

The spectre of censorship under the International Terrorism (Emergency Powers) Act 1987

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Section 14 of the International Terrorism (Emergency Powers) Act 1987 authorises the imposition of media censorship by the Prime Minister during and after an "international terrorist emergency". Failure to comply with a Prime Ministerial censorship notice may result in fines and imprisonment for those media personnel responsible. The full implications of the Prime Minister's censorship powers depend on the interpretation of section 14. In this article the writer examines the Act and section 14 in particular. The writer argues that the Act fails in its attempt to impose a realistic and workable concept of censorship on the media during a terrorist emergency. Instead New Zealand is left with a censorship regime that is incomplete, lacking in certainty, unworkable and posing a real threat to the freedom of the press and the individual. Whilst accepting the need for some form of censorship during a terrorist emergency, the writer advocates a clarification of the form censorship should take under the Act and the inclusion of safeguards to prevent potential abuses.

I. INTRODUCTION

This article is about the International Terrorism (Emergency Powers) Act 1987¹ and the implications for censorship under the Act.

II. SCENARIO

At approximately 11.50 p.m. on Wednesday 10 July 1985 the Greenpeace flagship Rainbow Warrior lay at her berth in Auckland Harbour. Suddenly two explosions rocked the vessel and she sank to the bottom in less than four minutes.² The bombing was an

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1 Called the "Terrorism Act" in this article.

2 *The Evening Post*, Wellington, New Zealand, 11 July 1985, pp.1, 22; 12 July 1985, pp.1, 6; and Sawyer, "Rainbow Warrior: Nuclear War in the Pacific" (1986) 8 *Third World Quarterly* 1325. Arguably the first instance of international terrorism in New Zealand. The Prime Minister was in no doubt that this affair fell within that category: NZ Parliamentary Debates Vol. 477, 1987: 6733. He was supported in this by the Minister of Justice at 6726. The terrorists' intention

attack by agents of the French Direction Générale de la Sécurité Extérieure (DGSE), the French equivalent of the American CIA.³ Fernando Pereira, a crewman on board the ship, was trapped in his cabin and drowned. Two of these French agents were caught and charged with murdering Pereira. Months later they pleaded guilty to the lesser charge of manslaughter and on conviction were sentenced to a term of imprisonment.⁴ However, the agents had succeeded in their mission to stop the Rainbow Warrior sailing to the French nuclear testing site at Mururoa Atoll.⁵

Picture for a moment the following scenario, arising in the aftermath of that affair. A courier van approaches the official residence of the Governor-General in Wellington. Under the pretext of making an urgent delivery to the Governor-General's press secretary, the van is allowed to proceed past the police guard at the gate and into the grounds. The female driver parks directly outside the residence itself. Three masked and armed companions alight from their place of concealment in the rear of the van. Together with the driver they storm inside, taking the Governor-General, his family and several staff members hostage. During the ensuing commotion a staff member is able to escape and alert the police. They react by throwing a cordon around the entire area and stop all pedestrian and vehicular traffic. The Commissioner of Police is notified of the situation

presumably being to deter the Greenpeace organisation from sailing to Mururoa Atoll and protesting against French nuclear testing.

- 3 Idem. The agents responsible were members of a highly-trained underwater saboteurs unit. The resultant political storm in France led to the resignation of the French Defence Minister, Charles Hernu.
- 4 It was believed that these two convicted "terrorists" were members of a much larger group involved in the bombing. The captured agents were identified as Alain Mafart and Dominique Prieur. They were sentenced to ten years imprisonment, but were released in July 1986 to the custody of the French on Hao atoll in French Polynesia. This occurred after adjudication by the United Nations Secretary-General Javier Perez de Cuellar: *The Dominion*, Wellington, New Zealand, 21 December 1987, p.1; 24 December 1987, p.1.
- 5 The French politician responsible for ordering the bombing, Socialist Defence Minister Charles Hernu, was reported as saying that it was a legitimate reaction to Greenpeace's attack on France's nuclear policy: *The Dominion*, Wellington, New Zealand, 24 December 1987, p.1.

and the police armed offenders unit is summoned to the scene. The police anti-terrorist squad⁶ and specialist army units are placed on standby.⁷

The terrorists free a staff member to carry their demands for the release of the two imprisoned French agents. Immediately the Prime Minister is informed of these facts by the Commissioner and of his belief that an "international terrorist emergency" (I.T.E.)⁸ is occurring.⁹ After a meeting with two other members of his Cabinet, the Prime Minister issues a written declaration that an I.T.E. exists and authorises the police to exercise emergency powers.¹⁰ Reporters, alerted to the drama through the monitoring of police radio, arrive on the scene simultaneously with the first wave of police personnel. Live radio broadcasts are already in progress, before the main contingent of police flood the area.¹¹ Normal television viewing is interrupted, as television crews commence live coverage of the siege.

- 6 There are six police regions and twenty-seven districts in New Zealand, each district has an armed offenders squad. The armed offenders squad throughout N.Z. comprises approximately 178 serving members involved in normal duties, but subject to callout at any time. Thirty two selected members from armed offenders squads throughout New Zealand form one national unit called the anti-terrorist squad. Like the armed offenders they are not in a permanent status of readiness, but are subject to callout. There are sufficient members forming an anti-terrorist section in each of the main centres of Auckland, Wellington and Christchurch. Refer "Report of the N.Z. Police for the year ended 31 March 1987" pp. 11, 16; and for year ended 31 March 1986. Similar reports in N.Z. Appendix to the Journals of the House of Representatives Vols. 5, 1978: 17,18; 3, 1980: 14,15; 6, 1982: 14,15; 5, 1983: 13,14; 8, 1984: 8.
- 7 The Defence Amendment Act 1987 amended the Defence Act 1971 at the same time as the International Terrorism (Emergency Powers) Act became law. It enables the Prime Minister or the Deputy Prime Minister or if they are unavailable the next highest ranked Minister of the Crown, upon request, to authorise the Armed Forces to assist the police in dealing with any "emergency". The term "emergency" is undefined, but is intended to encompass an "international terrorist emergency" and more. The request must come from the Commissioner of Police in the first instance. The House of Representatives must be informed accordingly.
- 8 As defined in s.2 of the International Terrorism (Emergency Powers) Act.
- 9 Section 5. International Terrorism (Emergency Powers) Act 1987
- 10 Section 6. Ibid.
- 11 Reporters were broadcasting live from the scene of the Rainbow Warrior bombing within nine minutes of the explosion. This information was contained in oral submissions to the Justice and Law Reform Select Committee, on Tuesday 5 May 1987 by Mr Rick Carlyon, Controller News and Current Affairs, Television New Zealand. The writer was present at these hearings. It is of interest to note that the President of the Court of Appeal in *Her Majesty's Attorney General in and for the United Kingdom v. Wellington Newspapers Ltd.* (1987), Unreported, CA 203/87, interim judgment 21 December 1987, recognised the speed with which television and radio coverage can be obtained, as rendering injunctive remedies ineffective. Cooke P. intimates (in that case) that there might be a need for further remedies, namely the strengthening of the criminal law. The ineffectiveness of injunctive relief against newspapers in an international terrorist situation might be a reason behind the enactment of the Act.

The scene is chaotic, littered with media representatives, police personnel, emergency vehicles and curious onlookers. Newspaper reporters and photographers are busy interviewing witnesses and recording their stories. More industrious reporters have already established telephone links with the occupants of Government House. Others have secreted themselves inside the grounds only metres away from the residence. Still more have established themselves on top of local vantage points, with expansive views of the area. A helicopter, hired by a local television crew, hovers over Government House filming the drama as it unfolds.

A message that the Prime Minister has signed an I.T.E. declaration notice is conveyed to police personnel. They react immediately. Everybody inside buildings and houses adjoining Government House is evacuated.¹² Vehicles that obstruct police operations are broken into and pushed aside.¹³ All further movement inside the cordon is strictly controlled.¹⁴ Passing buses and other heavy vehicles are stopped and seized for use in roadblocks.¹⁵

Police personnel approach radio and television journalists and direct them to cease all live reporting.¹⁶ They then begin to seize reporters' notebooks, camera equipment and vehicles.¹⁷ Reporters are told that any further broadcasting, or attempts to publish reports on the situation, are banned until further notice.¹⁸ Several reporters protest the seizure of their equipment. They are arrested and taken away.¹⁹ The remaining media are threatened with a similar fate unless they leave the area. A local radio station that has persisted in broadcasting news reports on the emergency, suddenly goes off the air as the police raid their premises.²⁰ The pilot of the helicopter is directed to land and it is seized by the police, along with the television equipment it contains.²¹ The only record

12 International Terrorism (Emergency Powers) Act 1987, s.10(2)(a) and (b).

13 Section 10(2)(d).

14 Section 10(2)(c).

15 Section 10(2)(f).

16 This was part of the emergency powers initially considered in the International (Emergency Powers) Bill as introduced and as reported back from the Justice and Law Reform Committee. It is no longer an express feature of the Act.

17 Pursuant to s.10(2)(f). This provision permits the requisitioning of any land, building, vehicle, boat, apparatus, implement, or equipment - within the area of the emergency. Reporters' notebooks etc. could come under "equipment" for the purposes of this section.

18 This was a feature of the Bill as introduced. The police were to be empowered to prohibit or restrict "the broadcasting, by radio or television or otherwise, of any report or account of any measure that is being taken, or has been taken, or is about to be taken, to deal with the emergency".

19 There are no special powers of arrest under the Act. The police would be exercising their powers of arrest under s.315 of the Crimes Act 1961, for offences punishable by imprisonment. Under s.21 of the Terrorism Act the failure to obey a police direction is an offence punishable by imprisonment.

20 Pursuant to s.10(2)(f), the radio station being construed by the police as being "within the area in which the emergency is occurring".

