

Department of Corrections reasonable to seek removal of prisoner from study course in some circumstances

Legislation	Ombudsmen Act 1975
Agency	Department of Corrections
Ombudsman	Chief Ombudsman Dame Beverley Wakem
Case number(s)	318649
Date	April 2013

Whether the Department of Corrections was reasonable to request the tertiary institution to remove a prisoner from a course at a polytechnic—Ombudsman found Department’s decision to have been reasonable in part

The complaint was a prisoner whom the Department of Corrections (the Department) had requested be removed from a polytechnic psychology course which the complainant was completing. He claimed this decision was unreasonable and that information provided to the Inspector of Corrections by Auckland Prison regarding this removal from the course was wrong. He also claimed that the decision not to allow him to enrol in an art course while he was at that prison, was unreasonable.

The Department advised the Chief Ombudsman that there were reasons for its decision to request the Open Polytechnic to remove the complainant from the course. These reasons included that the complainant had been unwilling to apply for the necessary loan for fees; his poor behaviour resulted in a higher security classification and placement in another division; his lack of submission of work to the tertiary institution; and a request from the institution to have the complainant to stop telephoning them due to the nature and volume of calls being received.

The Chief Ombudsman considered all the information to hand and concluded that the Department did not act unreasonably in requesting the tertiary institution to remove the complainant from the psychology course. However, with regard to the second ground of complaint, the Chief Ombudsman upheld that the complaint that the Department acted

unreasonably because Auckland Prison did not make it clear to the Corrections Inspector that it was the Prison which had initiated the complainant's removal from the course. This resulted in the Inspector incorrectly advising the complainant that it was the tertiary institution which had removed him from the course. The Department accepted that this had been the case. The Chief Ombudsman discontinued his inquiries into this aspect of the investigation.

The third ground of complaint concerned the complainant's enrolment in an art course, through an education provider. However the complainant was in maximum security and the Department's policy was to limit availability of such courses to this group of prisoners because, as advised by the Department, *'materials required for a prisoner to have in their cells to complete the work set for them [pose a problem because] almost any item can be fashioned into a weapon and as such, restricting prisoners' ability to access items is vital in ensuring the health and safety of other prisoners and staff'*. The complainant challenged the reasoning behind this explanation and when asked to explain further, the Department told the Chief Ombudsman that *'materials used in the art course can be fashioned into makeshift weapons. For example, oil based paint can be burnt, causing toxic fumes and fire. Paint brushes can be sharpened and made into stabbing weapons'*.

The Chief Ombudsman considered that the Department was not acting unreasonably by identifying the foregoing considerations as security risks and that the Department's decision not to allow the complainant to enrol in an art course while on maximum security classification, was reasonable.

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