IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2019-404-000761
[2019] NZHC 1163

UNDER THE	Declaratory Judgments Act 1908
BETWEEN	THE KIWI PARTY INCORPORATED Applicant
AND	THE ATTORNEY GENERAL Respondent

Hearing: 15 May 2019

Appearances: G E Minchin for Applicant
A M Powell for Respondent

Judgment: 27 May 2019

JUDGMENT OF WYLIE J

This judgment was delivered by Justice Wylie
On 27 May 2019 at 11.00 am
Pursuant to r 11.5 of the High Court Rules

Registrar/Deputy Registrar

Solicitors/counsel:
Crown Law, Wellington
G E Minchin, Auckland

Introduction

[1] The applicant – The Kiwi Party Incorporated – has filed a statement of claim seeking declarations in relation to:

(a) the validity of the Arms (Military Style Semi-automatic Firearms) Order 2019 ("the Order");[1]

(b) the process followed by Parliament in passing the Arms (Prohibited Firearms, Magazines and Parts) Amendment Act 2019[2] ("the Amendment Act);

(c) the validity of the Amendment Act.

[2] The Attorney General has filed an application seeking to strike out the statement of claim. This application is opposed by The Kiwi Party.

[3] The Kiwi Party, for its part, has filed a notice of interlocutory application seeking interim orders forbidding the Government from acting on the Amendment Act, and directing the Government to extend the amnesty put in place by the Amendment Act, in both cases until six months after the next election or until a referendum is held on the Amendment Act. A number of affidavits have been sworn in support of this application. The Attorney General opposes the application for interim orders.

Factual background

[4] The factual background can be stated relatively shortly.

[5] The Order was made on the advice and with the consent of the Executive Council. It was an Order in Council made under the authority of s 74A(c) of the Arms Act 1983. The Order came into force at 3.00 pm on 21 March 2019. The effect of the Order was to declare that, for the purposes of the Arms Act, all semi-automatic firearms that are capable of being used in combination with a detachable magazine (other than one designed to hold 0.22-inch or less rimfire cartridges) that is capable of

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1 L1 2019/55.
2 2019 No. 12.

holding more than five cartridges, and all semi-automatic shotguns that are capable of being used in combination with a detachable magazine that is capable of holding more than five cartridges, are military style semi-automatic firearms. The result was to make such firearms subject to the additional licencing requirements set out in the Arms Act.

[6] As from 12 April 2019, the Arms Act was amended by the Amendment Act. It repealed the Order and made other substantial amendments. Inter alia it made semi-automatic firearms prohibited weapons. It put in place a definition of prohibited magazines and prohibited parts. It imposed restrictions on licenced dealers, amended the endorsement requirements and made it an offence to sell, supply or possess any prohibited firearms, magazines or parts.

[7] As might be expected, the Order and the Amendment Act attracted significant public attention. There was vociferous opposition to many of the requirements and prohibitions put in place.

The Statement of Claim

[8] The statement of claim is succinct. It asserts that The Kiwi Party is a political party, constituted as an incorporated society. It refers to the Order, and notes that, amongst other things, it declares that semi-automatic pistols are military style semi-automatic firearms, where they can be used in combination with a detachable magazine that is capable of holding more than five cartridges. It refers to the passage of the Amendment Act, noting that it was introduced into Parliament as a Bill on 1 April 2019, that it proceeded to its first reading on 2 April 2019, that submissions before the Select Committee to which it was referred opened on 3 April 2019 and closed on 4 April 2019, and that on 4 April 2019 the Select Committee heard from selected and invited submitters only. It goes onto assert that on 8 April 2019, the Select Committee approved the Bill and referred it back to Parliament. It asserts that the Bill went through its second reading on 9 April 2019, its third reading on 10 April 2019, and received Royal Assent on 11 April 2019.

[9] Against this background, 12 causes of action are raised. Declarations are sought as follows:

(a) that the Order is ultra vires s 74A of the Arms Act;

(b) that the Select Committee made a mistake of fact;

(c) that the process followed by the Select Committee was inadequate, because there was no proper consultation;

(d) that the Select Committee predetermined the matters which it was required to consider;

(e) that the Select Committee failed in its duty to provide the checks and balances necessary to maintain a free and democratic society;

(f) that the Select Committee took into account irrelevant considerations;

(g) that the Select Committee failed to take into account relevant considerations;

(h) that the Select Committee abdicated its responsibility by endorsing de facto legislative powers to repeal legislation upon the executive;

(i) that the Amendment Act is in breach of the Treaty of Waitangi;

(j) that the Amendment Act breaches the right to private property;

(k) that the Amendment Act is in breach of the Bill of Rights 1688; and

(l) that the Amendment Act is unconstitutional and in breach of constitutional rights.

