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# Are Clean Slates in New Zealand Undermined by the Internet?

Does the New Zealand Criminal Records (Clean Slate) Act 2004 truly provide a clean slate when cases are released on the Internet?

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## **Introduction**

With the introduction of the Criminal Records (Clean Slate) Act 2004 (CSA) by the New Zealand Government a New Zealand individual with criminal convictions, that are of a non custodial nature or non specified offence,<sup>1</sup> and who is eligible under s 7, is deemed to have no criminal record for the purposes of any request asked of him or her and any request made to a statutory body, such as the Courts or the Police, must conceal such criminal record.<sup>2</sup> Further, under s 14(2) an eligible individual may answer any question asked of him or her about their criminal record as "no". The intention, debated in its second reading by the Honourable Nandor Tanczos, is to provide the eligible person with a "clean slate" and society must consider the persons past indiscretions' as "spent".<sup>3</sup> This was to be achieved by making it unlawful for a body, private or statutory within New Zealand, to release such information.<sup>4</sup> However, many ex-offenders who are eligible under the CSA continue to struggle against discrimination associated with their past convictions. This has resulted from the indiscriminate publishing of Court judgments, or sentencing judgments, where no suppression order has been made, upon the Internet.<sup>5</sup> Marshall outlines that since 2006, when the policy decision to publish onto the internet was made, has seen some 18,000 judgments published in the period between 2006 and February 2011.<sup>6</sup> It is submitted that this undermines the purpose of the CSA due to the longevity and international nature of this information. Bennis, Goleman, and O'Toole argue that "the internet is forever"<sup>7</sup> and Justice Harvey reminds us that Courts have limited to no control over the copying and dissemination of internet information due to a lack of jurisdiction.<sup>8</sup> Therefore,

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<sup>1</sup> Criminal Records (Clean Slate) Act 2004, s 7(1)(d); Specified offence being defined in s 4 of the Criminal Records (Clean Slate) Act 2004 as sexual offences under ss 131-218 of the Crimes Act 1908.

<sup>2</sup> Criminal Records (Clean Slate) Act 2004, s 14(1).

<sup>3</sup> (19 May 2004) 617 NZPD 13089.

<sup>4</sup> Ibid; see also s 17 and 18 of the Criminal Records (Clean Slate) Act 2004 which makes it an offence for disclosure or request of such information.

<sup>5</sup> Marshall, J "Report of an Inquiry requested by the Minister of Justice on the Publication of Names of Victims in Judicial Decisions on the Judicial Decisions Online Website of the Ministry of Justice" (2011) Ministry of Justice <<http://www.justice.govt.nz/publications/global-publications/j/judicial-decisions-online-inquiry-report>>, at 18-28.

<sup>6</sup> Ibid, at 33.

<sup>7</sup> Bennis, W., Goleman, D., O'Toole, J. *Transparency: How Leaders Create a Culture of Candor* (Jose-Bass, CA, 2008).

<sup>8</sup> Justice Harvey *internet.law.nz* (Lexisnexis, Wellington, 2005), at [27-102].

where judgements are published to the internet there will be no control over its use, dissemination and application. Despite the good intentions of the CSA this dissemination continues to result in eligible ex-offenders being refused employment due to employers' finding these Court reports on the internet.<sup>9</sup> Discrimination of this sort, however, is not a breach of the CSA requirements. This is because the CSA is designed to conceal the records based on disclosure and request. Searching and finding the information from the internet is not classified as an offence as the information was not disclosed within the defined parameters of the CSA.<sup>10</sup> Further, as these judgments were disclosed lawfully by the Ministry of Justice at a time before the ex-offender was eligible, the CSA is powerless to prevent the resulting discrimination. Accordingly, once the judgment has been published to the internet, where it can be freely archived and disseminated across internet borders as a public record, the judgment is no longer subject to the jurisdictional controls of the CSA and, therefore, provides no temporal limit as to the discriminatory effects. The aim of this article is to investigate the reach of the CSA and whether it has created an environment of discrimination contrary to New Zealand's international human rights obligations. However, it must be noted that the scope of this article, while pointing out discrimination issues towards all ex-offenders in employment situations, does not directly address discrimination towards the ex-offenders that have had custodial sentences, or other Court orders that disqualifies eligibility under the CSA. Further, this article is focused on the New Zealand legal landscape and while it includes articles and cases from other jurisdictions these are only to aid in interpretation of the international Human Rights obligations and landscape the New Zealand has pledged to uphold.

## **Human Rights in New Zealand - an Overview**

### *The general position*

While this paper will focus primarily on the discriminatory issues that result from internet publication of judicial decisions it is helpful at this juncture to

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<sup>9</sup> There is little research in New Zealand on this specific area and the statement is made based on discussions with officers in the Department of Social Development.

<sup>10</sup> Criminal Records (Clean Slate) Act 2004, ss 17-18.

provide a brief overview of the New Zealand Human Rights landscape completing with a focus on the anti-discrimination framework. In 1948 New Zealand voted in favour of the Universal Declaration of Human Rights 1948 (UDHR) which has become the corner stone for countries to work together in the promotion of ideals towards equality and universalism for all human beings.<sup>11</sup> The UDHR provided the opening for the development of legislative treaties, that bind the ratified country into protecting the "common standard of achievement for all peoples and nations",<sup>12</sup> and resulted in the Convention on the Elimination of All Forms of Racial Discrimination (CERD); the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). These last two, (ICESCR) and (ICCPR), combined with the Universal Declaration on Human Rights, form the "International Bill of Rights".<sup>13</sup> On 12 November 1968 New Zealand became a signatory to the ICCPR and on 28 December 1978 ratified the covenant with reservations not to apply clauses 10(2)(b); 10 (3); 14(6); 20 and 22. Through ratification of the ICCPR, and despite the reservations - it is noted that reservations do not negate the purpose of treaties-<sup>14</sup> New Zealand declared its acceptance to be bound to uphold the ideology and unreserved clauses.<sup>15</sup> Once a treaty becomes ratified, Governments undertake to put in place domestic measures and legislation compatible with the treaty obligations and duties.<sup>16</sup> New Zealand, taking this position seriously, fulfilled this obligation with the introduction of the New Zealand Bill of Rights Act 1990 (NZBORA) and later the Human Rights Act 1993 (HRA). However, New Zealand did not just confirm its commitment with the enactment of rights legislation but made it known to the New Zealand Judiciary that it is faithful to

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<sup>11</sup> Universal Declaration of Human Rights 1948, Article 1.

