



IMMIGRATION AND PROTECTION TRIBUNAL

PRACTICE NOTE 5/2018
(PUBLICATION OF DECISIONS)

16 May 2018

PRACTICE NOTE 5/2018 (PUBLICATION OF DECISIONS)

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PREAMBLE

This Practice Note is issued pursuant to section 220(2)(a) of the Immigration Act 2009 ("the Act"). It is effective for all appeals and matters determined by the Tribunal.

The following information on the practice and procedure adopted by the Immigration and Protection Tribunal ("the Tribunal") in relation to the publication of its decisions is designed to provide guidance to members of the legal profession, immigration advisers and those appearing in person before the Tribunal. The Tribunal expects compliance with the procedures set out.

The practice and procedure of the Tribunal is subject to the Act and Regulations made under it - (section 220(2)(a)).

References in this Practice Note to "the appellant" should be taken to mean the appellant, applicant or affected person, as relevant. References to "the member" should be taken to mean "members" where more than one member hears an appeal or matter.

In this Practice Note:

- "to **abridge**" means to remove from a decision a section of text and replace it with, as appropriate, a notice that the section has been withheld from publication or a summary of the information contained in the section;
- "**appellant**" means the appellant, applicant or affected person, as relevant;
- "to **depersonalise**" means to remove from a decision the name of the appellant and other details considered reasonably likely to identify him or her;
- "**member**" means "members" where appropriate;
- "**Publication Prohibited**" means that a decision is withheld from publication in its entirety;
- "**research copy**" means the copy of a decision which is published by the Tribunal to the world at large;
- "**parties' copy**" means the copy of the decision which is published by the Tribunal to the appellant and the respondent, and to any other party to the proceedings;
- "**respondent**" means the Minister of Immigration, Ministry of Business Innovation and Employment, Immigration New Zealand or immigration officer, as appropriate to the context.

1. COMMENCEMENT

[1.1] This Practice Note takes effect from 16 May 2018. It replaces Practice Note 5/2016 (Publication of Decisions) and applies to all appeals or matters for which the Tribunal has not delivered a decision by that date.

2. JURISDICTION

[2.1] Subject to certain exceptions, the Tribunal is required to publish its decisions - (clause 19(1), Schedule 2). The presumption of open justice and transparency carries an expectation that the names of the parties taking an active part in the proceedings and the whole of the content of the decision will be published.

[2.2] The exceptions are:

- (a) The research copy of any decision relating to a refugee or protection appeal must be edited to remove:
 - (i) the name of the appellant or affected person; and
 - (ii) any particulars likely to lead to the identification of the appellant or affected person - (clause 19(2), Schedule 2).

This does not apply to publication to persons involved in the appeal, or to persons involved in the administration of this Act, or where permitted under section 151 - (clause 19(3), Schedule 2).

- (b) The Tribunal may, in any other case, edit the decision to remove the name of the appellant or any other person, and any particulars likely to lead to the identification of the appellant or other person, before publishing it to persons other than persons involved in the appeal or involved in the administration of this Act - (clause 19(4), Schedule 2).
- (c) Where a decision is in respect of proceedings involving classified information, the Tribunal may make orders for the non-disclosure of the names and identifying features of particular witnesses and their evidence, including in the parties' copy of the decision - (section 259).

3. REFUGEE AND PROTECTION APPEALS

[3.1] Confidentiality as to the fact that a person is a claimant, a refugee, or a protected person, and as to the particulars relating to the person's claim or status, must at all times during and subsequent to the determination of the claim or other matter be maintained by all persons - (section 151(1)).

[3.2] Confidentiality may, in a particular case, be required to be maintained as to the very fact or existence of a claim or case if disclosure of its fact or existence would tend to identify the person concerned or be likely to endanger the safety of any person - (section 151(1)).

[3.3] In accordance with these obligations, the Tribunal publishes decisions concerning refugee and protection appeals in the following manner:

The parties

- (a) Subject to any classified information restrictions (see section 259) the parties will receive a full copy of the decision, bearing the name of the appellant and full particulars of the claim and reasons for the decision.

The general public

- (b) The general public normally receives a depersonalised research copy or abridged copy (as appropriate) of the decision, from which the name of the appellant and identifying particulars have been removed.

Prohibition on general publication

- (c) Where the Tribunal considers that no reasonable degree of depersonalising or abridgement of a decision would ensure compliance with section 151(1), the parties' copy of the decision will be certified to be "Publication Prohibited" and the research copy will be in 'short form', recording only the fact of an appeal from a national of the relevant country, the withholding of the facts and reasons, and the outcome itself, for reasons of confidentiality.

