

1 December 2015

Jessie Henderson
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By email: jessie.henderson@justice.govt.nz

Dear Jessie

Immigration and Protection Tribunal draft Practice Note 5/2015 (Publication of Decisions)

The New Zealand Law Society welcomes the opportunity to review the Immigration and Protection Tribunal's *draft Practice Note 5/2015 (Publication of Decisions)*, and makes the following brief comments.

Suppression of general publication

The Law Society supports the presumption of open justice and notes the requirement for the Tribunal to publish its decisions, subject to relevant exceptions¹ and the requirement to maintain confidentiality.² Where publication of a decision is entirely withheld on the grounds of confidentiality, the Law Society submits it would be useful for the Tribunal to publish a research copy of the decision consisting only of the Country of Origin Information – particularly where substantial analysis has been undertaken and in relation to refugee and protection appeals. If this submission is accepted, paragraphs [3.3(d)], [5.1 (c)], [6.1(c)], [7.7] and [8] of the draft Practice Note will need to be amended accordingly.

Seeking parties' views on publication

As the draft Practice Note states at [7.1], the form in which the research copy of a decision is published is the responsibility of the Tribunal and it does not normally seek the views of the parties as to the manner and form of publication. However, the Law Society submits that a more proactive approach would be appropriate in appeals involving refugees, where the safety of the appellant and his or her associates may be a key concern. In those cases, refugee appellants' views on publication should be sought at the beginning of the hearing process. Such an invitation could be included in the letter notifying the appellant of the hearing date. This would particularly benefit self-represented appellants, who may otherwise be unaware of the publication requirements.

If this submission is accepted, a suggested rewording of paragraph [7.1] is as follows:

¹ Draft Practice Note at [2.2]: clause 19, Schedule 2 of the Immigration Act 2009.

² Ibid at [3]: section 151(1), Immigration Act 2009.

[7.1] The form in which the research copy of a decision is published is the responsibility of the Tribunal. In particular, responsibility for compliance with section 151 is personal. For this reason, and because the content of decisions is solely a matter for the Tribunal, it does not normally seek the views of the parties as to the manner and form of publication of any research copy, except in appeals involving refugees where the safety of the appellant (and his or her associates where relevant) is a key concern. Upon receipt of such an appeal, the Tribunal will invite the appellant to express his or her view about the publication of a research copy of any future decision. In any case, if a party wishes to draw the Tribunal's attention to any matter he or she considers relevant to the issue of publication, the Tribunal will have regard to what the party says but is not bound by it.

This submission was prepared by the Law Society's Immigration and Refugee Law Committee. If further information or discussion would assist, the committee convenor, Marcus Beveridge, can be contacted via the committee secretary Karen Yates (04 463 2962, karen.yates@lawsociety.org.nz).

Yours sincerely

A handwritten signature in black ink, consisting of a stylized initial 'C' followed by a long horizontal line.

Chris Moore
President