[10] No statement of defence has been filed by the Attorney General. Rather, and as noted above, the Attorney General has filed an application to strike out the proceedings.

[11] It is appropriate to deal with the Attorney General's application first.

The application to strike out

[12] Mr Powell, appearing for the Attorney General, advanced three core propositions:

(a) while the validity of a legislative instrument, such as the Order, can be examined by the Court, the Order The Kiwi Party asks the Court to examine was in force for only 21 days, and it was repealed before the proceedings were filed. Any issue about its interpretation and whether it was intra vires the Arms Act is moot;

(b) the processes followed by the Select Committee in considering the Bill cannot be examined by the Court; and

(c) the validity of the Amendment Act cannot be examined by the Courts.

For these reasons, he argued that the proceedings cannot succeed and that they should be struck out.

[13] Mr Minchin, appearing for The Kiwi Party, responded as follows:

(a) the validity of the Order can be examined by the Court, notwithstanding that it has been repealed and was only in force for 21 days;

(b) the Court would not be trespassing on Parliamentary process were it to enquire into the processes followed by the Select Committee in considering the Bill. The issues raised are important, because the Order permits an abdication of the powers of Parliament by the Executive; and

(c) under the Declaratory Judgments Act 1908, the validity of acts of Parliament can be considered by the Court. Here there is good reason to do so because fundamental rights and constitutional principles have been infringed.

[14] In the interests of brevity, I have very much abbreviated the arguments presented.

Analysis

The Attorney General's strike out application

[15] Pursuant to r 15.1 of the High Court Rules, the Court may strike out all or part of a pleading if it discloses no reasonably arguable cause of action, or is likely to cause prejudice or delay, or is frivolous or vexatious, or is otherwise an abuse of the process of the Court.

[16] The approach to be taken when considering a strike out application is well settled. The established criteria were summarised by the Court of Appeal in *Attorney General v Prince*.[3] They are as follows:

(a) pleaded facts, whether or not admitted, are assumed to be true. This does not however extend to pleaded allegations which are entirely speculative and without foundation;

(b) the cause of action or defence must be clearly untenable. It is not appropriate to strike out a claim summarily unless the Court can be certain that it cannot succeed;

(c) the jurisdiction is to be exercised sparingly and only in clear cases;

(d) the jurisdiction is not excluded by the need to decide difficult questions of law, requiring extensive argument; and

(e) the Court should be particularly slow to strike out a claim in a developing area of the law.

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3 *Attorney General v Prince* (1998) 1 NZLR 262 at 267; endorsed by the Supreme Court in *Couch v Attorney General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33].

[17] The same criteria apply to applications to strike out judicial review and other public law proceedings.[4]

[18] I turn to consider each of the causes of action raised against these criteria.

(a) First cause of action – a declaration that the Order is ultra vires s 74A of the Arms Act

[19] Relevantly, s 74A(c) of the Arms Act provides that the Governor General may, by Order in Council, declare semi-automatic firearms (other than pistols) of a stated description to be military style semi-automatic firearms for the purposes of the Arms Act.

[20] It is alleged in the statement of claim that a pistol is a firearm and that the Order extends to semi-automatic pistols, if they can be used with detachable magazines capable of holding more than five cartridges. It is alleged that the Order was therefore ultra vires, because there was no authority to declare pistols to be military style semi-automatic firearms.

[21] The Attorney General's response is to say that the Order in Council was in force for only 21 days before it was repealed by the Amendment Act, and that it was not in force when the statement of claim was filed on 30 April 2019. It was also argued that under the Arms Act, (prior to its amendment), pistols were a controlled firearm and that a licence holder could obtain a permit to possess a pistol, only if he or she came within one of the various capacities set out in s 29 of the Act, and that under s 30, any licence holder applying for a permit to possess a pistol had to be a fit and proper person and satisfy the police he or she should be permitted to have possession of a pistol. It was submitted that if there was any error in the Order, the only effect was to suggest, wrongly, that a permit to possess a pistol could be issued to any licence holder under s 30, rather than to the special categories of permit holder under s 29. It was argued that the police, who are responsible for dealing with permit applications, would have been in no doubt as the correct application of the Arms Act and the Order

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4 *Southern Ocean Trawlers Ltd v Director General of Agriculture and Fisheries* [1993] 2 NZLR 53 (CA).

in the unlikely event that any application for such a permit could have been processed in the 21 days the Order was in force.

