedly valid under English law but the situation is constitutionally anomalous as far as New Zealand is concerned.

OTHER HONOURS

Knighthoods, appointments to various orders of chivalry, and awards of medals are announced in *The New Zealand Gazette* from time to time, but the propriety of or the authority for doing so is questionable in most cases.

The Queen’s Service Order and the Order of New Zealand are clearly orders of the Crown of New Zealand. Their statutes have been defined by Royal Warrant under the Seal of New Zealand and published in New Zealand in accordance with the Regulations Act 1936:⁵⁴ they are part of the laws of New Zealand.

The same cannot be said of the Statutes of the Orders of the Bath, Saint Michael and Saint George, the British Empire, and so on. Each of these orders has been established by letters patent issued under the Great Seal of the United Kingdom. Only United Kingdom Ministers countersign letters patent concerning the British orders.⁵⁵ Their statutes have never been published in New Zealand. They are not included in the schedules to the Imperial Laws Application Act 1988. There is no evidence that they are part of the laws of New Zealand.

The Statutes of various British orders provide for members to be appointed on the recommendation of ministers of Commonwealth countries (other than the United Kingdom). However, an order can have only one Sovereign and each set of Statutes is headed with the titles of the Sovereign of the United Kingdom and ordains that successive “Kings and Queens Regnant of Our Realm are and forever shall be Sovereigns” of the Order concerned.⁵⁶ As only the Sovereign of an order may make appointments to

51 Meetings of the Privy Council held in New Zealand are nevertheless reported in *The New Zealand Gazette*, eg 1 March 1977, 1.

52 Order of Precedence in New Zealand, *The New Zealand Gazette*, 10 January 1974, 5.

53 P P O’Shea, op cit, above note 33, at 8.

54 Section 3 of which required all regulations made under the prerogative rights of the Crown to be published by the Government Printer (the 1936 Act has been superseded by the Acts and Regulations Publication Act 1989 which contains a similar provision). The Statutes of the Queen’s Service Order and the Order of New Zealand have been published as Statutory Regulations 1975/200 (and amendment 1981/288) and 1987/67 respectively.

55 Eg the 1983 letters patent defining the Statutes of the Most Distinguished Order of Saint Michael and Saint George were countersigned by the Rt Hon Francis Pym, and the 1986 letters patent defining the Statutes of the Most Excellent Order of the British Empire were countersigned by the Rt Hon Douglas Hurd.

an order,⁵⁷ it follows that even New Zealanders recommended by ministers of the Crown of New Zealand for membership of British orders can be appointed only by the Sovereign of the United Kingdom. Nevertheless, the warrants of appointment of New Zealanders to the British orders recite the titles of the Queen of New Zealand,⁵⁸ a different legal *persona* from the Queen of the United Kingdom who is the Sovereign of the various orders; such warrants would appear to be of questionable validity.

The Royal Warrants governing the Victoria Cross and George Cross and numerous other awards – including the Queen’s Silver Jubilee Medal, awarded to 1507 New Zealanders in 1977⁵⁹ – have also never been published in New Zealand in obedience to the Regulations Act 1936: these decorations and medals are clearly not awards of the Crown of New Zealand.

Even the creation of Knights Bachelor is treated (quite unnecessarily) in New Zealand as an act of the Crown of the United Kingdom.⁶⁰

The Statutes of the British orders anachronistically imply that Commonwealth Governors-General represent the Sovereign of the United Kingdom,⁶¹ although in New Zealand law the Governor-General is the representative of the Sovereign in right of only New Zealand.⁶² At present the Governor-General is the formal promulgator of announcements of Royal honours for New Zealanders;⁶³ the constitutional position of the British orders would be made explicit if the High Commissioner for the United Kingdom were to announce New Zealand appointments to them – which appear to be somewhat analogous to the honorary awards which may be made to citizens of Ireland or the United States or other foreign countries – but would be accurately reflected only if such appointments were to be discontinued.

CONCLUSION AND RECOMMENDATIONS

At present official practice in armorial matters and the award of honours is based on seriously defective constitutional and legal foundations and is inconsistent with New Zealand’s national sovereignty.

