

Immigration New Zealand's advice to Associate Minister of Immigration unreasonable

Legislation	Ombudsmen Act 1975
Ombudsman	Beverley Wakem
Case number(s)	W56590 (previously unpublished)
Date	2009

Immigration New Zealand (INZ)—misleading and inadequate advice provided to Associate Minister of Immigration

Complaint about advice provided by Immigration New Zealand (INZ) to the Associate Minister of Immigration, in relation to a request by the complainant for a permit. The Ombudsman formed the view that INZ's advice was unreasonable as it did not accurately summarise the submissions made by the complainant's lawyer.

The complainant's lawyer had originally advised INZ that he understood the complainant had a conviction overseas. However in subsequent letters, the complainant's lawyer sought to clarify (after receiving further information from the country where the conviction allegedly took place – including both State and FBI clearance) that the complainant did not have such a conviction.

In its advice to the Associate Minister, INZ referred to both the lawyer's original letter, stating that there was a conviction, and the subsequent submissions that there was not a conviction, and gave misleading advice to the Associate Minister that there was a dispute over whether there was in fact a conviction.

The Ombudsman considered that the advice provided to the Associate Minister in this case called for a different format than the usual, given the unusually complex legal issues involved and the fact that certain material information only came to light over a period of time.

The Ombudsman formed the view that rather than informing the Associate Minister of any particular views, the complainant's lawyer may have held at any particular moment, it would

have been preferable had the Associate Minister been informed of all the known relevant facts and the statutory provisions that applied.

The Ombudsman also noted that INZ's advice was presented as the lawyer's 'opinion'. It was noted that the INZ advice was also unreasonable because it did not properly inform the Associate Minister of the mitigating circumstances concerning the complainant's deportation from the overseas country. The Supreme Court in that country had expressed strong concern about the potential unfairness of the retrospective legislation under which the complainant was deported. INZ had advised the Associate Minister of the complainant's deportation from overseas, but it did not advise the Associate Minister of the Supreme Court's concerns.

The Ombudsman did not make a recommendation in this case as INZ agreed to provide further advice to the Associate Minister in a manner which addressed the deficiencies identified by the Ombudsman.

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