[22] I had some difficulty in following that part of the argument advanced for the Attorney General as related to the operation of the Arms Act and part of that argument was speculative.

[23] As a matter of law, legislative instruments cannot be cast in terms that take them beyond the scope of the empowering legislation under which they are passed.[5] Whether or not the Order was capable of interpretation in a manner consistent with s 74A of the Arms Act as it stood at the relevant time is not a point that can be resolved on a strike out application. I accept that the Courts will not generally give a remedy if it is useless to do so, and the futility can be a basis for striking out a statement of claim.[6] Nevertheless, the Courts have been prepared to consider the lawfulness of legislative instruments, even where they have been repealed or replaced,[7] and as a matter of discretion, a Court can hear a proceeding, despite the absence of a dispute affecting the rights of the parties inter se, where there is an important question of law concerning a public authority.[8] I cannot be certain that that discretion would not be exercised in this case.

[24] Accordingly, I am not certain that the cause of action alleging that the Order was ultra vires is untenable and cannot succeed. I decline to strike out the first cause of action in the statement of claim.

(b) Causes of action 2 to 8 – challenges to the process followed by the Select Committee

[25] It was common ground between counsel that, for present purposes, causes of action 2 to 8 (inclusive) should be considered together.

[26] Here, the Bill being considered by the Select Committee received Royal Assent and passed into law on 12 April 2019 as the Amendment Act.

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5 *Drew v Attorney General* [2002] 1 NZLR 58 (CA).
6 *Maddever v Umawera School Board of Trustees* [1993] 2 NZLR 478 (HC) at 502; *Crusader Meats New Zealand Ltd v New Zealand Meat Board* HC Wellington CP 85/02, 16 December 2002.
7 *Taylor v Chief Executive of Department of Corrections* [2013] NZHC 1659 at [13].
8 *Attorney General v Smith* [2018] NZCA 24, [2018] 2 NZLR 899 at [24].

[27] The Privy Council has stated as follows:[9]

> It is not open to the court to go behind what has been enacted by the legislature, and to inquire how the enactment came to be made, whether it arose out of incorrect information or, indeed, on actual deception by someone on whom reliance was placed by it. The court must accept the enactment as the law unless and until the legislature itself alters such enactment, on being persuaded of its error.

Further, and as Professor Joseph, in his seminal text on Constitutional and Administrative Law in New Zealand, has noted, the Courts have been astute to respect the inherent authority of Parliament to control its own internal proceedings.[10] Parliament's proceedings are immune from interference by the Courts, and that the Courts will not entertain a challenge to the validity of a statute that is passed in contravention of standing orders, that is founded on incorrect information, or is induced by fraud or deceit.[11]

[28] There remain questions about the exact scope, qualifications and basis of the principle of non-interference in Parliamentary proceedings, but any uncertainty is not relevant to the present case.[12] The Kiwi Party is not seeking, in regard to the Select Committee processes, a declaration as to its rights. Rather, it is directly challenging the validity of the Order by reference to what occurred in the Select Committee.

[29] That the Courts cannot go behind the Select Committee's process is clear from s 11 of the Parliamentary Privilege Act 2014. It provides as follows:

> **11 Facts, liability, and judgments or orders**
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> In proceedings in a court or tribunal, evidence must not be offered or received, and questions must not be asked or statements, submissions, or comments made, concerning proceedings in Parliament, by way of, or for the purpose of, all or any of the following:
>
> (a) questioning or relying on the truth, motive, intention, or good faith of anything forming part of those proceedings in Parliament:

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9 *Hoani Te Heuheu Tukino v Aotea District Maori Land Board* [1941] AC 308at p 322.

10 P A Joseph *Constitutional and Administrative Law in New Zealand* (4th ed, Thomson Reuters, Wellington, 2014) para 2.8, para 37, citing *Bradlaugh v Gossett* (1884) 12 QBD 271; *R v Graham Campbell v ex parte Herbert* (1935) 1 KB 594; *British Railways Board v Pickin* [1974] AC 765 (HL).