21 Pursuant to s.10(2)(g) and (f). Section 10(2)(g) permits the police to "totally or partially prohibit or restrict land, air, or water traffic within the area in which the emergency is occurring".

of these seizures is a written notice handed to each person stating that their property has been requisitioned and will remain under the control of the police.²²

While this is happening negotiations between the terrorists and the police have commenced in earnest. The police inform them that in line with their demands the French prisoners have been taken from their respective institutions and are en route to Wellington. A journalist discovers this during a telephone interview with the terrorists, but on checking with the penal authorities finds that the prisoners have remained in their cells.

This information is broadcast over local radio and is overheard by the terrorists. They become agitated at the treachery of the police and threaten the immediate execution of a hostage. Further media attempts to telephone the terrorists fail, as the police begin monitoring and disconnecting such calls.²³

Members of the overseas press corps begin arriving in New Zealand to cover the crisis. The police prevent them making simultaneous television broadcasts,²⁴ but find it physically impossible to stop newspaper and radio journalists filing live reports by telephone.²⁵ By that evening, Australian newspapers with feature articles on the emergency become available on New Zealand streets. While overseas countries receive a glut of information, New Zealanders face a twenty-one day domestic news blackout.²⁶ All media coverage of the drama is banned. No information is forthcoming from the authorities other than a brief Prime Ministerial statement that an I.T.E. has been declared.²⁷ This statement is delivered in a radio broadcast from the House of Representatives.²⁸

22 Pursuant to s.11. The police exercising requisitioning powers are required to give the owner or person in charge of the requisitioned property a written statement specifying that property and the person under whose control it is to be placed.

23 Section 10(3) and (4).

24 *Supra* n.18.

25 A feature of the Bill as introduced would have permitted the police to prohibit or restrict the broadcasting on radio or television, or the publication "in any newspaper or other document, of any report or account of any measure that is being taken, or has been taken, or is about to be taken, to deal with the emergency". This power would have been ineffective against reporters for articles intended for publication overseas.

26 Pursuant to s.6 of the Act, the emergency powers can remain effective for an initial period of seven days, but can be extended under s.7, for a period of up to fourteen days maximum, thus totalling twenty-one days in all.

27 Pursuant to s.6(5).

28 Pursuant to s.7 of the Act, the Minister signing the declaration of the emergency must inform the House of Representatives "forthwith" of this fact. Broadcasts from the House are left unaffected by the Act under s.14(5). It provides that: "Nothing in this section shall restrict the broadcasting or reporting of the proceedings of the House of Representatives." As this subsection is specific in its application to s.14 it might be possible that such broadcasts will be affected by other sections in the Act. Broadcasting from the House is permitted under Standing Order 52, "Standing Orders of the House of Representatives" (1985), Part IX. It provides: "The proceedings of the House shall be broadcast on radio during all hours of sitting".

The siege drags on for a further ten days until the Special Air Services (SAS) anti-terrorist unit storms the building and releases the hostages. The four terrorists are killed in this assault. Under a Prime Ministerial directive, the censorship ban is continued. Nothing apart from very general information is communicated to the public. All reports on specialist personnel, equipment, and techniques used in resolving the matter, are banned.²⁹ The media are advised that the ban will remain in effect for an initial period of one year, followed by an immediate extension for a further period of five years.³⁰ In the meantime, overseas publications flood the domestic market replete with these prohibited details.

Reporters arrested for defying police directives during the crisis, later appear in court. They are convicted, fined the maximum of \$2000.00 and imprisoned for three months.³¹ Radio stations that defied the news ban, receive maximum fines of \$20,000.00.³² Their editorial staff are also convicted, fined \$2000.00 and imprisoned for three months.³³

Three years after the incident, a journalist attempting to write an article on terrorist activity in New Zealand is approached by the police and threatened with prosecution.³⁴ He is told that publication will contravene the Prime Ministerial ban still in force. His

Broadcasting is not required but is permitted at the discretion of the House. Standing Orders could be suspended for a time to prevent a broadcast being made. This would occur under Standing Order 412. This point was raised by the B.C.N.Z. Chairman Mr H.B. Rennie at the Select Committee hearings.

29 Section 14.

30 Section 15(3) and (4).

31 Section 21(1)(a) provides that:

...every person commits an offence who, - (a) without lawful excuse, fails or refuses to comply with any direction, requirement, prohibition, or restriction given to or imposed upon that person pursuant to s.10 of this Act -

(i) by any member of the police; or

(ii) by any member of the Armed Forces

32 Sections 21(1)(a)(i) and 21(2)(b).

33 Sections 21(1)(a)(i) and 21(2)(a).

34 For an offence under s.21(1)(b). This section provides:

(1) ... every person commits an offence who, -

(a)

(b) Contrary to any notice issued by the Prime Minister under section 14 of this Act, publishes or causes or allows to be published in a newspaper or other document, or broadcasts or causes or allows to be broadcast by radio or television or otherwise, -

(i) The identity of any person involved in dealing with an emergency in respect of which authority to exercise emergency powers has been given under this Act, or any other information or material (including a photograph) which would be likely to identify any person involved in dealing with any such emergency; or

(ii) Any information or material (including a photograph) of any equipment or techniques lawfully used to deal with any such emergency.

publisher is warned that if he assists in publication he will be charged.³⁵ Faced with this threatened action, the article is never completed.

It was the prospect of these provisions being enacted and used to censor the press that caused widespread opposition to the International Terrorism (Emergency Powers) Bill.³⁶ The media described the Bill as containing "severe and unwarranted restrictions on the freedom of the press in a democratic society"³⁷, as "heavy-handed"³⁸, "repressive" and "draconian"³⁹, as well as being "vague"⁴⁰ and an "over-reaction to a distant threat".⁴¹ The Chairman of the New Zealand Broadcasting Corporation criticised the Bill for adopting a confrontational and dictatorial approach, rather than a cooperative and consultative one.⁴²

As a result of combined media pressure and representations to Government, the more controversial censorship provisions were removed from the statute. The Prime Minister said that undertakings received from both broadcasters and newspapers⁴³ were responsible. The Minister of Justice described the Broadcasting Corporation,⁴⁴ as reconfirming in writing their "commitment for providing responsible broadcasting coverage of such terrorist matters".⁴⁵

35 Idem.

36 Called the Terrorism Bill in this article.

37 Contained in the combined media submissions to the Select Committee on Justice and Law Reform on 5 May 1987.

38 *The Evening Post*, Wellington, New Zealand, 7 February 1987 editorial.

39 *The Auckland Star*, Auckland, New Zealand, 11 March 1987, p.A8.

40 *The Dominion*, Wellington, New Zealand, 5 February 1987 editorial.

41 *The Southland Times*, Invercargill, New Zealand, 9 February 1987 editorial.

42 Mr H.B. Rennie, Chairman, B.C.N.Z., in his oral submissions to the Justice and Law Reform Committee, on behalf of the board of the B.C.N.Z.

43 *The Dominion*, Wellington, New Zealand, 7 July 1987, p.2.

44 *The Evening Post*, Wellington, New Zealand, 17 July 1987, p.10. This statement also included a commitment to adopt the same standards in the reporting of "internal" domestic matters of a terrorist nature, where they might not be classifiable as I.T.E.'s. This would presumably cover criminal kidnappings without political overtones, e.g. the Gloria Kong kidnapping in Oamaru, on 29 June 1983, where a young girl aged fourteen years was kidnapped for ransom. The media agreed to a voluntary thirty-six hour ban on all news of the kidnap being released, in the interests of saving her life. *The Evening Post*, Wellington, New Zealand, 1 July 1983, p.1 and 2 July 1983 editorial, at p.6.

45 The Broadcasting Corporation is responsible for the maintenance of programme standards in the broadcasting medium, and in particular must have regard to: 1. the observance of standards of good taste and decency; 2. the accurate and impartial gathering and presentation of news, according to recognised standards of objective journalism; 3. the principle that when controversial issues of public importance are discussed, reasonable efforts are made to present significant points of view, either in the same programme or in other programmes within the period of current interest; 4. the maintenance of law and order; and 5. the privacy of the individual. Broadcasting Act 1976, s.24(1)(c),(d),(e),(f),(g). Similar responsibilities reside with private broadcasters under s.95(1)(c),(d),(e),(f),(g).

However the spectre of compulsory censorship continues to dominate the Terrorism Act. Section 14 still permits compulsory censorship by Prime Ministerial directive and section 17 contains an explicit warning to the media to monitor and control their own standards of reporting. It provides that:⁴⁶

The Commissioner of Police shall include in every annual report prepared by the Commissioner for the purposes of section 65 of the Police Act 1958 information on the operation of any agreement between the Police and representatives of the news media under which guidelines are established for the reporting, by the news media, of terrorist incidents.

In essence, the Commissioner of Police is required to comment on the media's adherence to voluntary censorship guidelines during a terrorist incident. An adverse report to Parliament on such matters would increase the prospect of the more draconian measures for compulsory censorship being reintroduced.⁴⁷

It is submitted that the New Zealand press has failed in its efforts to escape the net of police censorship. Instead it is now entangled in a far more complicated web of both statutory censorship and de-facto police censorship. The media failed to recognise the threat posed to their freedoms by section 14 of the Terrorism Act. Their arguments against the deleted provisions were just as applicable to that section. However, the content of section 14 was never directly assailed by the press. This article examines the Terrorism Act as it affects the media, with particular emphasis on censorship under section 14 and in the light of media submissions to the Justice and Law Reform Select Committee.

III. BACKGROUND

A. Aims of the Terrorism Act

The enactment of this legislation was set against a background where the Government had two objectives, namely the repeal of the Public Safety Conservation Act 1932 and the desire to remedy the vulnerability of New Zealand to terrorist attack.

