

LEGISLATIVE COUNCIL LEGAL AND SOCIAL ISSUES COMMITTEE

Inquiry into a legislated spent convictions scheme

Melbourne—Wednesday, 19 June 2019

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**Necessary corrections to be notified to
executive officer of committee**

WITNESS

Mr Zed.

The CHAIR: Thanks so much for coming today.

Mr ZED: Thank you for the opportunity.

The CHAIR: Can I give you some information about what happens to the information you give us tonight?

Mr ZED: Yes.

The CHAIR: I just want to make it really clear that the evidence taken at this hearing is protected by parliamentary privilege, so this means that the information you give today is protected by law and cannot be used against you in a court of law or any other forum. However, it is being recorded. You will be provided with a transcript of it, and ultimately it will become public on our website.

Mr ZED: Yes. Not a problem. From time to time I am just going to refer to my notes—I hope you do not mind—in the process.

The CHAIR: Not at all.

Mr ZED: I will start by thanking the Chair and members of the committee, by recognising the great work that this committee, the Legal and Social Issues Committee, undertakes, because I have been privileged enough to teach my students about the great work the committee does in terms of responding to law reform; hence why it brings me here today as well. I recognise I am protected under parliamentary privilege under the Constitution Act 1975, but I am still going to refer to myself as Mr Zed because I want to avoid any embarrassment or humiliation that I might face in my career.

I am 34 years old. I am a high school teacher. I work in a government school in metropolitan Melbourne. My incident—my case—refers to 10 years ago on Melbourne Cup eve. I had gone out with my brother and my best mate. At the time I was going through a really hard time. I was going through a separation from a long-term partner. Anyway, they were trying to console me. One drink, two drinks, three drinks—next minute you know, I was heavily intoxicated. I make no excuse for my behaviour on the night. I was eventually arrested for being drunk and found drunk in a public place. I have no recollection of that night at all. All I remember is being entered into custody, and that is it.

Fast-forward to January 2011. I had just finished my undergraduate studies, which I deferred due to the breakdown of my relationship, and I was actively seeking employment. Interestingly enough, I applied for a job with Victoria Police, the record service division. Ironically, I am here today. The irony is definitely not lost on me as a result. I had a successful interview. They said, ‘Do you have a criminal record?’, to which I said, ‘No’, because, remember, I have no recollection of what happened that night. It was a successful interview. Two days later he goes, ‘Look, we’ll get back to you. We’ll check your criminal record. We’ll get a national police check’. No problem. He goes, ‘Look, we can’t hire you. You’ve got a criminal record’. I go, ‘For what exactly?’. For being found drunk in a public place. So it turns out I was discharged from the police cells. I have no recollection of this because I was heavily intoxicated still after 4 hours. I was bailed. I was convicted in absentia in court. I have no recollection whatsoever of this and had found out through a prospective employer that I had a criminal record, which happened to be the record services division of Victoria Police.

I have sought out legal representation. Considering I was a university student at the time—I was working part-time—I could not afford legal representation, so I had to borrow money off my friends to reopen a rehearing application. I was able to have the conviction set aside, but as we know it still appears on my national police check, as it has been proven and dismissed, despite it not being a conviction. I asked the record services division at the time to reconsider hiring me. They simply rejected that because there was a finding of guilt as a result. Since then I have gone on to postgraduate study. I have got married. I have become a high school teacher. I have purchased my own home and I have got my first child on the way, which is due in seven weeks.

Mr ONDARCHIE: Congratulations.

Mr ZED: Thank you. I just want to show that I have turned my life around, but this one little blemish still hangs over my head. I have become a high school teacher: I teach legal studies, I teach politics. I have done all this, but despite this it still prevents me from seeking employment in other fields—namely, if I wanted to enter the defence sector or law enforcement as such, and this still hangs over my head.

Even travelling abroad as well. As the committee would know, travelling to the US we have a visa waiver program. When I travel with my wife, my wife gets the benefit from that. However, I am unable to benefit from that due to having a criminal record as such, which means I have to go in for interviews with consulate officials. I have to disclose this offence, and the humiliation and the embarrassment it causes and the extra costs—that adds to what I am going through. Furthermore to that, I cannot even go on any overseas trips with my school, with my students, because I am just worried about that humiliation—that I might be turned away at border control for a criminal record.