<sup>12</sup> OHCHR "International Human Rights Law" (2011) United Nations Human Rights <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>>.

<sup>13</sup> OHCHR "International Human Rights Law" (2011) United Nations Human Rights <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>>; see also *Northern Regional Health Authority v Human Rights Commission* [1998] 2 NZLR 218; (1997) 4 HRNZ 37, at 22.

<sup>14</sup> O'Neill, N., Douglas, R. *Retreat from Injustice: Human Rights Law in Australia* (2nd ed., United Federation Press, Sydney, 2004) at 142.

<sup>15</sup> See Vienna Convention on the Law of Treaties, Art 21; and Human Rights Committee, General Comment 24, CCPR/C/21/Rev.1/Add.6 (1994).

<sup>16</sup> OHCHR "International Human Rights Law" (2011) United Nations Human Rights <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx>>.

these binding obligations by including them in the long title to each Act which can be seen as follows:

HUMAN RIGHTS ACT 1993

An Act to consolidate and amend the Race Relations Act 1971 and the Human Rights Commission Act 1977 and *to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights.* [emphasis added]

NEW ZEALAND BILL OF RIGHTS ACT 1990

- (a) To affirm, protect, and promote human rights and fundamental freedoms in New Zealand; and
- (b) To affirm New Zealand's commitment to the International Covenant on Civil and Political Rights

The Judiciary has responded to this firm commitment of New Zealand's international human rights obligations<sup>17</sup> by adopting a wide interpretive approach to New Zealand's legislative framework, arguing:<sup>18</sup>

[T]he presumption that so far as its wording allows, legislation should be read in a way consistent with New Zealand's international obligations.

In *Northern Regional Health Authority v Human Rights Commission*<sup>19</sup> the Court held that:<sup>20</sup>

There is... a strong measure of congruity among the international instruments which have been the genesis for the New Zealand Bill of Rights Act and the Human Rights Act. In interpreting human rights legislation the

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<sup>17</sup> McBride, T., *New Zealand Civil Rights Handbook* (Craig Potton Publishing, Nelson, 2010) at 287.

<sup>18</sup> *Nicholls v Registrar of the Court of Appeal* [1998] 2 NZLR 385; (1998) 4 HRNZ 537, at [555].

<sup>19</sup> *Northern Regional Health Authority v Human Rights Commission* [1998] 2 NZLR 218; (1997) 4 HRNZ 37.

<sup>20</sup> *Northern Regional Health Authority v Human Rights Commission* [1998] 2 NZLR 218; (1997) 4 HRNZ 37, at 23.

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New Zealand Courts have resisted any attempt to limit their impact, noting that such legislation is to be “accorded a liberal and enabling interpretation”

Further, the Court in *Northern Regional Health Authority v Human Rights Commission* outlined that New Zealand's human rights obligations do not exist in a vacuum and must accord appropriate weight to judgments of its jurisdictional neighbours, holding the same obligations, to aid in our own understanding of the human rights ideals to which we aspire.<sup>21</sup> The Court went on to confirm the statement of Thorp J in *Coburn v Human Rights Commission*,<sup>22</sup> that:

“The proper construction ... requires an appropriate regard for the substantial body of authority, both in New Zealand and abroad, as to the special character of human rights legislation and the need to accord it a fair, large and liberal interpretation, rather than a literal or technical one”.

This opened the door for the use of international judgments and articles to aid in the interpretation of New Zealand legislation in accordance with the Human Rights obligations.

#### *The anti-discrimination framework*

Discrimination, in general, occurs when one group or person is treated distinctly differently to another in a specified area of public life that results in a burden, disadvantage, obligation or detriment to that person or group of people.<sup>23</sup> This is confirmed by Articles 2(1), 3 and 26 of the ICCPR which state:

#### Article 2(1)

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights

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<sup>21</sup> *Northern Regional Health Authority v Human Rights Commission* [1998] 2 NZLR 218; (1997) 4 HRNZ 37, at 24.

<sup>22</sup> *Northern Regional Health Authority v Human Rights Commission* [1998] 2 NZLR 218; (1997) 4 HRNZ 37, at 23 citing Thorp J in *Coburn v Human Rights Commission* [1994] 3 NZLR 323, at [333]; (1994) 1 HRNZ 120, at [137].

<sup>23</sup> McBride, T., *New Zealand Civil Rights Handbook* (Craig Potton Publishing, Nelson, 2010) at 292.

recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

### Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 2(2) of the ICCPR requires that states subscribing to the covenant must take positive action to provide legislative or other measures necessary to give effect to these rights. In 1990 New Zealand took affirmative action to protect against all forms of discrimination, both direct and indirect, under s 19 of which provided full protection against discrimination to people and groups on all grounds of the ICCPR except "other status".<sup>24</sup> The original s 19(1) of the 1990 NZBORA affirmed these protected rights as: everyone has a right to freedom from discrimination on the ground of colour, race, ethnic or national origins, sex, marital status, or religious or ethical belief. In 1993 New Zealand enacted the Human Rights Act 1993 and substituted s 19(1) of NZBORA with "Everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993" which extended the prohibit grounds of discrimination to include age, disability, employment status, family status and political opinion.<sup>25</sup> However, "other status" was still not included as a prohibited ground despite its inclusion in Article 26 of the ICCPR.

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<sup>24</sup> New Zealand Bill of Rights Act 1990, s 19.

<sup>25</sup> Human Rights Act 1993, s 21(1).

It is understood that the purpose of s 19 NZBORA is to ensure the protection of people and groups, as stated above, from being treated differently than that of others without objective and reasonable justification.<sup>26</sup> However, it is noted that this different treatment must fall within one of the prohibited grounds under s 21 of the HRA<sup>27</sup> and the applicant must be able to show a causative link between the prohibited ground and the treatment complained.<sup>28</sup> Where this cannot be done, or the ground is not included within s 21 of the HRA, no case can be made. This creates a problem with the CSA as refusal to employ a person due to a historical conviction discovered on the internet, despite any rights available under the CSA not to declare, is not a prohibited ground and, therefore, provides no causative link. I will return to this argument later in this article.