1. Repeal of the Public Safety Conservation Act 1932

The Public Safety Conservation Act 1932⁴⁸ was repealed on 1 September 1987 at the same time that the Terrorism Act came into force.⁴⁹

46 Section 17(2).

47 In fact pressure for the reintroduction of blanket censorship would rise even through the media's mishandling of an internal, non-terrorist incident, particularly if it could be shown that their activities resulted in the loss of life.

48 Called the P.S.C. Act in this article.

49 By the Public Safety Conservation Act Repeal Act 1987.

Historically the P.S.C. Act has served as a backstop measure for the handling of a variety of emergencies.⁵⁰ Once an emergency was declared under that Act, the Executive had unrestricted powers to promulgate emergency regulations.⁵¹ These powers were considered so broad as to lead the Minister of Justice, the Rt. Hon. Geoffrey Palmer, M.P., to describe the Act as "potentially the most dangerous and repressive piece of legislation on the New Zealand statute book".⁵² He said it had led to regulations of "the most oppressive character imaginable".⁵³

The Prime Minister, the Rt. Hon. David Lange, M.P., declared that the Terrorism Act represented his Government's philosophy of tailoring legislation to address particular problems, rather than leave a statute like the P.S.C. Act in place.⁵⁴

2. *New Zealand's vulnerability to terrorist attack*

Although intent on the repeal of the P.S.C. Act, the Government was not prepared to leave a "power vacuum".⁵⁵ The Prime Minister said that "New Zealand must have,

50 The Act was passed immediately after serious riots in Auckland in April 1932. Since its inception it has been used only twice to promulgate emergency regulations: (1) on 1 September 1939 when war was about to break out; and (2) during the 1951 Waterfront Strike situation. However the use of powers under the Act was threatened in 1976 during an electricity supply dispute and again in 1982 when national petrol supplies were endangered by a dispute at the Marsden Point oil refinery: E.D. Deane "Public Safety Conservation Act: Repeal and the Armed Forces" [1975] N.Z.L.J. 266.

51 Section 2 provides as follows:

If at any time it appears to the Governor-General that any action has been taken or is immediately threatened by any persons or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light or with the means of locomotion, to deprive the community or any substantial portion of the community of the essentials of life, or if at any time it appears to the Governor-General that any circumstances exist, or are likely to come into existence, whereby the public safety or public order is or is likely to be imperilled and a state of national emergency or of civil defence emergency has not been declared under the provisions of the Civil Defence Act 1962 in respect of those circumstances, the Governor-General may, by Proclamation approved in Executive Council ... declare that a state of emergency exists throughout New Zealand ...

Section 3 provides the regulation making powers.

52 N.Z. Parliamentary Debates Vol.477, 1987: 6719. A statement made by the Prime Minister, the Rt. Hon. David Lange, M.P., during the Bill's introduction but attributed by him to the Deputy Prime Minister, the Rt. Hon. Geoffrey Palmer, M.P.

53 Ibid. 6725. A statement made by the Rt. Hon. Geoffrey Palmer, Minister of Justice, in advertising to regulations promulgated during the 1951 waterfront strike.

54 Ibid. 6719.

55 Ibid. 6719. Statement made by the Prime Minister, on the introduction of the Terrorism Bill to the House of Representatives. The Public Safety Conservation Act

and must be seen to have, the powers necessary to protect itself against terrorist threats and violence".⁵⁶

On introducing the Terrorism Bill, the Prime Minister outlined five reasons why censorship was necessary to reduce New Zealand's vulnerability to terrorist attack. Firstly, to deny terrorists the "publicity" they crave, as it provides the stimulus and justification for their actions.⁵⁷ Secondly, to deny terrorists access to basic intelligence derived from media sources, as live coverage of such incidents only served to alert them to police counter-terrorist operations and unnecessarily endangered life.⁵⁸ Thirdly, to prevent terrorists from "exploiting" the news media and hindering negotiations, revealing a need to control all communications to and from any building or place where the hostages might be held.⁵⁹ Fourthly, to protect personnel involved from becoming future terrorist targets, particularly through their identification by the media. Finally, there was a need to conceal the techniques and specialist equipment utilised, in order to protect their efficient use in the future.⁶⁰

The Prime Minister also alluded to an overseas review conducted after a siege outside the Libyan People's Bureau, St James Square, London, on Wednesday 18 April 1984. This review appears to have influenced the form of censorship promoted by the Terrorism Act.⁶¹ It dealt with the type of control needed over the publication, or

1932 was repealed when this Act became law, by virtue of the Public Safety Conservation Act Repeal Act 1987.

56 Ibid. 6720.

57 Idem. This echoes British Prime Minister Margaret Thatcher's sentiments, reported in a speech she made to the American Bar Association in 1985. She called on the media to deny terrorists "the oxygen of publicity". M. Rudin Edinburgh International Television Festival "Terrorism - Manipulating the News" (1985) 6 J. of Media Law and Practice 295.

58 N.Z. Parliamentary Debates Vol. 477, 1987: 6721.

59 Idem. Cf. Prime Minister Thatcher's belief that coverage of terrorism allows terrorists to increase their effectiveness through the manipulation of the media. The contrary view was expressed by Paul Friedman, Director of ABC News (European, Middle Eastern & African Coverage), in commenting on a June 1985 hijacking by Amal terrorists, of TWA Flight 847. In his view the media speeded up the release of hostages, by showing them to be real human beings. He claimed terrorists were in no way helped by this, instead their violence was exposed. He did not believe that terrorism necessarily depends or thrives on the media. To support this he gave the example of a terrorist incident occurring in the U.S.S.R., where media coverage could not be expected, but terrorism might occur. See Rudin, *supra* n.57.

60 N.Z. Parliamentary Debates Vol. 477, 1987: 6721.

61 Idem. 6721. This information comes from a statement made by the Prime Minister on the Terrorism Bill's introduction. The review has not been sighted by the writer but could be either a discussion document produced by the Home Office, entitled *Organisational Arrangements for Dealing with Terrorists, Sieges, Hostage-taking and Hijacking*, which details the control the security forces should have over the media and the co-operation expected from them; or a Ministry of Defence White Paper on *The Protection of Military Information* published April 1985. The latter report makes it clear that journalists must take a subservient role to the security forces in "limited conflicts", as well as in general war. See Rudin, *supra* n.57.

broadcasting of information during a terrorist incident. The siege arose after a gunman inside the Libyan embassy fired on demonstrators outside, killing a policewoman. The persons responsible barricaded themselves inside the embassy and refused to surrender to the police. A cordon was maintained around the Bureau for ten days until the siege finally ended on 28 April 1984. The entire saga was broadcast live on television and was viewed by the terrorists⁶² inside the Bureau. This resulted in police deployments and counter-terrorist measures being revealed to the occupants of the Bureau as they occurred. Newspapers also published articles describing police techniques and specialist equipment employed. The police complained of being frustrated in their negotiations with the terrorists, because of journalists who conducted telephone interviews with the occupants of the Bureau.⁶³

Further stimulus for Government action came with the bombing of the *Rainbow Warrior* in July 1985.⁶⁴ It served as a sharp reminder to New Zealanders that they were not immune from the realities of international terrorism.⁶⁵ The media were very active in their reporting of that affair, with reporters broadcasting live from the scene within nine minutes of the explosion.⁶⁶ Media speculation about the police investigation was blamed for alerting one suspect and allowing her to make her escape.

It is apparent that our geographical size and isolation are no longer sufficient deterrents to terrorists, and that they may even provide an attraction. In fact New Zealand faces an increasing danger of becoming a target for terrorism because of her stance on several controversial matters: the opposition to French nuclear testing at

- 62 The Prevention of Terrorism (Temporary Provisions) Act 1984 (U.K.), as introduced and enacted following Earl Jellicoe's review of the Prevention of Terrorism (Temporary Provisions) Act 1976 (U.K.) (Cmnd. 8803) defines "terrorism" as "the use of violence for political ends, and includes any use of violence for the purpose of putting the public or any section of the public in fear". This was a definition used in both the 1976 and 1974 enactments of the same name. The gunman or gunmen inside the Libyan People's Bureau would therefore be classified as being involved in terrorism and hence terrorists within this definition. The U.K. enactment currently in force primarily is concerned with the detection, prevention, arrest and detention of terrorists. Censorship is not a central feature of the 1984 Act or its predecessors. See C. Walker "Prevention of Terrorism (Temporary Provisions) Act 1984" (1984) 47 M.L.R. 704; and A. Samuels "Terrorism and English Law" (1980) 10 Kingston L.R. 1; and "The Legal Response to Terrorism: The Prevention of Terrorism (Temporary Provisions) Act 1984" [1984] Public Law 365.
- 63 *The Times*, London, England, 18 April 1984, p.1, 2 and 3; 19 April 1984, p.1, 2; 21 April 1984, p.1; 23 April 1984, p.2; 28 April 1984, p.1.
- 64 *Supra* n.2. The Prime Minister was in no doubt that this affair fell within the category of an I.T.E. N.Z. Parliamentary Debates Vol.477, 1987: 6733. He was supported in this by the Minister of Justice at p.6726. In terms of the definition of an I.T.E., the terrorists' intention presumably was to deter the Greenpeace organisation, (i.e. a "group of persons" existing both inside and outside New Zealand), from sailing to Mururoa Atoll and protesting against French nuclear testing (i.e. "furthering outside New Zealand a political aim").
- 65 Albeit terrorism of the government sponsored variety, in that the "terrorists" responsible were official agents of the French Government.
- 66 *Supra* n.11.

