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UNDERMINING DEMOCRACY

By Muriel Newman

The freedom of speech, including the freedom to criticise the government, has always been central to the healthy functioning of a democracy. The underlying principle of a democracy is that the ultimate power rests with the people, and the underlying virtue is that the transition from one administration to another occurs quickly and without bloodshed. This is in stark contrast to dictatorships where change is measured in generations rather than years, and the catalyst for change is revolution not election.

Just this week the military regime in our Pacific neighbour Fiji, used violence and intimidation in their on-going campaign to silence public opposition. A newspaper publisher was deported without warning for publishing articles critical of a member of the interim government.

Prime Minister Helen Clark spoke out against this serious threat to media freedom in Fiji, stating, "I'm very concerned at this attempt to shut down freedom of speech and media". She also described as a "disturbing turn of events" the fact that the Commissioner of Police had warned the public to avoid criticising the government.

What is ironic about Helen Clark's comments is that while she defends the freedom of speech and the public's right to criticise their government in Fiji, here at home, she has done everything in her power to silence criticism of her government in this crucial election year.

The Labour Government – with the support of the Greens and New Zealand First – passed the Electoral Finance Act just before Christmas. The Act effectively prevents the public from criticising the government during the whole of election year. They have achieved this by firstly forcing anyone who wants to campaign against the government to register with the state and subject themselves to audits, and secondly, by intimidating those who breach the Act (and its precise meaning is far from clear) with hefty fines or imprisonment.

Under the penalty provisions of the Act, search warrants can be issued, and computers, files and other goods seized. Further, a conviction of 'illegal' practice for unwittingly exceeding spending limits carries a maximum fine of \$40,000, with a conviction of 'corrupt' practice for knowingly exceeding spending limits, carrying a maximum fine of \$100,000 and two years in jail.

These penalties are so harsh that the Human Rights Commission predicted they would have a "chilling effect" on the public. That is exactly what is happening, and in reality it is not too different from the intimidation in Fiji that Helen Clark has been protesting about.

But Labour's hypocrisy is not just limited to the freedom of speech provisions in the Electoral Finance Act. They have scored a "home goal", by deliberately trying to

avoid having to disclose a secret donation, in spite of claiming that they were introducing the Act to crack down on secret donations!

In this case, the interest that would have been payable on the much publicised \$100,000 loan from billionaire industrialist Owen Glenn, was conveniently "forgotten" when the Labour Party denied they had received other donations from him. This has seriously damaged their credibility and undermines the entire need for the law change. When democratic governments become so arrogant that they can no longer recognise their own hypocrisy, voters usually decide it is time for a change. That's what the latest political opinion polls indicate is now taking place. Helen Clark's response to her fall in the polls has been to blame the New Zealand Herald. It is deeply ironic that on the one hand she can support the free press in Fiji, but on the other attack the free press in New Zealand.

Helen Clark and her husband have accused the Herald of playing dirty. At the heart of their criticism is the strong lead taken by the Herald in opposing the Electoral Finance Act. Yet as the fourth estate, the media stands as the fourth pillar of a free democracy – alongside the Executive, Parliament, and the Judiciary – acting not only as a watchdog over government, but as a fearless defender of free speech.

New Zealand's Electoral Commission explains it this way: "*The health of a representative democracy rests on the public's access to crucial information, first, during an election campaign to discover what candidates promise to do if elected, and second, throughout a government's term to check whether they keep their promises. The media plays a vital role in passing on this information. It is through the media that the link between the governed and the government is maintained; most voters 'meet' their representatives, not in person, but through the media. Increasingly the media are also seen as the most effective 'watchdog of government' – holding it to account for its actions.*"

Karl Du Fresne, a freelance journalist and former Editor of the Dominion, is this week's NZCPR Guest Commentator. In his opinion piece, "Free Speech, Anyone", Karl observes:

"New Zealanders are among the freest citizens in the world in terms of their right to express themselves. While not entrenched in supreme law here, as it is in America's First Amendment, this right is no less real. It has been upheld and promoted by enlightened judges, liberal-minded politicians and public servants such as the Ombudsman, all of whom recognise that democracy cannot function without free speech. It was given legislative force in the Bill of Rights Act 1990, which holds that everyone has the right to "seek, receive and impart information and opinion of any kind and in any form".

But it is a right that is under constant, insidious attack”.

Karl explains the various motivations given by governments for suppressing free speech, but concludes that more often than not, the reason is naked political self interest:

“But perhaps the most common reason for suppressing free speech is naked political self-interest. We have seen this recently in the form of the Electoral Finance Act. Strip away all the sophistry surrounding this legislation, and we are left with one stark fact. The most fundamental act of the citizen in a democracy, the casting of an informed vote, is now hedged about by a thicket of bewildering rules about who can legally say what in election year. Politicians who insist that this will not inhibit political discussion are either naïve or dishonest, and I don’t think they are naïve”. See www.nzcpr.com to read Karl’s article.

The Electoral Finance Act is already claiming victims. David Moore, the young man who ran the “dontvotelabour” website was forced to remove it or face a \$10,000 fine for failing to disclose his home address on the site, which the Electoral Commission had deemed to be an election advertisement.

The Engineering, Printing and Manufacturing Union, which has applied for registration as a third party so it can spend up to \$120,000 campaigning, is likely to be another victim. As an affiliate of the Labour Party, it looks like their application will be refused since third party registration is not permitted for organisations that are involved in the administration of the affairs of a political party.

These are undoubtedly the first of many casualties. Last year, John Boscawen, an ardent opponent of the new law, spent \$150,000 of his own money campaigning against the Electoral Finance Bill. He has pledged to continue his campaign right through to the election. This week NZCPR’s Mid Week Politics features an interview with John. I asked him why he is so passionate about this issue:

The law is wrong. Parliament ignored both the Human Rights Commission and the Electoral Commission on such a basic issue as the freedom of speech. These are bodies set up to protect the rights of ordinary New Zealanders. They are run by state servants, independent of the government. No

government should be able to override such basic protection mechanisms in such a unilateral way.

I asked John what outcome he would like to see as a result of his initiatives:

In the short term as a very minimum, changes need to be made to the Act to bring it at least partly in line with what both the Human Rights Commission and the Electoral Commission recommended. The Human Rights Commission wanted the restrictions on free speech to apply for no more than three months prior to the election. The Electoral Commission concluded to be effective a campaign would likely cost \$250,000 to \$300,000 and recommended that the maximum spending limit be set at the higher end of this range. By setting the maximum spending limit at \$120,000 (rather than \$250-300,000) and having the restrictions apply for a full election year (rather than three months) parliament has ignored these two independent bodies and passed a law that unduly restricts the right of its citizens.

Finally, I asked John how people who oppose the Government’s ban on free speech can help:

“I suspect one of the reasons MPs pushed on and passed the Act was that they believed that New Zealanders would soon forget what had happened and would be prepared to sit back and simply accept that their freedom had been taken from them. I need as many people as I can get to help me demonstrate this is not true.”

To read the interview – and to help John in his campaign, see www.nzcpr.com.

The Herald ran an on-line poll asking “Who’s to blame for Labour’s fall in the polls? They reported that 80 percent of the 3,000 respondents believed Labour was to blame for the polling troubles, 16 percent blamed “the media” and 4 percent blamed National.

This week’s poll: This week we ask NZCPR readers who they think is to blame for Labour’s polling troubles – Labour, National or the media?

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