### *The concept of Equality*

For discrimination law to be effective it must consider that all people are equal. Article 26 of the ICCPR states that: "all persons are equal before the law". However, equality in the human rights context is not a straight forward argument. Over a number of years the arguments towards equality have settled into two generally accepted concepts of "Formal or judicial equality" and "substantive equality".<sup>29</sup> 'Formal' or 'juridical' equality refers to a basic idea that "individuals in like situations should be treated alike".<sup>30</sup> The position of formal equality is to focus on equal treatment based on the appearance of similarity, regardless of any broader context, and places a negative duty on the

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<sup>26</sup> Butler, A. & Butler, P. *The New Zealand bill of Rights Act: a commentary* (LexisNexis, Wellington, 2005) at [17.4.1].

<sup>27</sup> *Human Rights Law* (Looseleaf ed, Brookers) at [HR22.13]; See also *Reekie v TVNZ* HC Auckland CIV-2010-404-004893, 3 November 2010, at [46]; *Trevethick v Ministry of Health* [2008] NZAR 454 at [38].

<sup>28</sup> *Human Rights Law* (Looseleaf ed, Brookers) at [HR22.13]; See also *Reekie v TVNZ* HC Auckland CIV-2010-404-004893, 3 November 2010, at [46]; *Trevethick v Ministry of Health* [2008] NZAR 454 at [38].

<sup>29</sup> Bamford, N., Malik, M., & O'Conneide, C. "Discrimination Law: Theory and Context" (1st ed., Sweet & Maxwell, London, 2008) at 178-194.

<sup>30</sup> Bamford, N., Malik, M., & O'Conneide, C. "Discrimination Law: Theory and Context" (1st ed., Sweet & Maxwell, London, 2008) at 178-194.



state to prevent the passing of legislation or practices that have the purpose of granting different treatment to individuals in similar situations.<sup>31</sup>

‘Substantive equality’ refers to the notion that individuals in different situations should be treated differently.<sup>32</sup> It encompasses two distinct ideas – equality of results and equality of opportunity which are defined as follows:

‘Equality of results’ requires that the result of the measure under review must be equal. It recognises that apparently identical treatment can in practice reinforce inequality because of past or ongoing discrimination or differences in access to power or resources. Under this approach, the effects as well as the purpose of a measure must be taken into account.<sup>33</sup>

‘Equality of opportunity’ suggests that the law can ensure that all individuals have equal opportunity, taking into consideration their different starting positions, to gain access to the desired benefit. Equal opportunity aims to provide equal chances but not necessarily results.<sup>34</sup>

The concept of equal opportunity is currently the most frequently applied equality concept in modern legislation due to its compatibility with the free market economy.<sup>35</sup> New Zealand has no distinct definition for equality but has appeared to adopt a mingling of both equality concepts in to the HRA and NZBORA. This has the effect of providing equality through negative action by placing a positive duty upon persons and bodies not to discriminate on one of the prohibited grounds set out in s 21 of the HRA. This means that as long as a person or body ignores the characteristics of a person, as defined under s 21 of the HRA, no direct discrimination will have taken place. However, this positive

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<sup>31</sup> Kitching, K. (ed.) *Non-Discrimination in International Law: A Handbook for Practitioners* (Interrights, London, 2005) at 19.

<sup>32</sup> Ibid.

<sup>33</sup> Ibid, at 20.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

duty of negative action does not necessarily prevent discrimination. This is because there are two types of discrimination direct and indirect.

### *Direct Discrimination*

Direct discrimination provides for 'formal equality' by prohibiting less favourable or detrimental treatment of an individual or group on the basis of a prohibited characteristic or ground.<sup>36</sup> This is the type of protection provided in s 21 of the HRA where discrimination that has a causative link to one of the prohibited grounds would constitute direct discrimination.<sup>37</sup> In *Director of Human Rights Proceedings v New Zealand Thoroughbred Racing Inc*<sup>38</sup> the Court of Appeal held that unless legislation can be seen to clearly stipulate its discriminatory effect, and thereby justify discriminatory action, the Act in question will not be exempt from the reach of the HRA. In this case a woman was refused entry to a racing club due to her being married to a person who had been barred. The Court held that discrimination was present and that the rules are not exempt to later legislation that protects Human Rights.<sup>39</sup> Direct discrimination by definition is intentional so no proof is required<sup>40</sup> the applicant only needs to show that discrimination is possible to satisfy the causative link.<sup>41</sup>

### *Indirect Discrimination*

Indirect discrimination has been formulated in different ways by different jurisdictions. However, Kitching outlines that two main components remain present in the general understanding.<sup>42</sup> These are:

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<sup>36</sup> Kitching, K. (ed.) *Non-Discrimination in International Law: A Handbook for Practitioners* (Interrights, London, 2005) at 71.

<sup>37</sup> McBride, T., *New Zealand Civil Rights Handbook* (Craig Potton Publishing, Nelson, 2010) at 292-293.

<sup>38</sup> *Director of Human Rights Proceedings v New Zealand Thoroughbred Racing Inc* [2002] 3 NZLR 333; (2002) 6 HRNZ 713 (CA).

<sup>39</sup> *Ibid*, at [22-23]

<sup>40</sup> Kitching, K. (ed.) *Non-Discrimination in International Law: A Handbook for Practitioners* (Interrights, London, 2005) at 72.

<sup>41</sup> McBride, T., *New Zealand Civil Rights Handbook* (Craig Potton Publishing, Nelson, 2010) at 293.

<sup>42</sup> Kitching, K. (ed.) *Non-Discrimination in International Law: A Handbook for Practitioners* (Interrights, London, 2005) at 80.

**Disproportionate impact.** A prima facie case of indirect discrimination occurs when a practice, rule, requirement or condition is neutral on its face but impacts disproportionately upon particular groups.

**No justification.** Because the provision or condition is facially neutral, however, the analysis will also generally consider whether there is a strong enough reason for the practice to justify the differential impact. Such justification must demonstrate the policy or practice is objectively reasonable and proportional.