Mururoa, the support for the Kanak Independence movement in New Caledonia, the withdrawal from ANZUS and the recent handling of the constitutional crisis in Fiji. New Zealanders can only speculate about where the aggression may come from.⁶⁷

B. Media Concerns

In their submissions to the Select Committee, the media comprising radio, television and newspapers, were united in their opposition to censorship under the Terrorism Bill.⁶⁸ They made strong pleas for the retention of a voluntary scheme of self-censorship, negotiated with the police in 1984,⁶⁹ saying that the media had already demonstrated a willingness to accept restrictions on news coverage. They said this was evidenced on two grounds: firstly, by their acceptance of the self-restraint scheme and secondly in practical terms. They submitted that the "Gloria Kong kidnapping" was one instance where they had shown a practical willingness to act responsibly. This kidnapping occurred on 29 June 1983 and only ended after 14 year old Gloria escaped from her captors on 1 July 1983. The media maintained a voluntary ban on all news releases throughout her thirty-six hour ordeal. It was only lifted when her safety was assured.⁷⁰

The media expressed four main concerns about compulsory censorship. These were that:

- (1) It was undemocratic and infringed the freedom of the press in their role of "satisfying the public interest"; and
- (2) It was unworkable in that it would fail to prevent overseas media coverage and it would fail to prevent domestic media coverage during the initial stages of an I.T.E.⁷¹; and

67 Editorial, *The Timaru Herald*, Timaru, New Zealand, 10 Feb. 1987, outlines some of this background to the Act.

68 In fact they went so far as to say it was the first time that the media had taken a united stance on proposed legislation.

69 See Appendix A, *infra*. The voluntary guidelines operating between the police and the media are founded on three guiding principles. Firstly, that effective police-media relations are necessary in order to save life. Secondly, that reporters' actions can have quite dramatic effects on terrorist behaviour. Thirdly, that final responsibility for what is reported remains with the editorial staff concerned, whilst at the same time recognition is given to police operational difficulties.

70 Which was at approximately 9.00 a.m. on 1 July 1983. *The Evening Post*, Wellington, New Zealand, at pp. 1, 2.

71 A reality acknowledged in a recent unreported New Zealand Court of Appeal decision *Her Majesty's Attorney General in and for the United Kingdom v. Wellington Newspapers Ltd*, *supra* n.11, 7-8. This interim judgment dealt with an attempt by the U.K. government to prevent the publication of the book *Spycatcher*, by Peter Wright a former agent of MI5. The book had been serialised in *The Weekend Australian* and *The Australian*, the latter regularly on sale in New Zealand. Cooke P. stated that the dominate factor in refusing an injunction was that the book had been

- (3) It would lead to the operation of "blanket" censorship, with its accompanying affects of rumour, suspicion and speculation, causing unnecessary concern within the community; and
- (4) It would lead to the forced closure of radio and television stations by the police, in order to prevent coverage.

Whilst acknowledging that certain situations would arise where restraint was required, the media did not accept that restrictions should be imposed by legislation. They saw restraint as necessary in only three circumstances: where lives were at risk, the national interest was threatened, or where sensitive police operations might be jeopardised.⁷²

The Select Committee was prepared to accept media undertakings to act responsibly, but was concerned with the possible actions of the "rogue" reporter or broadcaster. In addressing that argument the media representatives submitted that "rogue" reporters acting in breach of their employment contract could be dismissed. The Chairman of the Broadcasting Corporation submitted that any television or radio station acting irresponsibly would have its operating warrant revoked.⁷³

IV. A PRELIMINARY EXAMINATION OF THE ACT

This article is primarily interested in the censorship provisions of the Act. However censorship can only occur once an I.T.E. has been declared. This necessitates a preliminary examination of some other sections of the Act.

published worldwide and was effectively in the international public domain. He considered the spread of its contents as an "irreversible process" and said: "In our opinion, the material in *Spycatcher* is accessible so nearly universally, and so readily to New Zealanders, that to try to stop further dissemination in New Zealand would be incongruous and not far short of absurd", (at 12). It is submitted that similar reasoning would apply to attempts to censor newspapers in New Zealand during and after a terrorist emergency.

⁷² Combined media submissions to the Select Committee on Justice and Law Reform.

⁷³ Broadcasting Act 1976, s. 83(4) contemplates the revocation or suspension of a warrant for such period as the Broadcasting Tribunal sees fit, or a reduction in the term of the warrant (which normally lasts for a five year period, see s.72) or a monetary penalty not exceeding \$500 where a holder fails to comply with the conditions of the warrant (as specified s.71A). However before this can be done the section envisages that the warrant holder be warned in writing to comply with the warrant conditions. It is only after a continuing failure to comply with the warrant that sanctions may be imposed. The warrants concerned relate to radio and television (s.71).

A. *The Definition of an I.T.E.*

The definition of an "international terrorist emergency" provides the key to the operation of the emergency powers under the Act. Censorship under the Act cannot operate until an I.T.E. is declared. Section 2 defines an I.T.E. as:

... a situation in which any person is threatening, causing, or attempting to cause

- (a) The death of, or serious injury or serious harm to, any person or persons; or
- (b) The destruction of, or serious damage or serious injury to, -
 - (i) Any premises, building, erection, structure, installation, or road; or
 - (ii) Any aircraft, hovercraft, ship or ferry or other vessel, train, or vehicle; or
 - (iii) Any natural feature which is of such beauty, uniqueness, or scientific, economic, or cultural importance that its preservation from destruction, damage or injury is in the national interest; or
 - (iv) Any chattel of any kind which is of significant historical, archaeological, scientific, cultural, literary or artistic value or importance; or
 - (v) Any animal -

in order to coerce, deter, or intimidate -

- (c) The Government of New Zealand, or any agency of the Government of New Zealand; or
- (d) The Government of any other country, or any agency of the Government of any other country; or
- (e) Any body or group of persons, whether inside or outside New Zealand,

-for the purpose of furthering, outside New Zealand, any political aim.

The three key elements in this definition are:

1. There must be some form of attempted, threatened, or actual violence or destruction directed against a human or non-human target.
2. The violence or destruction etc. must be intended to coerce, intimidate or deter any government agencies or "body or group of persons" anywhere.
3. The incident must be intended to further a political aim outside New Zealand.

1. *Political aim*

The furtherance of a political aim outside New Zealand is crucial to the operation of the powers under the Act. Its presence is determinable by the Ministers of the Crown who initiate the I.T.E. It is only with the addition of this political element, that an

otherwise criminal venture becomes an I.T.E. The definition would not encompass a situation with an internal political purpose.⁷⁴

One might ask how the presence or absence of a "political aim" is determinable. Is it based solely on an objective assessment by the authorities, or on the subjective behaviour of a suspected terrorist, and would the involvement of foreign nationals or property be sufficient? For example, on Monday 2 February 1987 Janice Gallagher, aged 45 years, was kidnapped from her home in Hamilton and held for ransom. She managed to escape unharmed two days later. During her ordeal she became convinced that she was a prisoner of a "large terrorist group"⁷⁵, a fiction created by her two captors. It is submitted that her subjective belief in this fiction, as communicated to the police, would be sufficient to initiate an I.T.E., if the same situation occurred today. The furtherance of a political aim outside New Zealand, would be implied from the actions and words of her captors.

2. *The primary target group*

It is submitted that the primary target group, the people to be intimidated and coerced, really amount to the world at large and that the additional references to governments etc. are unnecessary. Although these references may give an international flavour to the definition, they are superfluous and add nothing to what constitutes an I.T.E. The definition could just as effectively say "any person" as the relevant words, "body or group of persons", import the singular "person".⁷⁶

3. *Conclusion*

Contrary to the belief of the Prime Minister, the definition of an I.T.E. fails to provide any real safeguard against the operation of the emergency powers.⁷⁷ The critical terms in the definition are capable of such wide interpretation, that in effect the emergency powers could operate for almost any violent criminal act. The danger in having such a general definition is that the provisions of the Act are open to abuse.

74 However, it would apply to an incident with a mixed motive, e.g. where terrorists staging a bank robbery to fund overseas political activities were caught in the act and took hostages. Provided the focus of their political activity was outside New Zealand the Act would apply.

75 *The Dominion*, Wellington, New Zealand, 11 March 1987; 14 March 1987, p.1; *The Evening Post*, Wellington, New Zealand, 11 March 1987, p.28.

76 Pursuant to the Acts Interpretation Act 1924, s.4, which provides: "... words importing the plural number include the singular number ...". "Person" is also defined as including "a corporation sole, and also a body of persons, whether corporate or unincorporate".

77 The Prime Minister saw the use of the emergency powers under the Act as being "clearly limited by the definitions set forth" therein. N.Z. Parliamentary Debates Vol.477, 1987: 6720.

B. *Initiation of the I.T.E.*

The Commissioner of Police is the person who initiates matters under the Act. Once the Commissioner has a belief that an emergency is occurring, that it is an I.T.E.⁷⁸ and that emergency powers are needed to deal with it, the Prime Minister must be informed "forthwith".⁷⁹

The Act makes provision for the unavailability of the Prime Minister, but none in relation to the Commissioner. However this is provided for within the Police Act 1958, which states that if the Commissioner is absent for whatever reason, the Deputy-Commissioner can exercise all the Commissioner's "powers, authorities, duties and functions".⁸⁰ In addition the Commissioner may delegate such powers to any member of the police of the rank of Inspector or above.⁸¹

78 As defined in s. 2.

79 Section 5 provides:

Where the Commissioner of Police believes -

- (a) That an emergency is occurring; and
- (b) That the emergency may be an international terrorist emergency; and
- (c) That the exercise of emergency powers is or may be necessary to deal with that emergency, -

the Commissioner shall forthwith inform the Prime Minister that such an emergency is believed to be occurring and that it is or may be necessary to exercise emergency powers.

80 Police Act 1958, s.3(4) provides:

In the case of absence from duty of the Commissioner (whether by reason of illness, absence from New Zealand, or for any other reason whatever) or in the case of a vacancy in the office of Commissioner (whether by reason of death, resignation or otherwise) and for so long as the absence or vacancy continues, the Deputy-Commissioner longest in office as such shall have and may exercise all the powers, authorities, duties, and functions of the Commissioner.

