

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2024-485-164
[2025] NZHC 38**

UNDER the New Zealand Bill of Rights Act 1990,
Section 27 and the Judicature Amendment
Act 1972

IN THE MATTER of a Judicial Review of a decision to refuse
to correct a false conviction History Report
and a false Criminal and Traffic History
Record

BETWEEN ALLAN MAGNUS YORSTON
Plaintiff

AND ATTORNEY-GENERAL
Defendant

Hearing: 18 July, 13 September and 14 November 2024

Counsel: Mr Yorston in Person
R E R Gavey for Defendant

Judgment: 31 January 2025

JUDGMENT OF RADICH J

[1] In this judicial review proceeding, Mr Yorston claims that entries in his convictions history report—produced by the Ministry of Justice—are wrong. He seeks an order that they be corrected.

[2] In fact, there were errors in the dates of Mr Yorston’s convictions in that report. In the course of this proceeding, they have been identified and fixed.

[3] However, Mr Yorston does not see that as concluding his claim. He believes that the conviction dates—recorded in earlier versions of the convictions history report—to have been altered deliberately by one or more Ministry of Justice employees. He does not see the issues as having been resolved.

[4] For the reasons I go on to give, I am satisfied that the issues with the convictions history report have been remedied such that the proceeding is resolved. A sound practical outcome has resulted. In any event, underlying that practical outcome, the Court does not have jurisdiction to consider Mr Yorston’s claim.

The allegations and the issues

The nub of the case

[5] The Ministry of Justice¹ produces a document known as a convictions history report upon request. The report is a computer-generated compilation of information about an individual’s convictions and the sentences imposed. It is created from information recorded in the case management system used by the courts at the time a request is made. The report contains seven columns:

- (a) the CRI number for a particular proceeding;
- (b) the court in which a conviction was entered;
- (c) the court record number (CRN);²
- (d) the conviction date;
- (e) a description of the charge for which a conviction was entered;
- (f) the sentence date;
- (g) a sentence description.

¹ On whose behalf the Attorney-General is named as defendant.

² A CRN is a unique number assigned to a singular charge laid by a prosecutor.

[6] In November 2023, Mr Yorston requested his convictions history report from the Ministry. The report that was produced showed, for each of the convictions it covered, the conviction and sentence dates to be the same. In fact, in each case, the dates on which Mr Yorston’s convictions were entered were earlier than the dates on which sentences were imposed for those convictions.³

[7] The Ministry accepts that the dates of Mr Yorston’s convictions were not the same as the dates on which he was sentenced and that, therefore, the report produced is inaccurate. The Ministry has identified a software issue which, in the reports produced for Mr Yorston, has essentially conflated the conviction date with the sentence date. When a conviction is entered, but before sentencing, the conviction date in the system was recorded correctly. But, after sentencing, both dates in the report are shown as the date on which the sentence was imposed.

[8] The software issue has affected, also, a related report called a “criminal and traffic history” report. Unlike a convictions history report—which is produced through the Ministry in response to a request made of it—the criminal and traffic history report is produced by courts directly through their case management system. Criminal and traffic history reports do not record separate conviction and sentence dates. Instead, in the case of each offence, the criminal and traffic history report has a single column headed “result date”.

[9] At the 14 November hearing, Mr Yorston handed up a criminal and traffic history report that had been produced through the Court’s case management system on 27 March 2007. It was produced after the conviction was entered but before the sentencing for the offending in question. The “result date” shown in that document at that point and time was the conviction date—19 March 2007. However, when on 15 August 2007, Mr Yorston was sentenced, the “result date” in subsequent versions of that report changed to 15 August 2007.

³ For example, in relation to a 2004 proceeding involving five separate CRNs, the conviction and sentence dates were both recorded as being 15 August 2007 when in fact the convictions were entered on 19 March 2007. Similarly, for a 2005 proceeding involving four CRNs, the conviction and sentence date were both recorded as being 19 May 2006 when in fact the convictions were entered on 10 April 2006.

[10] The underlying software issue identified by the Ministry has been described as complex and technical. The Ministry is, as I understand it, considering the issue. However, in order to address Mr Yorston’s concerns in the meantime, the Ministry has amended his convictions history report.

[11] On 11 November 2024, the Ministry wrote to Mr Yorston, and provided him with an amended convictions history report. The report excluded the “conviction date” column altogether. The letter explained the software error and said that the attached report was now an accurate record of his criminal history.

[12] With the essence of the case explained, I go back now to consider the allegations that Mr Yorston makes.

The nature and course of the proceeding

[13] Mr Yorston alleges, in his amended statement of claim, that his convictions history report has been “maliciously falsified” for the “sole purpose of misleading individuals or entities when forming and making decisions or judgments”.