Kitching continues by saying that:<sup>43</sup>

If the requirement is not reasonable in all the circumstances, it is likely to constitute indirect discrimination. The law measures whether a requirement is reasonable by balancing the reason for having the requirement against its discriminatory effect - including the numbers of people disadvantaged by it and the degree of that disadvantage.

The Human Rights Committee, in HRC general Comment 18, interpreted the prohibition of discrimination under the ICCPR to include both direct and indirect discrimination:<sup>44</sup>

“[T]he Committee believes that the terms ‘discrimination’ as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.”

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<sup>43</sup> Kitching, K. (ed.) *Non-Discrimination in International Law: A Handbook for Practitioners* (Interrights, London, 2005), at 81.

<sup>44</sup> "General Comment No. 18: Non-discrimination" (1989) Office of the High Commissioner for Human Rights at [7] <[http://www.lawfoundation.org.nz/style-guide/nzlsq\\_25.html#7.1](http://www.lawfoundation.org.nz/style-guide/nzlsq_25.html#7.1)>.

McBride outlines that New Zealand has accepted indirect discrimination to involve:<sup>45</sup>

[A]ny conduct, practice, requirement or condition that appears neutral but has the effect of discriminating in a way that is unlawful (eg., an imposition of a conduct that, although the same for everyone, disadvantages some people).

In *K v M*<sup>46</sup> the Human Rights Commission (HRC) formed the opinion that practising Muslim students were indirectly discriminated against when the schools uniform policy prevented the students from wearing trousers that covered his body from the naval to his knees as required by the pupil's religious beliefs. This, the HRC held was a breach of the HRA despite arguments from the school that the policy promoted equality amongst pupils. And in *Northern Regional Health Authority v Human Rights Commission*<sup>47</sup> Cartwright J held that s 19 of NZBORA includes a prohibition on both direct and indirect discrimination.<sup>48</sup>

### **The rise of convictions**

In 1999 the New Zealand Ministry of Justice recorded 462,000 offences with 196,000 resulting in prosecution that saw 124,000 convictions - these figures exclude traffic offences.<sup>49</sup> Since 1999 the number of prosecutions during 1999 to 2008, resulting in conviction, has risen by 28 percent<sup>50</sup> making a staggering 1.7 million criminal convictions in an eight year period between 1999 and 2009. 31.6 percent of these convictions were for traffic offences and 21.4 percent were for property such as theft and burglary.<sup>51</sup> However, it must be noted that these statistics do not report the convictions of repeat offenders, which is unnecessary detail for the scope of this article, and must therefore be

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<sup>45</sup> McBride, T., *New Zealand Civil Rights Handbook* (Craig Potton Publishing, Nelson, 2010) at 295.

<sup>46</sup> *K v M* (1995) 1 HRLP 34.

<sup>47</sup> *Northern Regional Health Authority v Human Rights Commission* [1998] 2 NZLR 218; (1997) 4 HRNZ 37.

<sup>48</sup> *Northern Regional Health Authority v Human Rights Commission* [1998] 2 NZLR 218; (1997) 4 HRNZ 37 at 236-238.

<sup>49</sup> MOJ "Responses to Crime: Annual review 1999" (MOJ, 1999) at 3.

<sup>50</sup> MOJ "Statistical Bulletin: Conviction and Sentencing Statistics in New Zealand 1999 to 2008" (MOJ, 2009) at 1.

<sup>51</sup> *Ibid*, at 6.

taken as an overview of the situation not a detailed picture. What the statistics do highlight is that New Zealand has seen an increase in the number of convictions for offences of the type which the CSA is to provide protection.

### **Public interest in Court decisions**

The judiciary in New Zealand has undertaken a positive act of releasing judgements onto the internet to confirm its commitment to transparency. This commitment has seen 18,000 judgments published to the internet between 2006 and February 2011.<sup>52</sup> However, Marshall also points out that this has not been without its mistakes seeing 11 cases reported to the internet that included information that easily identified victims.<sup>53</sup> The Judiciary's position is that where the Courts consider there is a public interest in the decision then this will outweigh any privacy protection of the accused and the court will not provide protection against publication regardless of the harm publication will cause.<sup>54</sup> The result is a complicated set of rules that must be traversed when applying for name suppression and the accused must assume that such orders will not be granted with the inevitable result of the judgment becoming published to the internet. Further, news reports by the press, and in today's internet environment everyone is a reporter,<sup>55</sup> are considered by the Court to be a media right<sup>56</sup> which is protected by s 14 of NZBORA, freedom of speech, and the Court will not entertain any Court order that prohibits the presumption of openness and freedom of expression.<sup>57</sup> This, it is submitted, is the correct approach. However, this creates inherent problems for proper application of the CSA when a person obtains eligibility due to the un-restrained nature of the internet.

### **The un-restrained nature of the internet**

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<sup>52</sup> Marshall, J "Report of an Inquiry requested by the Minister of Justice on the Publication of Names of Victims in Judicial Decisions on the Judicial Decisions Online Website of the Ministry of Justice" (2011) Ministry of Justice <<http://www.justice.govt.nz/publications/global-publications/j/judicial-decisions-online-inquiry-report>>, at 18-28.

<sup>53</sup> *Ibid*, at 16-25.

<sup>54</sup> *R v Durham* CA38/97, 25 March 1997; *Kerr v Dominion Post* HC Wellington Civ-2007-485-2243, 12 February 2008.

<sup>55</sup> Gunter, B. *News and the Net* (Lawrence Erlbaum Associates, Inc., NJ, 2003) at 167.

<sup>56</sup> *Television New Zealand v Green* (2008) 8 HRNZ 715; [2009] NZAR 69, at [60].

<sup>57</sup> *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546; (2000) 18 CRNZ 55; (2000) 6 HRNZ 1.