81 *Ibid.* s.55A provides:

- (1) The Commissioner may from time to time, by writing under his hand, either generally or particularly, delegate to such member or members of the Police, of a rank not less than Inspector, as he thinks fit all or any of his powers, authorities, duties, and functions under this Act or any regulations made under this Act.
- (2)
- (4) Every such delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commissioner of Police.
- (5) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Commissioner of Police by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of the Commissioner.

It is submitted that the Commissioner could delegate his powers under the International Terrorism (Emergency Powers) Act 1987 as being part of his duties etc. under the Police Act 1958.

C. *The Declaration of an I.T.E.*

1. *The declaration*

Upon being informed of the situation as perceived by the Police Commissioner, the Prime Minister "may"⁸² call a meeting of no fewer than three Ministers of the Crown. The Ministers at this meeting must have a cumulative belief on reasonable grounds: that an emergency "is occurring", that it "may be" an I.T.E. and that the exercise of emergency powers "is necessary to deal with that emergency".⁸³ Once this belief is established, the Ministers must issue a written notice authorising the Police to act.⁸⁴ This notice must be "signed" by the Minister of the Crown presiding at the meeting,⁸⁵ at which time it comes into force.⁸⁶ The public must also be notified of its being issued.⁸⁷

2. *Formation of belief*

It seems that in forming their belief the Ministers must comply with a more stringent test than that applied to the Commissioner of Police. The Ministers must exercise a belief based on "reasonable grounds" that an I.T.E. is occurring, while the Commissioner need only have a "belief".⁸⁸ Therefore on the face of the provision, the Commissioner's "belief" really amounts to a "suspicion" that an I.T.E. is occurring. In practice, the Prime Minister and the Ministers are likely to form their belief on the same

82 On the introduction of the Bill this section was more imperative. The word used was "shall".

83 Section 6(2).

84 This written "notice" is also called a "declaration notice" in this article, i.e. declaring an I.T.E.

85 Section 6(2). Cf. s.46 Civil Defence Act 1983 which provides for alternative procedures for the declaration of a state of national emergency where in different circumstances such an emergency can be declared by either the Governor-General acting alone or on the advice of the Executive Council; or by three members of the Executive Council acting alone; or the Prime Minister acting alone.

86 Section 6(6). There is an inconsistency in the use of the words "signed", and "given" in the Act. The notice is effective from the time it is "signed" by the Minister, while section 6(4)(d) introduces a new concept in providing that the notice will expire at the close of the seventh day on which the notice was "given". "Given" appears to mean "issued". One would think the signing of a notice amounted to its being issued. However if "given" and "signed" are distinct terms, then the duration of an I.T.E. might be extended by a failure to "issue" or "give" the "signed" notice to the police. Section 6(5) makes a distinction between the terms providing that: "The Minister of the Crown who signs any notice given pursuant to ...". It is a distinction repeated in s.6(6).

87 Section 6(5). This is the responsibility of the Minister presiding at the meeting where the I.T.E. is declared. The notice must also be published in the *Gazette*.

88 A comparison between ss. 5 and 6(2).

information available to the Commissioner.⁸⁹ Therefore while the statute seems to demand different standards of decision-making, in practical terms they will be the same. On this assumption it appears that both the Commissioner and the Ministers may act on a "suspicion" and not on a "reasonable belief".

It is submitted that the "beliefs" of the Commissioner and the Ministers should be the same, that is based on either "reasonable grounds" or on a "suspicion". The wording of the provision should be amended accordingly, to give recognition to the realities of the decision-making process involved.⁹⁰

3. *Judicial review*

On the assumption that the Ministers must exercise a discretion to declare an I.T.E. based on a reasonable belief, one wonders whether that Ministerial decision will be subject to judicial review and even if it is, whether the courts would interfere. The Human Rights Commission, in a report to the Prime Minister on the Terrorism Bill did not think judicial review was possible. The Commission felt that this was evident from the Bill's failure to provide the necessary review machinery and instead provide Police and Armed Forces personnel with absolute protection from liability where they acted in good faith.⁹¹

The question of judicial review hinges on whether the Ministers are required to exercise an objective standard of reasonableness or whether the decision is for their subjective determination. It is submitted that as long as the Ministers addressed the criteria outlined in section 6(2) of the Act, their decision would remain outside the field of an in-depth judicial review. These criteria would constitute "obligatory" considerations, that the Act expressly requires the Ministers to take into account before deciding to declare an I.T.E.⁹² The relevant parts of section 6 provide:

- 89 Unless there are developments in the situation between the time the Commissioner forms the belief and the Prime Minister being informed. But this seems unlikely due to the immediacy with which the Commissioner has to act to inform the Prime Minister.
- 90 Although in the wartime case of *Liversidge v. Anderson* [1942] A.C. 206, the use of seemingly different standards did not affect the operation of the Act concerned. The majority of the Law Lords held that the words "reasonable cause to believe" and "satisfied" could both import the same subjective beliefs which in that case were personal to the Secretary of State.
- 91 The Human Rights Commission "Report on the International Terrorism (Emergency Powers) Bill 1987" (April 1987). The Commission made this report in terms of section 6(1)(c) of the Human Rights Commission Act 1977. The Report also expressed concerns about the implications for civil liberties and human rights under the Bill, particularly as New Zealand lacks some of the checks and balances of other democracies - such as a written constitution, a Bill of Rights, or an upper house.
- 92 *Ashby v. Minister of Immigration* [1981] 1 N.Z.L.R. 222, 224-225 per Cooke J. In the case the Judge described "obligatory" considerations as those which the Act concerned expressly or impliedly requires the Minister to take into account.

(1) Upon being informed pursuant to section 5 of this Act, the Prime Minister may cause a meeting of not fewer than 3 Ministers of the Crown to be held for the purpose of considering whether to exercise the power conferred by subsection (2) of this section.

(2) The Ministers of the Crown, not being fewer than 3, present at the meeting held pursuant to subsection (1) of this section may, if they believe, on reasonable grounds,

- (a) That an emergency is occurring; and
- (b) That the emergency may be an international terrorist emergency; and
- (c) That the exercise of emergency powers is necessary to deal with that emergency,

by notice in writing signed by the Minister of the Crown presiding at the meeting, authorise the exercise, by the Police, of emergency powers.

(3) ...

Although the provision is worded in objective terms, it is submitted the court would be sympathetic to importing subjective criteria. The Act deals with emergencies of an extraordinary character, closely approximating wartime emergencies⁹³ and necessitating the use of special emergency powers. In addition the decision to declare an I.T.E. resides with the highest ranked members of the Executive,⁹⁴ acting in a non-judicial capacity and subject to the invigilation of Parliament. Historically the courts have expressed some reluctance to interfere with a political decision.⁹⁵ Another factor in favour of non-interference by the courts is the inbuilt safeguard that limits the use of the emergency powers to a maximum period of twenty-one days.

93 *Liversidge v. Anderson* [1942] A.C. 206 and *Reade v. Smith* [1959] N.Z.L.R. 996, 1000, per Turner J. Turner J. stated that the Courts in deciding wartime cases have "often quite understandably been influenced by the atmosphere of national emergency in which they were heard", and that "the question of public safety" was often a decisive factor.

94 *Ashby v. Minister of Immigration*, supra n.92, 230, per Richardson J. citing from his judgment in *CREEDNZ Inc. v. Governor-General* [1981] 1 N.Z.L.R. 172, 197-198. He said:

The willingness of the Courts to interfere with the exercise of discretionary decisions must be affected by the nature and subject-matter of the decision in question and by the consideration of the constitutional role of the body entrusted by the statute with the exercise of the power. Thus the larger the policy content and the more the decision-making is within the customary sphere of elected representatives the less well-equipped the Courts are to weigh the considerations involved and the less inclined they must be to intervene.

95 In *Ashby v. Minister of Immigration*, supra n.92, 231, Richardson J. discussed the types of cases where the Courts have decided for historical or policy reasons to decline to review the exercise of discretionary power and said: "Many such non-justiciable questions have a strongly political flavour".

It is submitted that in the light of the above matters, judicial interference would be minimal.

4. *Cessation of an I.T.E.*

The authority for the police to exercise emergency powers under the Act ends on the resolution of the I.T.E. or after seven days, whichever first occurs. The Ministers can limit the duration of the emergency to within the seven day period by recording an earlier expiry date within the declaration notice.⁹⁶ The expiry date may also be extended beyond the initial seven days by the House of Representatives⁹⁷ or the Governor-General.⁹⁸ The House of Representatives can only extend an I.T.E. for seven days at a time and only for an aggregate maximum period of fourteen days.⁹⁹ The Governor-General is similarly bound.

5. *The invigilation of Parliament*

Under section 8 of the Act, the House of Representatives may revoke the authority to exercise emergency powers at any time. However this safeguard is rendered ineffective if Parliament has been prorogued, dissolved or has expired. Unlike the Civil Defence Act 1983 there are no procedures laid down requiring that Parliament be summonsed in this event. It is submitted, that if Parliament is not in session it should be required to be summonsed within seven days of the issuance of the declaration notice.¹⁰⁰

V. THE CENSORSHIP PROVISIONS

The censorship provisions considered by this article are those embodied in section 14 of the Terrorism Act. Section 14 has remained unaltered since the introduction of the Terrorism Bill,¹⁰¹ its presence being overshadowed by the more draconian measures in

96 Section 6(4) provides:

The authority to exercise emergency powers under any notice ... shall expire -

- (a) Once the Commissioner of Police is satisfied that the emergency is not an international terrorist emergency; or
- (b) When the international terrorist emergency ends; or
- (c) At the close of the day specified in the notice as the day when that notice expires; or
- (d) At the close of the seventh day after the day on which the notice is given,

whichever occurs first.

