Taylor, 2007

NEW ZEALAND

War of words and ethical agendas

16 Nov, 2007 6:45pm

Tuhoe hikoi protesters march on Parliament on Wednesday. The Maori Party condemned the raids as an over-reaction, an affront in particular to Tuhoe. Photo / Getty Images

By: Phil Taylor,

By: **Phil Taylor**
Senior writer, Weekend Herald and New Zealand Herald
phil.taylor@nzherald.co.nz
@PhilHTaylor

KEY POINTS:

On the morning of Monday October 15, police executed a series of search warrants up and down the country that brought "Operation 8" to a head and sparked a debate which has few agreed facts.

It was the first time anti-terrorism legislation had been invoked against domestic targets.

The police, armed with a 156-page affidavit, applied for search warrants and convinced more than one High Court judge that there were good grounds to suspect crimes had been committed under the Terrorism Suppression Act and the Arms Act, and that evidence would be found at the addresses police wished to search.

The Herald's examination of subsequent charges indicate that only two of the 16 people now facing firearms charges were charged in relation to weapons seized in the searches. Charges against Tuhoe activist Tame Iti include illegal possession on October 15 of three rifles, while another man, whose name is suppressed, is charged with illegal possession on that date of a Ruger rifle, 100 rounds of .22 calibre bullets and 130 rounds of .303 ammunition.

Charges under terrorism laws have since been ruled out and it's expected that firearms charges against some of the 16 will be dropped because the case against them relied on evidence collected under the terror laws which is inadmissible in Arms Act cases. If others are eventually found guilty they will probably face a fine.

In the wake of such dramatic action, the public has been served many agendas. Strange bedfellows emerged. Right-wing MP Rodney Hyde and Ross Meurant, the former MP who was deputy-leader of the police "Red Squad" during the 1981 Springbok tour, found themselves agreeing with veteran human rights activist John Minto, a key figure in the campaign against that rugby tour.

Public sentiment was split between those who saw the police as doing its job of investigating, collecting evidence and, if sufficient, bringing it to court, and those for whom it was a massive over-reaction.

Many doubted New Zealand was a likely target of terrorists, although it had been in 1984

(Trades Hall bombing) and 1985 (Rainbow Warrior), each resulting in a death.

Minto, Meurant and Hyde agreed that laws dealing with weapons and conspiracy crimes were sufficient and that introducing new terrorism laws would set a dangerous precedent. Meurant, in a quote that could easily have come from his old adversary, said: "Once this beast gets it foot in the door it may turn on you because it doesn't like who you vote for or what you say about the Prime Minister."

The Maori Party condemned the raids as an over-reaction, an affront in particular to Tuhoe whom Turiana Turia claimed had been branded as terrorists, and as a setback for race relations.

Turia's co-leader Pita Sharples suggested evidence collected under the Terrorism Suppression Act should have been destroyed when laying charges under the act was dropped. And he wants answers from police minister Annette King after secret police documents were leaked to media. "Those who are ... committing criminal acts themselves and are demonstrating contempt for the rule of law."

The alleged defendants claim they are political protesters whose legitimate activism is being trampled under the label of terrorism.

Minto entered the fray to draw attention to the potential for terror laws to impinge on the freedom to dissent in a civil society.

He notes that terror laws weren't necessary to deal with the Rainbow Warrior terrorists, suggests the mere existence of the Terrorism Suppression Act may prompt its use and worries that apparent inadequacies in this instance may prompt an ill-conceived reaction to strengthen the law.

A year after the Terrorism Suppression Act was passed in 2002, amendments were made removing safeguards enabling New Zealanders to support an overseas group (such as the ANC) that might have been termed a terrorist organisation, so long as that support was aimed at promoting human rights and democratic government.

Also removed was the authority of the High Court to review cases in which the Prime Minister had designated groups as terrorists. "The Prime Minister is now judge and jury," says Minto. "That is a concern because the United States and the SIS are just a phone call away. Ahmed Zaoui is a classic example."

Solicitor-General David Collins QC said the problem was with the law rather than the evidence.

Not surprisingly, defence lawyers were unhappy about the inherent prejudice to clients facing firearms charges.

One of those lawyers, Jeremy Bioletti, believes the Solicitor-General overstepped the mark by commenting that police evidence showed the accused involved in "very disturbing" activities. Bioletti also wonders, if the law was as flawed as the Solicitor-General indicated, why judges granted the police the search warrants.

