

Protection of the flag, royal crown, other royal and national emblems

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Unlike coats of arms generally, certain royal, national and viceregal emblems enjoy the protection of the law in New Zealand. So do certain professional and academic qualifications, and military decorations. There is no single law governing these matters, but rather a series of enactment, some obsolescent, which have grown up over time.

The Flags, Emblems, and Names Act 1981

The *Flags, Emblems, and Names Protection Act 1981* was intended to protect various official and semi-official emblems, such as the royal crown, from false use. It was recommended when it was being introduced into Parliament that protection ought to be extended to coats of arms, but this was not done. The maximum penalty under the Act is \$500, in summary jurisdiction. This is manifestly insufficient, and does not protect all symbols covered by the current legislation. This omission should be remedied, and the penalty increased.

It is also recommended that the Department of Internal Affairs, which is responsible for its administration, take more active steps to do so. It is recommended that the *Flags, Emblems, and Names Protection Act* be amended to protect all honours, titles (including academic titles), and achievements of arms.

The Act provides that it is an offence to alter the New Zealand Flag¹. By section 12 (1) it is provided that-

[E]very person commits an offence against this Act who, without the authority of Her Majesty or (as the case may require) the Governor-General, displays or exhibits or otherwise uses any representation to which this subsection applies in such a manner as to be likely to cause any person to believe that he does so under the authority, sanction, approval, appointment, or patronage of Her Majesty or the Governor-General.

That section covers the following-

- s 12 (2) (a) Royal coat of arms including those of the Royal Family.
- s 12 (2) (b) Any representation of any Royal crown or Royal coronet or Royal cypher or Royal badge.
- s 12 (2) (c) Royal Standard or Sovereign's personal flag for New Zealand.
- s 12 (2) (d) Governor-General's Flag.
- s 12 (2) (e) Any representation that so closely resembles any thing referred to in any of paragraphs (a) to (d) of this subsection as to be likely to cause any person to believe that it is that thing.

State emblems are also protected. It is illegal to use any representation of the coat of arms of New Zealand, the Seal of New Zealand, or any emblem or official stamp of any Government department².

It is also illegal to form an association under a name which is protected, or to use words which imply the authority, sanction, approval, appointment, or patronage of Her Majesty's Government, of any Minister of the Crown, or of any Government department³. However, use of such words may be authorised by The Queen or by the Governor-General, or by the Minister of Internal Affairs as appropriate⁴.

By section 14 (3) (c) it is also illegal to use publicly in any business, trade or occupation any name, title or designation which implies the authorisation, custom, support or patronage of-

- (i) Her Majesty or a member of the Royal Family;
- (ii) The Governor-General;
- (iii) The House of Representatives;
- (iv) The Government;
- (v) Any Minister of the Crown;
- (vi) Any Government department.

Advertisements claiming government patronage are also illegal⁵.

Section 21 instructs "registering authorities not to register in certain cases". Despite these, the Registrar of Companies has in the past registered a number of companies incorporating such names as "Crown". Use of such name, title or designation may however be authorised by the proper authority, respectively The Queen; the Governor-General; the Speaker; the Minister of Internal Affairs; or the appropriate Minister.

The Commercial Use of Royal Photographs Rules 1962

*The Commercial Use of Royal Photographs Rules 1962*⁶ regulates the use of royal photographic portraits. The use of photographs of Her Majesty The Queen or of members of the Royal Family in articles for sale is permitted provided the articles made conform to good taste, and are of a permanent nature⁷. They must also be free from advertisement or the implication of royal custom⁸. Royal photographs may be sold as portraits, reproduced on postcards, greeting cards, calendars (including trade calendars, provided they are free from advertisements)⁹.

Royal photographic portraits may not be used on medals or coins, articles of dress except scarves and head scarves, household linen or like articles or material or furnishing material¹⁰. Nor may they be used on any paper or other material which may be used for wrapping or packaging purposes, or adhesive tape¹¹. They may not be used on any kind of adhesive seal¹², or any article which is used to assist the sale of any other article, such as cigarette cards¹³.

These Rules are obsolescent in that they prohibit use of photographs of the Prince of Wales and Princess Anne, except for portraits, postcards, calendars and greeting cards¹⁴. It also provides that for the present photographs of Prince Andrew may not be used¹⁵. They are clearly in need of updating.

Additionally, section 18 (1) (b) of the *Trade Marks Act 1953* prohibits representation in trade marks of Her Majesty The Queen, or any member of the Royal Family.

