

Stake Out

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ON TV AND IN MOVIES, THERE IS A SHADY MYSTIQUE TO THE JOB OF A PRIVATE INVESTIGATOR. THE REALITY IS ONE OF HARD WORK, PERSEVERANCE - AND SOMETIMES OPERATING ON THE KNIFE-EDGE OF THE LAW.



It's not paranoia if they really are out to get you.

John Murphy looks to see if anyone is sitting in a car outside his house before he leaves. He searches his car and office for recording and tracking devices. These are not paranoid delusions, he says.

Murphy has experience of being watched 24-7 by private investigators. He says two investigators followed and secretly recorded him: one hired by a disgruntled customer who was taking him to the Motor Vehicle Disputes Tribunal.

Murphy has difficulty proving he was followed: the Herald on Sunday has spoken to both PIs, who deny spying on him, though one confirms he was twice hired to serve papers on Murphy.

"You'd never know," Murphy insists. "That's the way it works. I had one private investigator come in and serve papers and intimidate me. I found bugs in my house. You wouldn't mind if it was the police who were gathering information about you."

Murphy is an Auckland car dealer who has been the subject of a TVNZ Fair Go story on complaints by people who had bought cars from Murphy's Paris Motors in Greenlane. The programme alleged he bullied and threatened violence to customers and had 15 complaints brought against him to the tribunal. The tribunal found against him in four of nine cases publicly available.

So, aren't the private investigators serving the public interest in exposing someone like him?

Murphy says no. He says there is a broader principle at stake: every New Zealander's right to privacy, to not be spied upon by a de facto police force that is not subject to the same standards as real police.

Former Associate Justice Minister Clayton Cosgrove sponsored a bill to extend private investigators' powers to allow them to covertly record people without consent two years ago, which simply gave them the same rights as the general public.

The New Zealand Institute of Professional Investigators says its members comply with their licensing regime and abide by a code of conduct. An independent government body investigates any complaints. However, critics such as the Green Party believe the system is open to abuse because the bar is so low for entry.

Some of the techniques private investigators use include putting tracking devices on cars, following people and secretly recording them. Twelve private investigators have NZ Transport Agency authorisation to check motor-licence details, enabling them to find out who owns a car and where they live. The Privacy Commission is concerned about their use of high-tech radio-frequency identification (RFID) skimming and computer spyware.

"It is stalking," says Murphy. "The New Zealand private investigators are mostly ex-police who forget that they are no longer sworn. New Zealand has its own private police force. They look like policemen, they talk like policemen, but they're not policemen."

From Sherlock Holmes to Remington Steele to, er, Roger Rabbit, Hollywood has made private eyes look glamorous, or at least intriguing.

They never show the private eye peeing in a bottle in the back of a surveillance van on a 10-hour stakeout. Private investigator Andrew McQuilter says the reality can be far from the glamour to which wannabe private investigators aspire.

Indeed, National College of Security manager Evaine McKendrick says she was bombarded with negative feedback from graduates of her private investigation course when they sought jobs.

Most private investigators are ex-police, as it's nearly impossible to get experience unless you have been in the force, but anyone without a conviction can be licensed and set up in business.

Despite having a certificate in investigation skills, her students couldn't get jobs with private investigation firms. "It just wasn't working," she says. "Companies wanted people with five years' or sometimes seven years' experience. We didn't feel like we were offering a useful course so we decided to close the doors."

McQuilter says, "You need a lot of patience to do surveillance. But I'm one of these people who can sit and stare for 10 hours and not get bored.

Then, once the person comes out, it's all on and what you've been thinking about for the past 10 hours is all gone."It can get really hot. If you are stuck in the van during the summer it can get so hot I end up sitting there in my shorts and singlet. I have to take all my food with me and a bottle to go to the toilet."

He uses the van to monitor people who are actively evading companies they owe money to, people who are dealing in stolen property or other illegal activity.

The van has three cameras linked to a hard drive and a screen. It can be left at the side of the road empty with cameras rolling, or a private investigator can sit in the van during a stake-out.

"It looks like any work van. Just this week I had to serve papers on someone who owed \$76,000. He knew people were after him so we couldn't use a car; it would have been too obvious. I parked the van outside his house with the orange light on the roof and wore a hard hat and a high-vis. He walked right up to me and asked me what I was doing and I handed the papers to him."

