

REPORT OF PROCEEDINGS BEFORE

STANDING COMMITTEE ON LAW AND JUSTICE

INQUIRY INTO REGULATING THE USE OF
COATS OF ARMS IN NEW SOUTH WALES

At Sydney on Monday, 12 August 2002

The Committee met at 10 a.m.

PRESENT

The Hon. R. D. Dyer (Chair)

The Hon. P. J. Breen

The Hon. J. F. Ryan

RICHARD JOHN WILLIAM d'APICE: Solicitor, Level 18, 68 Pitt Street, Sydney, sworn and examined:

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act?

Mr d'APICE: I did.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr d'APICE: I am.

CHAIR: Could you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

Mr d'APICE: I am a Bachelor of Laws of the University of Sydney. I am a solicitor, or a legal practitioner I think I am these days, in New South Wales and admitted in the Australian Capital Territory. I have had a lifelong interest in heraldry and matters relating to the symbols by which sovereign States represent themselves and have made a study of it, both legal and heraldic.

CHAIR: Mr d'Espine, as you are well aware, you have made a very learned and lavishly illustrated submission to this inquiry for which we are very grateful. Is it your wish that your submission be included as part of your sworn evidence?

Mr d'APICE: It is.

CHAIR: If you should consider at any stage during your evidence that, in the public interest, certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. However, I must point out that the Legislative Council itself does have the right, if it chooses, to override our decision in that regard.

Mr d'APICE: Thank you, Mr Chairman. I have no desire that any of my evidence should remain confidential.

CHAIR: Thank you. Could I now invite you to make a brief oral opening submission to the Committee?

Mr d'APICE: My submission comprises, in written form, a submission dated March 2002, which is submission 5 before this inquiry, and also a supplementary submission dated 12 June 2002. I would like to supplement those submissions by written submissions by way of response to two of the other submissions before the inquiry, namely submission number 4 by the New Christian Democratic Party and submission number 36 by Australians for Constitutional Monarchy. I have already handed a copy of these written submissions to the secretary for the inquiry and I will now hand you three copies for the members of the Committee.

CHAIR: You are tendering those materials?

Mr d'APICE: I am tendering those materials. They take the form of reproducing those two submissions in bold type and then commenting on them in normal typeface, as I think that these are probably the major submissions contrary to the proposal presently before the Committee and I have prepared them in that written form, but I will make comments on some of them during the course of evidence.

Could I first say that the purpose of this bill and the motivation behind it is in no way republican or anti-monarchist in its intent. Really it should have the opposite effect. The Queen of Australia in the right of New South Wales is our sovereign and the purpose of this bill is to ensure that she is represented in this sovereignty by symbols of this sovereignty. We would consider it quite eccentric if she were to be represented by the Royal Arms of Canada or of New Zealand and we should

think it equally eccentric that she is represented here by the Royal Arms of the United Kingdom of Great Britain and Northern Ireland. They certainly are Arms of great historical significance. The United Kingdom is certainly where our sovereignty derives from, but it is not where our present sovereignty is. Our present sovereignty is in the Queen of Australia and particularly in the Queen of Australia in the right of New South Wales and it is that outcome which the bill is intended to achieve. It is certainly not intended to vandalise any of the current representations of the Royal Arms. Far from it. They should be preserved and conserved and properly displayed and interpreted for the benefit of those who are interested in them, but they should not have that position of pre-eminence which they currently have in certain places, which misrepresents the sovereignty under which both justice and law are being administered.

A number of examples will show what I mean: The Speaker in the Legislative Assembly conducts the business of that House under a representation of the Arms of the United Kingdom. Those Arms should be the Arms of New South Wales. Similarly, the President of the Legislative Council conducts the business of that House under the Arms of the United Kingdom. Again I believe that to be wrong. In the Supreme Court of New South Wales, as you enter the foyer on the ground level in Queen's Square, there is a vast representation of the Royal Arms of the United Kingdom. Again, that is not the sovereignty whose justice is being administered in that building. Each of the judges sits and administers his court under a representation of the Royal Arms of the United Kingdom. Each of them writes on notepaper which bears those Arms. I think that you will see amongst the submissions which have been made to this inquiry a number of submissions by justices of the Supreme Court of New South Wales, number 14 by Justice Dunford, and Justice Handley has also made a submission which is number 41. You will see that both of those have on their letterhead the Arms of the United Kingdom.

As I said, this is simply not a republican move, it is a move to ensure that the Queen of Australia in the right of New South Wales is properly represented in all of those places where she should be exercising her sovereignty.

I think that is probably all I need to say at this stage, Mr Chairman.

CHAIR: Thank you, Mr d'APICE:. Could I start by asking you a general or perhaps philosophical question and that is: Could you tell the Committee what you consider to be the function and the proper purpose of a Coat of Arms in our current contemporary society?

Mr d'APICE: It was quite helpful to have the proposed questions and, having given that some thought, I believe that the function and purpose of the Coat of Arms in today's society continues to be, as it has been in the past, to symbolise, represent and identify the sovereign, person, family or body using those Arms; so essentially their purpose is identification, representation and symbolism.

CHAIR: I want to turn to the question of heraldic jurisdiction in Australia. You do note in your submission and in subsequent correspondence with the Committee that you consider it important to the Committee to clarify whether any authority has heraldic jurisdiction in Australia. For example, at page 11 you express your opinion that the College of Arms does not have any heraldic jurisdiction in Australia. I would like to invite you to explain your own reasoning for that view and, if, as you say, the College of Arms does not have heraldic jurisdiction over Australia, what body in your opinion would have such jurisdiction?

Mr d'APICE: Well, Mr Chairman, to start at the end first, I do not believe that there is any heraldic authority which has heraldic jurisdiction in Australia. I certainly believe that the Queen of Australia and the Queen of Australia in the right of New South Wales have that part of the font of honour of the sovereign which would enable them to make grants of Arms, as does the Queen of the United Kingdom but not in respect of Australia. The Queen of the United Kingdom does not exercise her power to make grants of Arms directly herself. She delegates that power in respect of England, that is south of the Trent, to various Kings of Arms of the College of Arms in London and north, that is in Scotland, she delegates it to the officers of the Court of the Lord Lyon. Those are the heraldic authorities to which I would refer. There are other heraldic authorities, particularly the Chief Herald of Ireland who exercises the power of the Republic of Ireland and the Chief Herald of Canada who

exercises the heraldic power of the Queen of Canada, but the only ones that did ever have relevance in Australia are the English and Scottish heralds and they are members of the household of the Queen of the United Kingdom. They are not members of the household of the Queen of Australia. They are not ministers of the Australian Government; they are not appointed by or answerable to or in any way connected with the constitutional monarchy of Australia and they, in my view, have absolutely no jurisdiction.

You will have seen that attached to the supplementary submission by the Reverend Fred Nile, which is submission 4, there is a letter from the Garter Principal King of Arms, Mr Gwynn-Jones, who is an officer of the College of Arms in London, and this was in response to a number of questions concerning what jurisdiction the College of Arms had. The highest he can put it is to say:

As you are aware, grants of Arms have been made by the English Kings of Arms to Australian citizens and corporate bodies since the nineteenth century. Although there were significant constitutional changes as a result of the Statute of Westminster in 1931, it is true to say that the Australian authorities continued to acquiesce in the exercise of heraldic jurisdiction by the Earl Marshal and the English Kings of Arms.

The Earl Marshal is effectively a minister of the English Crown and part of the Queen's household and the English Kings of Arms are the same. "Acquiescence" seems a slender basis upon which to base any heraldic jurisdiction of the English College of Arms over Australia.

Although he makes reference to the Statute of Westminster in 1931, he makes no reference and seems to be quite unaware of the existence of the Australia Acts of 1986 which have a fairly significant effect on finalising the constitutional position in Australia. That is an Act which was passed by the United Kingdom Parliament and the Commonwealth Parliament on the advice and at the request of the Commonwealth and the States and it was intended to clarify the sovereign and independent status of Australia and its various States. The preamble to the Act says: "The Prime Minister of the Commonwealth and the Premiers of the States in conference on various dates agreed on taking certain measures to bring the constitutional arrangements affecting the Commonwealth and the States into conformity with the status of the Commonwealth of Australia as a sovereign independent and Federal nation", and it goes on to make various provisions which exclude any legislation passed thereafter by the United Kingdom Parliament from having any effect in either the Commonwealth or the States. It also says in section 10: "After the commencement of this Act, Her Majesty's Government in the United Kingdom shall have no responsibility for the government of any State". It is quite clear from the legislation that, whatever may have been the position before 1986, certainly there is no power in any aspect of the sovereignty of the United Kingdom over either the Commonwealth of Australia or the State of New South Wales.

CHAIR: If I might quote a short passage from your submission appearing at page 12 dealing with your proposal to create a New South Wales heraldic authority, you say:

In my view creation of a NSW Heraldic Authority would be desirable as an interim measure pending the creation of an Australian Heraldic Authority by the Commonwealth. Many state instrumentalities and corporations, local government authorities, corporations and associations and members of the general public use Arms and other heraldic symbols in everyday life.

Could I ask you what form and functions do you envisage that the proposed New South Wales heraldic authority would have?

Mr d'APICE: In form, I believe that that heraldic authority, should have much in common with the Canadian heraldic authority which is perhaps the best analogy to draw because it is a recently created body - and perhaps here I might tender to the Committee, firstly, some material which I have printed from the Canadian Heraldic Authority's web site and a Canadian book called The Canadian Heraldic Primer, which sets out how heraldry has been used and introduced into Canada and how it has been essentially indigenised to make it relevant to local circumstances, particularly indigenised in

relation to the Inuit, formerly called the Eskimo people, whose own symbolic traditions have been introduced into the Canadian heraldic system to great and successful effect.

You will see that in Canada, as is the case in the United Kingdom, the heraldic authority is part of the Governor-General's household, and I believe that that is the appropriate course of action here. It should form part of the Governor's establishment, much as the Australian Honours Secretariat forms part of the Governor-General's establishment, and if a Commonwealth heraldic authority were to be formed that should also form part of the Governor-General's establishment. It should be kept as simple as possible and I think you will see that the Canadian authority has a fairly clear system. It is not a system which has caused, as far as I can understand, any difficulties in Canada and in fact it has been enormously popular from a nationalist point of view in Canada. The Queen of Canada still remains at the head of their honour system and the head of their heraldic system. I believe something along the lines of that body would be useful both to Australia and, in the limited field that this Committee is investigating, to New South Wales.

Ideally it should be heraldic authority established by the Commonwealth of Australia or the Queen of Australia acting through the Governor-General. That is not going to happen in the short term so far as one can tell. I have recommended that the State exercise its undoubted power to do so, by creating a State heraldic authority.

The position in Canada and Australia are quite different. The provinces of Canada do not have the powers the States have in Australia. The States in Australia have residual powers and they undoubtedly include the Queen's heraldic powers. The State certainly has the power to create honours and has recently done so in relation to the NSW Police Medal. That is one example of the font of honour in operation in New South Wales. I have no doubt the same power exists to create a NSW heraldic authority should there be the political will to do so.

CHAIR: Supposing the Committee were to recommend the enactment of The Hon Peter Breen's Bill, with or without appropriate amendments, what is your position regarding the Bill vis -a-vis the heraldic authority? Are you saying the NSW heraldic authority initially would be a desirable supplement to enactment of The Hon. Peter Breen's Bill, or are you saying without it The Hon. Peter Breen's Bill ought not to be enacted?

Mr d'APICE: It would be a desirable add-on. The Hon. Peter Breen's Bill should be enacted without it if there is no will to add the creation of an heraldic authority. As to how such an heraldic authority would be created, as I understand the position in New South Wales, Royal Proclamation, as a method of legislation, is not favoured and legislation is the way by which Parliament wishes to see law made. Although I think the Canadian heraldic authority was created by proclamation I do not think that would be the way it would occur in New South Wales. An add-on to the State Arms Bill creating an Australian heraldic authority would be a desirable outcome to achieve. However, they have two slightly different purposes. The purposes of the State Arms Bill is to deal with the symbols of our sovereignty and to say what can be done, how our sovereignty should be exercised in the symbolic sense, what can be done and what should not be done. It is prescriptive law.

If an heraldic authority were created it would give individuals, corporations, local councils government departments and the like the right to seek from an heraldic authority a grant of armorial bearing and given the heraldic authority the power to grant them. I do not envisage the legislation would create an enforceable right in relation to those Arms. Parliament may wish to do so. It would be up to the individual to pursue that right. I do not envisage any public policing of your right to a Coat of Arms.

The position in the United Kingdom is different in the two countries. In England there is no effective method of enforcing your rights in respect of the Coat of Arms. However in Scotland the Court of the Lord Lyon is a Court of Scotland and regularly enforces the heraldic law. If you are aggrieved that somebody else is using your Coat of Arms, you can go to the Court of the Lord Lyon and get an injunction to prevent them from doing so. Quite recently the Lord Lyon started looking at the coats of Arms used by various schools and wrote to the schools saying, "*What you are doing is prohibited under the law of Scotland and I require you to rectify the position*". He takes a very active

and positive role.

I do not envisage that would be popular in Australia and I would not recommend that. An heraldic authority which has the power to grant, leaving it up to the individuals to enforce if they wish, would be the way to go. An add-on to this bill would be useful but not essential to the purpose of the bill.

The Hon. PETER BREEN: A number of submissions have expressed the opinion that the granting of Arms is a Royal Prerogative and as a result any changes to the NSW Coat of Arms must be by Royal Warrant or with royal assent. Do you have any comment particularly in relation to the role of your proposed NSW heraldic authority?