Information placed on the internet is forever.<sup>58</sup> The internet is not bound by the jurisdiction of any one Court and has no limits as to the number of times information can be duplicated, re-published, used, or disseminated.<sup>59</sup> Further, issues of freedom of speech have been argued time and time again to protect publications made on the internet where the information is factually correct<sup>60</sup> and the Court has found its position powerless to reverse the clock for people harmed by internet release. The Court in *Lewis v Wilson & Horton Ltd*<sup>61</sup> confirmed that where publication is made to the internet and overseas publications the Court will have little power to enforce name suppression orders.<sup>62</sup> It has also been seen that the general public have no limitations, unlike journalists who have an ethical responsibility,<sup>63</sup> and no matter how much the Court may want to protect the dignity of victims it is unable to reverse the harm caused by publication on the internet.<sup>64</sup> This is due to the jurisdictional nature of the internet which has resulted in international Courts fighting to make old theoretical notions of law fit into an environment that is simply not able to provide the same border controls.<sup>65</sup> Internationally some theorists argue that copyright law may provide the answer to provide limits as to internet borders. The Court applied this theory of Copyright Law in *New Zealand Post v Leng*.<sup>66</sup> Here Williams J was able to assert jurisdiction over Mr Leng's activity, despite his website and domain name "nzpost.com" being located in California, due Mr Leng's domain name and website targeting New Zealand people with the same or similar products as provided by New Zealand Post. NZ Post was able to successfully stop Mr Leang from continuing his operation due to the breach of the Copyright Act. However, it is also noted that Mr Leang was present in New Zealand so it was much easier for the Court to

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<sup>58</sup> Bennis, W., Goleman, D., O'Toole, J. *Transparency: How Leaders Create a Culture of Candor* (Jose-Bass, CA, 2008).

<sup>59</sup> *Yahoo! Inc v La Ligue Contre Le Racisme et l'Antisemitisme* 379 F 3d 1120 (9th Cir 2004); *Dow Jones Company, Inc v Gutnick* [2002] HCA 56.

<sup>60</sup> *The Times Newspapers Ltd v Loutchansky* [2002] Part 12 Case 15 [CAEW].

<sup>61</sup> *Lewis v Wilson & Horton Ltd* [2000] 3 NZLR 546; (2000) 18 CRNZ 55; (2000) 6 HRNZ 1.

<sup>62</sup> *Ibid*, at [99].

<sup>63</sup> *Siemer v Legal Complaints Review Officer* HC Auckland CIV-2010-404-986, 25 February 2010.

<sup>64</sup> *Re X (No 2)* [2003] 3 NZLR 220; (2003) 20 CRNZ 242; (2003) 7 HRNZ 177, at [45].

<sup>65</sup> Dawson, C. "Creating Borders on the Internet: Free Speech, the United States, and International Jurisdiction" (2003-2004) 44 Va. J. Int'l L. 637 at 654.

<sup>66</sup> *New Zealand Post v Leng* [1999] 3 NZLR 219.

assert jurisdiction over his activities.<sup>67</sup> It is theorised internationally that the Crown maintains ownership over Court judgments.<sup>68</sup> The copyright argument suggests that Courts may be able to protect eligible individuals, protected from the disclosure under the CSA, by ordering the removal of the eligible individual's judgments from the internet regardless of their hosted location.<sup>69</sup> To do this, however, New Zealand would first need to amend s 27(g) of the Copyright Act 1994 as s 27(g) provides no Crown ownership to Court or tribunal judgments.<sup>70</sup> Arguably, however, even if s 27(g) of the Copyright Act 1994 was amended to provide Crown ownership it is the Crown that would have to bring a case to each and every offending jurisdiction that has duplicated or archived the judgment and then create reliable treaties for enforcement. This would create considerable resource expenditure even if one was to conservatively estimate that only one percent of the 18,000 publications currently in the internet were associated with CSA eligible individuals. Accordingly, the internet prohibits the effective administration of the CSA where Court judgments continue to be released on the internet.

### **The employers and employees views of previous offending**

Employers have argued across the centuries that property rights' are a fundamental human right and as owners of capital employers' should have the autonomy to hire or buy labour as they see fit.<sup>71</sup> Further, employers' argue that as they become liable for the actions of their employees', as provided in the law of Tort through vicarious liability, they must be allowed to protect their interests.<sup>72</sup> In many international jurisdictions employers also have legal obligations to protect the health, safety and welfare of others, including the protection of customers, from the actions of their employees such as violence,

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<sup>67</sup> *New Zealand Post v Leng* [1999] 3 NZLR 219.

<sup>68</sup> See the Australian Copyright Act 1968 s 182A, where all prescribed works, which is accepted to include Court judgments, are owned by the Crown.

<sup>69</sup> McCoy, M. & Boddie II, N. "Cybertheft: Will Copyright Law Prevent Digital Tyranny on the Superhighway" (1995) 30 Wake Forest L. Rev. 169; see also Copyright Act 1994, ss 2(1), 26 and 27.

<sup>70</sup> Copyright Act 1994, s 27(g).

<sup>71</sup> Lam, H., & Harcourt, M. "The Use of Criminal Record in Employment Decisions: The Rights of Ex-offenders, Employers and the Public" (2003) 47 Journal of Business Ethics 237 at 238.

<sup>72</sup> Israel, P. "Employee Misconduct ... Employer Responsibility?" 15(10) Canadian HR Reporter 5.

theft or sexual harassment.<sup>73</sup> This has lead employers to become anxious over hiring ex-offenders and is only enhanced by the continued discourse of reoffending by ex-offenders.<sup>74</sup> This has lead to employers seeking disclosure of criminal records in all forms of job applications and no matter the type of offence any answer in the affirmative results in immediate refusal.<sup>75</sup> This is enhanced in today environment as the request has become unnecessary due to the release of these records onto the internet. Employers are now easily able to obtain judgment information from the internet without the applicant's knowledge<sup>76</sup> and, despite the CSA eligible individual moving their life into a law abiding position, results in connecting the investigator, being the employer or the hired firm to undertake a background check, with the individuals past and not their present law abiding status.<sup>77</sup> This results in a one sided story that taints the application and usually results in the applicant being rejected out of hand.<sup>78</sup> This, the employer argues, is reasonable due to their need to protect the employment environment.<sup>79</sup>

#### *Ex-offender's argument*

The concept of forgiveness is one that is firmly seated in religious ideology and the concept of redemption is referred to as forgiveness of past sins that allows

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<sup>73</sup> Lam, H., & Harcourt, M. " The Use of Criminal Record in Employment Decisions: The Rights of Ex-offenders, Employers and the Public" (2003) 47 Journal of Business Ethics 237 at 240; see also Human Rights and Equal Opportunity Commission "On the Record" (2005) Australian Human Rights Commission

<[http://www.humanrights.gov.au/human\\_rights/criminalrecord/Criminal\\_record.pdf](http://www.humanrights.gov.au/human_rights/criminalrecord/Criminal_record.pdf)>.

