

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV-2007-485-2243

BETWEEN V C KERR
 Plaintiff

AND THE DOMINION POST
 Defendant

Decision: 12 February 2008

DECISION OF ASSOCIATE JUDGE D.I. GENDALL

- [1] On 28 January 2008 I issued a judgment in this proceeding with respect to an application by the defendant under Rule 60 *High Court Rules* for an order for security for costs against the plaintiff.
- [2] On 29 January 2008 the plaintiff forwarded an email to the Registrar of this Court which stated:
- “I do not believe that this judgment should be published. The decision contained my previous convictions some more than 18 years old. Publishing the judgment appeared to be in breach of the principles of the Criminal Record Clean Slate Act 2004.”*
- [3] The Criminal Records (Clean Slate) Act 2004 (“the Act”) broadly contains three provisions which explain the application and effect of the Act:

“4 Interpretation

...

clean slate scheme means the scheme established by Part 2 under which an eligible individual –

- (a) is deemed to have no criminal record for the purposes of any question asked of him or her about his or her criminal record; and*
- (b) has the right to have his or her criminal record concealed by government departments and law enforcement agencies that hold or have access to his or her criminal record.*

6 Application of Clean Slate Scheme

- (1) The clean slate scheme applies to every question asked about, and every request made for the disclosure of, an eligible individual’s criminal record or information about an eligible individual’s criminal record whether asked or made on or after the commencement of this Act.*

14 Effect of Clean Slate Scheme on Eligible Individual

- (1) If an individual is an eligible individual, he or she is deemed to have no criminal record for the purposes of any question asked of him or her about his or her criminal record.*
- (2) An eligible individual may answer a question asked of him or her about his or her criminal record by stating that he or she has no criminal record.*

[4] The scheme under the Act is clearly directed toward eligible individuals being permitted to avoid disclosure of his or her previous convictions when asked about or requested to provide information on them. In the present case I express no view at the outset on whether the plaintiff is an “*eligible individual*” under the Act. Suffice to say that bearing in mind the strict requirements of s.7(1) of the Act, there may be some doubt as to this. Nevertheless, I have approached this matter on the basis that he is an “*eligible individual*”.

[5] Section 4(b) of the Act dealing with the interpretation of the “*Clean Slate Scheme*” states that an eligible person has the right to have his or her criminal record concealed by a law enforcement agency or Government Department that holds or has access to his or her criminal records. There may be some issue here as to whether a Court could be considered to be a “*law enforcement agency*” although it

is noted that the definition does include the Ministry of Justice or a Government Department.

[6] On this basis at first glance it might be thought that the Act could possibly apply to the publication of judgments of this Court. Notwithstanding that, however, s.19 of the Act contains a number of exceptions. S.19 provides:

“19. Exceptions to general effect of clean slate scheme

(1) An eligible individual must state that he or she has a criminal record if subsection (3) applies.

(2) A government department or law enforcement agency, or an employee or contractor of a government department or law enforcement agency, that holds or has access to criminal records may disclose the criminal record or information about the criminal record of an eligible individual if subsection (3) applies.

(3) This subsection applies if-

(a) the eligible individual’s criminal record or information about the eligible individual’s criminal record is necessary for any of the following purposes:

(i) the exercise of the prevention, detection, investigation, or prosecution functions of a law enforcement agency or an overseas agency or body whose functions correspond to those of a law enforcement agency; or

(ii) the administration of sentences or the management of remand inmates by a law enforcement agency; or

(iii) the exercise of security-related functions of the New Zealand Security Intelligence Service; or

(b) the eligible individual’s criminal record or information about the eligible individual’s criminal record is relevant to any criminal or civil proceedings before a court or tribunal (including sentencing) or proceedings before the New Zealand Parole Board; or

...

[7] As I see the position, s.19(3)(b) of the Act is of relevance in the present case. The plaintiff's criminal record was clearly relevant to the civil proceedings which were before this Court and accordingly can be disclosed. Even assuming that the plaintiff is an "*eligible individual*" under the Act, I find that the Act does not apply to the publication of the judgment here by virtue of s.19(3)(b) and there being no other reason for suppression of its contents, I am satisfied that the judgment issued on 28 January 2008 can be properly published.

'Associate Judge D I Gendall'