Mr d'APICE: A NSW heraldic authority would exercise by delegation the powers of the sovereign and anything they do accordingly would be the act of the sovereign. That is true in relation to the College of Arms, it is true in relation to the Court of the Lord Lyon, and it is true in relation to the Canadian heraldic authority. What you have quoted comes from a submission I have responded to from the Australians for a Constitutional Monarchy or the Christian Democrats and I am not certain which. The act of the Parliament in passing the legislation would be assented to by the Queen. Assent is an act of the Royal Prerogative. The granting of Arms by the heraldic authority would again be an exercise of the Royal Prerogative.

I cannot quickly find where I was referring to in the submissions. I have dealt with it in my submission on the submission of Australians for a Constitutional Monarchy, paragraph 4 deals with the Commonwealth Courts owing their existence not to a charter of justice, or to imperial legislation or pursuant to the exercise of Royal Prerogative, so that in their view they do not fall under the same obligation to use the Royal Arms.

The Hon. PETER BREEN: The point you make is that the royal assent is part of the legislative process?

Mr d'APICE: It is. What is being proposed would be done with the royal assent. It cannot be done without it.

The Hon. PETER BREEN: I notice from your response to the New Christian Democratic Party submission:

“The function of the Royal Coat of Arms is to identify the person who is Head of State”.

That is a persuasive argument, that the head of state ought to be identified. If it is true that the Queen is the head of state then the appropriate Arms would be the Royal Arms. You are not persuaded by that argument?

Mr d'APICE: I think it is simply not correct. What are commonly called the Royal Arms are in fact the Arms of sovereignty and dominion of the United Kingdom of Great Britain and Northern Ireland. They are not personal Arms of the Queen. When the Tudors came to the throne they gave up the personal Arms of the Tudor family and adopted the three lions of England which were the Arms of sovereignty and dominion of the United Kingdom. When the Stuart family came to the throne of Scotland they gave up the Stuart family Arms and adopted the lion and tressure of Scotland because that represented the sovereignty of the kingdom, which they were exercising.

The throne of England came into possession of the same Stuart family and they joined the lions of England to the lion of Scotland to represent their sovereignty. When the Stuarts left the throne and the Hanoverian princes came to the throne they did not bring their personal Arms but the Arms of the Electorate of Hanover, which you will see in my submission on page 17. Those are the Arms of Luneburg and a number of German principalities over which they exercised sovereignty. When Edward VII came to the throne his paternal Arms were quite different to those which he assumed on becoming sovereign which were the sovereign Arms of the United Kingdom.

These are not personal Arms of Elizabeth II but the Arms that she bears in the right of her sovereignty of the United Kingdom. They are the Royal Arms of the United Kingdom. In Canada she bears quite different Arms which are the Royal Arms of Canada. They are derived from England with some of France thrown in, three fleurs de lis, and a couple of maple leaves; but they are distinct Arms of sovereignty and dominion of Canada. Similarly there should be Royal Arms of Australia and Royal Arms of New South Wales. I believe the Arms of the Commonwealth are the Royal Arms of Australia and the Arms of New South Wales are the Royal Arms of New South Wales.

The Hon. PETER BREEN: You say they in fact symbolise the head of state because they are the Royal Arms and have been granted by the sovereign?

Mr d'APICE: That is correct. It is a question of the sovereign being advised by her Ministers what Arms she should use. The major problem is in a total lack of advice to the sovereign and as a result it enables groups like the College of Arms to assert that we have acquiesced in certain conduct and acquiesced in the Royal Arms of the United Kingdom being used as the Arms of sovereignty and dominion in Australia. I would like to table a number of photocopied pages downloaded from the internet: First, the NSW Supreme Court list from which you will notice in the heading the Royal Arms of the United Kingdom; the remainder are Arms of various members of the Commonwealth which use a sovereign's helmet as used in the United Kingdom above the Arms of that State. It clearly shows these are the Arms of sovereignty and dominion of the various places concerned. Canada uses it as part of the Royal Arms of Canada; and you will find Jamaica, the Barbados and a whole mass of countries use the royal helm and it differentiates them clearly as being the sovereign Arms of those particular countries, by using the royal gold helmet front onwards as used in the UK Arms.

In Scotland the Queen shows that she has a different capacity by using the Arms arranged in a quite different manner. Again, she still uses the sovereign's helmet shown at page 16 of my submission. She puts Scotland in the first quarter, England in the second, Ireland in the third quarter and Scotland again in the fourth quarter unlike the usual arrangement we see. That clearly shows she is exercising a separate and different sovereignty there.

The Hon. PETER BREEN: Could I summarise that point of the New Christian Democratic Party that the Royal Arms identify the person who is head of state. Whilst that may be true, it is also true that the State Arms also identify the person who is the head of state?

Mr d'APICE: I do not believe the Royal Arms of the United Kingdom symbolise the head of state either of Australia or the right of New South Wales. They represent a different sovereignty.

The Hon. PETER BREEN: They represent the sovereignty of the United Kingdom?

Mr d'APICE: They are not the personal Arms of Elizabeth Windsor. They are the sovereign Arms of the Queen of the United Kingdom and Great Britain and Northern Ireland. If they were personal Arms there may be some sense in their use here, but they definitely say, again if you look at my submission, page 17, illustration 4, England and Scotland conjoined, and that is Great Britain at the time; France, to represent their claim to the kingdom of France; a harp to represent the kingdom of Ireland and the three-parted Electorate of Hanover, with the three separate parts that make it up, and the Arch-Treasurer of the Holy Roman Empire in the middle.

These are the Arms under which Australia was first governed in 1788. Our justice system was administered under those Arms from 1788 to 1801. They changed in 1801 to England, Scotland, Ireland and England again, with Hanover on an escutcheon, which we call the electoral bonnet because he was an Elector of the Holy Roman Empire. In 1816 that changed and he became King of Hanover so the electoral bonnet was removed and the Crown of the King of Hanover was put in its place. In 1837, when William IV died, the Salic law had the effect that Queen Victoria did not inherit Hanover and only inherited the United Kingdom of Great Britain and Ireland. Consequently the Arms became as they remain, set out in illustration 7; that shows the territories and territorial claims of the sovereign represented by these Arms. That is not the sovereign of Australia or the sovereign of Australia in the right of New South Wales.

The Hon. PETER BREEN: The other thing that I wanted to ask you is whether you consider that the Royal Arms should be retained in New South Wales because it is symbolic of our heritage and history? This is included in the submission - again I think it was the Christian Democratic Party's submission - and I wonder whether you have an opinion about that?

Mr d'APICE: I think you must draw a distinction between display in an historic sense and use in the present day sense. As for display, I think that most of the representations of the United Kingdom Royal Arms should be retained. As for use - and examples of use are where they appear above the Speaker's chair or the President's chair or above judges in courts - I do not think it is appropriate that heritage should be used to display our current sovereign. That is not the sovereign whose power is being exercised in those courts. We have three Arms of government, of course: The executive, the legislature and the judiciary. The legislature uses both the Royal Arms, including above the President's and Speaker's chairs, and the State Arms on all the Acts now. It used to be the Royal Arms and now it is exclusively the State Arms. On the letterhead it is the State Arms that are in use. The judiciary uses both the United Kingdom Arms and the State Arms. It uses the United Kingdom Arms above the judges in some courts but the State Arms in others and on letterheads, and you will see that some of the submissions are from justices of the Supreme Court using the United Kingdom Arms. The Chief Judge of the District Court writes on notepaper which has the State Arms at the top of it and says that the Royal Arms should be used - slightly schizophrenic. The executive consistently uses the State Arms, it does not use any other version. The purpose of this bill is merely to pull all of that into consistent order, I think merely have the State Arms represent the Queen of Australia in the right of New South Wales and not confuse it with any other of her sovereignties. I mean people would think it very eccentric, as I said before, if the Royal Arms of Canada were suddenly to start appearing in places on the basis that the Queen uses those Arms as well, or the Royal Arms of New Zealand.

The Hon. JOHN RYAN: I have a couple of questions, one relating to your suggestion that there ought to be a New South Wales heraldic authority. One of the issues that I suppose we would have to consider in whether we implemented such a recommendation is its cost. Are you aware of how the cost is met, for example, of the Canadian heraldic authority and, if the people of New South Wales were to pay the cost, what is the value of doing such a thing given other priorities of Government?

Mr d'APICE: Certainly if you take the United Kingdom College of Arms as an example, it is entirely self-funding. I do not know of the funding of the Canadian heraldic authority, but I imagine that it is capable of being self-funding as well. Applications for grants and matriculations and various other uses of the authority obtain fees and that would be on a full cost recovery basis, much as is the policy of our Government here. I do not imagine that it should result in much, if any, burden on revenue - it certainly would not be intended to do so - and I do not think there is any reason why a balanced outcome cannot be achieved. There would obviously be some set-up costs but beyond that I think that it ought to be made to fund itself and I think it would be capable of doing so.

The Hon. JOHN RYAN: Where would it get its expertise of the sort of nature that you have provided? Obviously there is not anyone within the Government of New South Wales who has the expertise that you have otherwise there would not be such confusion in our use of Arms. Where do they obtain that sort of expertise and knowledge of the heritage of various Arms?

Mr d'APICE: I think it is important that the head of an heraldic authority be an experienced bureaucrat without the necessity to have himself experience. The Chief Herald of Ireland is in fact the State Librarian of Ireland and he has various deputies and heralds who have expertise in the field, and that I think could occur here. Similarly, the recently appointed Lord Lyon of Scotland was a Writer to the Signet and had considerable legal experience and considerable experience within the Presbyterian Church in Scotland, but had no particular heraldic experience. He has been a very successful Lord Lyon, so I do not think that expertise in the subject matter is essential for the head of the organisation, he just needs to know where to go, whose brains to pick, and I think that if there is an heraldic authority in place then the expertise will follow. There will be a need for expertise; there will be a use for having it and it will be utilised.

The Hon. JOHN RYAN: What do you think we should be then doing with the current

buildings which display the State Arms where they are not the right ones or they are not the ones that we decide to use in the future? For example, the Heraldry and Genealogical Society of Canberra made the comment to us in a submission that there is an historical precedent for some Arms already in existence to remain in situ, particularly on the exterior of buildings. What would be your view if the State were to adopt, for example, the State Arms? What would we do with all the existing examples of State Arms that were not consistent with that?

Mr d'APICE: As far as concerns external architecture and any part of our environmental heritage, I strongly agree with what the Heraldry and Genealogical Society of Canberra says, and the bill provides for it. There is very specific provision that the buck stops with the Premier, but he must take the advice of the Heritage Council - and I would suggest persons knowledgeable in heraldry - before he makes the decision. This is not intended to attack with an axe every representation of the Royal Arms that appears on any building, far from it. They are an important part of our cultural, legal and environmental heritage and I would not suggest for one minute that they should be removed. But there will be a few occasions where they are being used in a manner which symbolises the head of State and there they ought to give way to a representation of the Arms of this State and of this sovereignty. There would be very few examples of that, but certainly all of the judges of the Supreme Court should exercise the powers of the State under the State Arms. The Speaker and the President should sit under representations of the State Arms, not the Arms of another country. But if they were to be removed they should be carefully removed, they should be conserved, they should be displayed and they should be properly interpreted so that people understand what they are. I would not suggest wholesale vandalism in any way.

The Hon. JOHN RYAN: You would seem to be suggesting - I might have it wrong - that in relation to existing Arms which are in use, those for example that appear above the President's and the Speaker's chairs in New South Wales, given, they are not correct Arms to be in use and there is possibly a strong case to remove and replace those?

Mr d'APICE: I think that there probably is, but the decision may ultimately be made to leave them in place because of their heritage value and to put somewhere else, but still above the Speaker and above the President, a representation of the State Arms, which are the current Arms. Their functions should not continue to be exercised solely under a representation of the Arms of a foreign country. The High Court in the case of *Sue v Hill*, which you might recall was a case concerning I think a Democrat senator but certainly a senator who had UK citizenship as well as Australian citizenship--

The Hon. PETER BREEN: It was One Nation.

Mr d'APICE: My apologies to the Democrats. The High Court held that she was the subject of a foreign power; that the United Kingdom was, since 1986, a foreign power. It is inappropriate that the Speaker and the President exercise their functions under representations which say: I am here exercising a foreign power. It may be from a heritage point of view that those representations should stay there, but they certainly should be supplemented by the Arms of the State of New South Wales. I think that that would look clumsy and unfortunate. I think that they could be removed but, as I say, respectfully conserved, displayed, interpreted, not thrown away, which is what happened on various occasions with those old Arms that I have illustrated here. They were displayed in New South Wales and in use and the great seal of New South Wales displayed them, the judges sat under them, but when they moved on they were just taken down and disposed of and I do not think you will find a single representation of any of the others except the current Royal Arms anywhere.

The Hon. JOHN RYAN: In the material you gave to us from Canada it says that heraldry in Canada includes symbols of Aboriginal people, native images such as eagles and feathers are included in coats of Arms to honour their traditions and contributions. Are there any examples of that in Australian coats of Arms and, if so, is it advisable to start including Indigenous peoples in our coats of Arms?