<sup>74</sup> Ibid; see also Blumstein, A., & Nakamura, K. "REDEMPTION IN THE PRESENCE OF WIDESPREAD CRIMINAL BACKGROUND CHECKS" (2009) 47(2) American Society of Criminology 331.

<sup>75</sup> See the Australian position in Human Rights and Equal Opportunity Commission "On the Record" (2005) Australian Human Rights Commission

<[http://www.humanrights.gov.au/human\\_rights/criminalrecord/Criminal\\_record.pdf](http://www.humanrights.gov.au/human_rights/criminalrecord/Criminal_record.pdf)>, which has legislated against this action in the Human Rights and Equal Opportunity Commission Act 1986.

<sup>76</sup> Blumstein, A., & Nakamura, K. "REDEMPTION IN THE PRESENCE OF WIDESPREAD CRIMINAL BACKGROUND CHECKS" (2009) 47(2) American Society of Criminology 327.

<sup>77</sup> Ibid, at 328.

<sup>78</sup> Ibid.

<sup>79</sup> Lam, H., & Harcourt, M. " The Use of Criminal Record in Employment Decisions: The Rights of Ex-offenders, Employers and the Public" (2003) 47 Journal of Business Ethics 237 at 240; see also Human Rights and Equal Opportunity Commission "On the Record" (2005) Australian Human Rights Commission

<[http://www.humanrights.gov.au/human\\_rights/criminalrecord/Criminal\\_record.pdf](http://www.humanrights.gov.au/human_rights/criminalrecord/Criminal_record.pdf)>.



the transgressor to be released from the mark of crime.<sup>80</sup> In *Re Owen*<sup>81</sup> the High Court had to deal with whether it was appropriate to approve Mr Owen into the role of a barrister and solicitor of the High Court despite the rejection of good character presented by the law society of Mr Owens past convictions. Pancurst J outlined the test, developed from the history of judgments', that: the focus of the Court must be forward looking as it is not the function of the Court to punish the applicant for past conduct.<sup>82</sup> The Court considered that where a person has turned their life around the test must be to consider whether the defect or frailty of human character can now be considered entirely spent. In Mr Owens case the Court held this as being affirmed and granted his acceptance to the role of Barrister and Solicitor. Criminology research also points to a lack of reoffending by offenders as they get older; the time they have remained clean since the last offence; becoming married or in a stable relationship and when stably employed.<sup>83</sup> This, it is argued, shows that ex-offenders are able to turn their life around and should be returned to same equal status of the non-convicted.<sup>84</sup> This, it is submitted, was the purpose of the CSA by concealing the eligible individual's record.

### **Role of the CSA**

The CSA is designed to prevent the disclosure of the criminal record effectively giving the eligible person a clean slate through concealment of their past. In a government press release the Right Honourable Phil Goff, Minister of Justice at the time, outlined that despite requests for information regarding someone's previous convictions the CSA would prevent disclosure allowing the person to get on with their lives under a clean slate.<sup>85</sup> This is achieved through the CSA's retrospective affect as outlined in s 6(1) which states that the clean slate scheme applies to every question asked about and every request made for

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<sup>80</sup> Blumstein, A., & Nakamura, K. "REDEMPTION IN THE PRESENCE OF WIDESPREAD CRIMINAL BACKGROUND CHECKS" (2009) 47(2) American Society of Criminology 327 at 328.

<sup>81</sup> *Re Owen* [2005] 2 NZLR 536.

<sup>82</sup> *Re Owen* [2005] 2 NZLR 536 at [7].

<sup>83</sup> Blumstein, A., & Nakamura, K. "REDEMPTION IN THE PRESENCE OF WIDESPREAD CRIMINAL BACKGROUND CHECKS" (2009) 47(2) American Society of Criminology 331.

<sup>84</sup> Blumstein, A., & Nakamura, K. "REDEMPTION IN THE PRESENCE OF WIDESPREAD CRIMINAL BACKGROUND CHECKS" (2009) 47(2) American Society of Criminology 327 at 328.

<sup>85</sup> Phil Goff "Clean Slate Act to help 500,000 Kiwis" (2004) [behive.govt.nz](http://www.beehive.govt.nz)  
<<http://www.beehive.govt.nz/release/clean-slate-act-help-500000-kiwis>>.

the disclosure of an eligible individual's criminal record,<sup>86</sup> regardless of the temporal existence of the request being asked or made on or before the commencement of the Act. Section 6(2) then widens the provision to also include all sentences imposed before or on or after the Acts commencement<sup>87</sup> and all specified orders made before or on or after the Act's commencement.<sup>88</sup> Individual become automatically eligible under the scheme without any formal applications provided they meet all the requirements of s 7(1).<sup>89</sup> If the individual, however, is convicted of another offence after becoming eligible under s 7(1) the individual's clean slate will be withdrawn<sup>90</sup> until the requirements of s 8(2)(a) or s 8(2)(b), being the s 7(1) eligibility, are again met.<sup>91</sup> Where the individual is eligible for CSA protection s 14(1) states that the individual shall be deemed to have no criminal record for the purposes of any question asked of him or her about his or her criminal record.<sup>92</sup> Section 14(2) takes this one step further by providing the eligible individual with the power to answer any such question as a definitive "no".<sup>93</sup> However, if the individual is asked about their criminal record under the jurisdiction of a foreign country,<sup>94</sup> despite being located within New Zealand at the time of the request,<sup>95</sup> or as outlined by s 19(3) which relates to the detection of crime;<sup>96</sup> Court enquiry;<sup>97</sup> applications under the Arms Act 1983;<sup>98</sup> employment applications to government service;<sup>99</sup> acting as a care giver for the elderly or children (this section is not applicable where the role is to predominantly provide education);<sup>100</sup> an inquiry under the Children; Young Persons, and their Families Act 1989;<sup>101</sup> or approved government research;<sup>102</sup> the eligible

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<sup>86</sup> Criminal Records (Clean Slate) Act 2004, s 6(1).