[14] It is alleged that this “falsified” information was used, for example, in an affidavit sworn by a police officer in an unrelated District Court proceeding. Mr Yorston’s point is that he was not actually convicted on the dates that are recorded in the report. The relief sought is expressed in the amended statement of claim in the following way:

An order for the Ministry of Justice to correct their records, supply the entry date of the falsified information and convictions. Further to disclose any access that has been allowed to this false information. So, the plaintiff can ascertain all associated impacts.

[15] Mr Yorston has expressed a number of concerns in his supporting evidence. They include his concern over the fact that, in an email to him from an Auckland District Court Registry officer in October 2023, mention was made of two of his previous jury trials and sentences but not of a third. And they include his view that counsel who had acted for him previously had, themselves, expressed views to him

about possible errors in court records relating to his previous convictions and sentences.⁴

[16] From the evidence filed by Mr Yorston in support of the proceeding, it had been understood, before the first (adjourned) hearing in this proceeding, that Mr Yorston claimed that five convictions that appear in his convictions history report were wrong and should not have been there at all. However, at hearing, Mr Yorston made it clear that he did not dispute that he had been found guilty, following trials, of the charges reflected in the convictions history report and that he had been convicted and sentenced on those charges. He made it clear that his wish in the proceeding is to see the conviction dates in the convictions history report recorded as the dates on which verdicts were returned and convictions were then entered.⁵

[17] The Attorney-General's evidence and submissions for the 19 July 2024 hearing (understandably, given Mr Yorston's affidavit evidence) was directed at establishing that the convictions which appeared to be in issue had in fact been entered.⁶ In an endeavour to resolve the proceeding efficiently, the Attorney-General agreed to engage with the merits of Mr Yorston's proceeding. But the Attorney did not concede that judicial review was appropriate.

[18] Because, during the course of the 18 July hearing, it became clear that Mr Yorston was, in fact, challenging the conviction dates for all of the entries in his convictions history report on the basis I have described, the hearing was adjourned part heard to enable the Crown to obtain information on the accuracy of the conviction dates in the report and on how one would go about correcting the dates if inaccuracies were found. The Crown was to update Mr Yorston and the Court when information

⁴ Some of those concerns related to certain convictions against Mr Yorston that had been quashed by the Court of Appeal *R v Yorston* [2018] NZCA 285. But those convictions no longer appear in Mr Yorston's convictions history reports.

⁵ It will most likely be the case that a Judge will enter a conviction upon the return of a jury's verdict but it is not inevitable that a conviction will be entered there and then.

⁶ At a case management conference on 20 May 2024, La Hood J had taken Mr Yorston through each of the convictions in his convictions history report and checked whether he was contesting the accuracy of them. As La Hood J's 21 May 2024 minute records, Mr Yorston confirmed that this proceeding related only to the five convictions dated 15 August 2007 in that report. While, subsequently, that has not been Mr Yorston's position, the Attorney-General prepared its initial set of evidence in the proceeding on that basis.

had been obtained and a new date was set—13 September 2024—to complete the hearing.

[19] I mention here for completeness that:

- (a) during the hearing on 18 July 2024, I declined Mr Yorston’s application to cross-examine the deponent of an affidavit given for the Attorney-General following minutes I had issued on that application in advance of the proceeding;⁷
- (b) in my separate Judgment of 19 July 2024, I declined Mr Yorston’s application for interim orders—described as “interlocutory injunction in the Wellington District Court matter CIV-2023-085-000443”—in which Mr Yorston had applied for corrections to be made to his criminal record in the context of an unrelated proceeding in the District Court relating to a firearms licence for his partner.⁸

[20] At the beginning of the hearing on 13 September, the Crown filed and served a memorandum and two further affidavits which, collectively, provided that:

- (a) for two of the three criminal proceedings in issue, the convictions history report had recorded Mr Yorston’s conviction dates incorrectly; and
- (b) for the remaining criminal proceeding in issue, the Attorney-General had not been able to confirm definitively the correct conviction date for the offences but was in the process of making enquiries.

⁷ *Yorston v Attorney-General* – two minutes of 17 July 2024.

⁸ *Yorston v Attorney-General* [2024] NZHC 2005.

[21] The Attorney-General's position was that, once the Ministry had identified the way in which the issues would be resolved, it would produce a new convictions history report and provide it to Mr Yorston and that the proceeding could be concluded and discontinued on that basis. However, because the documents had only become available to Mr Yorston and to the Court at the beginning of the hearing, I adjourned the hearing again to enable the documents to be considered.