I am not going to make any representations about how the law should be changed. I will leave that to your discretion. Parliament is the supreme lawmaking body of the land. You are there to represent our interests, and I hope my circumstances are given some sort of consideration.

The CHAIR: Absolutely. Thank you.

Ms VAGHELA: I do not know if I missed it: so how were you able to get the job if the police check had shown your record?

Mr ZED: With seeking employment in the education sector, it is through registration via the Victorian Institute of Teaching. So I applied for registration with them. It is up to their discretion; they have discretion as to employing. My employer—the school—my principal, many of my colleagues have no idea about this and they have no idea that I am here right now telling this story. The only people that know about this are my wife, VIT and probably just my closest friends.

Ms VAGHELA: So it is up to the school to decide?

Mr ZED: Sorry?

Ms VAGHELA: It is up to the school that is employing you to decide. It came up in past conversations over here—if there is a criminal record, what sort of jobs they can apply for. And here in this instance you have been able to get a job, which is good.

Mr ZED: Yes, indeed. But again the school itself is not privy to any of my records, and I have not disclosed such a thing. All I do is disclose that to the Victorian Institute of Teaching, which then goes on to give teachers registration. They tend to be a bit more flexible and a bit more discretionary with these things as well.

The CHAIR: It is an extraordinary story, but I suspect you are not the only person out there where this has occurred.

Dr KIEU: I have a quick question, Mr Zed. Regarding travelling, particularly for the US, for example, they have a question on their form about whether you have a past conviction or a record. They may or may not check the conviction in the past, even with a spent conviction. What I am saying is even with a spent conviction, they still pose the question. How would you deal with that?

Mr ZED: Again, that has not crossed my mind. I am just talking based on my experiences. For example, in 2015, when I travelled to the United States, because I was not eligible for the waiver program I had to apply for a business visa—it is a B1 and a B2 visa—and with those they have asked me for additional documents, such as a national police check. Also I have had friends who were prevented from travelling to the US in similar circumstances for a minor offence. As such, I have learned from their experience and I provided some court documents. Then they asked me, ‘Have you been in trouble with the police?’. I go, ‘This is the only thing I’ve been in trouble with’. ‘What is the purpose of your travel?’, ‘What do you do for work?’. I told them that I was a high school teacher, that I needed to get back for the new teaching year, so they were more inclined to grant

my wish in that particular instance. Probably knowing the fact that I had a job to come back to—namely, being a teaching position—probably looked favourable to the consular official’s eyes as well.

Mr ONDARCHIE: Did you say you were convicted at the Magistrates Court without you being in attendance?

Mr ZED: Yes.

Mr ONDARCHIE: Were you summonsed to appear?

Mr ZED: No, I was bailed.

Mr ONDARCHIE: Why didn’t you appear?

Mr ZED: I had no recollection that it took place. I have no idea of being discharged from the police cells I was so heavily intoxicated at the time. Upon finding out—I found out in January or February 2011—I sought legal assistance straightaway and had the matter reheard in March or April, if my memory does not fail me.

Mr ONDARCHIE: And what was the finding?

Mr ZED: Proven and dismissed.

Ms PATTEN: But it is still—

Mr ZED: I have got my national police check in the green manila folder—

Mr ONDARCHIE: Yes, I get it. That is fine.

Mr ZED: On there it will show as ‘proven and dismissed’.

Mr ONDARCHIE: But originally it was an extempore hearing, was it? On the spot?

Mr ZED: Yes.

Ms PATTEN: Look, as I said, I do not think you are alone in those circumstances—we all get tired and emotional sometimes over events. Thank you so much. It has been really helpful. We are dealing with such a great variety of stories. It shows that this is not a simple issue, and it is going to be complicated for this committee to find the path, but you have presented us with another angle, so we greatly appreciate it.

Mr ZED: No worries. Thank you for the opportunity.

Witness withdrew.