Mr d'APICE: It is a very sensitive issue with our Indigenous peoples. You might recall about six months ago they decided to chip one off the gates of old Government House on the basis that it represented a kangaroo and the kangaroo was a sacred image. Certainly the Indigenous images should

be used in Indigenous Australian heraldry. Kangaroos have been used not of course by Australians but granted by the College of Arms and other heraldic authorities to Australians for about 130 years I think. I think it is highly desirable that we develop an Indigenous form of heraldry with Indigenous images, but in doing so we must make certain that we do not offend Indigenous people. It is a difficult question. It does not seem to have arisen in the same way in Canada because most of the grants have been to the Inuit or bodies of persons associated with them.

CHAIR: Before we conclude, I would like to ask you a couple of questions relating to amendments you propose to the Honourable Peter Breen's bill. At the top of page 13 you suggest that it would be desirable for additions to be made to the bill so as to provide protection to the State Arms from commercial, inappropriate or unauthorised use. Would you like to say something to the Committee regarding that?

Mr d'APICE: As I understand the position, there is some suggestion that - I think it probably came from Parliamentary Counsel - that the Unauthorised Documents Act gives adequate protection to the State Arms, but I think one thing that needs to be done is to enable the State to stop use of the State Arms by persons it considers to be inappropriate, or if somebody suddenly started reproducing the State Arms and selling them - in America you can put the Arms on everything, they encourage nationalism by the use of the State symbols, but there are some uses which they would consider to be inappropriate.

CHAIR: So it is your view that there ought to be an appropriate amendment developed to confer that protection from inappropriate exploitative use?

Mr d'APICE: Yes, I think that is the case.

The Hon. PETER BREEN: Would you need an authority as well or can you just simply include a provision in the bill?

Mr d'APICE: You would not need an authority. I do not envisage a State heraldic authority as having any policing role, I think it should be a granting, registering an administrative role. And if there were additions to this bill, which gave someone a right in their own Arms, then they would quite individually go off and pursue it in order to protect their Arms. But here I think that the State should have the right to prevent inappropriate use of its Arms and I would not envisage an heraldic authority, even if it existed, to be the one who would do the enforcing. The State owns the Arms, the State has the right to enforce it and the State would go to the ordinary courts and do so.

CHAIR: At Schedule 1 of The Hon. Peter Breen's Bill there is a representation of the State Arms in the form of a line drawing. On page 13 of your submission you make the proposal that as the State Arms exist in colour and the bill clearly cannot be in colour, it would create an amazing precedent if that were the case, you suggest that the definition should be amended as set out. Would you like to say something to the Committee about that?

Mr d'APICE: Traditionally a Coat of Arms would be granted by any granting authority in words and then go on to say, "A representation of which appears in the margin". It is the words that are the Arms. The representation is merely one way that it can look. It does not need to be fixed. The Bill should say that principally the Arms are as set out in the blazon, the words describing the Arms, then "a representation of which appears in the second half of the schedule". Any other representation would validly be the Arms.

The Hon. PETER BREEN: Is there any value in including the Royal Arms in the schedule so people can make a visual comparison?

Mr d'APICE: I cannot see it. The Act should limit itself to deal with State Arms and say that the Royal Arms are not to be used as representative of the State.

The Hon. PETER BREEN: Would it be good politics to include the Royal Arms so that people could see the significant difference between the two? Most people are not familiar with the

Royal Arms.

The Hon. JOHN RYAN: They are not the Royal Arms.

Mr d'APICE: They are not the Royal Arms of the Queen of Australia in the right of New South Wales. Perhaps I might table the front cover of artwork of a book on "Anglo-Australian Attitudes" which neatly represents the problems associated with the UK Royal Arms and the Australian Arms and represents them one on top of the other. Michael McCarthy has kindly from this artwork drawn a version of the NSW Arms joined with but upside down from the UK Arms.

There are a number of articles I wish to table, one I thought might be of particular assistance, in relation to item No. 50, the opinion of the then Solicitor-General of New South Wales Keith Mason, now the President of the Court of Appeal. He refers to correspondence which I have located; as well as an article on the Arms of Her Majesty the Queen which show the separate Arms of the Queen of New Zealand and the Queen of Canada to show that separation; and there is an article about the New Zealand Herald Extraordinary, a strange and anomalous position in the College of Arms in London to deal with New Zealand issues.

CHAIR: Is there anything you would like to say that we have not covered?

Mr d'APICE: There was one other matter I wish to table from this morning's Sydney Morning Herald. In London you would be familiar with the bobby's hat and the badge and the fact the crown has a cross and the Arms have a cross has offended Muslim/Sikh members of the police. Swiftly they are removing the crown so it is out of the way. It has been done in the United Kingdom without much fuss at an administrative level. It shows that the same thing could occur here. Our Arms are full of crosses of one form or another and there may be members of the community who find that offensive for one reason or another. The purpose of tabling the document is to show it can be simply done in the United Kingdom. Here it is a far more elaborate process to make the change.

(The witness withdrew)

STEPHEN MICHAEL SZABO, New South Wales Public Servant, Suite 1, 330 Pacific Highway, Lane Cove, sworn and examined:

CHAIR: In what capacity are you appearing before the Committee?

Mr SZABO: I am appearing before the Committee in the position of Honorary Secretary of Heraldry Australia Incorporated.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act?

Mr SZABO: I have.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr SZABO: I am.

CHAIR: Could you outline your qualifications and experience as they are relevant to the terms of the inquiry?

Mr SZABO: I have had an interest for most of my adult life in heraldry and associated subjects. This led to my joining Heraldry Australia and becoming an officer of that group. In that capacity I am the Honorary Secretary of Heraldry Australia and Honorary Editor of its journal *Heraldry News*. I have served in those capacities for the last two years. I am particularly interested in heraldry in an Australian perspective and how it applies in contemporary Australia.

CHAIR: You have made a written submission to this inquiry. Is it your wish that that is included as part of your sworn evidence?

Mr SZABO: Certainly.

CHAIR: If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. However the House has a right to over-ride our decision in that regard. I now invite you to make an oral opening statement?

Mr SZABO: I thank the Committee for giving me the opportunity to appear. When I first read the draft Act I thought this was a wonderful opportunity for a Parliamentary body to examine heraldry in this country and in this State in particular; and how it applies in a contemporary society. Certainly it provoked debate amongst those who are interested in heraldry. Whatever occurs, whether the bill does pass through Parliament or not, it has heightened awareness of heraldry and its importance in contemporary society.

CHAIR: What do you consider in general terms to be the function and purpose of a Coat of Arms in our contemporary society in New South Wales?

Mr SZABO: The function of a Coat of Arms is what it has always been, a form of identification, whether that is for an individual or corporate body; and whether that corporate body is a private company or a State. One of the functions is that it represents the authority of that State or that company and also provides cohesiveness for those bodies. It is a representation of all that those bodies stand for.

CHAIR: In your submission you state:

To the best of my knowledge, two State instrumentalities have grants of Arms obtained from the College of Arms. These are Sydney Water (when it was the Metropolitan Water, Sewerage and Drainage Board) and the Maritime Services Board of New South Wales (which

is now, I believe, the Waterways Authority). All other State instrumentalities make use of the existing State Arms and/or logos.

You are confident you are correct in that regard, everyone apart from the authorities you have identified use the state Arms?

Mr SZABO: I believe so. From personal experience working in the Department of Education and Training extensive use is made of the State Arms as being representative of the Department. New South Wales Fire Brigade I know also makes use of those Arms although in a modified form; and certainly other State bodies as well.

CHAIR: You also say in your submission:

In the early 1970's, the Heraldry Council of Australia prepared a report to attempt to convince the Commonwealth Government that there was a need for an Australian Heraldic Authority, but without success.

You would have heard Mr d'APICE: address the need or desirability to have a NSW heraldic authority and preferably one across Australia. Do you have any direct knowledge of what happened in the 1970's in regard to attempts made to convince the Commonwealth there ought to be such a body?

Mr SZABO: I have no direct knowledge of the outcome or why it was not proceeded with. I would put it though that the political climate at the time was certainly not conducive to considering such a body. However, Australia as a nation and culturally has changed significantly since that time. If anything the need and desire for a distinctly Australian heraldic authority has strengthened in that time.

CHAIR: You note:

In 1988 Her Majesty Queen Elizabeth II transferred the Royal Prerogative to grant Arms to the Governor-General of Canada, and the Canadian Heraldic Authority was established as part of the Office of the Governor-General. This body is a flourishing one, and has helped to further develop Canadian identity.

Would the creation of such a body here help foster our identity in New South Wales or Australia?

Mr SZABO: Certainly it would help to foster that identity. By having Australians who are conversant with heraldry and also Australian traditions, actively involved in developing Arms, whether it be for individuals or corporate bodies, would further the cause of heraldry and make it more attractive to all Australians. The experience in Canada has certainly shown that this can work quite successfully. Certainly developing various aspects of that is not without controversy but controversy can be quite healthy; certainly much healthier than apathy in that environment.

One of the reasons I believe that Canada sought heraldic authority arose in part out of a controversy that occurred earlier in relation to the Canadian flag in which the Garter King of Arms in England claimed to have the authority to determine what the flag of Canada should be and that I believe happened in the 1960s and in part contributed I think towards that overall drive to have an Indigenous body that was solely responsible for developing all symbols relating to that country and to its inhabitants.

CHAIR: Would you agree with me that desirably there ought to be a national body rather than a State based one? I note that you do say in your submission:

While the creation of such a restricted heraldic jurisdiction in New South Wales would be an interesting, short-term proposition, it would still be a worthwhile long-term proposition to establish an Australian Heraldic Authority.

You adhere to that and you say to the Committee that an Australian authority would be desirable but

in the short term you advocate a New South Wales one?

Mr SZABO: Absolutely. New South Wales, of course, being the most populous State, one would anticipate would have the greatest interest in such a body and in being able to either register Arms to those who already have them or grant Arms to those who seek them, but I do not believe that that opportunity should be denied to other Australians and it is probably more appropriate in the long term that an heraldic authority be a Commonwealth authority in nature.

The Hon. JOHN RYAN: Who would seek to gain Arms or to have them registered?

Mr SZABO: I will address that in two parts. I will refer to the second part first, which is registration of Arms. There are a considerable number of Australian citizens who hold grants of Arms from foreign entities, whether that be the College of Arms in London, or Lord Lyon in Scotland; there are even people resident in Australia who hold Arms from Canada, from the Canadian Heraldic Authority; there are an increasing number of Australians who hold grants of Arms from the Chief Herald of Ireland and there are even some who hold registrations from the State Herald of South Africa. Currently those people have no real legal protection of those Arms in this State and there are members of Heraldry Australia who hold grants of Arms from those bodies who certainly see it as desirable to have the ability to register those Arms, one of the reasons being that that puts them on the record and makes it known that they are the owners, if you will, of those Arms.

The Hon. JOHN RYAN: But what are they; are they companies or families or what?

Mr SZABO: All of those bodies. Companies, of course, quite often, if they hold a grant of Arms, would probably take steps to cover them as a trademark. Families and individuals also hold grants of Arms. I cannot speak for people's personal reasons necessarily, but my belief is that they seek those grants of Arms as a symbol of their cohesiveness and their individuality at the same time. One of our members who sought a grant of Arms from the College of Arms, all of his children make use of those Arms, suitably differenced, to indicate their relationship and it is a very strong and powerful image to be able to use to indicate that cohesiveness.

The Hon. JOHN RYAN: So it might arise out of interest in family history and so on which does seem, in my view, to be a significantly increasing area.

Mr SZABO: It certainly is.

The Hon. JOHN RYAN: There might in fact be, if there was such an authority established in New South Wales, a community drive that would in fact take it up.

Mr SZABO: Absolutely. I believe that quite sincerely. Similarly, and I think you have answered in part the question of who would actually seek a grant who has not sought one from the College of Arms or the Chief Herald of Ireland or Lord Lyon, I believe that would be something that people would pursue for much the same reasons.

The Hon. JOHN RYAN: Can you explain to me the difference between a grant of Arms and a logo and a trademark?

Mr SZABO: Well, I do not really have the expertise of all the finer points of it, but my belief is that a trademark is essentially a symbol under which one carries out commerce and a logo can serve much the same purpose, although strictly speaking a logo consists of a word or words being derived from the Greek "logos", and that can take forms of block letters or particular shapes, but really the essential definition of it must be that it involves some sort of wording. It can, of course, form something else which is then a pictorial image. A Coat of Arms and a grant, by extension, is something that is granted to either an individual or a corporate body. It does not necessarily mean that it is used in trade. Obviously for individuals they would not be using that as an indication of representing their company, as it were, although I must touch, on that point, on something which causes a little bit of confusion perhaps, which is the possibility that where a corporate body has Arms and the head of that corporate body possesses personal Arms it is possible to show both of those on that person's

letterhead indicating their personal status as an armiger and also the corporate body status as an armiger.

The Hon. JOHN RYAN: Could organisations like schools and community organisations possibly seek Arms?

Mr SZABO: I think they certainly would. There is at least one school in this State which actually has a grant of Arms from the College of Arms and that is Sydney Grammar. Nearly all schools use a heraldic or quasi-heraldic representation.

The Hon. JOHN RYAN: Yes, they do.

Mr SZABO: Some of them, one must say, are not particularly attractive and I think that an heraldic authority would be able to provide the guidance and the advice to make those appealing and attractive. The beauty of it too, if a school seeks a grant, is that there would be a document which would depict those Arms - letters patent, as they are referred to - and that would certainly be something that would take I think pride of place in a school. In terms of display of letters patent, certainly Sydney Water, rather than hiding the letters patent in a boardroom, has it displayed on the ground floor of its building in, I believe, Bathurst Street, so it is obvious to all who come in that it is a body that holds armiger status.