97 Section 7(2).

98 Section 7(3).

99 Section 7(4) imposes the 14 day limitation.

100 This matter has been addressed in the Civil Defence Act 1983, s. 49. Parliament must be summonsed within seven days of the making of a proclamation or declaration of a "national emergency".

101 Apart from changes to section references as the Bill progressed through the Committee stages.

that Bill. However this section contains censorship powers as broad and far-reaching in their effect, as those original measures so vehemently opposed by the media. They have really been allowed to slip into the statute book via the "back door", with little discussion on their application. Section 14 provides:

(1) Where, in respect of any emergency in respect of which authority to exercise emergency powers has been given under this Act, the Prime Minister believes, on reasonable grounds, that the publication or broadcasting of-

- (a) The identity of any person involved in dealing with that emergency; or
- (b) Any other information or material (including a photograph) which would be likely to identify any person as a person involved in dealing with that emergency -

would be likely to endanger the safety of any person involved in dealing with that emergency, or of any other person, the Prime Minister may, by notice in writing, prohibit or restrict-

- (c) The publication, in any newspaper or other document; and
- (d) The broadcasting, by radio or television or otherwise -

of the identity of any person involved in dealing with that emergency, and other information or material (including a photograph) which would be likely to identify any person as a person involved in dealing with that emergency.

(2) Where, in respect of any emergency in respect of which authority to exercise emergency powers has been given under this Act, the Prime Minister believes, on reasonable grounds, that the publication or broadcasting of any information or material (including a photograph) relating to any equipment or technique lawfully used to deal with that emergency would be likely to prejudice measures designed to deal with international terrorist emergencies, the Prime Minister may, by notice in writing, prohibit or restrict -

- (a) The publication, in any newspaper or other document; and
- (b) The broadcasting, by radio or television or otherwise -

of any information or material (including a photograph) of any such equipment or technique.

(3) The Prime Minister may issue a notice under subsection (1) or (2) of this section notwithstanding that the emergency in respect of which the notice is issued has ended.

(4) Where any notice is issued under subsection (1) or subsection (2) of this section, the Prime Minister shall forthwith give public notice of the issue of that notice by such means as are practicable in the circumstances, and the notice shall be published in the Gazette as soon as practicable.

(5) Nothing in this section shall restrict the broadcasting or reporting of the proceedings of the House of Representatives.

A. *The Aim of Section 14*

This section addresses some of the Prime Minister's main concerns regarding terrorism¹⁰² by controlling the release of sensitive information in two principal areas. Firstly, information leading to the identification of personnel involved in an I.T.E. and secondly, to the disclosure of techniques¹⁰³ and equipment used.

However before the Prime Minister can exercise these censorship powers certain criteria must exist, namely:

- (1) The emergency occurring must have been declared an I.T.E.; and
- (2) The Prime Minister must believe on reasonable grounds¹⁰⁴ that the publication or broadcasting of the information would either:
 - (i) Endanger the lives of people involved in dealing with that emergency, or
 - (ii) Prejudice measures designed to deal with international terrorist emergencies.

Once these "obligatory"¹⁰⁵ criteria are satisfied, the Prime Minister can issue a written notice prohibiting or restricting that information being published in any "newspaper or other document"¹⁰⁶ or its broadcast by "radio or television or otherwise". The ban applies to prevent the release of both specific information, and general

102 Adverted to by the Prime Minister on the introduction of the Bill, as discussed earlier in this article.

103 The term "technique" is capable of wide interpretation. It could result in the censorship of everything from eyewitness accounts to detailed descriptions of police modus operandi.

104 The question of whether the Prime Minister must exercise an objective or subjective criteria in the exercise of this censorship provision raises similar arguments to that discussed earlier in this article. It is unlikely that the Prime Minister's decision to impose a censorship ban could be subjected to judicial review for the same reasons as discussed earlier, and as long as the Prime Minister addressed the "obligatory" conditions outlined in s. 14(1) and (2). An additional and significant factor weighing against judicial review is that the power resides with the highest ranked member of the Executive.

105 As defined in *Ashby v. Minister of Immigration*, supra n.92, 224-225.

106 "Other document" is also capable of very wide interpretation and would effectively stifle the distribution of any written matter about an international terrorise emergency, for example through alternative forums such as pamphlets.

information likely to lead to the identification of particular individuals¹⁰⁷ or expose techniques or equipment.

This mantle of protection extends to non-I.T.E. situations. That is, censorship can be imposed during any emergency as long as it has been declared an I.T.E. This would afford protection to members of specialist police and army units, after their attendance at a false alarm. Censorship could even be extended to protect their families from public exposure.¹⁰⁸

B. The Form of Censorship Envisaged

A distinction appears to be drawn between "prohibiting" and "restricting" the release of information. This suggests the application of degrees of censorship. The dictionary¹⁰⁹ defines "prohibit" as to "forbid" or "debar", as distinct from "restrict", which is defined as "confine, bound, limit". It is submitted that "prohibit" suggests a total ban on the release of information, whilst "restrict" applies to confining or limiting information disclosures, in terms of a partial censorship ban. Partial censorship would involve news releases being tailored to suit the circumstances. "News tailoring" is something the media engage in on a daily basis, deciding what to report, when to report it, the amount of space to assign to the story and the tone to adopt in its communication.¹¹⁰ Normally it is a responsibility that resides with the editorial staff. Under the Act it is assumed by the Prime Minister.

An example of news tailoring by the media occurred during the 1980 Iranian Embassy siege in London. At the request of the authorities, terrorist demands were suppressed for some hours and their requests for mediation were withheld from publication for three days.¹¹¹ During a New Zealand I.T.E. the same type of information might well be suppressed under section 14(2), as relating to "techniques" lawfully used, whose publication is "likely to prejudice measures" designed to deal with that emergency.

As a result of the Terrorism Act, the media are faced with a stark choice. They can either cooperate with the police to voluntarily tailor their news releases and at least get

107 Section 14(1)(a) and (b) make this distinction, and it is repeated in a less distinct manner in s.14(1)(d).

108 In s.15(1) there is a clear distinction drawn between a person involved in dealing with that emergency and "any other person". Family members would appear to fit within this, as their identification would reveal their connection with personnel.

109 *The Concise Oxford Dictionary*, (7 ed., Clarendon Press, Oxford, edited by J.B. Sykes).

110 Clarence Mann "Personnel and Property of Transnational Business Operations" in Evans and Murphy (eds.) *Legal Aspects of International Terrorism*, (Lexington Books, D.C. Heath & Co., Lexington, Massachusetts, 1978) 399-482.

111 Philip Schlesinger "Princes' Gate, 1980: The Media Politics of Siege Management in Britain" in Curry and Dassin (eds.) *Press Control Around the World*, (Praeger Publishers, New York 1982) 42. The siege took place from the 30 April to 5 May 1980. It involved six Khuzistan guerrillas, seizing twenty-six hostages.

some information published, or submit to a compulsory and total news blackout. In the latter event, the Minister of Broadcasting could resort to his powers under the Broadcasting Act 1976, and direct the making of emergency broadcasts by all radio and television stations.¹¹² The Minister is empowered to do this during any "national emergency"¹¹³, a term that remains undefined in that Act. However "national emergency" is defined in the Civil Defence Act 1983¹¹⁴ and it is submitted that this definition would apply for the purposes of the Broadcasting Act. A "national emergency" so defined, seems broad enough to encompass an I.T.E. The broadcast must be accompanied by a statement that it is made under ministerial direction.¹¹⁵ It is submitted that this course of action would only be resorted to by the authorities, if faced with an uncooperative media and a desire to disseminate official information.

C. Limitations on Censorship

Section 14 does place some limitations on the application of censorship by the Prime Minister. Censorship can only be exercised in relation to a specific emergency, not just emergencies in general, and the equipment and techniques must be used in the lawful resolution of the I.T.E.

1. Censorship of a specific emergency

The Prime Minister can only issue a censorship notice to protect personnel and equipment employed in resolving "that emergency", as in a specific I.T.E. It appears a blanket ban on the release of information unrelated to a current crisis cannot be imposed.

On this assumption nothing would appear to prevent the press speculating on either the identity of personnel involved in past emergencies,¹¹⁶ or the type of equipment and techniques used to combat terrorist activity overseas. This occurred during the 1980 siege at the Libyan People's Bureau. For example, *The Times* published detailed articles describing both the contents of the "modern siege kit", and police weaponry.¹¹⁷ The

112 Section 36(1), Broadcasting Act 1976. It provides:

In the case of any national ... emergency, the Corporation and any private broadcaster shall, if directed to do so by the Minister and in accordance with his directions, broadcast any announcement that he requires to be broadcast.

113 Refer to the Civil Defence Act 1983, s. 2 which defines "civil defence emergency" (which encompasses local and regional civil defence emergencies) and "national emergency".

114 Ibid. s. 2 defines "national emergency" as:

an emergency due to an actual or imminent attack on New Zealand by an enemy, or to any actual or imminent warlike act whether directed against New Zealand or not, whereby loss of life or injury or distress to persons or danger to the safety of the public is caused or threatened to be caused or threatened to be caused in New Zealand or any part of New Zealand.

115 Ibid. s.36(2).

116 Although revelations about people involved in past emergencies could be prohibited under an existing Prime Ministerial censorship notice issued under s. 14.

117 *The Times*, London, England, 23 April 1984, p.2. It described the kit as containing laser microphones, for picking up sound vibrating on the windows of target

articles also outlined some of the psychological techniques employed against the terrorists, namely: the controlling of food, drink and cigarette supplies, constant conversation with them over the telephone, the use of consultant psychiatrists, the isolation of the terrorists from all signs of normal life and the use of carefully worded police statements throughout negotiations.¹¹⁸

A further limitation is that censorship can only be applied in relation to equipment or techniques "lawfully used to deal with that emergency".¹¹⁹ That is equipment or techniques that were "used", as opposed to being used or intended for use. There could be no restriction on the communication of details relating to equipment currently being used, or intended for use during that particular emergency.