<sup>87</sup> Criminal Records (Clean Slate) Act 2004, s 6(2)(a).

<sup>88</sup> Criminal Records (Clean Slate) Act 2004, s 6(2)(b).

<sup>89</sup> Criminal Records (Clean Slate) Act 2004, s 7(1).

<sup>90</sup> Criminal Records (Clean Slate) Act 2004, s 8(1).

<sup>91</sup> Criminal Records (Clean Slate) Act 2004, ss 8(2)(a-b).

<sup>92</sup> Criminal Records (Clean Slate) Act 2004, s 14(1).

<sup>93</sup> Criminal Records (Clean Slate) Act 2004, s 14(2).

<sup>94</sup> Criminal Records (Clean Slate) Act 2004, s 14(3)(a).

<sup>95</sup> Criminal Records (Clean Slate) Act 2004, s 14(3)(b).

<sup>96</sup> Criminal Records (Clean Slate) Act 2004, s 19(3)(a).

<sup>97</sup> Criminal Records (Clean Slate) Act 2004, s 19(3)(b).

<sup>98</sup> Criminal Records (Clean Slate) Act 2004, s 19(3)(c).

<sup>99</sup> Criminal Records (Clean Slate) Act 2004, s 19(3)(d).

<sup>100</sup> Criminal Records (Clean Slate) Act 2004, s 19(3)(e).

<sup>101</sup> Criminal Records (Clean Slate) Act 2004, s 19(3)(f).

<sup>102</sup> Criminal Records (Clean Slate) Act 2004, s 19(3)(g).

individual must answer the question as "yes" and disclose all information regarding the individual's criminal record.<sup>103</sup> To aid in the lawful concealment of the eligible individuals criminal records s 15 and 16 of the CSA places a positive duty on government departments, such as the justice department, law Government agencies, the police etc., that hold the criminal records of eligible individuals to conceal these records.<sup>104</sup> This is enforced by s 17 which makes it an offence to disclose the eligible individual's criminal record.<sup>105</sup> Section 18 takes this further by making it an offence for anyone, private or public, to require an individual to disregard the scheme.<sup>106</sup> However, the CSA provides no guidance or remedy where information regarding the eligible individual has been released to the internet. As submitted above, the New Zealand Judiciary are powerless to withdraw internet publications' leaving the eligible individual with increased possibilities of discrimination.<sup>107</sup> During the introduction of the Criminal Records (Clean Slate) Bill in 2003 the Labour and Green parties encouraged the Human Rights Commission to include in its submission on the CSA the need for additional legislative amendment. This, it was suggested, should be an amendment to the HRA to include unrelated or irrelevant criminal convictions as a prohibited ground of discrimination.<sup>108</sup> National and United future, however, argued that to do so would take the principles of non-discrimination to the absurd.<sup>109</sup> With respect, this argument is incorrect. As is submitted above through examples from international legislation and articles, the principles derived in Article 26 of the ICCPR are designed to prevent discrimination in all forms, even those produced indirectly. This is confirmed by s 19 of NZBORA as determined in the case of *Northern Regional Health Authority v Human Rights Commission*.<sup>110</sup> Accordingly, not to include provision for this form of discrimination only serves to distance New Zealand from its non-discrimination obligations under Article 26 of the ICCPR. The

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<sup>103</sup> Criminal Records (Clean Slate) Act 2004, s 19(3)(1).

<sup>104</sup> Criminal Records (Clean Slate) Act 2004, ss 15(2) and 16(1).

<sup>105</sup> Criminal Records (Clean Slate) Act 2004, s 17(1).

<sup>106</sup> Criminal Records (Clean Slate) Act 2004, s 18(1).

<sup>107</sup> Justice and Electoral Committee commentary "Criminal Records (Clean Slate Bill)" (2003) at [19-20] (Obtained under Official Information Act 1982 request to the Human Rights Commission).

<sup>108</sup> *Ibid.* at 20.

<sup>109</sup> *Ibid.*

<sup>110</sup> *Northern Regional Health Authority v Human Rights Commission* [1998] 2 NZLR 218; (1997) 4 HRNZ 37 at 236-238.

inability of the CSA to enforce its own provisions where the release to the internet has been made creates tensions between the rights of the eligible offender under the CSA and the discrimination by employers who, having been lawfully told by the employee that they have no convictions in accordance with s 14 of the CSA, finds the information on the internet and refuses to employ the candidate. This result can be described as "indirect discrimination" caused by the CSA's inability to prevent discrimination of the ex-offender group in this situation. The *Non-Discrimination in International Law: A Handbook for Practitioners* outlines protection against indirect discrimination require a State to take account of relevant differences between groups and legislate to prevent such discrimination.<sup>111</sup> At common law the position is clearly stated in the case of *Dempsey v Waikato Drycleaners (1983) Ltd*<sup>112</sup> the ERA. Here the ERA had to investigate the wrongful dismissal of Mr Dempsey, who despite wrongfully thinking that he was eligible under the CSA, was able to claim some relief. The ERA outlined that where records fall under the jurisdiction of the CSA then dismissal of an employee on the basis of finding out about their prior convictions would be unlawful.<sup>113</sup> However, as submitted above, with information being released onto the internet ex-offenders are usually denied their application without their knowledge, or being told the reason, and are not protected by the provisions of the CSA despite being able to lawfully say "no" to any question asked about their criminal record. Further, employers are not bound by ss 18 and 14 of the CSA where they have obtained information regarding the individual's criminal record outside the provisions of the CSA such as from the internet. Therefore, the CSA can provide no protection to the eligible individual against discrimination when the information is obtained prior to employment. Further, the provisions of the CSA provide no limits as to the information's use despite the individual being purported to have a clean slate. It is, therefore, submitted that the New Zealand Government has a

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<sup>111</sup> Kitching, K. (ed.) *Non-Discrimination in International Law: A Handbook for Practitioners* (Interrights, London, 2005) at 21.

<sup>112</sup> *Dempsey v Waikato Drycleaners (1983) Ltd* ERA Auckland AA438/08, 23 December 2008.