CHAIR: This could well become a growth industry.

Mr SZABO: One hopes so. Certainly the global experience has been that there is an increasing interest in heraldry. Many of the eastern European countries, following the collapse of communism, have begun to pursue heraldry again. Within the European countries, as recently as two years ago, in the Flemish portion of Belgium, a body has been set up to grant Arms to individuals and in the process of setting that body up they effectively did seek to find out before the body was formally established how many people would be willing to apply for those grants, so even before it actually started there was I suppose an expectation that at least a certain number of people would pursue grants of Arms.

The Hon. PETER BREEN: Could it replace personalised number plates?

Mr SZABO: That is an interesting question. I think it would probably not really be possible in the sense that obviously one of the reasons we have number plates is so that in the case of law enforcement one can easily identify vehicles, but certainly as an addition to a person's car--

The Hon. PETER BREEN: As an addition to their ego and their status. Could I ask you about your submission which expresses some concern about clause 5 of the bill resulting in the ability to alter the State Arms or to replace them. Other submissions, such as that of Mr Poulos of the Australian Iconography Foundation, suggest that New South Wales Arms are outdated, excessively British and in need of upgrading, not consolidation. How would you respond to claims such as that?

Mr SZABO: Well, certainly I disagree with the fact that they are excessively British. I think I have pointed out in my personal submission that the lion is used quite extensively in heraldry throughout the world, being described of course as king of the beasts, and is a fine symbol for sovereignty - and used by a lot of countries where lions are not native.

The Hon. JOHN RYAN: Like England.

Mr SZABO: Like England, like Germany for that matter or France. It is one of the more common heraldic beasts used, so as a symbol of sovereignty it does not necessarily represent British sovereignty.

The Hon. PETER BREEN: It is a legitimate concern, though, I think that is raised that under this bill some group of people might convince the Government that part of the State Arms, such as the lion, should be abolished. How would you suggest the bill ought to be amended to protect that?

Mr SZABO: I certainly do not believe that it is necessarily a bad thing if that were to occur because the State Arms have not existed for ever and a day and certainly provision for change can be there, but it requires I believe consultation and canvassing of views before that were to occur. The other concern I touched on in my personal submission was that, if the lion were to be removed from the very centre of the Arms on the shield itself, that then puts us at odds with the representation on the Commonwealth Coat of Arms for New South Wales and whether the Commonwealth would then accede to that change or not would be an interesting point.

The Hon. PETER BREEN: You also expressed concern about the devolving of the power to grant Arms to the Governor. I think you said that was perhaps unique in heraldic law. Can you perhaps explain that a bit further?

Mr SZABO: Certainly within this country I believe I said it would be a unique situation that that prerogative to grant Arms would be devolved to the Governor. It is not inappropriate, but I believe it must be done in accordance with the tradition of Arms, which is that the monarch would provide the Governor with letters patent delegating that power. This is what was done in Canada in 1988 with the Governor-General. Letters patent were presented to the Governor-General of Canada by Prince Edward, who was acting on behalf of Elizabeth II as sovereign, and obviously that was the trigger then for the establishment of the Canadian heraldic authority. I believe that if those powers were to be exercised by the Governor of New South Wales to grant Arms a similar mechanism should be carried out.

The Hon. JOHN RYAN: That would simply be a matter of the Government of New South Wales instructing the sovereign to grant the letters patent. It does not sound particularly complex.

Mr SZABO: No, not at all, and of course constantly our sovereign has stated that she will accede to the wishes of her people - we saw that with the constitutional referendum and in so many other aspects - so the establishment of that body I think would certainly not provoke any controversy at the level of the sovereign if it is the wish of the people.

The Hon. PETER BREEN: You note in your submission that schedule 1 of the bill, the illustration of the State Arms, should be replaced by a written description. Could you explain your reasoning? Could you also consider the issue I raised with Mr d'Apice about depicting Royal Arms in any schedule?

Mr SZABO: I will touch on the first issue. In my submission I noted that the pictorial depiction should be replaced by a verbal description, which in heraldic terms is known as a blazon. The Heraldry Australia submission was developed after consultation with members and I certainly agree with the view that one would include the blazon, (the verbal description) and the illustration of the line drawing.

The Hon. PETER BREEN: Is that for reasons of clarity and exact definition?

Mr SZABO: Yes, blazon is fairly precise technical language. If you were to ask the average person to describe the Coat of Arms they would probably say, well, there is a lion on one side with a kangaroo on the other, a cross with some stars and a lion in the middle. That is a verbal description; but if you told someone to draw that you could end up with any number of representations. On the other hand to omit that description in writing of the blazon and simply have the depiction suggests that once that legislation is passed and becomes law that is the only possible depiction of those Arms. Arms are meant to be depicted, ideally in colour.

In my submission I touched on the fact there is a system in black and white of showing Arms known as the Petra Sancta, a system of lines and cross-hatchings, et cetera, which shows the different colours. That is another possible depiction. As far as including the Royal Arms in that schedule, it would require further definition in the Act to show that if they are there, they are there to show that these are now excluded. That would be to some degree redundant because the Act is trying to establish in a positive way consistency in the use of Arms. Mr d'Apice's example of having senior

members of the judiciary writing, opposing the consistent use of the NSW State Arms to represent that sovereignty on letterhead using those same NSW State Arms; whereas those who were in support were writing on letterhead which used the Royal Arms shows that there is some confusion. To some degree people are not looking at their letterhead, or perhaps they wanted to make the point. There would not be any advantage to depicting the Royal Arms within the bill.

The Hon. JOHN RYAN: I suspect in any economic climate the difficulty for any Government to establish an Arms authority is going to be an argument about cost. People might see it as a bureaucratic nightmare, as unnecessary and superfluous. The most likely representation of an heraldic authority might be a community committee perhaps with government endorsement and sponsorship much in the same way as the scientific committee operates for environmental purposes and so on. There will be people with appropriate expertise who carry out the function, but it might be a voluntary capacity. Is that an appropriate way to establish a NSW heraldic authority?

Mr SZABO: It certainly is one appropriate way. Models around the world vary from the traditionalist College of Arms approach, where the officers are effectively full time heralds to the Canadian model, or the model in Zimbabwe which is very similar to what you are proposing. What happens with such a committee - I suppose what would make it worthwhile is that it gives the authority of the State to register Arms, to grant Arms and to have an over-sight of that process. I believe the interest is there for that.

The Hon. JOHN RYAN: How is Heraldry Australia different from the concept of a community committee endorsed by the Government of the day?

Mr SZABO: We are a society of people interested in heraldry, chiefly in an Australian context but certainly in a global context as well. As such we have no authority to recognise Arms. Certainly in our journal we publish Arms that have been granted to members by foreign entities, be it the College of Arms, the Lord Lyon or the Chief Herald of Ireland; but simply to make those Arms known to the broader community of people who are interested in heraldry. By depositing our journal in all State libraries we believe it puts on record that these Arms belong to those people but we have no official power to recognise those Arms and given them any legal force in Australia or to protect them.

I do not think it would be Heraldry Australia's place to do that, although we certainly have members who would have expertise to provide advice on grants of Arms, but obviously with the sanction of the State.

The Hon. JOHN RYAN: To sully this lofty question with the issue of economics, what sort of cost is incurred by a family in Australia who would seek to have a family crest recognised by the College of Arms in Great Britain? That might indicate the sort of things people would be prepared to pay to do the same thing in Australia?

Mr SZABO: That is an interesting point in that regard, and I might touch on some of the other countries and what their heraldic bodies charge for grants or registration of Arms and I might start from cheapest to most expensive. The State Herald of South Africa registers Arms to individuals whether they be domiciled in South Africa or outside, and they can be non-citizens of South Africa as well. Depending on whether it is a shield, or has supporters, or a crest, the charges vary. At this time it would cost in the vicinity of \$500 Australian to register Arms with the State Herald of South Africa.

The Spanish Chronicler King of Arms also registers Arms although generally limited to people who reside in areas which were once colonies of Spain. There are varying interpretations but they charge in the vicinity of \$750 United States, about \$1,500 Australian. That is not an elaborate document; it will have a depiction of the Arms then typewritten pages giving the blazon, the person's name and some details of family and who might be entitled to inherit those Arms.

For a grant of Arms from the Chief Herald of Ireland fees are in the vicinity of \$3,000 Australian or may be more. I have not checked recently. With a grant from the College of Arms, we are speaking in the vicinity of at least \$8,000 Australian with the current exchange rate, which probably explains more so rather than any lack of interest in Arms, the fact that in 1996 there were only six grants

of Arms to Australians - I do not know whether it was corporations or individuals - and in 2001 there were three grants; whereas in the same period there had been an increasing number of grants by the office of the Chief Herald of Ireland to Australians of Irish decent. The situation in Scotland is somewhere between those two in terms of cost and again a larger number of Australian corporations will seek Arms from Lord Lyon rather than the College of Arms simply on the basis of cost.

In Canada there is a differentiation between registration of existing Arms and a new grant. They register Arms, I believe, at zero cost to the person registering. A grant begins at about \$1500 Canadian. The cost can increase depending on how elaborate the letters patent and that applies with a number of bodies. Letters patent is effectively a work of art. The increasing cost depends on how elaborate it becomes. When you touched on someone wanting to establish the right, you referred to a family crest. Often there is confusion between a Coat of Arms and a crest. A crest is what appears above the shield on a helmet in most instances, there are one or two exceptions. The Arms itself are the Coat of Arms and that is what people often refer to inaccurately. People often say, "I have a family crest" or family Coat of Arms. They may have been to one of those people at a fete or fair who said "I can look up your family name" and there is a Coat of Arms associated with that name.

Any printed material from those merchants usually manages to couch it in such terms that it is clear whatever Arms they may issue to that person are not the property of that person or even necessarily associated with them. Certainly in the conversational side they give the strong impression - most people will go home and stick that on the wall and say: That is my family Coat of Arms.

The Hon. PETER BREEN: It is true in a sense about a family's Coat of Arms.

Mr SZABO: It is a family's Coat of Arms but not necessarily your family.

The Hon. PETER BREEN: Even if they have the same name as your family?

Mr SZABO: You can have quite a few Smiths who may all bear Arms and they will all be different to one another because they are not necessarily related by blood and their ancestors have sought grants for that. By analogy, if Mr Jones owns a piece of land to say that all persons whose surname is Jones would be entitled to a piece of that land would not be considered a reasonable argument.

The Hon. PETER BREEN: You cannot stick the land on the wall; you can stick the Coat of Arms on the wall.

Mr SZABO: You can but I suppose it would be analogous to where a corporate entity has a Coat of Arms. If the company is called Smith & Co, someone named Smith might say, "I like that", and put that on their wall and their letterhead. They are obviously not their property and it would be improper for them to make use of them. Display is another matter; certainly if you put a Coat of Arms on your wall because you think it looks attractive is one thing but to assert any right to those Arms merely because the surname of the person they were granted to is the same as your own is not appropriate.

The Hon. PETER BREEN: You said the Canadian Heraldic Authority at no charge would provide coats of Arms to people who requested them?

Mr SZABO: No they register them to people who have an existing grant whether from the College of Arms or Lord Lyon, primarily. They have to establish whether it be a personal grant they receive, in which case it is fairly straight forward, they have the letters patent or reference could be made to the College to provide something confirming that grant of Arms. That would then be put on the register so it is protected under Canadian law. If they are claiming a right to Arms by virtue of descent from a person with a grant of Arms, they would have to establish generation by generation their link to that person. Depending on where they fall within the line of descent there may be a need to make modifications to those Arms, which still shows the family relationship but does not indicate they are the senior member of that family. I have not addressed your question.

The Hon. JOHN RYAN: I am happy. It shows people are prepared to pay that sort of money. I can see a group of people who establish descent or family relationship often at enormous expense in terms of genealogical fees; it would not be hard to see them all chip in to apply for a grant of a Coat of Arms not impossible at all.

CHAIR: Do you have an opinion about whether any heraldic authority such as the College of Arms has jurisdiction in New South Wales?

Mr SZABO: My short answer is that certainly the College of Arms has no exclusive heraldic authority to grant Arms in the State of New South Wales or in Australia in the broader sense, although the College of Arms continues to assert an imperial prerogative, and this is something that has been asserted in books written by the heralds themselves, this imperial prerogative to grant Arms to Australian citizens at the exclusion of any other body's right to grant those Arms, and in part they assert this claim in recent letters patent issued to people with grants of Arms by referring to her Majesty as Queen of Australia, her other Dominions and Territories. Prior to the passing of the Australia Act they normally referred to her as Queen of the United Kingdom of Great Britain and Northern Ireland, her other Dominions and Territories, et cetera, which is who they hold their own commissions from as heralds, Kings of Arms, et cetera. To the best of my knowledge, there have never been any letters patent issued to those officers of Arms appointing them as acting on behalf of the Queen of Australia and that particular sovereignty.