Suppression of general publication

- (d) Because confidentiality may require the very existence of a claim to be withheld, in exceptional cases the Tribunal may need to withhold

from publication any research copy of the decision whatsoever. Because such suppression has the potential to undermine public confidence, a determination to withhold any research copy of a decision whatsoever will be made by the Chair of the Tribunal.

4. RESIDENCE APPEALS

[4.1] Residence appeals arise from applications in which applicants are required by residence instructions to divulge substantial personal information (including in relation to health, character, financial affairs and employment). For this reason:

The parties

- (a) Subject to any classified information restrictions (see section 259) the parties receive a full copy of the decision, bearing the name of the appellant and full particulars of the claim.

The general public

- (b) The general public receive a depersonalised research copy or abridged copy (as appropriate) of the decision, from which the name of the appellant and any identifying particulars have been removed.

5. DEPORTATION (NON-RESIDENT) APPEALS

[5.1] The presumption of open justice applies in respect of deportation (non-resident) appeals. For this reason:

The parties

- (a) Subject to any classified information restrictions (see section 259) the parties receive a full copy of the decision, bearing the name of the appellant and full particulars of the claim.

The general public

- (b) The public at large normally receive a research copy bearing the name of the appellant and full particulars of the claim.
- (c) Where a decision on a deportation (non-resident) appeal contains information which is unduly sensitive or personal and which outweigh the interests of open justice, the Tribunal may (as appropriate)

depersonalise or abridge the research copy. The protection of children and vulnerable persons and the section 151 protection of the confidentiality of refugee claimants are common considerations.

6. DEPORTATION (RESIDENT) APPEALS

[6.1] The presumption of open justice applies in respect of deportation (resident) appeals. For this reason:

The parties

- (a) Subject to any classified information restrictions (see section 259) the parties receive a full copy of the decision, bearing the name of the appellant and full particulars of the claim.

The general public

- (b) The public at large normally receive a research copy bearing the name of the appellant and full particulars of the claim.
- (c) Where a decision on a deportation (non-resident) appeal contains information which is unduly sensitive or personal and which outweigh the interests of open justice, the Tribunal may (as appropriate) depersonalise or abridge the research copy. The protection of children and vulnerable persons and the section 151 protection of the confidentiality of refugee claimants are common considerations.
- (d) On occasion, deportation (non-resident) appeals concern matters already the subject of suppression orders by a superior court. In such cases, the Tribunal is bound by such orders and will, as appropriate, depersonalise, abridge or publish in 'short form' only, the research copy of such decisions. Such orders from superior courts commonly relate to the protection of the identity of victims of sexual offending and victims of family violence.

7. THE PROCESS OF DEPERSONALISATION, ABRIDGEMENT AND PROHIBITION FROM PUBLICATION

[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. If a party wishes to draw the Tribunal's attention to any matter he or she considers relevant, it will have regard to what the party says but is not bound by it. Any such request may be directed to ipt@justice.govt.nz, for the attention of the member/s who heard the appeal.

Order as to Depersonalisation, Abridgement or Prohibition on Publication

[7.2] Where the research copy of a decision differs from the parties' copy because it is depersonalised, abridged or prohibited from publication, both copies will include, at the end, an order recording the difference and explaining the reasons, in the following form (varied according to the circumstances):

PUBLICATION OF RESEARCH COPY

[XX] Pursuant to clause 19 of Schedule 2 of the Immigration Act 2009, the Tribunal orders that, until further order, the research copy of this decision is to be depersonalised by removal of the appellant's name and any particulars likely to lead to the identification of the appellant.

General Endorsements

[7.3] Where the research copy of a decision is depersonalised, abridged or in 'short form' only, the parties' copy will be endorsed on every page with:

**PARTIES' COPY
NOT FOR PUBLICATION**

[7.4] In such cases, the research copy of the decision will be endorsed at the foot of the decision with:

Certified to be the Research
Copy released for publication.

[Member's name]
Member

Depersonalising

[7.5] Where the research copy is depersonalised, the name of the appellant is to be replaced in the intituling with the pseudonym **AB ([country name or residence category, as appropriate])**, with the initial letters following the sequence AB, AC, AD etc, to avoid repetition and ensure anonymity. All particulars likely to lead to the identification of the appellant will be similarly withheld.

