

Office of the Ombudsmen

Te Tari-o-Ngā Kaitiaki Mana Tangata

Our Ref: C5143

18 February 2009

Mr Scott Watson
Christchurch
Prison Private Bag
4726 Christchurch
8140

Dear Mr Watson

On 21 March 2007 Manager Custodial Systems Ellie Williams wrote to you in regard to your need for a legal assistant, and in part said that:

"Regulation 193 of the Corrections Regulations 2005 applies only to prisoner that are: (1) appealing or applying for leave to appeal against any conviction. order or sentence; (ii) preparing a defence or plea in mitigation: or (iii) preparing for any process under the Immigration Act 1987 (regulation 193(1)). As your appeal rights have been exhausted you cannot rely on regulation 193(2)(b). You are therefore not entitled to have access to a legal assistant."

Following my meeting with you on 12 January 2008, I asked Ms Williams for the basis of her advice. She then checked with Corrections Manager Legal Services Martin Sawyers who advised that:

"I have been back and looked at the advice that was obtained from Crown Law when this matter was raised in 2007 The advice from Crown Law was that Prisoner Watson has exhausted his appeal rights and therefore cannot rely on regulation 193(2)(b). Advice was also received that plans by Prisoner Watson to present a petition to the Governor General is not an 'appeal' that falls within the regulation. Therefore your decision to refuse him a legal assistant can legally stand."

The Department's response was then discussed with Assistant Ombudsman Quenten Ford who said that:

"Technically; I am minded to view the Department's legal interpretation as correct. However, the refusal of a legal assistant to prepare a petition to the Governor General is still likely to be administratively unreasonable within the meaning of the Ombudsmen Act (assuming the wish to present a petition is genuine and the degree of legal assistance is reasonable)."

Mr Ford's view was then discussed with this Office's Legal Adviser John Pohl who was of the view that:

"I agree that the Department appears to be correct in law. I note that the Crown Law Office has previously also considered the issue and reached the same conclusion. In my view, regulation 193 cannot be relied on by Mr Watson in any request for legal assistance and, as you suggest, the grant or refusal of such a request would need to be considered on an ordinary 'administrative reasonableness' basis under the OA."

In other words, Crown Law and the Department of Corrections are of the view that you do not, under the Regulations, qualify for a legal assistant. However, while this Office is also of a like view there could be a case for "administrative unreasonableness", if you are indeed planning a petition, in which case, we may have to look at it again.

I hope that this information has clarified matters for you.

Yours sincerely



John Couch Lewis
Investigator