The van has been useful uncovering illegal dumping. It was a company that had been paid to safely dispose of hazardous waste by a bigger company."The bigger company had heard they were just taking the money and dumping the waste to landfill. So I got the van and drove straight into the dump behind them. I was able to film them and it was the evidence the company needed," he says.

Andrew, 24, was accepted into police college when he finished school in 2005. However, he decided to work for his father's investigation company to gain experience. Four years later, he still hasn't got around to joining the force. "I'm having fun," he says.

Andrew's father, Ron McQuilter, became a private investigator in his native Scotland after becoming frustrated with the path his police career was taking."I always wanted to be a detective but they had me lined up to be a traffic cop. I didn't want to be a traffic cop so, when a friend of mine suggested I join him as a private detective, I said, 'Yeah, why not'."

He is now director of New Zealand's largest private investigation firm, Paragon Investigations, which earns about 60 per cent of its revenue from investigating corporate theft and fraud.

The company also works for SOEs and insurance companies. Ron McQuilter is chairman of the NZ Institute of Professional Investigators, which has 74 members who must be approved by their peers before they can join. He is well-known for his work on TV3's Missing Pieces programme. "I am good at finding people who don't want to be found," he says.

He also helped solve the mystery disappearance of Kiwi Lee Sheppard in London. A production company offered McQuilter Snr \$10,000 to work on the case. McQuilter refused and offered his services to Sheppard's family free and advised them against signing an exclusive deal with the documentary maker.

He says he spent \$300,000 of his own money on the case."I reviewed the file and conducted interviews and then it just came to me," he says. "It was all there but three different detectives who had reviewed the file had missed it. It was suddenly so obvious to me and the coroner agreed with everything I said."A London coroner's court found Lee Sheppard, 26, died of asphyxiation at the recycling plant where he worked – and Sheppard's family finally had the answers they were looking for.

Daniel Thompson-Toresen started work as a private investigator with his father, Daniel Thompson, who was formerly a South Auckland police detective but has worked in the private sector for about 35 years. At their central Auckland office they have three permanent staff and about seven full-time contractors including a team of top-secret surveillance experts. All are ex-police, except him.

"You pretty much need to be an ex-cop to get a job. You pick up the skills you need in the police force. Others who might have those skills are lawyers or forensic accountants. As for me, I have been working with my father on surveillance jobs since I was 15," Thompson-Toresen says.

His own son, Jacob, who is 15, is interested in joining the family business, but also has an interest in joining the police.

Thompson-Toresen says people hire private detectives for reasons including protection against stalkers, or to gather evidence against former partners in child custody battles.

"Before the law change we had less rights than the average citizen." We couldn't photograph anyone without their permission. That clause in the old law had stemmed from divorce cases in the 70s when we had 'at fault' divorce. You had private investigators bursting into hotel rooms taking photographs of people having sex. So when they outlawed that, I'd say the number of private investigators dropped by 90 per cent.

"Corporate fraud detection is the big earner for most investigators. The Privacy Commissioner has said the strongest case for allowing private investigators to carry out covert photography or tape recording is where a retailer may know that small amounts of money or product are going missing, and the only way to effectively investigate will involve weeks of surveillance that police are not prepared to do.

Thompson-Toresen's clients include Restaurant Brands, which owns Pizza Hut and KFC. His work with Coca-Cola uncovered eight people who had stolen \$1.8 million of product from the drink giant. It involved eight months' covert surveillance of the factory followed by interviews with staff.

They also do surveillance for people who suspect their partner is cheating.

"People hire us to get the proof they need to confront their partner. It's never nice," he says. "People ask us to break the law all the time and shows like CSI give people false expectations. They give us grainy video footage and expect us to clean it up at the press of a button and tell them who the person is, but we can't do that."

So yes, New Zealand private investigators are more active (though perhaps not more visible) than pretty much any time since the divorce law changes. And in 2014, the World Association of Detectives will recognise that by holding its annual conference in Auckland.

Thompson-Toresen presented the winning bid to host the international conference, which will be attended by about 200 private investigators from 80 countries.

Victims and families of victims are increasingly turning to private investigators to help the police prosecution or following a failed prosecution.

Kylee Guy, the widow of murdered Feilding farmer Scott Guy, has enlisted former police detective inspector Mike Crawford to help give her some answers, after her brother-in-law Ewen Macdonald was acquitted of Scott's murder. Crawford has worked privately for 15 years, after a 30-year career with Auckland police. As a detective inspector he was in charge of many murder cases; as a private detective he has worked on behalf of defence counsel.