Now in order to have a jurisdiction obviously one needs a judicial body and, in the case of the College of Arms, that judicial body is the High Court of Chivalry which is empowered to enforce the laws of Arms. In the submission on behalf of Heraldry Australia reference was made to a case in the early 1950s which was the Citizens of Manchester versus the Manchester Palace of Varieties. The court made a decision there that this company was making use of the Arms of effectively the city of Manchester inappropriately because it was using it on its common seal and that was the last time the court sat. Prior to that the court sat some 200 years before, so it is not an active judicial body in that regard and I believe that if, for example, an Australian who holds a grant of Arms from the College of Arms in London found that a company or an individual was making use of their Arms inappropriately, if they approached that court to act on their behalf, the court has no ability to do that and a court with no jurisdiction has no authority at all. Therefore, I believe that the actual power to grant Arms still resides, in the case of Australia and particularly in the right of New South Wales, with the sovereign and that certainly, as Queen of Australia and Queen of Australia in the right of New South Wales, Elizabeth II has not exercised that prerogative, nor has she delegated it to any of her representatives, so there is no one who has that power within the State of New South Wales actively to exercise that, although that potential power is there for the monarch to exercise it directly, and certainly the grants which have been made to States have been directly from the monarch. While the college obviously was involved in the consultation, it was not the granting power, it was the monarch herself.

Further to exercise of jurisdiction, I made some notes of the fact that the College of Arms undoubtedly has jurisdiction within the bounds of England and that they can claim an exclusive right to grant those Arms within that area certainly by historical precedent; the fact that Lord Lyon has granted Arms to persons of Scottish descent domiciled in England and similarly the Chief Herald of Ireland has granted Arms to persons of Irish descent domiciled in England, and no action has been taken on the part of the College of Arms or the High Court of Chivalry to prosecute for what is a breach of that jurisdiction. I think that shows that there is no intent to exercise that power at all.

CHAIR: Is there anything further you would like to say before we conclude your evidence?

Mr SZABO: No, I think that is probably sufficient.

The Hon. JOHN RYAN: The Irish herald - which Ireland are we referring to?

Mr SZABO: The Chief Herald of Ireland acts for the Republic of Ireland. There is no reason why because, under the manner in which the Chief Herald acts, the grants may be made to any person of Irish descent, that is male or female descent, wherever they reside, and that of course includes Northern Ireland. The College of Arms has within it a herald or rather a King of Arms called Norroy

and Ulster King of Arms which is a merged office. Prior to 1943 there was an Ulster King of Arms based in Dublin.

The Hon. JOHN RYAN: The area of interest I had was that obviously that is a republic which grants--

Mr SZABO: Certainly, and South Africa for that matter is a republic.

The Hon. JOHN RYAN: It is not unique to being a monarchy?

Mr SZABO: Absolutely not. There is no reason why a republic cannot continue to grant Arms because the granting of Arms is seen as one of the powers of a sovereign State, the same as the power to mint coinage, complete treaties, so on and so forth. It was certainly established in the middle ages as being one of the signs of sovereignty to be able to grant Arms.

(The witness withdrew)

ANTHONY COLIN BURTON, President, Flag Society of Australia, PO Box 233, Milsons Point, affirmed and examined, and

RALPH DOUGLAS KELLY, Banker, 64 Hannah Street, Beecroft, sworn and examined:

CHAIR: Mr Burton, did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act?

Mr BURTON: Yes, I did.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr BURTON: Yes, I am.

CHAIR: Could you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

Mr BURTON: I represent the Flag Society of Australia, I am currently its president. Mr Kelly is a former president and an executive member and we have requested that he be invited also. Flags are our business. The Flag Society of Australia was established in 1983. It is a non-profit, non-political, research organisation promoted for the knowledge of flags and their related symbolism and that is the connection with the terms of reference here. We have links to similar vexillological associations overseas. The Society has researched especially the background, the meaning, the usage of flags and associated symbols in Australia since they were first used in the early nineteenth century. The Flag Society is well placed through our efforts in publishing, chiefly through our journal, *Crux Australis*, to share our expertise with an inquiry of this kind, and especially here where the chief distinguishing mark of the State flag of New South Wales, which was adopted a century ago, is in fact a badge of the State which evolved into the current Coat of Arms. So, that is the nexus.

CHAIR: You have made a written submission to this inquiry. Is it your wish that that submission be included as part of your affirmed evidence?

Mr BURTON: It is.

CHAIR: Mr Kelly, did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act?

Mr KELLY: Yes, sir.

CHAIR: Are you conversant with the terms of reference for this inquiry?

Mr KELLY: Yes.

CHAIR: Could you please briefly outline your qualifications and experience as they are relevant to the terms of reference for this inquiry?

Mr KELLY: As Mr Burton said, the Flag Society is interested in primarily the flags of Australia and internationally, but much of the interest in flags, and the knowledge, is based in its historical framework on heraldry and there is a very strong connection between flags and heraldry in the case of New South Wales. In my personal case, I have been undertaking extensive archival research on flags and other local symbols of Australia and the States.

CHAIR: Mr Kelly, the Flag Society has made a written submission to this inquiry. Is it your wish that that submission be included as part of your sworn evidence?

Mr KELLY: Yes, sir.

CHAIR: If either of you should consider at any stage during your evidence that, in the public interest, certain evidence or documents you may wish to present should only be heard or viewed by members of the Committee, the Committee will be willing to accede to that request. However the House has the right to over-ride our decision in that regard. Mr Burton, I understand it is your wish to make a brief opening statement?

Mr BURTON: My oral statement was to introduce the Society and I believe I have done that Mr Chairman.

CHAIR: What do you consider to be the function and purpose of a Coat of Arms in today's society in New South Wales?

Mr BURTON: The Flag Society has prepared detailed responses to five questions on notice; but for the purpose of this hearing I would like to talk to that by way of paraphrase and leave the detail with you. There are two answers to this question. The phrase, "today's society" gave us cause to ponder because there is a sense in which the Coat of Arms cannot be confined to passing fads or the fashion of any given society. The reason we feel that way is: what is today's society is tomorrow's past. It is important to distinguish between a Coat of Arms used by the Government and Coats of Arms or personal devices that have arisen out of heraldry over the last several centuries and are a matter of private genealogy. Personal heraldic usage has diminished or at least is less relevant than it was.

Turning to the function of a Coat of Arms in this context, the NSW Coat of Arms, there is a perennial function of Coats of Arms. Once given, granted or warranted, they are to be changed not lightly. For Governments, the Coat of Arms is a form of insignia. It is similar to the Seal which likewise is reserved for limited use by the State. The Arms convey in a highly visible way the sovereign authority and endorsement of the sovereign. They retain relevance; the Coat of Arms is a representation of the Government of NSW rather than the people as individual citizens. The Arms represent the Government itself. The Arms are used as a mark to authorise or give governmental endorsement of a particular matter. It is the Government's brand mark and - as observed later in answer to question 5 - it should be treated according to the protocols of brand marks.

By way of illustration we gave earlier an example of how this was treated in Singapore. In that State, the State Arms were reserved for use only by the Government of the country. Another symbol, a representation playing on the name of the country, Singapore, the Sea-Lion was introduced as a popular device to market Singapore as a desirable and dynamic place. In New South Wales we have something similar in the Waratah and there are other symbols used. To sum up the answer to the question: The Coat of Arms that we are talking about in this context is the special device representing Government activity.

CHAIR: In the summary page to your submission you state:

As to TOR-1, the circumstances of Federation in 1901 and Royal Warrant of Arms to NSW in 1906 are justification to display the same State Arms in preference to the Royal Arms of the United Kingdom. NSW is not part of the United Kingdom.

Display of the 1906 State Arms in no way detracts from the dignity of the Royal Arms.

Is there anything you would like to say to the Committee in further explanation of those remarks?

Mr BURTON: Yes, this brings us to one of your other questions: What would you say to people who consider the Arms should be retained as a matter of history and heritage and respect for that? In our original submission we say that the English Royal Arms (because the Scottish Royal Arms are different again) are found on a number of our buildings, in architecture and so on, and we read in the draft bill that there is provision that those be retained. We are not talking about throwing the baby out with the bath water, but the dignity of the Royal Arms is best respected when the Royal Arms are used for the purpose they were devised, that is the activity, sanctioning by the sovereign. The same sovereign or her predecessors vested Arms for a similar use in the colonies of Australia, and

later, the States. Your previous speaker referred to the warrant of Arms by King Edward to New South Wales. In our written response we have gone into detail about how change does not necessarily mean disrespect for the past.

It is important not to throw the baby out with the bath water. The Flag Society understands the point of view of those who would argue that both the Royal Arms and the State Arms, as they are, including the latter's reference to the Arms of the sovereign (we are still a monarchy) are part of our heritage. But babies also grow up. As St Paul put it: "When I was a child, I thought as a child; now I am a man I see things as a man".

The Flag Society also understands the concerns and anxieties a conservative view might seek to emphasise unduly. The recent past is replete with examples, from Hong Kong to Mozambique to Zimbabwe where the positive contribution of the colonial period has been defaced and consigned to the dustbin. That is a fear that conservatives may want to present to you.

The caution is: Don't jettison history. Iconoclasm invites a counter-reaction and the weakening of social harmony. The conservative view might be more cogently put though, if it were to argue for retention in our symbols of some links to our heritage, as has been done superbly and simply in the flag of South Africa. It (the flag) combines without visually confusing fussiness all the emblems of the past 450 years. Perhaps we can do something here.

Simplification does not mean jettisoning the past. Neither does it retain the old simply because change is too unsettling to contemplate. No one regrets the demolition of the Macquarie Fort at Benelong Point, for something finer did replace it. True conservatism conserves what leads us to the good, the true and the beautiful. Rather than oppose change outright, conservatives might insist on changes of the highest quality.

CHAIR: Concerning the line drawing contained in schedule 1 to The Hon. Peter Breen's Bill, and your previous submission appears to make the point the simplified version of the State Arms contained in schedule 1 might lead to a problem, that is the depiction is simplistic or over-simplified and clearly in accordance with practice for printing bills and statutes in this State it is not rendered in colour. Would you agree there needs to be a blazon to sufficiently identify the State Arms and prevent any confusion?

Mr BURTON: Broadly we do. But further than that we think that what is generally referred to as a blazon ought to be expressed in plain English. Let me give you as an example the language of blazonry particularly as related to the 1906 Coat of Arms of New South Wales. Yes, a description of the matrix, the fundamental, the approved design is very desirable. Heraldry has a technical term for this, blazonry. It tends to use language that is rather special, some would even say precious; but the point is that it is highly precise language. You have to know the rules to understand the language. For example, it is a convention in blazonry to refer to colours by the order of their first appearance, so that if the first colour mentioned is blue and blue appears further on, the reference is to the "first", meaning to the first colour mentioned. If the next colour is yellow, that is the second and so on.

In the case of the blazonry of the Arms of New South Wales - and we are arguing against blazonry of an archaic kind - there is a reference to "of the last banded of the second". We presume we are talking about the edging on the shield, but it is not clear, and I hear rumblings from my left to suggest I may have that wrong. The Flag Society is recommending there should be a description but not a blazon; there ought to be a description in plain English that every man and woman can understand.

CHAIR: The description in plain English would reflect the blazon being rendered in more contemporary language?

Mr BURTON: That is one way of doing it.

CHAIR: Mr Kelly?

Mr KELLY: I believe there is no technical problem in the Schedule to the Act being rendered in colour. I draw your attention to the Flags Act 1953 (Commonwealth) where the Australian flag is rendered in colour in the Act.

CHAIR: I hesitate to interrupt. There may be no technical problem but you might give the Parliamentary Counsel a heart attack if that should happen.

Mr KELLY: I raise it as a precedent on the basis that up until this time the possibility of an Act including colour drawings had been assumed not to be feasible...

CHAIR: New South Wales is an older jurisdiction.

Mr KELLY: In that context we think a colour version with plain English would be the better approach; and then you simplify down from that, rather than have a simple version in the Act, then complicate it in other or variant renditions.

Mr BURTON: Mr Chairman may I add that another concern in that context was that if you had a line drawing based on the original warrant and that is taken out of context there is nothing to prevent anyone not understanding the blazon, and colouring the Arms in, say, the Aboriginal colours on the shield or in some other sectarian or idiosyncratic way. That is what we are getting at when we say that having a line drawing in the Act without colour drawing or specification invites variation upon a device which is the property of the State. That is it in sum. The choices are a very clear: concise, precise description of how that line drawing should look if it were to be in colour; or a blazon only, and leave it to the heraldists to correct and sort out the obscurities; or, thirdly, a coloured page inserted into the Act.

CHAIR: If we can persuade the Parliamentary Counsel to include a colour depiction in the bill and ultimately the Act that would be sufficient identification?

Mr KELLY: Yes.

The Hon. PETER BREEN: I previously suggested the schedule might include the Royal Arms by way of comparison, illustration or explanation to people reading the legislation to see the State Coat of Arms is represented in such a way and the Royal Arms was represented in a different way? Would you have any thoughts about that? Is that a ridiculous idea?

Mr BURTON: It would be a costly idea if it were to be in colour. We have just increased twice- over the problem the Chairman alluded to, if you were to have a colour rendition in the bill of the Royal Arms. If you were going to do that, I think you need to have a description or blazon of the Royal Arms so people could understand those. By the way, which Royal Arms? The Royal Arms in Scotland are different. I presume you mean the Arms of the United Kingdom?

The Hon. PETER BREEN: The United Kingdom. I stand corrected. I always use the term Royal Arms but that is not the same to some people as the Arms of the United Kingdom and Northern Ireland.

Mr KELLY: I draw to your attention, also that the Royal Arms have over time changed. Some historical examples would include the elements which are not currently in the stylisations seen today in the UK.

CHAIR: Mr d'Apice's submission illustrates that point.

The Hon. PETER BREEN: The question of which Arms aside, would you agree with previous witnesses it is not a good idea to put any other Arms in the bill other than the State Arms?