11 P A Joseph, above n 10 at 13.6, pp 446 to 467, and see generally para 13.6.1, p 466 to para 13.62, p 472.

12 *Ngāti Whātua Orakei Trust v Attorney General* [2018] NZSC 84, [2019] 1 NZLR 116 at [36]-[48].

(b) otherwise questioning or establishing the credibility, motive, intention, or good faith of any person:

(c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament:

(d) proving or disproving, or tending to prove or disprove, any fact necessary for, or incidental to, establishing any liability:

(e) resolving any matter, or supporting or resisting any judgment, order, remedy, or relief, arising or sought in the court or tribunal proceedings.

[30] The second to eighth cause of action call into question proceedings in Parliament.[13] The Kiwi Party is asking this Court to enquire into the Select Committee's processes, the correctness and propriety of statements made in the Select Committee, what the Select Committee did or did not consider, and how it considered it. This is prohibited by s 11. Any enquiry by the Court would undermine the principle of comity between the legislative and the judicial branches of Government. I agree with the submission by Mr Powell that, to accede to The Kiwi Party's request, would be inconsistent with what Lord Browne-Wilkinson described as the "basic concept" underlying article 9 of the Bill of Rights 1688,[14] namely:[15]

> To ensure … that a member of the legislature and witnesses before Committees of the House can speak freely without fear that what they say will later be held against them in the Courts.

[31] In my view, the second to eighth causes of action (inclusive) are untenable. I am certain that they cannot succeed, and I strike them out.

(c) Ninth cause of action – inconsistency between the Amendment Act and the Treaty of Waitangi

[32] The statement of claim alleges that the Treaty of Waitangi is a constitutional agreement by which Māori surrendered sovereignty in return for British citizenship and the retention of their extent property rights, such as the right to their Taonga. The

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13 As defined in s 10 of the Parliamentary Privilege Act 2014.

14 The Bill of Rights 1688 has legislative force in New Zealand – see the Imperial Laws Application Act 1988. Article 9 of the Bill of Rights – Freedom of Speech – reads as follows – "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any court or place out of Parliament".

15 *Prebble v Television New Zealand* [1994] 3 NZLR 1 (PC) at [8].

statement of claim goes on to assert that Taonga is "that which is obtained by the spear". There is then the assertion that Taonga was understood by all parties to the Treaty to include firearms of a nature which enabled effective self-defence and effective resistance to any exercise of arbitrary power by the Crown, and that the Amendment Act prohibits Māori from possessing firearms of a nature which enable effective self-defence and effective resistance to any exercise of arbitrary power by the Crown. On this basis, it is argued that the Amendment Act breaches the Treaty of Waitangi and is unlawful.

[33] It is an alarming proposition that Taonga, as that word is used in the Treaty of Waitangi, includes anything with the capacity to deliver lethal force against the exercise of arbitrary power by the Crown, as is the proposition that the concept of Taonga extends to military style semi-automatic firearms, to prohibited magazines or to prohibited parts, all as defined in the Amendment Act. While pleaded facts are, in the context of a strike out application, assumed to be true, this assumption does not extend to pleaded allegations which are entirely speculative and without foundation. In my view, the allegations made in the statement of claim in relation to Taonga fall into this category, but in any event, I do not need to address these issues.

[34] There is no jurisdiction to make a declaration that the Amendment Act is in breach of the Treaty of Waitangi. The pleading assumes that the Treaty of Waitangi creates legal rights which can be breached. The Treaty of Waitangi, although of "transcendent importance",[16] does not on its own confer enforceable legal rights.[17] There has to be legislative incorporation of the Treaty to establish an actionable right.[18]

[35] In *Attorney General v Taylor*,[19] the Supreme Court upheld decisions in this Court and in the Court of Appeal, to the effect that there is jurisdiction to make declarations that a statute is inconsistent with the New Zealand Bill of Rights Act 1990. The making of such declarations was found to be legitimately within the judicial function, because the New Zealand Bill of Rights Act guarantees certain civil and

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16 *New Zealand Maori Council v Attorney General* [1987] NZLR 641 (CA) at 658.
17 *Hoani Te Heuheu Tukino v Aotea District Maori Land Board*, above n 9 at 324
18 *New Zealand Maori Council v Attorney General* [2007] NZCA 269, [2008] 1 NZLR 318 at [62]-[76].
19 *Attorney General v Taylor* [2018] NZSC 104, [2019] 1 NZLR 213.

political rights, and because the ability to make such a declaration is necessary in order to provide an effective remedy when those rights are unjustifiably abridged by legislation.