False claims to honours

Genuine military decorations, those worn with the approval of the Crown, are protected by the *Military Decorations and Distinctive Badges Act 1918*. This latter act prohibits false claims to military decorations, including formation, though not regimental, insignia¹⁶. It is also an offence to supply any military decoration, without reasonable excuse, to anyone not authorised to wear or use it¹⁷. However there is no specific protection for civil decorations and medals, nor are the orders of chivalry protected.

Only rarely will the general law be of assistance, as where someone has sought to obtain some pecuniary or other advantage for an assumed honour, an action which is illegal as being under false pretences. There is no specific law which says that one cannot call oneself a knight, or claim to be a CMG. Unfortunately, there is a growing fondness for people to make use of membership of spurious or non-official "orders", such as the many illegitimate Orders of St John. This is to be deeply regretted, since few people are in a position to readily identify the real orders, and many people are misled by the apparent genuineness of some of the more established orders.

False claims to qualifications

University degrees and other similar qualifications are protected by the *Summary Offences Act 1981*, section 20 of which renders liable to a \$500 fine anyone who, in connection with business, trade, calling or profession claims any degree, diploma, certificate of a university, institution, society or association. They are also liable if they claim to be a member, associate or fellow of any such institution, society or association. This is interesting because it does not distinguish between academic and professional qualifications, nor between those legally recognised by the Government, and those which are purely private.

Section 20(4) of the *Summary Offences Act 1981* provides that the style "doctor" may be used by a registered medical practitioner, but not by anyone else unless they hold a doctorate¹⁸. Thus veterinary surgeons and dentists may not style themselves doctor without an actual doctoral degree, which is rarely found. It is unfortunate that the

prohibition is confined to claims in connection with a business, trade, calling or profession, as there are those who lay claim to qualifications to enhance their social standing, in the same way that they or others of a similar persuasion claim bogus knighthood.

A number of other styles are also protected by law¹⁹. Thus, only a member of the New Zealand Society of Accountants can call him or herself a chartered accountant²⁰. Only registered architects may style themselves architects²¹.

¹s 11 (1) (a).

²s 13 (2) (a), (b) and (c) respectively. In the United Kingdom it was always unlawful to use the Royal Arms, though only in the law of arms, which is not justiciable by the common law courts. However, the *Trade Marks Act 1994* s 99 (iii) provides that illegal use of the royal achievement of arms is punishable by a £500 fine.

³s 14. Words covered include such as Royal, Government, State, National.

⁴s 14 (4) (a) (i).

⁵s 15.

⁶SR 1962/81; very similar rules 1955/87 and 1959/77 still remain in force.

⁷cl 2 (1) (a) and (b).

⁸cl 2 (1) (c).

⁹cl 3.

¹⁰cl 4 (a), (b) and (c).

¹¹cl 4 (d).

¹²cl 4 (e).

¹³cl 4 (f).

¹⁴cl 6.

¹⁵cl 7.

¹⁶s 4A, as amended by s 46 (1) of the *Summary Offences Act 1981*.

¹⁷s 4A (2) (c). Clearly a legitimate collector has a reasonable excuse.

¹⁸The *Medical Practitioners Act 1995* also restricts use of any style or letters which imply that the claimant is a medical practitioner, unless he or she is registered. Whilst many dentists style themselves "doctor", this usage is unsupported by legal authority. It is contrary to the *Summary Offences Act 1981*, nor does the *Dental Act 1988* exempt dentists from the general law in this respect. Nor have veterinary surgeons the right to call themselves "doctor"- *Veterinarians Act 1994*.

¹⁹There are a long list of occupations regulated by statute. Examples are the *Law Practitioners Act 1982*, *Patents Act 1953* (patent attorneys), *Music Teachers Act 1981*, *Engineers Registration Act 1924*, *Engineers Associates Act 1961*, *Real Estate Agents Act 1976*, *Dieticians Act 1950*, *Pharmacy Act 1970* (pharmacists), *Veterinarians Act 1994*, *Valuers Act 1948*, *Second-hand Dealers Act 1963*, and the *Auctioneers Act 1928*. Despite recent criticism of the appropriateness of continued regulation of many of these occupations, to date the only significant occupation which has been deregulated is that of Clerks of Works, when the *Clerks of Works Act 1961* was repealed by the *Clerks of Works Act Repeal Act 1992*.

²⁰*Institute of Chartered Accountants of New Zealand Act 1996*.

²¹*Architects Act 1963*.