The New Zealand Coat of Arms

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It has been said that the 1911 royal warrant, by which the Sovereign granted the New Zealand Coat of Arms, is a legal nullity and that consequently Armorial Bearings of New Zealand, and indeed those of most other national, provincial and state governments in the Commonwealth, have no legal existence. It has been said that this is because the *Union with Ireland Act 1800*[1] provided that armorial ensigns for the Crown should be by Royal Proclamation under the Great Seal[2], and that this procedure has not been used.

It has also been said that it is not clear what "the Coat of Arms of Her Majesty" is which is given statutory protection in New Zealand by s 12 (2) (a) of the *Flags, Emblems, and Names Protection Act 1981*. A royal warrant is not a proclamation, so the 1911 New Zealand arms would appear to be a legal nullity, not having been brought into existence by the means prescribed by statute[3]. In Canada, the correct procedure was followed, and a proclamation rather than a royal warrant was used[4].

However, this argument is incorrect, for the very reason that the arms of New Zealand are not the arms of the United Kingdom. The arms protected by s 12 (2) (a) clearly means the royal arms of Her Majesty, those approved in accordance with the *Union with Ireland Act 1800*[5]. However, any arms assigned to the Crown in right of any possession, colony, dependency, or realm, or to the government thereof, or any other legal entity, need not follow the provisions of that act.

The New Zealand Coat of Arms were published in the New Zealand Gazette on 11 January 1912[6]. The royal warrant, signed 26 August 1911 and directed to the Earl Marshal, stated that:

> [F]or greater honour and distinction of the said Dominion of New Zealand certain Armorial Ensigns and Supporters should be assigned thereto... by these presents do grant and assign for the Dominion of New Zealand the Armorial Ensigns and Supporters following, that is to say...

It has been suggested that since neither New Zealand nor the Government of New Zealand is a legal entity capable of bearing arms, the validity of the grant is uncertain. However, the arms are assigned to the Dominion, rather than to the Government of New Zealand (which has no legal personality anyway). Arms can only be borne by a legal entity. Ordinary personality is possessed by humans. Artificial personality is possessed by corporations or quasi-corporations. Corporations may be corporations sole or corporations aggregate. The Crown is a corporation sole, as is an official such as the Public Trustee. Companies, and local authorities, are corporations aggregate. A

corporation can hold property, be sued, or sue, and has perpetual succession, and a common seal[7].

Corporations can come into existence by the Crown exercising the royal prerogative[8]. Corporations can also be created by act of Parliament, or, for special classes of corporations, under special provisions of an act of Parliament[9]. In certain circumstances quasi-corporations arise by implication[10].

The Dominion of New Zealand is not a corporation. It cannot sue, be sued or possess property. However, apart from special agencies of government which have been given legal personality by one or other of the above methods, the whole government of New Zealand is vested in the Crown, subject to the legislative authority of the Queen in Parliament. The arms which were granted in 1911 were granted by the Crown to itself, in right of New Zealand.

The Queen in right of New Zealand is a legal person, whether or not it is a distinct legal person to the Queen of the United Kingdom. These arms are arms of dominion rather than personal arms. Although these might be thought of as Government arms, they are in fact used by all official agencies in New Zealand. The Crown cannot grant honours to itself, simply because it is the fount of dignity[11]. The legality of the grant is unimportant.

The Crown is not required to use any particular method to grant arms, either to itself, or generally. The *Union with Ireland Act* provided that the royal style and title pertaining to the Imperial Crown of the United Kingdom and its dependencies be determined by proclamation under the Great Seal. It also stated "and also the ensigns, armorial flags and banner thereof, shall be such as his Majesty, by his royal proclamation under the Great Seal of the United Kingdom, shall be pleased to appoint"[12].

Since then, the royal style has been changed only by proclamation, or, more usually, by act of Parliament. The royal arms have not been changed in essence since 1800, the removal of the Hanoverian aspects of the arms in 1837 not being contrary to the 1800 act. The arms assigned by the Crown to its colonies and dependencies, and later to independent dominions, do not conflict with the *Union with Ireland Act 1800*[13], since they do not purport to be the armorial ensigns of the United Kingdom.

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[1]39 & 40 Geo III c 67 art 1:

The royal stile and titles appertaining to the imperial Crown of the said United Kingdom and its dependencies, and also the ensigns, armorial flags and banners thereof, shall be such as His Majesty, by His Royal Proclamation under the Great Seal of the United Kingdom, shall be pleased to appoint.

[2]This method was used for Great Britain, however. Macaulay, Gregor, writing in The Heraldry Gazette, the Official Newsletter of the Heraldry Society New series LIX March 1996 p 8. A royal proclamation was also used for Canada, but under the Great Seal of Canada, not of the United Kingdom.

[3]Macaulay, GA, "Honours and Arms: Legal and Constitutional Aspects of Practice concerning Heraldry and Royal Honours in New Zealand" (1994) 5 Canta LR 381, 382.
[4]Swan, Sir Conrad, *Canada: Symbols of Sovereignty* (University of Toronto Press, Toronto, 1977) 62-63.
[5]39 & 40 Geo III c 67 art 1.
[6]11 January 1912 p 52.
[7]*Sutton's Hospital Case* (1613) 10 Co Rep 23a at 28b; 77 ER 960 at 968-9; *MacKenzie-Kennedy v Air Council* [1927] 2 KB 517 at 533-4; *Land Commissioner v Pillai* [1960] AC 854 at 868, 882.
[8]As by issuing a royal charter or letters patent; *Peerless Bakery Ltd v Clinkard (No 3)* [1953] NZLR 796.
[9]As for companies and incorporated societies.
[10]*The Conservators of the River Tone v Ash* (1829) 10 B & C 349; 109 ER 479.
[11]*Buckhurst Peerage Case (1876)* 2 App Cas 1, HL per Lord Cairns LC.
[12]39 & 40 Geo III c 67 art 1.
[13]39 & 40 Geo III c 67 art 1.