[36] Here, the Treaty of Waitangi has not been incorporated into the Arms Act by Parliament. The Treaty of itself does not confer enforceable legal rights. It follows that there is no jurisdiction to make a declaration that the Amendment Act breaches the Treaty of Waitangi.

[37] I do not consider that the ninth cause of action is tenable. It cannot succeed. Accordingly, I strike out the ninth cause of action as well.

(d) The tenth to twelfth causes of action – breach of rights/unconstitutionality

[38] Relevantly:

(a) the tenth cause of action asserts that there is a constitutional right to private property, and that the Amendment Act purports to allow the Executive to prohibit and confiscate private property. It seeks a declaration that in so doing, the Act breached the right to private property;

(b) the eleventh cause of action refers to the Bill of Rights. It is asserted that the Bill of Rights provides that Protestants may have arms for their defence suitable to their conditions and as allowed by law. It is then asserted that the words "is allowed by law" relate to prior law, and on that basis, a declaration is sought that the Amendment Act breaches the Bill of Rights; and

(c) the twelfth cause of action asserts that it is a principle of law that no power is unfettered, that there is a common law constitutional right to bear arms, and that that right is coincident with the balance of power in English society. It is argued that the Amendment Act contravenes that alleged right.

[39] The allegations made in the statement of claim are contentious, and in many respects speculative. These matters aside, there are insuperable difficulties with these causes of action. Traditionally it has been held that, when an enactment is passed there is finality unless and until it is amended or appealed by Parliament. It is the function of the Courts to give effect to the intention of the legislature and there can of course be extensive debate as to the correct interpretation of an enactment. The Courts cannot however be called on to decide whether an act should be on the statute book at all.[20] The constitutional position in New Zealand until recent times has been clear and unambiguous. Parliament is supreme, and the Courts do not have a power to consider the validity of properly enacted laws.[21] In more recent years, it has been suggested, both extrajudicially and in some cases, that the supremacy of Parliament is a common law construct, and that there are common law limitations on Parliamentary power. It has been suggested that there may be "higher law" values that are antecedent to the law itself, that these values inform legislation and common law principles and that they provide a rationale for legal development. It has been said that Parliament "misfires" where legislation flouts such values in a wanton or indiscriminate manner.[22]

[40] A party seeking to "disapply" a statutory provision must identify the cherished ideal or value, and demonstrate that Parliament has failed to appreciate the significance of its legislative encroachment.[23]

[41] The difficulty from The Kiwi Party's perspective in the present case, is that while it has identified values, it does not assert that those values are "higher law" values, and it is difficult to see that it could properly do so. First, it asserts a right to private property. The right to private property has never been absolute. There are a number of statutes which permit the confiscation of private property, for example, the Public Works Act 1981. Secondly, the rights set out in the Bill of Rights allowing Protestants to have arms for their defence is qualified by the words "as allowed by law". There is nothing to support The Kiwi Party's assertion that those words relate to "prior law". The law does not require me to accept that assertion in the statement

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20 *British Railways Board v Pickin*, above n 10 at 789.

21 *Shaw v Commissioner of Inland Revenue* [1999] 3 NZLR 154 (CA) at 157-158, affirming a proposition advanced in this Court in *Rothmans of Pall Mall (NZ) Ltd v Attorney General* [1991] 2 NZLR 323 at 330.

22 P A Joseph, above n 10 at para 15.7.3(2), p 569, and see generally para 5.7, p 564 to 574.

23 Ibid.

of claim uncritically. Thirdly, the Arms Act and the Amendment Act, do not deny absolutely any right there may be to have firearms. They simply curtail that alleged right in respect of particular types of firearm. Fourthly, the Bill of Rights is simply an act of Parliament. It has no "higher law" value. The doctrine of implied repeal comes into play. The alleged common law constitutional right to bear arms, is not unqualified, even assuming that such right exists.

[42] There is nothing in the statement of claim to support the proposition that there are "higher law values", antecedent to the law itself or to the Amendment Act. Nor in my view, is the statement of claim capable of amendment to cure these difficulties.