Mr BURTON: Further on in our submission, the last question, we talk about the efficacy of focus in not having too many variations of symbols. If you want to confuse the public, one way of doing that is giving too much choice or giving choice that is wider than the precise terms of reference.

If the focus is on the existing Arms of New South Wales which are issued by Royal Warrant and very much a matter of our heritage already for over 100 years, it seems to us sufficient to focus on the Arms of the State of New South Wales.

The Hon. PETER BREEN: At page 5 you state:

Any such changes to Arms granted directly by the Sovereign in 1906 may require Royal Assent from the Sovereign personally.

Could you expand on this? Your submission also suggests that it may be appropriate for the State Arms to incorporate reference to the Indigenous heritage of New South Wales. Would this also require Royal Assent?

Mr BURTON: There are two parts to this, one being the Indigenous part. I would defer to Mr Kelly to speak to the first part and I will address the Aboriginal side.

Mr KELLY: In doing research on the Flags Act 1953 I became aware that the Federal Government had legal advice preparatory to that Act which called into question the legal power of the Commonwealth Government to pass legislation in respect to a matter which had been the subject of the Royal Prerogative, that is the approval of the Australian Flag in 1903. The same situation applies here though with a different constitutional framework. I am not clear as to what the constitutional position in Australia is, but the New South Wales Arms are derived from a grant of Arms from King Edward VII and, as such, this was an exercise of the Royal Prerogative in 1906. Therefore, it is a question mark we raised in our submission as to whether anything which had the effect through the bill of altering the effect of the original warrant might require a reservation to the Sovereign specifically if there were similar provisions or restrictions on the power of the State legislature. As I say, the analogy is based on the Federal position which is fundamentally a different constitutional arrangement, but that was the origin of the question mark which centres around the status of a Royal Warrant given that the bill would give the power to the Governor to make alterations or complete replacement, of something which was the subject of the grant of Arms.

If the Act is legislatively possible or is in fact approved then the bill empowers the Governor to make changes and those changes could include a change to reflect an Indigenous element, and I would pass back to Tony Burton to comment on the Indigenous aspect.

Mr BURTON: We do see a secondary issue here, a kind of sleeper. If the Arms were to be changed to include some, say, Aboriginal design or some reference, one of the supporters, whatever - we do not need to go into that detail - we feel that a question not to be overlooked is that the question itself of some Indigenous reference might also raise the whole vexed, and we believe yet unresolved, question as to what in an Indigenous context is meant by sovereignty. And to what extent Australians who are Aboriginal to New South Wales and other tribal and sacred lands beyond New South Wales that were ruptured by arbitrarily imposed borders, colonial borders, will consider that their sovereignty was ever abrogated. Now we realise that this is another issue, but we signal that it is there just below the surface.

What prompts this view is that the writings of Spanish constitutional theorists, Bartolomé de las Casas and de Vitoria, are often cited for a view of native sovereignty that was recognised in the Indies meaning all the overseas territories of the Continental powers. Now this is not a view that generally is familiar to the British heritage, but the doctrine of the pre-existing Indigenous sovereignty has been recognised by European colonising powers, on paper at least (if not always in the Act). The point is that it has never been controverted legally, so if you get into the question of Indigenous marks and symbols, no doubt the State would want to confer with Aboriginal representatives and leaders and might be aware or be prepared for such issues that we have outlined to come up.

The Hon. PETER BREEN: That would not be an issue so long as we do not seek to change the State Arms, though. It is an issue down the track, as I see it, it is not an issue currently.

Mr BURTON: It was an issue for at least some Aborigines in January this year when they

decided it was okay to purloin the Arms from the old Parliament House.

The Hon. PETER BREEN: Yes.

Mr BURTON: I am not saying that this is representative of the entire Aboriginal nation, but it is a view that does exist out there.

The Hon. PETER BREEN: But the problem that you have alluded to is one that exists regardless of what we do in relation to this bill. I mean this bill does not change any of the perspective or arrangements with Indigenous people. This bill changes the arrangements perhaps with the United Kingdom, but I would not see it changing any relationships with the Indigenous people.

Mr BURTON: If the purpose of this bill is restricted to using less the Royal Arms of the United Kingdom and using more, displaying more, the Royal Warranted Arms of New South Wales, if the purpose of the bill is restricted to that, yes, I would agree with you. But certainly there is scope and ambiguity in the bill to allow of other changes to the lineaments or the design of the 1906 Arms, and then I think you have some of these other issues coming in. Now the terms of reference do not say we are going to change the Coat of Arms of New South Wales, the 1906 Arms, but there are sufficient ambiguities and loopholes in the way the bill is drafted to allow that at some time, so we are just covering all bases.

The Hon. PETER BREEN: Yes. Because it is an Act of Parliament and the Parliament is sovereign or the Parliament is the supreme law maker, that means that the Parliament, once this legislation is passed, could then make an amendment to the legislation to describe the State Arms in a different way, I agree with that, but arguably that power is there anyway in the Parliament, whether this legislation were to be passed or not, through the executive government, in my opinion.

Mr BURTON: The point we make in both our papers on what is a Coat of Arms and what it is for is that it is the badge and the immutable, shall we say, badge of sovereignty. It belongs to the sovereign and it is issued by the sovereignty, it is a badge of sovereignty of the State. The Arms are not a marketing device. There is scope to adapt whole or part of the Arms for such purposes - and I mentioned Singapore earlier - but we wonder whether the Parliament does have the power to change the Arms and we note the previous speaker also referred to the question of Royal Assent and we think that if you are tinkering with a badge that represents sovereignty and you have in Australia an Indigenous people who have denied that their sovereignty was ever abrogated, there are two sovereignties of whatever kind that you are going to have to reconcile sooner or later.

The Hon. PETER BREEN: I accept that, but I do not think that this bill changes any of that dynamic, that is the point I wanted to make. I mean I would be anxious to hear if you have something else to say about it. Personally I am not convinced that the bill will change any of the dynamic or relationship in terms of the sovereignty that Indigenous people claim. Ultimately I think that will be a decision for the High Court down the track.

Mr BURTON: Okay. We are not constitutional lawyers. Our purpose was to bring this to your attention as something to think about.

CHAIR: I want to return to the definition of the State Arms in Schedule 1. In response to my earlier questioning you were postulating that it might be more appropriate to describe the Arms in plain English rather than using archaic language that would be used in a blazon. The difficulty that occurs to me in that regard is that, although the language used might be archaic, presumably it is settled on the basis of long usage and interpretation. If it were the case that that archaic language were to be rendered into more contemporary language, might not there be some risk of inexactitude occurring?

Mr KELLY: Perhaps if I might answer that question: My understanding of heraldry is that the blazon, as in the precise verbal description, is actually the formal fixed version of the Arms; that the drawing depicted from those words is subject to artistic licence and artistic variation, particularly in terms of the traditions of heraldry which do not make any distinctions between shades of colour, or the precise formation of the drawing of the Arms. By way of illustration "A Roll of Australian Arms" by

Charles Low the New South Wales Arms are shown with a very exaggerated lion in the centre, in a form which is different to the drawing on the Royal Warrant, so I think it is necessary, if you are going to have both an illustration and blazon, whether that blazon be in words of the plain English current form or of the traditional heraldic form, that it is also made clear which is the authoritative version from which variants are then permitted and what is the form of approval of those variants, so we would suggest to you that the precise language of the herald actually allows far greater variety of rendition of the Arms than would be the case if there was a line drawing, be it rendered in colour or black and white.

CHAIR: Could I perhaps suggest that the Flag Society might consider whether it can furnish us with a plain English rendition so that we can examine that?

Mr BURTON: Yes. There is a strong link between flags and heraldry; there are certain rules of colour so the image is visible at a distance. The Flag Society is happy to do that and confer with our heraldic colleagues as well.

The Hon. JOHN RYAN: Is there any precedent for rendering blazons in plain English - obviously the Royal College of Arms does not - but are there other heraldic organisations that attempt to express that?

Mr BURTON: A number of republics have their own colleges or institutes of heraldry. A notable example is that of South Africa, the Bureau of Heraldry and they use both, (that is blazonry and plain language). They describe the flag and the new Arms of South Africa, adopted about 18 months ago, in straightforward language, not only in English but the official languages of South Africa. Canada has something similar.

If I could pick up a point Mr Kelly alluded to, in heraldry the colour yellow is generally referred to as "Or" and the colour white is referred to as "Argent", from the word "silver". What is it going to be? Recently at the independence celebrations for Timor a flag manufacturer secured the delivery of small flags of the new country that were printed in Macau. They opened the boxes and there was the red, yellow, black and white star of Timor, but the star was rendered silver. Heraldically white is "Argent". If you are a printer, however, the closest colour to "Argent", to silver, is grey. Here were all the flags of Timor with grey stars instead of white. This is the sort of pit-fall that we allude to.

Many countries around the world, especially new countries take great care to define their emblems, who will use them and what the sanctions are. It boils down to a question of intellectual property in the end and maintaining the value and respect and dignity of the Arms of the State.

CHAIR: Before we conclude I invite you to tender the written answers you prepared to the questions we posed.

Mr BURTON: Certainly.

CHAIR: Is there anything else you wanted to say?

Mr BURTON: Yes. In our written remarks we have alluded to the Arms being adapted as a marketing, advertising or localising device in a similar fashion to Singapore. There are parts of the 1906 Arms that render themselves amenable to this. We have the State symbol, the Waratah, but from the Arms themselves there is the crest of the rising sun. We would like to draw to your attention and table this, that you need to be careful about symbols that at first light might seem obvious, because there are about 20 States that use the same or a similar rising sun as an emblem. We have written this up in detail in our journal *Crux Australis*. These are some of the countries that have used the sun symbol which I now show you.

We also allude to some of the difficulties that arise when there is a lack of clarity about defining detail about the Arms and most recently since our submission we have gone into these difficulties with the Commonwealth Arms and table our detailed article on that as well.

(The witnesses withdrew.)

MICHAEL FRANCIS McCARTHY, 8 Little Surry Street, Darlinghurst, sworn and examined:

CHAIR: What is your occupation?

Mr McCARTHY: I am a professional heraldic painter and author and publisher of heraldic works, in addition to which I am an administrator at Sydney University.

CHAIR: Did you receive a summons issued under my hand in accordance with the provisions of the Parliamentary Evidence Act?

Mr McCARTHY: I did.

CHAIR: Are you conversant with the terms of reference of this inquiry?

Mr McCARTHY: I am.

CHAIR: Could you briefly outline your qualifications and experience relevant to the terms of reference of this inquiry?

Mr McCARTHY: I have for 30 years studied heraldry in great detail and have published three reference works on this subject, specifically about ecclesiastical heraldry but in a general sense about correct heraldic usage in this country and other places.

CHAIR: You have made a detailed written submission to the Committee. Are you happy to have that included as part of your sworn evidence?

Mr McCARTHY: Yes.

CHAIR: If you should consider at any stage during your evidence that in the public interest certain evidence or documents you may wish to present should be heard or seen only by the Committee, the Committee will be willing to accede to your request. However, the Legislative Council may override our decision in that regard. I now invite you to make a brief opening statement if you wish?

Mr McCARTHY: The subject under consideration of the bill is in essence a final assertion of our own sovereignty and not somebody else's. This process has graduated over a long period of time. The most dramatic example of it happening was 1967 at the time of the Vietnamese War when the Australian Navy used the Royal Navy's ensign and it was the only flag which was a British flag, and it was considered inappropriate considering Britain was not fighting in the same war and we therefore at that time adopted by proclamation the current Australian naval ensign; which was the last British symbol apart from the Royal Arms which was removed from us and represented that we are a separate sovereignty, we pursue separate ends under our own crown and not under the British crown.

The bill as it now stands simply takes that to its logical conclusion and removes all reference to foreign symbols from usage. Certainly officially by this Government the Commonwealth has not used the Royal Arms in any capacity for a large number of years. Even the Governor-General does not use the Royal Arms on correspondence, he uses the badge but does not use the Royal Arms of Great Britain as used in England - and I made that specific point, as used in England, not Scotland or anywhere else. Prior to 1949 the Royal Arms as used in Ireland when it was a dominion were different again in that the crown was different, the reality being that we have been a sovereign and separate nation for a long period and to use a somebody else's Coat of Arms is equivalent to using their criminal code or their milk regulations.

CHAIR: What do you consider to be the function and purpose of a Coat of Arms in today's society?

Mr McCARTHY: It is essentially the same as it always was; it is a method of identification.

Initially it was used to know who to kill and not to kill in battle. It quickly became the device put on seals so that the same knights who were killing each other, who were also illiterate knew who they were dealing with not by the document but by the seal. Its primary function has always been identification. It is also used in our society to demonstrate that an individual acts for and on behalf either of themselves or more importantly for bodies corporate - which the Government is a body corporate - that acts for and on behalf of the Government in an official capacity. Similarly councils use sometimes coats of Arms and other things that purport to be coats of Arms. Corporations use something, either a Coat of Arms for the same reason, to show that a person issuing the document or doing the act, acts on their behalf. It is a symbolic and visual recognition of who they act for.

CHAIR: You will be aware that some individuals or bodies who have made submissions to this inquiry consider that the Royal Arms, using that perhaps as a generic expression, should be retained in New South Wales because it is symbolic of our heritage and history as a State. Would you like to make some response?