56 Eg Statute III of the Order of Saint Michael and Saint George and Statute III of the Order of the British Empire.

57 Eg Statute XXI of the Order of the British Empire.

58 Eg the warrant of appointment of the Hon S J Rodger, CMG, 31 December 1990.

59 *Honours, Titles, Styles, and Precedence in New Zealand; Supplement to 1977 Edition*, ed P P O’Shea (1980) 13.

60 New Zealand knights bachelor are given complimentary membership of the Imperial Society of Knights Bachelor, whose certificates imply that membership depends upon notification from “Her Majesty’s Secretary of State for the Home Department” (ie a Minister of the Crown of the United Kingdom) that a knighthood has been conferred.

61 Statute XXIII of the Order of Saint Michael and Saint George and Statute XXX of the Order of the British Empire refer to “Our Governor-General” who is to act “in Our name and on Our behalf”. The Statutes of the Order of New Zealand contain similarly lax wording: Statute 7 mentions “subjects of Our Crown”, which phrase appears to be intended to comprehend subjects not only of the Crown of New Zealand but also of the Crowns of each of the other monarchical realms of the Commonwealth.

62 The Letters Patent Constituting the Office of Governor-General of New Zealand (S R 1983/225) were issued by and in the name of the Queen of New Zealand and sealed with the Seal of New Zealand, and cannot in any way be construed as an instrument of the Sovereign of the United Kingdom. Moreover, Section 2 of the Constitution Act 1986 explicitly states:

(1) The Sovereign in right of New Zealand is the head of State of New Zealand, and shall be known by the royal style and title proclaimed from time to time.

(2) The Governor-General appointed by the Sovereign is the Sovereign’s representative in New Zealand.

63 The form of words used in *The New Zealand Gazette* (eg 25 January 1991, 215) is “Her Excellency The Governor-General has announced that The Queen has been graciously pleased ... to confer the following honours”.

The series of difficulties and anomalies identified in this article could be remedied by the following:

(a) The Arms of New Zealand

The passage of an Act authorising the Sovereign to issue a proclamation defining her arms as Queen of New Zealand for use by Her Majesty, the Governor-General, and the Government.⁶⁴

(b) Heraldic Authority

The patriation and clarification of heraldic authority in New Zealand with the appointment of a Chief Herald of New Zealand (analogous to the Chief Herald of Canada or the Chief Herald of Ireland) and statutory provision for the recording and protection of officially granted armorial bearings.

(c) The Privy Council

The cessation of appointments of Ministers of the Crown of New Zealand to the Privy Council for Great Britain.⁶⁵

(d) Royal Honours

The cessation of recommendations from New Zealand ministers for the award of British honours; the validation, if necessary, of past awards of United Kingdom orders and decorations to New Zealand citizens;⁶⁶ and the creation of a suite of New Zealand orders and decorations to replace the British honours.⁶⁷

64 Such arms could be simply the coloured version of the 1956 arms already in use, but the opportunity could be taken to add a Royal helm and a new crest (eg a kiwi with a crown on its back) and to replace the banal *New Zealand* on the motto scroll with the original *Onward* and to add a translation of the same motto into New Zealand's other official language (*Haere atu*) on another scroll above the arms.

65 The use of the Privy Council as a court of appeal is a separate and unrelated issue, independent even of whether New Zealand remains a monarchy (the Republic of Singapore retained until 1993 the right of appeal to the Privy Council). Consideration could also be given to the creation of a Privy Council for New Zealand on the Canadian model.

66 If the Sovereign of New Zealand cannot make valid appointments to United Kingdom orders, it follows that Dame Catherine Tizard and Dame Kiri Te Kanawa, amongst others, are not entitled to be called 'Dame'.

67 The Order of New Zealand should probably be retained, but otherwise a single four- or five-class order should be sufficient for New Zealand's purposes to take the place of the Orders of the Bath, Saint Michael and Saint George, and the British Empire; such an order could incorporate the present Queen's Service Order. A number of other decorations would be required to replace the George Cross, George Medal, and military decorations such as the Victoria Cross and other gallantry and service awards.