<sup>113</sup> *Ibid*, at [27].

positive duty to remedy the effects of this indirect discrimination under its international obligations.<sup>114</sup>

*Can Human Rights help the eligible individual?*

As submitted earlier in this article the provisions of the HRA are limited to the grounds provided within s 21 and the Courts will not entertain any grounds outside this exhaustive list. This list comprises of all Article 26 discrimination provisions, such as sex, race, age, etc, but specifically excludes the ground of "other status". It has been accepted in international interpretation that discrimination due to a criminal conviction falls within the bounds of "other status";<sup>115</sup> however, it is likely to be excluded by New Zealand Courts due to the prescribed limitations of s 21 as submitted above.<sup>116</sup> The Courts have made it clear that the provisions of Human Rights are political in nature and, therefore, the Courts, while interpreting the HRA and NZBORA in the widest sense will still remain within the stipulated confines of s 21 of the HRA.<sup>117</sup> Therefore, if any protection is to be afforded against the indirect discrimination caused the New Zealand Government will need to make legislative changes.

*Should the CSA be amended?*

It is submitted that amending the CSA will provide no greater protection to these individuals than the Act currently provides. This is because any amendment would have to incorporate the range of possible causes of discrimination within the CSA context. Further, in order to prevent the discrimination caused by the internet publication of judgments the Copyright Act 1994 would require amendment to recall already published information. As

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<sup>114</sup> Kitching, K. (ed.) *Non-Discrimination in International Law: A Handbook for Practitioners* (Interrights, London, 2005) at 21.

<sup>115</sup> The European Court of Human Rights has interpreted non-discrimination on the grounds of 'other status' to include non-discrimination on the basis of criminal record: see *Thlimmenos v Greece* ECHR 34369/97, 6 April 2000; See also S Joseph, J Schultz and M Castan, *The International Covenant on Civil and Political Rights: Cases, Commentary and Materials* (2nd ed., Oxford University Press, 2004) at 689, which discusses UN Human Rights Committee decisions suggesting that a clearly definable group of people linked by their common status is likely to fall under the definition of 'other status'.

<sup>116</sup> *Human Rights Law* (Looseleaf ed, Brookers) at [HR22.13]; See also *Reekie v TVNZ* HC Auckland CIV-2010-404-004893, 3 November 2010, at [46]; *Trevethick v Ministry of Health* [2008] NZAR 454 at [38].

<sup>117</sup> See the discussion above regarding the New Zealand Human Rights landscape.

submitted above the crown would then have to undertake litigation for its recall at considerable cost resource expenditure making this unviable. In addition all future publications of minor convictions, it is submitted here that the minor convictions would have to be defined and all summary offences stipulated to maintain this definition, would need to cease removing the policy of transparent government. This seems untenable and unworkable due to the considerable cost of revising current legislation that has a summary conviction. It is further submitted, that considerable tension would be created in maintaining public policies of openness and transparency, the rights of the press to publish, and the prevention of indirect discrimination. Accordingly, it is submitted that amending the HRA is a more appropriate direction.

#### *Amending the HRA*

As has been submitted amendment of the HRA is a more appropriate course of action as only one change is required to create the protection needed to prevent the indirect discrimination caused through internet publication. By adding "other status" into s 21 of the HRA New Zealand would conform to its international obligations under the ICCPR and provide protection in employment in accordance with the unrelated or irrelevant principle suggested by the Green Party. The use of "other status" as a prohibited ground allows the judiciary and the press to maintain its rights towards publication to any media device. Further, it allows for employers to protect their rights by refusing employment where the conviction would affect the job on offer and it protects the ex-offenders right to obtain employment where the conviction is irrelevant to the job.<sup>118</sup>

#### **Conclusion**

In New Zealand the purpose of the Criminal Records (Clean Slate) Act 2004 (CSA) is to provide an eligible ex-offender with the ability to move forward with their lives without the imposed stigma that is created through a criminal conviction. The ability to report "no" to any question asked regarding the

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<sup>118</sup> This is the position reflected in Australia through the Human Rights and Equal Opportunity Commission Act 1986; see Human Rights and Equal Opportunity Commission "On the Record" (2005) Australian Human Rights Commission  
<[http://www.humanrights.gov.au/human\\_rights/criminalrecord/Criminal\\_record.pdf](http://www.humanrights.gov.au/human_rights/criminalrecord/Criminal_record.pdf)>.

eligible individual's criminal record is prima facie intended to remove this stigma from employment opportunities. However, with the policy principles of openness and transparency many eligible individuals lose the protection of the CSA, due to no protection being available in Human Rights legislation, as their convictions have been published onto the internet for all to see. Accordingly, New Zealand must take positive action to prevent the CSA becoming little more than lip service to an ideal. New Zealand's international obligations under ratified treaties place a positive duty on the Government to take action in preventing the discrimination caused through the CSA's inability to protect eligible individuals from discrimination caused through internet publication. It is, therefore, recommended that s 21 of the Human Rights Act 1993 be amended to include "other status" as a prohibited ground of discrimination in accordance with the international obligations under Article 26 of the International Covenant of Civil and Political Rights.

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S Joseph, J Schultz and M Castan, *The International Covenant on Civil and Political Rights: Cases, Commentary and Materials* (2nd ed., Oxford University Press, 2004) at 689.

### **About the Author**

Lloyd Gallagher the founder of Gallagher & Co has had 18+ years experience in LAW and developing business solutions from IT and Marketing through to events and Project management.

In his early years Lloyd trained as a telecommunications technician in while working for Telecom then branched out into his own IT company now known throughout New Zealand and Australia as LG Holdings. Lloyd was instrumental in developing the first ISP and ADSL solutions for New Zealand, and has been featured in the Best of the Best 2 years running and countless computerworld magazines.

Lloyd has qualifications in Business Management and is a practicing Tax Agent for Inland Revenue in New Zealand.

Lloyd completed his four year degree in management in 2.5 years and his Bachelor of Laws in 3 years. Lloyd now embarks on a Masters in Law (LLM) and a Masters in Management Communications (MMS). Lloyd will then move to complete the degree with a Doctorate.

Adding to his credentials Lloyd has guest lectured at M.I.T (Manukau Institute of Technology) a prestigious Institute in Auckland. Through his involvement the Lecturers offered him a place on the advisory committee helping students to prepare for the real world.