Mr McCARTHY: I could ask first: Whose heritage? The point being made is that we were founded as a British colony, which we stayed for one hundred and something years, up to 1930 with the Statutes of Westminster. Our laws up to some point reflected the British law but do not any more. We have our own legislation; all of our laws are separate. The Royal Arms are the Arms of the dominion of the sovereignty of Great Britain they are not Her Majesty's personal Arms, which would be the Arms of the House of Wettin Saxe-Coburg-Gotha. The sovereigns have not used personal Arms since the last of the Plantagenets who did use personal coats of Arms in that their Arms were the same as the kingdom of England. From 1485 with the last Plantagenet the sovereigns of England had not used personal coats of Arms, they used the Arms of the sovereignty, of the State; and then highly selectively. At no stage has Wales ever been included in the Royal Arms.

Not all sovereignties have been represented in the Coat of Arms. It was always and only the principal kingdoms which were married for political reasons; the Stuarts ascended to the throne of England, were kept as a separate entity on the throne of Scotland. Therefore the Coat of Arms used by the sovereign was accorded Coat of Arms but curiously in Scotland until the act of union in 1700 they continued to use on the Parliamentary business only the Arms of Scotland and not the accorded Arms. Similarly the Commonwealth of Oliver Cromwell used a very different version of Arms; but in Scotland they only used the Scottish cross and not the whole version a used by Oliver Cromwell south of the border. It was considered that they were territorial and specific to certain places only. To use the Royal Arms of Great Britain as used in England here, would suggest we are somehow part of one of the lost counties of England and not a separate political identity; suggest we are not a separate sovereign power, which we are.

We happen to have the same sovereign as the United Kingdom but we are not in any way, shape or form part of the United Kingdom. If you do not believe that, go and line up at Heathrow and see what happens to you: You are treated like a foreigner.

CHAIR: You would have heard me ask previous witnesses about that part of The Hon. Peter Breen's Bill, namely Schedule 1, which sets out a line drawing of the State Arms. I have asked various questions about the use of a blazon or a rendering of that in contemporary language. What is your view as to the way in which the State Arms should be sufficiently identified in any legislation?

Mr McCARTHY: First, blazing is not a precise science. The things the Flag Society of Australia were talking about are extreme form of blazon. There are simpler ways to blazon abiding by the rules; using terms of the first and the second is an extreme form of blazon which tends no longer to be used. I publish all my books in English for an international audience a large part of which is not English. The blazons are always given in English; nobody, no matter who they are and what language they speak has any trouble understanding what they are. Even though words can change - for instance, in Italian the words are not the same for red and blue - the sense is the same and there are ways of finding out. If you do not understand a term in one language or in another language, there are compendiums which list the terms in about ten different European languages. The notion that you solve a problem by rendering it in a language which is not precise and does not have the same precise meaning is to my mind not accurate.

The only way to define something is to use the language you divine it in; in the same way you use the language in chemistry and lawyers use their own language. It is counter productive to simplify something so that you understand it and you have guarantee that anyone else can interpret the way you interpret it to mean what it should mean. Whereas if you use an old and established codified system to describe something the chances are most people will understand and get it right even if they have to resort to an heraldic dictionary to get it right.

CHAIR: So in contradistinction perhaps to the view of the Flag Society you are saying to us that it would be appropriate to use a blazon?

Mr McCARTHY: Yes.

CHAIR: Would it be equally appropriate to render the State Arms in a colour drawing?

Mr McCARTHY: Once again, I publish all my books as black and white drawings - colour is very prohibitive - and I do not have any problems. The thing that you should perhaps attach if people have trouble with heraldic terms is a glossary which sets out what they mean in plain English as an addendum to the Act, which has been done in the past in situations like this where the word "azure" is heraldic for blue and you put a glossary at the end setting out exactly what all those terms mean, which is the normal way of doing it if you want to clarify it for people who do not understand heraldic language.

The Hon. PETER BREEN: Is there a precedent for putting it in the definition part of the legislation?

Mr McCARTHY: You could put it in the definition part if you like, yes, that would be another place to put it.

The Hon. JOHN RYAN: If you defined them differently, though, would you change their meaning?

Mr McCARTHY: I am not talking about defining. Heraldically there is a different name for every colour. You would simply say that where you see "azure" it means blue, not a defined colour blue because there is no such thing as a defined colour, or if you come across something that is an heraldic term which is not the same in English, I mean a cross is a cross in English and in heraldry it would become something like a bend and you describe what a bend is, a vertical bar across a shield. Those places where the term is different, and there are not that many that are different from English in fact. The colours are different and some of the technology. A lion rampant means a lion standing on one leg waving the others in the air. In effect, that is what it means.

CHAIR: Earlier this morning Mr d'APICE: tendered a publication entitled Canadian Heraldic Primer and I am advised that words used in a blazon include the following: "Sinister" for left and "dexter" for right.

Mr McCARTHY: There is a reason for that.

CHAIR: Are such terms still used and, if so, are they sufficiently clear or should they be changed?

Mr McCARTHY: "Dexter" and "sinister" are the two that cause the most confusion because they mean left and right but they are in fact reversed, because the shield is viewed not from out there but with it in front of you, which is why they are reversed. It has always been like that and everybody who understands heraldry understands what that means. It can be confusing if you, however, do not understand that principle. Heraldry is described as you, the bearer, looking out with it in front of you and not you, the viewer, looking on to it.

CHAIR: So you see no problem in a blazon using what I am describing as - and I am not

intending to be derogatory - archaic language?

Mr McCARTHY: It is an archaic language but, as I said, a simple glossary would solve the problem.

The Hon. JOHN RYAN: Music is pretty archaic too, but you cannot change it. I was going to ask one simple question: Your depiction of the State Arms seems to be different to that which appears in a line drawing in the bill in that it includes a helmet of some sort.

Mr McCARTHY: Yes.

The Hon. JOHN RYAN: Is there some reason as to why you have included that?

Mr McCARTHY: As part of my submission I make the suggestion that as New South Wales is a sovereign State the symbol of a sovereign State should be included and the symbol of a sovereign State is a sovereign helm. A great many organisations use coats of Arms with supporters - councils, companies - but to distinguish a legislative authority, a sovereign State, the symbol that is used is the sovereign's helm. It has been used by both monarchies and republics. Oliver Cromwell used the sovereign's helm, for instance. I think that is also in my submission. It merely states that the user has sovereign power.

The Hon. JOHN RYAN: Would it be different from the Coat of Arms which was issued by Edward VII?

Mr McCARTHY: No, because the Coat of Arms consists of the blazon which consists of the shield, the crest and the supporters. The insignia of office, which this is, is assumed, but never in the blazon, in the same way if a bishop gets a Coat of Arms. All that will be blazoned is what is on the shield and the insignia of office that go around the shield are assumed given the rank of the bearer. Blazons are particular to an individual. The rank is assumed and, for instance, you will never find in the Royal Arms anywhere the blazon for the Crown, it is just assumed that the Crown is there because the Queen is the sovereign. New South Wales could also use a crown if it chose to, but in the current political climate that would seem probably less than useful.

The Hon. JOHN RYAN: Is there anything inadequate by rendering the State Arms without the helmet?

Mr McCARTHY: No, in heraldry, especially in the period that that was designed which was the best part of 100 years ago, Royal Warrants tended not to use helms of any sort and they simply gave a shield and a crest and the rest was up to the user as to how they wanted them to be used. The only limitation, if you like, is the crest is suspended in midair, which from the point of view of gravity would suggest a few problems. Helms are part of the whole process which, for simplicity, for a long period of time, the College of Arms did not use. If you look at all the grants, from about 1700 right up until the first world war, helms were often not included in grants. They were simply an assumed, a given.

The Hon. JOHN RYAN: You have rendered the lion slightly differently.

Mr McCARTHY: It is just artistic licence.

The Hon. JOHN RYAN: That is an example of what is meant by artistic licence?

Mr McCARTHY: Yes.

The Hon. JOHN RYAN: Do you support the establishment of an heraldic authority in New South Wales?

Mr McCARTHY: I do, and I would like to add to what Mr Szabo said. His estimates of how much people are prepared to pay are greatly undervalued. The average grant from the College of Arms

which people pay, for an individual, is about 6,000 pounds, which is close to \$20,000. Most corporations are prepared to pay 20,000 pounds. British Tobacco in the 1980s paid 100,000 pounds. A properly organised heraldic authority, apart from all of the things that it would give culturally, could be quite a respectable revenue raiser for the State. People are prepared to pay. I charge a not inconsiderable amount of money. People come to me wanting a design for something and I simply charge them what I say is the going rate and they pay it. Companies would - and this includes local governments who want coats of Arms - go to London and pay inordinate sums of money to get what they want.

The Hon. JOHN RYAN: Are you aware of any local governments, New South Wales councils which have--

Mr McCARTHY: Woollahra, Rockdale, Canterbury - the list goes on and on - and they have all paid these sums of money.

The Hon. JOHN RYAN: Keep it in Australia.

Mr McCARTHY: Well, foreign exchange then comes into mind, but in addition to that one of the things that has happened in Canada is that, as has been pointed out before, a local authority - and it has to have authority - can start the process of evolving local heraldic traditions and for this purpose - I will tender this as evidence - I have taken the liberty of just putting some designs together of Australian flowers and animals and other things to show what could be done to create an Australian heraldry which is Indigenous to us.

One of the problems that I perceive at the moment is most grants that come from London are incredibly complicated and have too many ideas, all of them competing, and if you asked the average person in the street what is on the New South Wales Coat of Arms they have no idea because it is so complicated, it does not in any way grab them. They have no idea what it is. If it was one simple emblem and it was in fact pushed as that one simple emblem, people would understand and identify with it, in the same way that Americans identify with the stars and stripes, because it is a simple emblem that they recognise. Our coats of Arms are too complicated. The things that come from London, especially for local authorities and for companies, are so complicated that no one takes any notice what they are. The sense that we could use this as a way to create a national identity and to enhance the things that are uniquely ours is something that I think is essential if you really are serious about the notion of nation building.

Similarly, we have in this country a large number of people who are not Anglo-Celtic in origin, a lot of whom bear coats of Arms from where they came: Italians, Germans. They would no sooner be interested in something that came from London than flying to the moon, but if there was an Australian body that was prepared to register and recognise them as is, because they have inherited them from umpteenth centuries, that is something that they would welcome, but they are not interested in continuing what they see as a British tradition which has nothing to do with them. A lot of the Irish in this country have the same problem. I simply assumed a Coat of Arms. I would never spend money, hand money to somebody, for something which is a dubious reality at best. It would also include, as it has in Canada, those people who do not have an heraldic tradition. The current Governor-General of Canada is of Chinese origin - I should but cannot remember her name - and she was granted a Coat of Arms by the Canadian heraldic authority which reflected her Chinese heritage, and it also includes things which London would regard as not particularly good heraldry from their perspective. The Canadians have shown that you can take an ancient tradition and mould it in your own direction by being brave enough to say we are separate and we will do it our way, thank you very much.

The Hon. JOHN RYAN: I do not know if you have ever visited Government House in New South Wales, but it would appear that each Governor seems to have some sort of--

Mr McCARTHY: The English ones certainly did or the aristocrats--

The Hon. JOHN RYAN: Where does that come from?

Mr McCARTHY: Most of them were aristocrats before a certain point. Cutler had his granted by the College of Arms. I also work at Sydney University where there is an equally large number of heraldic devices. The problem with Sydney University is that a large number of them were simply assumed from books by people who had no right to use them because there was nothing here to consult when they were building the building and all of the original senate have their coats of Arms on the outside of the Great Hall. The only one that was actually genuine was Bishop Davis's. The rest of them were people of substance in our community and they wanted something to put up so they put up family coats of Arms of people that they technically were not connected with, but if there had been somebody even then that could have been regulated in a very different way.

The Hon. JOHN RYAN: Where do the ecclesiastical coats of Arms come from that are used in Australia, such as the Archbishop of Sydney?

Mr McCARTHY: They are designed by individuals on request. I designed some of them.

The Hon. JOHN RYAN: But they are not recognised?

Mr McCARTHY: It is important to remember this, and it has not been talked about before: Individuals have the right to assume Arms in the absence of an authority, and there is no authority in this country so they assume Arms. They have a perfect right to do that. In the middle ages knights assumed Arms and the first king to grant Arms - and he did it for the purposes of revenue - was Richard III. He established the College of Arms for the purpose of making money and all subsequent bodies that have been set up have been set up to raise money. The visitations of England in the 17th century when the heralds went around to every county and recorded people's coats of Arms - the bill came afterwards and you did not have any option but to pay it. In the 18th century the French government, having suffered fairly nasty financial reverses, decided that everyone who had certain qualifications of property or education had to have a Coat of Arms and you were sent what you got and the bill. So the regulations always had the financial side attached to it and governments have seen it as a way to make money, but in this country to date it is highly questionable that anyone has the power to extract that money from you or any guarantee that in fact in law in this country it has any validity, but people still pay large sums of money to go somewhere else. Bishops and other individuals assume coats of Arms which they would be prepared to register. In London they refuse to grant coats of Arms to Catholic bishops for reasons which are tortured and legalistic; and once again apply to England but not to this country.

The Hon. JOHN RYAN: If we had an Indigenous authority granting Arms all those problems are solved so far as New South Wales.

Mr McCARTHY: Yes. The comment that you made earlier about it being a committee would not be appropriate. What you are dealing with is like a driver's license, a government instrumentality is authorising something for you and charging you money. Having a committee do that would be inappropriate because the committee would not have the same authority of a government instrumentality.

The Hon. JOHN RYAN: I was suggesting in terms of providing advice it would have to be initially a committee of volunteers.