However this interpretation would defeat one of the main aims of the Act, which is to deny terrorists access to basic intelligence from media sources.¹²⁰ In a sense it exposes a fatal flaw in the application of the Act to the media.

This anomaly arose after the more controversial censorship provisions were deleted from the Terrorism Bill. Those provisions prohibited the publication or broadcasting of "any report or account of any measure that is being taken, or has been taken, or is about to be taken" to deal with an emergency".¹²¹ They would have successfully muzzled any attempts to disclose past, present or future actions by the authorities. However these censorship powers were only intended to last during an I.T.E., with section 14 providing the machinery for censorship to continue after the I.T.E. The combined effect of those two provisions guaranteed total censorship throughout the crisis and after its resolution. Media undertakings not to publicise material likely to jeopardise sensitive police

buildings; pinhead microphones for placement in the exterior walls of target buildings; microphones extra-sensitive to sound, for lowering from surrounding rooftops; equipment capable of detecting human movement through body heat; even describing the type of weapons used as Hechler and Koch automatic rifles, pump action shotguns (also used to fire CS-gas) and miniature submachine guns. This article also described how the noise of "gas board workmen" employed nearby was used to conceal the sound of drilling, during the placement of the pinhead microphones and how for further noise effects, commercial and military aircraft en route to Heathrow were diverted over the Iranian Embassy.

118 *Idem* and 19 April 1984, p.2.

119 Emphasis added.

120 *Supra* n.59.

121 Contained in cl. 9(1) of the International Terrorism (Emergency Powers) Bill, as introduced. It provided that:

any member of the police authorised to do so ... may for the purpose of dealing with any emergency in respect of which authority to exercise emergency powers has been given ... or of preserving life or property threatened by that emergency, prohibit or restrict

- (i) The publication, in any newspaper or other document; and
- (ii) The broadcasting, by radio or television or otherwise, of any report or account of any measure that is being taken, or has been taken, or is about to be taken, to deal with the emergency.

operations led to the deletion of these provisions.¹²² The gap in the legislation is intended to be filled by the media's adherence to the voluntary self-restraint guidelines.

However on an alternative interpretation of section 14, the powers of the Prime Minister could extend beyond banning reports on measures "used", to banning reports on measures "about to be used" or "being used" to deal with an I.T.E. Such an approach would necessitate interpreting the words "equipment or technique lawfully *used* to deal with that emergency"¹²³ as meaning "any equipment or technique lawfully *used, being used or about to be used* to deal with that emergency".¹²⁴ So in effect the media would have gained nothing by the expunging of those earlier contested clauses from the Terrorism Bill. It is submitted that the courts would be very sympathetic to this approach, recognising the extraordinary nature of a terrorist incident and the special measures needed to cope with it.

2. *Equipment and techniques "lawfully used"*

Conflict could also arise between the authorities and the media over situations where equipment or techniques do not appear to have been "lawfully used". The official version of events as lawful, might well conflict with media impressions. In this event the media might rely on their perceived "legal" right to publish or broadcast sensitive information, despite a Prime Ministerial directive to the contrary. Although this would expose them to the risk of prosecution under the Act¹²⁵ it would leave the question of lawfulness for the retrospective determination of the court.

An example of how this conflict might arise occurred after the 1980 Iranian Embassy siege, in Princes' Gate, London. In that incident, where the Special Air Services (SAS) were used for the first time in an overt police action on the British mainland, the building was stormed and five of the six terrorists were killed. One author questioned whether they were killed in the course of a legitimate struggle, or executed by the SAS as part of a hard-line government attitude towards terrorists.¹²⁶

D. *Overseas Legislation*

1. *The Official Secrets Act 1911 (U.K.)*

This dilemma facing the media, of what to publicise or what not to publicise, is analogous to a situation which arose in the United Kingdom under the Official Secrets Act 1911. Section 2 of that Act made it an offence to receive secret material from a government source, knowing or believing such receipt to be in contravention of the Act. It provided no guidelines as to what might or might not be published and was so wide

122 *Supra* n.43.

123 *Emphasis added.*

124 *Idem.*

125 Section 21(1)(b) and (2) refers.

126 *Supra* n.111, 53.

in its potential application that the media were never sure of whether they were in breach of the Act or not.

To resolve this, a committee was established to provide guidance to the press on what could not be published. This committee still exists today, comprising representatives from the Armed Services, the Foreign Office and the media.¹²⁷ Their function is to issue "D" notices or brief documents, warning editors about the publication of certain stories which might breach the Official Secrets Act. Editors are free to consult the committee secretary if they are in doubt over what to publish. Publication contrary to a "D" notice or to any advice given by the secretary will not necessarily result in prosecution, but it is likely. Otherwise the system is completely voluntary, with no penalties for non-observance.¹²⁸

It is submitted that the Terrorism Act should provide a similar mechanism for consultation between the media and the Prime Minister during an I.T.E. Consultation with anyone other than the Prime Minister is not envisaged under the Act and section 14 is specific in providing that any direction must come from the Prime Minister. The consultative role should not devolve by default upon the police. The prospect of the police exercising editorial control over newspapers, television and radio, is the very thing dreaded by the media.¹²⁹

2. *The Prevention of Terrorism (Temporary Provisions) Act 1984 (U.K.)*

Section 11 of the Prevention of Terrorism (Temporary Provisions) Act 1984 (U.K.), presents another dilemma for British journalists. It places a positive duty on people to disclose information about acts of terrorism and makes a failure to comply an offence. The maximum penalty on conviction is five years imprisonment. That section was enacted after the B.B.C. televised an interview with a terrorist in July 1979, in which he claimed responsibility for the murder of a British Parliamentarian.¹³⁰ The police were only informed of that interview after it took place.

127 The committee is now called the Services, Press and Broadcasting Committee. It was formed in 1912, only one year after the Official Secrets Act was enacted. A. Smith, *The British Press Since the War*, (Rowman and Littlefield, Totowa, New Jersey, 1974), discusses "Franks Committee - Report on Section 2 of the Official Secrets Act, 1911" (1972, Cmnd. 5104), and the "Radcliffe Committee on D Notice Matters" (HMSO, 1967, Cmnd. 3309).

128 *Idem*.

129 Under the voluntary guidelines that have operated between the media and the Police since 1984, this consultative role is filled by a media liaison officer appointed by the Police. See Appendix A.

130 *I.e.* Airey Neave. See A. Samuels "Terrorism and the English Law" (1980) 10 *Kingston L.R.* 1; and *Jellicoe Report - Review of the Operation of the Prevention of Terrorism (Temporary Provisions) Act 1976* (1983, Cmnd. 8803) paras. 214-233. Section 11 was first introduced in 1976, after some initial resistance. It is confined to terrorism occurring in the United Kingdom and connected with Northern Irish affairs. This report advocated its retention in the Act.

However this Act is more relevant for its exceptional safeguards. Firstly, it is subject to annual renewal by statutory instrument. To ensure proper debate takes place, the Government undertook to have an independent person report to Parliament on the operation of the Act, well before each renewal. The Government also undertook where necessary to renew or reject the legislation in whole or in part. Secondly, the Act is designed to lapse after five years, requiring full re-enactment if Parliament wishes it to continue. This involves a new bill being reintroduced to Parliament in the ordinary way, thus commanding public and parliamentary attention.¹³¹

It is submitted the Terrorism Act should contain similar safeguards. There is no reason why New Zealand, with a relatively non-existent terrorist problem, should possess this piece of legislation without the accompanying constitutional safeguards.

E. Notice in Writing

The Prime Minister is the only person authorised to exercise the censorship powers under this provision and must do so through the issuance of a written notice.¹³²

However the protective effect of this requirement is undermined by the provisions of section 15 of the Act. A censorship notice once issued can only become "effective" in one of two ways, depending on whichever occurs first. Either by its delivery to some "person"¹³³ or by the Prime Minister "giving ... public notice of the issue of that notice".¹³⁴

The entire provision is deficient in several respects. Firstly, the term "delivered" is too vague and the person to whom delivery is made is unspecified. Secondly, public notification of a censorship ban, can hardly be equated with "delivery" of a written notice. Thirdly, the means of public notification remains unclear, as is the time frame within which it must be conveyed.

1. Delivery of the notice

This failure to provide some definition of "delivery" procedures introduces further uncertainty into the Act. This omission is curious as statutory examples of such

131 A. Samuels "Special Legislation" (1985) Statute Law Review 41.

132 Pursuant to section 14(1) and (2). If the Prime Minister is unavailable, the Deputy-Prime Minister may do so and if for whatever reason they are both unavailable, the next highest ranked Minister of the Crown may act pursuant to section 2(3).

133 Section 15(1)(a). "Person" also includes a corporation sole, and also a body of persons, whether corporate or unincorporate. Section 4, Acts Interpretation Act 1924.

134 Section 15(1)(b). Public notice must be given pursuant to section 14(4). That subsection provides that:

Where any notice is issued ... the Prime Minister shall forthwith give public notice of the issue of that notice by such means as are practicable in the circumstances, and the notice shall be published in the Gazette as soon as practicable.

provisions do exist. For example, regulation 15 of the Censorship and Publicity Emergency Regulations 1939¹³⁵, required a written notice to be given to either "the proprietor, editor, printer or publisher", to effect wartime censorship.¹³⁶ A notice given to any one of them was a notice "deemed to be given to all of them".¹³⁷ A notice was deemed sufficient if addressed to any of those persons by description of their position and the name or commonly accepted name of the periodical of which they were the "proprietor", etc. The addition of their personal name was unnecessary.¹³⁸ The notice was deemed sufficiently "given" if left at the premises where the periodical was usually printed or published, with some person "appearing for the time being to have the management thereof".¹³⁹

It is submitted that if the Act adopted similar provisions, greater certainty of the law and a better understanding of the media's position would prevail.