[43] The Declaratory Judgments Act, on which The Kiwi Party relies, relevantly provides as follows:

> **3 Declaratory orders on originating summons**
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> Where any person has done or desires to do any act the validity, legality, or effect of which depends on the … validity of any statute, … or
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> Where any person claims to have acquired any right under any such statute, … or to be in any other manner interested in the … validity thereof,—
>
> such person may apply to the High Court by originating summons for a declaratory order determining any question as to the construction or validity of such statute, regulation, bylaw, deed, will, document of title, agreement, memorandum, articles, or instrument, or of any part thereof.

[44] The scope of s 3 is limited. It is confined to ensuring that the statute was properly enacted – in other words, that Parliament has followed those laws that govern the manner in which the statute in question was created. Section 3 does not give the Court the power to consider the validity of the content of legislation.[24]

[45] There is no assertion in the statement of claim that there were laws governing the manner in which the Amendment Act had to be passed, or that Parliament failed to follow any such laws. The Kiwi Party's attack is to the content and validity of the

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[24] *Shaw v Commissioner of Inland Revenue*, above n 21 at [13]; see also *Westco Lagan Ltd v Attorney General* [2001] 1 NZLR 40 (HC); see also Mary Harris and David Watson (eds), *McGee Parliamentary Practice in New Zealand* (4th ed, Oratia, Auckland 2017) at 9.

Amendment Act, and, subject to the limited qualification I have noted above, that is not a matter for the Courts.

[46] I note the observations of the Court of Appeal in *Shaw v Commissioner of Inland Revenue*, made in relation to the assessment of a superannuation surcharge. The Court there stated as follows:[25]

> Those who object to such a tax or feel that it is unfair have their remedy in the legislative, or ultimately in the electoral, process.

Those comments are equally applicable in the present case.

[47] I am certain that the tenth to twelfth causes of action are untenable, and that they cannot succeed. Accordingly, I strike out those causes of action as well.

The Kiwi Party's application for interim orders

[48] The orders sought were in the following terms:

(a) An order of prohibition forbidding the government from acting on the Arms (Prohibited Firearms, Magazines, and Parts) Amendment Act 2019, until 6 months after any subsequent election or referendum on the Act.

(b) In the alternative

An order in the nature of prohibition directing the government that it ought not act on the Amendment Act until 6 months after any subsequent election or referendum on the Act.

(c) In the alternative

An order of mandamus directing that the government extend the amnesty in the Amendment Act until 6 months after any subsequent election or referendum on the Act.

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25 *Shaw v Commissioner of Inland Revenue*, above n 21 at [18].

(d) In the alternative

An order in the nature of mandamus directing that the government ought to extend the amnesty in the Amendment Act until 6 months after any subsequent election or referendum on the Act.

[49] Such orders are unprecedented insofar as I am aware, and Mr Minchin could not point to any situation where similar orders have been made. He frankly acknowledged that, in requesting the same, The Kiwi Party was in "unchartered waters".

[50] In my view, the waters are relatively well chartered. I have set out the relevant authorities and statutory provisions above. All but one of the causes of action advanced are, in my judgment, untenable, and the surviving cause of action will depend on the exercise of the Court's discretion in The Kiwi Party's favour.

[51] The surviving cause cannot possibly lead to the interim orders sought. The Order to which the first cause of action relates has been repealed. There is no status quo to preserve. The Kiwi Party's case in relation to the surviving cause of action is not strong. The orders sought would interfere with the proper business of Parliament, and cut across the Amendment Act, which has been passed by Parliament, with only one dissenting vote.

[52] The application for the interim orders is declined.

Costs

[53] The Attorney General seeks costs.

[54] As the successful party in all bar one respect, he is entitled to a costs award. It is my preliminary view that costs should be fixed on a 2B basis (with some minor adjustment to acknowledge that the first cause of action has not been struck out).

[55] If the parties are unable to reach agreement on costs, I make the following directions:

(a) any memorandum on behalf of the Attorney General seeking costs and disbursements is to be filed and served within 10 working days of the date of this judgment;

(b) any memorandum in reply is to be filed and served within a further 10 working days;

(c) memoranda are not to exceed five pages.

I will then deal with the issue of costs on the papers unless I require the assistance of counsel.

General

[56] The first cause of action has not been struck out. The Attorney General is to file a statement of defence to the first cause of action within 10 working days of the date of this judgment. The file is then to be placed before an Associate Judge for a case management conference on the first reasonably available date thereafter. Counsel are to comply with the relevant provisions in relation to case management conferences and the filing of memoranda, as are set out in the High Court Rules.

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Wylie J