Abridging

[7.6] Where the Tribunal abridges a decision:

- (a) any withheld section will (where possible) be replaced by a summary, providing a gist of the content. For the avoidance of doubt:
 - (i) The summary of the withheld information will be contained within square brackets and will be preceded by the words "Summary of withheld information".
 - (ii) The summary so provided is no more than a "best endeavours" attempt and does not constitute part of the Tribunal's decision. To the extent that the decision may be cited or relied upon, caution should be exercised, given the unavailability of the full text of the decision and the limited assistance provided by the summary.
- (b) the parties' copy of the decision will include the red endorsement at [7.3] above;
- (c) the research copy will include the red endorsement at [7.4] above; and
- (d) the parties' copy of the decision will have a footer on the first page stating as follows, or similar:

The research copy of this decision is abridged. Some particulars have been withheld pursuant to section 222(4) and clause 19(4) of Schedule 2 of the Immigration Act 2009. Where this has occurred, it is indicated by square brackets.

Prohibiting from Publication

[7.7] Where the research copy of a decision is prohibited from publication:

- (a) the parties' copy of the decision will bear the red endorsement at [7.3] above and be endorsed with a diagonal PUBLICATION PROHIBITED watermark;
- (b) the research copy will be in 'short form' only and will include the red endorsement at [7.4] above; and
- (c) the parties' copy of the decision will have a footer on the first page stating as follows, or similar:

(for refugee/protection decisions)

Until further order of the Tribunal, publication of this decision is restricted pursuant to s151 of the Immigration Act 2009. It is not to be released, copied or disseminated in any form, save to the parties and their legal advisers and as permitted by s151.

(for residence and deportation decisions)

Until further order of the Tribunal, publication of this decision is restricted. It is not to be released, copied or disseminated in any form, save to the parties and their legal advisers.

8. REVIEW OF 'PUBLICATION PROHIBITED' AND ABRIDGED DECISIONS

[8.1] In keeping with the presumption of open justice, the Tribunal will periodically review the decisions for which research copies have been published in 'short form' only, or which have been abridged.

[8.2] Where, on review, the Tribunal determines that the circumstances giving rise to the need for such a research copy no longer exist, it may determine to publish a research copy containing full particulars, or in depersonalised form (as appropriate).

[8.3] In the interests of efficiency and having regard to the lessening of public interest in some aged decisions, where an unredacted research copy is still not able to be published after five years, the Tribunal may certify that no further reviews of that decision are required.

[8.4] Because the Tribunal cannot maintain records of the future whereabouts of all appellants, it will not normally be possible to notify the person of the change in status of the research copy.

9. RECALL OF DECISIONS

[9.1] The Tribunal may recall a decision to correct it, to the extent necessary to rectify—

- (a) a clerical mistake;
- (b) an error arising from an accidental slip or omission;
- (c) a material miscalculation of figures or material mistake in the description of any person, thing, or matter referred to; or
- (d) a defect of form – (clause 20(1), Schedule 2).

[9.2] A correction may be made on application by a party, or on the Tribunal's own motion – (clause 20(2), Schedule 2).

[9.3] Beyond these limited powers of recall, a decision by the Tribunal is final once notified to the appellant or affected person – (clause 17(6), Schedule 2).

10. DATABASE OF DECISIONS

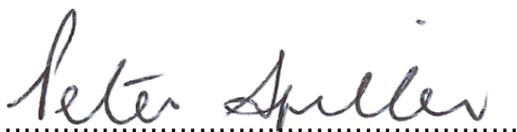
[10.1] In accordance with the requirement to publish its decisions (clause 19(1), Schedule 2), the Tribunal maintains three databases of its decisions (refugee, residence and deportation), at www.justice.govt.nz/tribunals/ipt/decisions. The databases are searchable using the Tribunal's own search engines and are free to access.

[10.2] All research copies of decisions are published on the Tribunal's databases. Some are also reproduced on third-party websites, such as www.nzlii.org

and www.refworld.org. Administration of such third-party websites is beyond the control of the Tribunal.

[10.3] In the interests of ensuring that the parties receive a decision personally, before publication of any research copy occurs, the Tribunal does not normally upload research copies to its databases until at least 21 days after the date of the decision. An exception might be justified in, for example, a case of very high public interest where the Tribunal is satisfied that the parties have, in fact, received the decision.

Dated this 16th day of May 2018

A handwritten signature in black ink, reading "Peter Spiller". The signature is written in a cursive style. Below the signature is a horizontal dotted line.

Judge P Spiller
Chair
Immigration and Protection Tribunal