Mr McCARTHY: There are sufficient people in this country who have sufficient knowledge to do what is necessary. I know the Chief Herald of Canada, Mr Robert Watt, who is quite prepared to come officially to this country to advise, if requested, how they set up the Canadian heraldic authority; and is prepared to give the value of his experience and expertise to us. As President of the Heraldic Society of Canada he set up the heraldic authority in Canada. His experience and knowledge would be of great use to us if we wanted to set up a similar body here.

The Hon. PETER BREEN: He would come to Australia?

Mr McCARTHY: If officially asked and paid for, of course. He is a civil servant, travelling officially on a Government passport. Their organisation is more than cost effective. They grant a

sufficient number of Arms to keep them going. Here given the vastness of our ethnic make-up we could do better than they do. A Coat of Arms buys respectability. You would be surprised who wants to spend their money.

The Hon. PETER BREEN: You spoke earlier about the addition of the helm to the State Arms. Did you say we could leave the existing warrant there is no need to go back to England?

Mr McCARTHY: Yes that is what is called in heraldry an entitlement of rank. Bishops have insignia, peers have insignia which are crowns, coronets; you never find any of them in a warrant. The warrant says what the Coat of Arms particular to them is. The insignia that goes with their rank is assumed that they will use.

The Hon. PETER BREEN: Once we pass this bill that situation would change?

Mr McCARTHY: No it would not. The rules of heraldry would still stay the same. If the blazon was in the bill that is all that would be there. The notion entitlements go, in this case, with sovereignty would not be changed.

The Hon. PETER BREEN: Once the line drawing goes in the bill without the helm is it not a fact you would need amendment to the legislation?

Mr McCARTHY: The blazon should be specifically stated, a representation of which is attached in the appropriate drawing. That is all it is, a representation; it does not alter the laws of Arms or the sense of what does exist.

The Hon. PETER BREEN: On the question of symbols Mr d'APICE: drew our attention to an article in the Sydney Morning Herald today where they have had some trouble with the cross on the insignia for the British police force. In heraldry the cross has a wider meaning.

Mr McCARTHY: No the origins of heraldry lie in the romantic movement of the crusades which was essentially Christian and symbols that emerged were a combination of Christian and pagan depending on where you came from. The three lions of England were in fact adopted by Henry II; there were two originally because someone gave him a couple of mangy lions he kept in the zoo in the tower. He thought that they would be appropriate to use. That was the only reason; it had nothing to do with anything deep and meaningful they thought they would put them on the shield and that was it.

The Hon. PETER BREEN: I quote something from the submission of the Flag Society and ask whether you can clarify that:

In heraldry, the cross is more than the Christian symbol generally supposed; it is a version of an ancient sun symbol and in this regard the symmetry of the cross is mirrored in the heraldic symmetry of an image of the rising sun in the crest, and again, in words, by the meaning of the motto beneath.

Mr McCARTHY: The motto comes first from the *Aeneid* which is Vergil's great poem and means: Recently risen how brightly you shine; and was adopted as a piece of Victoriana. The cross was adopted - in fact known to the crusades. The word "crusader" means taking the cross, it came into heraldry as the cross of the Christ. People can build all sorts of other meanings into it and in other cultures may well have other meanings; but in an heraldic sense it is the pre-eminent Christian symbol. All of the orders of chivalry, the hospitallers, the Holy Sepulchre, and the teutonic order all fought under a version of the cross. The Knights of Malta used a white cross and a red shield and the Holy Sepulchre used a red cross and a white shield and then it became more elaborate. The teutonic order used a black cross and a white shield but they all used a form of the cross, which is where the word "crusader" comes from and that is how it came into heraldry as the pre-eminent Christian symbol. What other people may say about other cultures may well be true but that is not how it came into heraldry or what it primarily means in heraldry.

If you look across a map of medieval Europe in the Arms of territories, diocese, sovereign

states the cross was the most universal sign; the King of Italy used a cross; the King of Greece - the Republic of Greece still uses a cross. Looking across the whole of Europe the use of a cross is the most common symbol used, especially on the continent where it uses a cross in various colours and it is used for that purpose as the premier Christian symbol.

The Hon. PETER BREEN: In terms of the process involved in British insignia for the police force, would you be able to say whether that process would involve legislation or regulation?

Mr McCARTHY: The situation is very different in England. Their legal system, in spite of what we are led to believe, is quite different; they do not have a written constitution. Authorities tend to have more power per say to act as they see fit. The police insignia, for instance, would be a matter for the police and not for the Government as a whole. The English police system, from memory, is divided into a number of areas which are ruled by chief constables. All of them have different symbols. The police in England do not have the same uniform as everyone has in New South Wales. Each chief constable's area has a different uniform and different badges. The cross they are referring to in London is the cross from the Coat of Arms of London, a white shield with a red cross with a sword of St Paul in the first quarter. It is the symbol of London which has been incorporated into the police badge for their constabulary and that is what they are talking about removing. The cross is also in the crown. I do not know how they get around that.

The cross is actually in English heraldry a very profound symbol, it is found everywhere, and all of the insignia of office - the crown, the sceptre, you name it - is there and to take it all away would be an interesting exercise which I suspect you will find will not happen. To change any of the royal symbols would require the consent of Her Majesty. In this case it would not be on the advice of her Ministers. She would say no because it is part of the Royal Prerogative.

The Hon. PETER BREEN: What advice should we seek from the Crown if we decide to go ahead with this bill?

Mr McCARTHY: My attitude and understanding of constitutional law in this country is the Queen acts on the advice of her Ministers who act through Parliament. Therefore the only advice that would be needed in New South Wales is to advise the Governor what she should do. The notion of seeking formal advice from London as far as I can see is a waste of time and energy. The reason in fact why the 1970 inquiry failed was that it was sabotaged by the College of Arms. They were determined we were not going to take their revenue away. They worked very hard to make sure it sank beneath the waves and they succeeded. They had a heavy financial interest in keeping us as part of their fiefdom and made sure that happened.

The only advice I would recommend we seek is someone like the Chief Herald of Canada who can give us practical advice about what to do and what not to do; and where the pit-falls are and how to get round them. Their biggest problem in Canada was that the French part of the country would have nothing to do with the Coat of Arms because it was British; but they have - mainly because of his ability to persuade - become an integral part of the Canadian heraldic authority. Two of the heralds who have been appointed are French and one of them is a woman, which is a first in heraldic circles as well.

The Hon. PETER BREEN: In your submission you state that where the monarch rules over several realms in a personal union, each remaining utterly with its own laws and customs, the sovereign should use the Arms of dominion and sovereignty of that realm itself. Could you explain this further for the Committee? How does this impact on the matters under inquiry?

Mr McCARTHY: There are two examples you could use, first the Roman Empire was monolithic although they did not have coats of Arms everyone acted under imperial authority; whereas the Holy Roman Empire at the time of Charles V, who reigned in the middle of the 16th century, had become a conglomerate mass of virtually independent states who owed allegiance to the emperor. He was also the ruler of Spain which was an absolute monarchy that ruled half of the world under a very different set of laws and regulations; and also ruled large parts of the Netherlands in each case quite separately as a sovereign prince. Last year I was in Groningen in the north of Holland which was part

of his empire and the Coat of Arms they still use - and in the law courts - consists of the imperial eagle which was a personal grant to them and the Coat of Arms of Groningen. They do not use the Dutch Coat of Arms in their law courts. That is what I am talking about. Whilst you may be one person you wear many hats and each of those hats is quite separate. Our sovereign is, in addition to being Queen of the United Kingdom, she is the Queen of Canada, she is the Queen of Australia, she is the Queen of the Solomons, Papua New Guinea, and it goes on and on; in each of those places with the exception of England the royal household is the household of the Governor-General and everything is done through that particular office. The laws are separate. They all act in her name but it is quite separate. Whenever an Act of Parliament is passed in New South Wales it is enacted in her name but it might be quite contrary to a law that exists in Papua New Guinea or England. It is done in her capacity as the sovereign of this place and not some other place.

In almost all of the Commonwealth, even today, they use the Coat of Arms of the place of which she is sovereign and never the Royal Arms; they do not use it in Canada, the Commonwealth never uses it; some of the States use it here. I have no idea what happens in New Zealand, which is in a different position. It seems to have attached itself somehow to the College of Arms. It is akin to New South Wales suddenly using the Coat of Arms of Tasmania. The Queen is certainly sovereign of Tasmania as well, but the Parliament of New South Wales does not act in any way for Tasmania.

The Hon. PETER BREEN: The expression ? Royal Arms? you use in a generic way?

Mr McCARTHY: That is what it is referred to in all the literature. Technically if you go to London and visit the churches you will find a variety of Royal Arms going back 500 years. The English have never changed them because they regard that as barbarism. Whatever was there when they put the building up is still there. Some of them are in fact incorrect renditions of the Arms but no-one bothers with that either.

They are called the Royal Arms in the same way it is a name attached to them but the notion of the Royal Arms of the sovereign technically in this country is the Commonwealth Coat of Arms. It is not referred to as that, but in Canada it is quite certainly called the Royal Arms of Canada, and it is the Royal Arms of Great Britain we are talking about. In that sense it is fine if you want to refer to it that way; it is a label. I make one further point in my personal area of ecclesiastical heraldry. In Rome you will find on monuments papal coats of Arms which go back centuries which no-one has bothered to take down, it would be criminal to do so, but in an official capacity you will find, usually painted in a very mundane way under a little plaque, the current Pope's Coat of Arms which symbolises the authority that they reside under. They do not take anything away but they have the official stamp there as well. It is usually on the outside of buildings, but it is done in such a way to signify - whatever is on display is wonderful, but this is where the power is. We need to come to that too.

The Royal Arms in England can be called anything it likes. The Royal Arms of Scotland can be called whatever they like. In relation to and pertaining to those countries that is fine. The notion because someone has a name it means more than that - technically speaking there are no Royal Arms because the Royal Arms would be personal to the sovereign and there are not any. If one was designed it consist of the Arms of Saxony, which would be German. Curiously, even though they would be the Royal Arms of the sovereign they are the territorial Arms of the Dutch of Saxe-Coburg-Gotha which Queen Victoria's husband was a junior member of and would simply have used those Arms as family Arms but they are in fact someone else's territorial Arms. The last family who ruled England to have personal Arms in any sense were the Stuarts, who had had a Coat of Arms before they ascended to the throne of Scotland, and the Tudors also had a Coat of Arms which they very quickly buried because it was considered very mundane because they originally started out as humble knights, but they are the only two families who have ruled England that actually had a personal Coat of Arms and they abandoned it very quickly.

The Hon. PETER BREEN: So in relation to Royal Arms, when we refer to the unicorn and the lion, it is not incorrect really, is it?

Mr McCARTHY: It is just a generic term, it does not mean anything and you could call it anything you like. It does not have any legal validity in this country. One of the submissions I

noticed said that it should even be painted on trains. My attitude to that was, if the British government wants to pay for the trains, let's do it, but otherwise it is irrelevant. It is something you will find in every piece of government legislation in England and every official Act, they use the Royal Arms in one version or another, and it is often without supporters and without this and that, but it is the Royal Arms because it is the Arms of Great Britain and they use it everywhere, in the same way that the State Government uses the State Arms here, and that is appropriate for England because it is their Arms. As an example, I got a letter recently from the National Library of Scotland which on the back has the Arms of Scotland as used in Scotland in current day, which is the Royal Arms of Scotland and not England, and I would like to tender that as well.

CHAIR: I am partly of Welsh heritage. Why is it that Wales never got a guernsey?

Mr McCARTHY: Because Wales is a principality which England conquered with a great deal of brutality and then pretended was a sovereign part of England, and has always pretended that. The English Royal Arms have a few contradictions. One is that Wales, which now has a separate parliament, although not as much power as Scotland has, which is interesting, and it is not included, they include the Arms of the King of Ireland, which has not been part of the British Crown in any way since 1949. Northern Ireland, which is a province and not a kingdom, has a separate Coat of Arms which is not included, but they used the Royal Arms of France for 500 years after they lost France, so we cannot hurry them along.

CHAIR: Is there anything you would like to say before we conclude?

Mr McCARTHY: Well, I would just like to add one final point in relation to the College of Arms. The College of Arms has, as far as I can see, no more authority in this country than any other British instrumentality, like the milk board or the local police, and for people in this country to throw their money away has always amazed me, but it is something that has been done in the absence of any government in this country assuming their undoubted right to be a font of honour and to have left it in abeyance more out of colonial clings than anything else and I really do think it is time that we, as a nation, decided that this is something that we should regulate. Symbols are one of the oldest - much older than heraldries - forms of recognition that societies have and people, like the honour system, would do almost anything to get one, in addition to which it adds to the cultural traditions and heritage of the nation that we represent.

The Hon. JOHN RYAN: What happens in the United States of America?

Mr McCARTHY: That is a good question: They go to London and pay lots of money as well, and they do not even get grants, they get devisals, as they call them. They charge them the same amount of money but call them devisals, whatever that means. Why they call them that I do not know. There have been a number of attempts in America to set up bodies, including immediately after the revolution, which have always been resisted because it is seen as--

The Hon. JOHN RYAN: British.

Mr McCARTHY: No, it was originally seen as monarchical, which is ironic in the present circumstances. It was also seen as unegalitarian, although the first three or four presidents of the United States all had and used coats of Arms which were English, and George Washington's Coat of Arms are still used by the city of Washington, from memory.

(The witness withdrew)

(The Committee adjourned at 1.05 p.m.)