The Solicitor-General's comments prompted the Labour Party to pass it to the Law Commission to review the law, while the National Party had a dig at "weak" legislation produced under their opponents' watch.

The Auckland Council for Civil Liberties says civil liberties are being trampled in a democratic country in where activism played an important role in women's suffrage, workers' rights, apartheid and nuclear weapons policies.

The police say the evidence collected justified their actions and might claim vindication in the comments of the Solicitor-General.

How, then, can the public cut through the noise to find some facts?

Alleging crimes under the Terrorist Suppression Act in search warrants allowed police to

scoop up a far wider range of evidence than had the warrants only invoked the Arms Act. Such items as camouflage clothing, computers and diaries that might be evidence of an association with a terrorist group can be seized but are irrelevant to Arms Act charges where the issue is whether the person illegally had possession of a firearm.

Evidence of possible terrorist links would be ruled irrelevant and unfairly prejudicial.

Police evidence could emerge in a civil trial - for example, challenging the legality of search warrants or the police road block near Ruatoki on the morning of the raids - but may be subject to suppression or non-disclosure orders.

The police could - after the Arms Act charges are dealt with - decide to make the evidence they collected public. Privacy issues could be mitigated by deleting names and any defamation proceedings could be answered with a defence of truth and the evidence tested in court. Or it could be leaked, as has happened.

The Dominion, The Press and the *Waikato Times*, last week published information from police affidavits containing evidence from communications intercepted by the police which was covered by suppression orders.

As a consequence many of the lawyers representing those charged have launched contempt proceedings against Fairfax Media, publisher of those newspapers. The Solicitor-General is deciding whether there is a case to answer.

The lawyers are also planning action against *TV3* and APN, publisher of *The New Zealand Herald* and the *Herald On Sunday*.

Fairfax's newspapers said in editorials that they were aware there could be huge repercussions, but they believed they were acting within the law and in the public interest.

Canterbury University associate law professor Ursula Cheer told Radio New Zealand the newspapers had no clear public interest defence and the Solicitor-General couldn't ignore the breach.

The defence lawyers says they are fighting a "sensationalist groundswell" that is destroying their clients' chances of a fair trial. But at the same time the supporters of those caught up in the operation are seeking to influence opinion by saying their activities are harmless.

Bioletti says at issue was whether we are all equal under the law, or whether there are instances where publication is more important than the court system.

"I think it is a fairly cynical move ... to sell newspapers," Bioletti says. "They have obviously looked at it from a commercial point of view and felt they can make more money by publishing it and I think that just adds to the level of contempt."

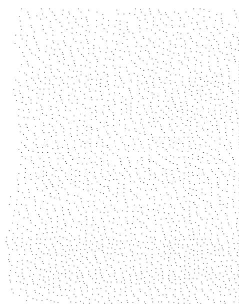
The penalty for publishing intercepted communications is a $500 fine but those found guilty of contempt of court could face a far greater fine or a term of imprisonment.

The Prime Minister said the *Dominion Post* had in effect taken the law into its own hands by publishing, adding that she knew that people wanted to know the details but in her position she could not advise people to break the law.

Auckland University associate law professor Scott Optican, a specialist in criminal procedure, suggests the only proper course is for a commission of inquiry to be sanctioned to examine the facts of the case, the nature of the investigation and relevant laws.

"This case now is Moby Dick's white whale," he says. "Everybody gets to use it for their own purposes and everybody gets to see in it what they want."

Trending on NZ Herald

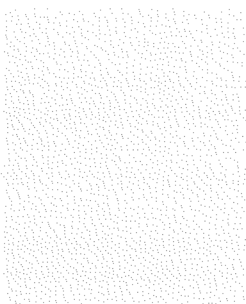


NEW ZEALAND

Exclusive: Auckland motorists to be stung with fuel tax

26 Oct, 2017 5:00am
5 minutes to read

Labour says it will make an immediate start on building a light tram system.

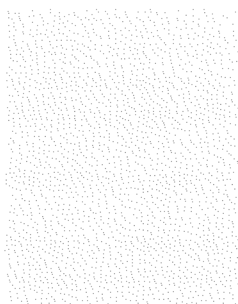


NEW ZEALAND

Herald readers slam 'Twyford Tax'

26 Oct, 2017 7:50am
5 minutes to read

Motorists are flooding the Herald with complaints against the proposed petrol tax.



BUSINESS

Why Dreamworld will 'never recover'

26 Oct, 2017 7:39am
8 minutes to read

A year on from Dreamworld's disaster, grieving families still don't know what happened.