2. *The giving of public notice*

It is also difficult to understand how delivery of a censorship notice can be equated with public notification of its issuance. Presumably the written notice would contain sufficient information to inform editors of what they can and cannot report, whereas a very general public notice, however communicated, would not. Editorial staff would be forced into the invidious position of reporting official versions of events, in close cooperation with the authorities, or publishing independently and risking prosecution. This raises the point discussed earlier in the article, of the need for consultation between the media and the authorities.

3. *The means of communicating public notice*

The Prime Minister is required to give "public notice" of the issuance of a censorship notice. It is to be done "forthwith by such means as are practicable in the circumstances". The censorship notice must also be published in the *Gazette* "as soon as practicable".¹⁴⁰

It is submitted that unreasonable delay in notifying the public would be inconsistent with the use of the word "forthwith"¹⁴¹ and contrary to the spirit of that particular

135 S.R. 1939/121 (now repealed) promulgated pursuant to the Public Safety Conservation Act 1932.

136 Ibid. reg. 15(1).

137 Ibid. reg. 15(5).

138 Ibid. reg. 15(6).

139 Ibid. reg. 15(7).

140 Section 14(4). Nothing would appear to prevent the media publishing the details of a notice. Cf. the "D" notice system operating in the U.K. A D notice itself is not normally published, under an understanding that exists between the media and the authorities. The reason being that the D notice contents could be very revealing and threaten national security.

141 "Forthwith" is used in an inconsistent fashion throughout this Act, eg.: The Prime Minister on introducing the Bill to the House of Representatives, interpreted "forthwith" in s.5 to mean "immediately". In s.6(5) the Minister is to give public

provision. Further public notification should be through the mediums of radio, television and newspapers, as it would be unreasonable for the authorities to do otherwise. Support for this view can be found in the Acts Interpretation Act 1924. It provides:¹⁴²

Public notification or public notice, in relation to any matter not specifically required by law to be published *in extenso*, means a notice published in the *Gazette*, or in one or more newspapers circulating in the place or district to which the act, matter, or thing required to be publicly notified relates or refers, or in which it arises.

F. Expiration of the Censorship Notice

A Prime Ministerial censorship notice expires one year after the date on which it was issued¹⁴³, or "on such earlier date as may be specified in the notice".¹⁴⁴ However the Prime Minister retains the right to revoke it at any time, by placing a notice to that effect in the *Gazette*.¹⁴⁵ The censorship notice may also be renewed for further separate periods, each of up to five years in duration.¹⁴⁶ Prior to renewal of the notice the Prime Minister must satisfy certain conditions. The relevant parts of the renewal provision provide that:

The Prime Minister may, from time to time, by notice in the *Gazette*, renew any notice issued under section 14 of this Act for such period, not exceeding 5 years in each instance, as is specified in the notice of renewal, if the renewal of the notice is necessary -

- (a) To protect the safety of any person; or
- (b) To avoid prejudice to measures designed to deal with international terrorist emergencies.

notice "forthwith", but this is then modified by the added words, that such notice shall be "by such means as are reasonable in the circumstances", so forthwith does not necessarily mean immediately. In s.7(1)(a) and (b) a distinction is made between "forthwith" and "at the earliest practicable opportunity", so they are not the same. Therefore, "forthwith" must mean more than "at the earliest practicable opportunity". Section 11(3) uses the expression "as soon as reasonably practicable". The Court of Appeal interpreted "forthwith" as used in s.58A of the Transport Act 1962, as meaning "as soon as reasonably practicable". Although it was not synonymous with "instantly", containing some elasticity, it certainly imported the feeling that there must be no significant delay. *Scott v. Ministry of Transport* [1983] N.Z.L.R. 234, 236 (C.A.), per Cooke J. The importance of the word will be determined in the context of the statute concerned. *Police v. Maugham* [1975] 2 N.Z.L.R. 385, 391, per Chilwell J.

142 Acts Interpretation Act 1924, s.4, *in extenso*, meaning "at large".

143 "Issued" appears to be synonymous with when the original notice "comes into force", which occurs when it was "signed". Refer section 6(6).

144 Pursuant to s.15(3).

145 Pursuant to s.15(2).

146 Pursuant to s.15(4).

Therefore the Prime Minister must consider that renewal of the notice "is necessary" to protect the safety of "any person" or "to avoid prejudice to measures designed to deal with international terrorist emergencies".

It appears that the conditions to be fulfilled by the Prime Minister in renewing a notice, are of a lesser standard than that required on the issuance of the original censorship notice. The Prime Minister is not required to have a belief based on "reasonable grounds" that some person is endangered, nor is there a requirement that any equipment or techniques have been "lawfully used". Renewal of a notice seems reduced to a rubber stamping exercise, with no apparent need for the Prime Minister to re-examine the reasons for issuing the original notice.

However an alternative interpretation is possible. Subsection (4) requires that any notice subject to renewal, must have first been "issued under section 14 of this Act". It is submitted that these words require that the standards applied in the issuance of the original notice be applied to its renewal. This approach is reinforced by the offence provisions in respect of a breach of section 14. Section 21 provides that it is an offence to publish, broadcast etc. "any information ... of any equipment or technique *lawfully used* to deal with any such emergency".¹⁴⁷ Therefore no editor could be prosecuted for publishing details on the unlawful use of equipment. So by implication the words "lawfully used" are imported into section 15(4), as obligatory criteria for consideration by the Prime Minister in renewing a censorship notice.¹⁴⁸

It is submitted that the renewal procedure for a censorship notice should resemble the conditions required for its initial issuance under section 14. The renewal provisions require clarification on this point.

VI. CONCLUSION

It is submitted that the International Terrorism (Emergency Powers) Act fails in its attempt to present a realistic approach to censorship and threatens to make unacceptable inroads into civil liberties and the freedoms of the press. The intention of the Act is clear. The media either conform to responsible standards of reporting as perceived by officialdom, or face compulsory censorship. This piece of legislation is an over-reaction to a remote threat. Government has failed to advance any convincing reasons why New Zealand should impose censorship on the media, when countries like the United Kingdom, who face a far greater terrorist threat, do not. The failure of the Act to adequately define the boundaries of section 14's operation, the lack of proper safeguards, the omission of the appropriate machinery to institute censorship, and the unworkable nature of the censorship scheme envisaged, can only lead to inevitable abuses of power. If the spectre of compulsory censorship is to remain on our statute books these matters must be addressed.

147 Section 21(1)(b)(ii). The word "lawfully" was omitted from the original Bill, being inserted after the hearings of the Justice and Law Reform Committee. Emphasis added.

148 See *Ashby v. Minister of Immigration* supra n.92, 224-225.

In the final analysis, the question that remains to be asked is whether the lessons implicit in the repeal of the Public Safety Conservation Act have been learnt. With the words of the current Minister of Justice, the Rt. Hon. Geoffrey Palmer, M.P., echoing in our ears, we might well ask if the International Terrorism (Emergency Powers) Act is a good piece of legislation or is it "potentially the most dangerous and repressive piece of legislation on the New Zealand statute books"?¹⁴⁹

APPENDIX A

Terrorist Situations: Police/Media Policy (1984), as incorporated in the media submissions to the Justice and Law Reform Select Committee:

1. The extremely serious nature of incidents involving terrorists means that effective police-media relations will be vital in minimising further risk to life.
2. While experienced reporters can be relied upon to exercise discretion and commonsense there have been worrying incidents, where broadcast or published reports have put people at risk. These have not been malicious or wilful but seemed to stem from a lack of appreciation of the dramatic effects reporters' actions or news contact can have on an offender.
3. A set of guidelines has been prepared which should serve the needs of both police and the news media. The guidelines make it clear that police have neither the authority nor the desire to diminish editorial responsibilities. On the other hand as police bear the direct consequences of any negative terrorist response evoked by media reports they expect media recognition of their operational perspective.
4. The guidelines are:
 - 4.1 A "terrorist situation" in which the agreed media liaison policy is to be invoked will be clearly designated as such by police from the earliest possible contact with the media.
 - 4.2 Police employ specially trained teams to negotiate with terrorists. It is therefore of prime importance that they be the sole group co-ordinating communication with the terrorists.
 - 4.3 Besieged terrorists should not be contacted without the consent of the police. To do so may complicate a tense situation and prevent police from maintaining essential negotiations.
 - 4.4 Where terrorists contact a reporter the police should be told and given as full an account of the communication as soon as possible. Such information may be vital in bringing the operation to a satisfactory conclusion. Conversely withholding information could have dire consequences. If an editor or station

manager prefers the police to instigate legal proceedings to secure the information the police still need to be told as soon as possible, that contact has been made.

4.5 While final editorial responsibility remains with editors/station managers the media should be receptive to advise on the handling of any communication received. A police liaison officer will be available at all times for consultation on whether or not the broadcast/publication of the communication is likely to exacerbate the operation.

4.6 Terrorists are likely to have access to radios and television receivers and possibly newspapers. For this reason broadcast/publication of details of police movements, plans, staff, disposition, or speculation in these areas may help offenders and increase risk to police, hostages and the public. Therefore the closest liaison is necessary to ensure this type of broadcast is phrased so as not to assist offenders.

4.7 Delayed telecasts and broadcasts may be necessary to enable proper news media editing or material to ensure that no unauthorised information of value is made known to the terrorists. Final responsibility for what is published/broadcast rests with editors/station managers, but again, they should remain fully receptive to police advice and requests.

4.8 In circumstances where the presence of large numbers of media representatives could impede the police operation, the concept of pool coverage may have to be considered. The selection of personnel to service the pool coverage is a matter for the news media and not the police. Once invoked police would deal only with the media-appointed pool.

4.9 Reporters, photographers and film crews are not to place themselves in danger or positions where police extrication may become necessary.



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