[22] A new hearing date was fixed for 14 November 2024 and on 31 October 2024 I issued a minute in which I said that two overriding issues needed to be considered:

- (a) As counsel for the Attorney-General had said in her memorandum for the 13 September hearing, the Ministry had identified errors and, once it had determined how to resolve them, it would produce a new convictions history report for Mr Yorston. Accordingly, an issue, at a practical level, was whether the proceeding should be concluded on that basis.
- (b) As I had mentioned in a minute of 19 July 2024, the overriding jurisdictional issue needed to be considered. The issue was whether the subject matter of the proceeding and the relief sought is something that is capable of being considered by the Court in its judicial review jurisdiction.

The issues have been remedied

[23] I am satisfied from the information the Ministry has provided that, as mentioned in [5] to [9] above, the convictions history report is a computer-generated compilation of conviction information for an individual, taken from data recorded in a case management system used by the courts. Individuals were not involved in compiling the convictions history report or in anything that led to the dates in the "conviction date" column updating automatically to the sentencing date, once that subsequent hearing event had taken place. It is a software issue. Light has been shed on the issue through this proceeding and steps are being taken to remedy it. For Mr Yorston in particular, a revised report has been prepared which excludes the conviction date and Mr Yorston has been advised that if, subsequently, further

convictions history reports are sought, he can apply to a named individual who will produce a tailor-made report for him.

[24] On this basis, the issues that underly this proceeding have been addressed. Errors in the previous version of the report have been remedied. A sound practical outcome has resulted. The Attorney-General has, helpfully, engaged with the practical issue in order to achieve a practical outcome. However, quite apart from that, an overriding jurisdictional issue does remain.

The underlying jurisdictional issue

[25] The Court's judicial review jurisdiction enables it to consider the legality, or lawfulness, of a statutory decision or an exercise of power by an inferior court or public authority. The simple point in this proceeding is that there has been no statutory decision or exercise of power.

[26] As Mr Lewthwaite said in his evidence for the Ministry, a convictions history report is a computer-generated compilation of conviction information for an individual. It is drawn from information in the separate case management system used by the courts. The Ministry cannot alter or amend the court record. That is something that can only be done through r 7.1 of the Criminal Procedure Rules 2012. Under r 7.1(9), the contents of the permanent court record are provable by a certified copy or extract provided by a Registrar. However, under r 7.1(6), a judicial officer or Registrar may correct an entry in the permanent court record if satisfied that it is wrong.

[27] No application has been made under that provision. But any such application would, in any event, be beside the point. The proceeding is concerned with a document produced by the Ministry. The Ministry produces convictions history reports through the use of its statutory power under s 172 and sch 4 of the Privacy Act 2020 to access court records for the purpose of responding to requests for criminal conviction histories. The Ministry accessed Mr Yorston's court record in order to respond to his request for a convictions history report. As Ms Gavey says, there is no suggestion that the Ministry has exercised that power unlawfully.

[28] Rather, as I have found, the Ministry's software uses the court record which it has accessed lawfully in order to populate the convictions history report. The Attorney-General has acknowledged the error that occurred when that software populated the plaintiff's report. But populating a convictions history report through Ministry software is not a statutory power of decision under the Judicial Review Procedure Act 2016. Nor is it the exercise of public power in a more general sense at common law. It is a decision that is wholly administrative in nature. It is essentially mechanical. As such, is not readily susceptible to the sort of error that may justify judicial review.⁹ Things might be different had, for example, the Ministry delegated to software a decision that otherwise would amount to a statutory power of decision or an exercise of public power. However, that is not the case here. Accordingly, there is no decision that has been made, and no exercise of public power, that is amenable to review.

[29] In addition, because the convictions history report came into the possession of the Ministry through the access that is available to it (for the purpose of responding to requests for criminal conviction histories) under s 172 and sch 4 of the Privacy Act, the information privacy principles in the Privacy Act¹⁰ will apply to the correction of information and, under s 31 of the Act, those principles do not confer on any person a right that is enforceable in a court of law.

Outcome

[30] For these reasons, the Court does not have jurisdiction to consider Mr Yorston's claim. In any event, the inaccuracies identified in his convictions history report have been remedied. His application for judicial review is declined accordingly.

[31] While this proceeding has produced a practical outcome for Mr Yorston, the Ministry has succeeded in its defence and would be entitled to its costs. If costs are sought by the Attorney-General then a memorandum should be filed within 20 working days of the date of this decision. If the Attorney-General does file a

⁹ *Greenpeace of New Zealand Inc v Environmental Protection Authority* [2013] NZHC 3482, [2014] NZRMA 112 at [31]–[33], citing *AgResearch Ltd v GE Free NZ in Food and The Environment Inc* [2010] NZCA 89.

¹⁰ The information privacy principles are set out in s 22 of the Privacy Act 2020.

memorandum, Mr Yorston may file a memorandum in response within a further 15 working days. Any such memoranda (including schedules) are to be limited to five pages in length.

Radich J

Solicitors:
Crown Law, Wellington