He worked for Peter Williams QC on high-profile cases, including that of accused murderer Zion King, who was acquitted of the charge two years ago."

When you get the right result it's rewarding but it is always hard work," he says.

On the flip side, Crawford has worked for families of victims when police prosecutions have failed, to look at files and try to find new evidence.

Crawford is working with Kylee Guy on a voluntary basis, after being approached by the Sensible Sentencing Trust. He declines to comment on how his investigation is progressing, but Trust spokesman Garth McVicar says the use of private investigators is a growing trend among victims.

"I think it comes from a frustration with the system and also a desperation for answers," he says. "People need to feel like they are doing something and turning to a private investigator fulfils that need.

Since the law changed a person can be recharged if new evidence comes to light. "Government agencies, too, employ private investigators.

Accident Compensation Corporation hires them to spy on claimants. Several private investigators spoken to for this article say they have Government contracts.

The use of private investigators by media organisations is internationally contentious, after the UK tabloid The News of the World hired a private eye to hack into the voicemails of celebrities and crime victims.

TV3 says it uses private investigators, "but very, very occasionally". State broadcaster TVNZ says it hires private investigators to help producers of its news and current affairs programmes. "We do occasionally use private investigators, mostly to locate people who may not want to be found," says TVNZ spokeswoman Megan Richards. "But our use of these guys is judicious and very infrequent. There's no separate budget for them so I couldn't give you a figure. Payment would just come out of the normal budget for a given programme.

"The private Security Personnel Licensing Authority has received 55 complaints relating to breaches of the Security Personnel and Private Investigators Act, 15 of which were against private investigators. Of the 55 complaints, 19 were upheld and an individual's certificate of approval was either suspended or cancelled.

The authority does not make details of its decisions publicly available. The Department of Internal Affairs' Complaints, Investigation and Prosecution Unit has received 57 complaints since it was set up in 2010, 30 involving unlicensed operators. The department recently conducted its first prosecution under the new Act. Andrew Campbell and Anthony Tuhoro were convicted and fined \$12,500 and \$7500 respectively in Hamilton District Court last month, after selling and installing thousands of dollars of security without being licensed. They were accused of targeting elderly clients.

Internal Affairs' regulatory services' general manager, Maarten Quivooy, says the unit has also issued seven warnings and a further 10 complaints are still being investigated.

"We use a wide range of regulatory tools to promote and secure compliance," he explains. "A number of individuals were ostensibly unlicensed but we found they had either applied for the wrong Certificate of Approval or licence or were confused about what they were required to do. We worked through the requirements with them and they successfully processed the correct application.

"The Privacy Commissioner, Marie Shroff, says she is concerned about intrusive investigative behaviour by investigators and supports the need for better regulation of surveillance by state and private investigators. She says the law has not gone far enough and gaps still exist in the use of spyware and RFID skimming. She called for an offence being created to cover the covert use of tracking devices.

"Technology innovations are developing quickly in the area of video surveillance and tracking and could present future challenges to personal privacy," she says.

Green Party Justice spokesman Dave Clendon believes the new Act was needed to introduce boundaries and controls to an industry which is "wide open to abuse given the relatively low bar for entry". "You just have to demonstrate you have no convictions or have no mental impairment. There is a perception PIs have more powers than anyone else but they do not - they have no authority to enter private homes or business premises," he says. "But they get away with things people wouldn't like, secretly recording people and taking photographs. People's privacy is not protected in public places."

He criticises the use of private investigators by state-owned power company Solid Energy, which employed Thompson & Clark Investigations Ltd to spy on environmentalists protesting against its coalmining operations on the West Coast.

"It was an appalling practice," says Clendon. "Privacy is an absolute right and should be defended by the state."

In the case of car dealer John Murphy, the Motor Vehicle Disputes Tribunal proved it was able to decide on the merits of complaints without unhappy customers going to the lengths of hiring private eyes.

They probably didn't need private investigators to satisfy their concerns, but then, the job of a private detective is not to keep people happy.

Whether defrauded employers or cuckolded spouses, the people who hire private eyes are, almost by definition, suspicious and worried – and looking for confirmation of their worst fears.

As Thompson-Toresen says: "It's never nice."