

## ACRE – INZ Review Final Report – Privileged and Confidential 14 March 2022<sup>1</sup>

1. In accordance with the terms of reference, I have reviewed the MBIE/INZ files relating to Samsudeen and interviewed many of the MBIE/INZ personnel who dealt with the case. I have been assisted by Charlotte Agnew-Harington in my review.
2. The files are very significant and cover:
  - The initial entry into New Zealand of Samsudeen in 2011;
  - His application for refugee status and decline by INZ in 2012;
  - His successful appeal to the IPT and the grant of refugee status in 2013;
  - Information from NZ Police as to Samsudeen's activity in 2015 and onwards; and
  - The referral to INZ in 2017.
3. The file also covered INZ processes from 2017 including activities of CRIS, RSB, Resolutions, MBIE/INZ legal, Crown Law, NZ Police and DPMC.<sup>2</sup> This includes the detailed manuals, SOPs, and guidance materials relied on by RSB. Those materials are thorough and extensive. As I have found that there no material failures to follow such policies, I have not found it necessary to reflect the specific details in the body of this report.
4. I note that policies tend to set out indicative timeframes that are, in practice, flexible enough to cater to the needs of INZ and claimants. That is appropriate. Further, it is apparent to all involved that standard policies and procedures could only get INZ so far in dealing with Samsudeen; as this case progressed it became a novel and complex one, such that one would not expect standard policies to assist. While there were some irregularities, I do not find that there were material errors in process or that a different outcome would have resulted had matters progressed otherwise.
5. The files were provided to me in hard copy after very significant copying and indexing efforts. I am grateful to MBIE personnel who assisted in this. It appears to me that the original files were not chronologically ordered or easily identifiable. This was a product of the complexity and length of time this case involved. Ideally, the relevant material would be kept in chronological order where possible and an orderly electronic file would be optimal.

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<sup>1</sup> Subject to final edits or clarifications if required.

<sup>2</sup> I note that the policy documents have various dates and the versions provided were not necessarily those in force when INZ was making decisions in relation to this case. Through discussion with MBIE, it was determined that the versions provided could be treated as authoritative for the purposes of this review, because relevant processes and procedures had not changed in any material respect.

## Summary of Conclusions

6. My overall impression is that INZ handled the Samsudeen file in a manner consistent with its orthodox process and procedure, in a thorough and professional manner. The usual processes were inevitably modified to deal with the unique circumstances. The case was a complex one; Samsudeen was a highly problematic individual and the legislative framework made it practically impossible for INZ to achieve a different outcome.
7. The following critical phases are examined in more depth.

## The initial entry into New Zealand of Samsudeen in 2011

8. On 14 July 2011, Samsudeen made an application for a student visa to study a diploma in electronics and telecommunications. The application was processed through the INZ Bangkok Branch and met the INZ application checklist criteria. He had an offer of a place in a 78-week full-time course expected to be completed in April 2013. Samsudeen paid the \$15,420 tuition fee in full and provided the INZ Financial Undertaking for a Student (INZ1014).
9. His application was supported by family members, a clear Sri Lankan Police check, and various employment references and certificates of academic achievement (in English and Technology). Immigration instructions were followed and on 1 September 2011 a student visa was granted. On 21 October 2011 Samsudeen arrived in New Zealand – he had not been to this country before and did not have family in New Zealand.

## Samsudeen's application for refugee status and decline by INZ in 2012

10. On 7 November 2011 Samsudeen claimed refugee status. The relevant INZ processes for considering such a claim are contained in **Appendix 1** to this report. The process is governed by the Act and by RSB's *Refugee Determination Manual* (Manual), its *Making Refugee and Protection Status Determinations Standard Operating Procedures for RPOs* (SOP), and its Process Map.
11. The Department of Labour (as it then was) responded to Samsudeen and his lawyer, scheduling an interview with a Refugee Protection Officer (RPO) from the Refugee Status Branch (RSB). The interview ultimately took place, with the aid of an interpreter, on 26 January 2012.
12. By then, Samsudeen had withdrawn from his diploma course and was granted a work visa on the basis of being a refugee claimant (after queries were raised concerning some of the information provided). I have not scrutinised this decision in depth but it appeared to be an orthodox one.
13. The RSB process followed with an interview report being completed on 23 February and provided to Samsudeen and his lawyer for comment. The RPO outlined the basis for his claim to refugee status (fear of serious harm or death from the actions of a government minister, Police and Sri Lankan intelligence services) and highlighted a number of issues which went to the credibility of his claim. The process followed was orthodox and the RPO's report was meticulous.
14. Samsudeen responded to the issues raised in the interview report by submission dated 30 March 2012 (together with his lawyer's submission of 2 April).



15. These submissions and the claim of Samsudeen were considered by the RPO. In a 30-page decision dated 19 April 2012, the RPO, together with another RPO (quality assurance), rejected the claim for refugee status. The RPO considered that Samsudeen's account of the difficulties he and his family faced at the hands of Karuna and his faction were not credible and that the issues of credibility signalled in the interview report were not satisfactorily answered. The RPO found that the discrepancies in Samsudeen's account, when combined with the overall lack of credibility, provided evidence that the account of his and his father's problems in Sri Lanka with the Karuna group were fabricated. The RPO found that Samsudeen had a propensity to provide false information and manufacture supporting evidence to obtain benefits from INZ. In light of what the NZ Police subsequently found this was prophetic.
16. The procedure followed by the RSB in declining his refugee claim was orthodox and consistent with its own processes, including the Manual, SOP, and Process Map.

### **The First Appeal to the IPT**

17. Samsudeen appealed against the decline of refugee status to the Immigration Protection Tribunal (IPT) on 27 April 2012. The appeal process is governed by the Act. He changed lawyer and notified the IPT on 3 May 2012. The IPT received the INZ file and submissions from his new lawyer (with various attachments) dated 10 December 2012. A hearing occurred on 12 December 2012, where his lawyer appeared before the IPT but no-one from INZ was present. This is apparently orthodox and reflected the INZ view that this case was not a particularly complex one but one which turned upon credibility.
18. A clinical psychologist's report and medical report were provided to the IPT on behalf of Samsudeen. After the hearing, further documents were provided in February and March 2013.
19. In a decision dated 20 December 2013 (almost 18 months after his appeal), the IPT found Samsudeen to be credible and allowed his appeal. The relatively brief decision turned entirely on a finding that Samsudeen was credible.
20. The IPT found that despite the superficially unsatisfactory nature of his account, concerns as to his credibility were addressed by the fact that much of his account related to matters which occurred to his father (not him) and occurred prior to his birth.
21. The IPT found that the clinical psychologist's evidence was that his presentation could only be explained in terms of traumatic experience and it would have been very difficult for him to have fabricated the degree of disturbance displayed during the clinical interviews.
22. The IPT found that the doctor's evidence was consistent with the appellant's claim to have been subjected to mistreatment and beatings in the past.
23. **Section 9(2)(g)(i) OIA**



## Section 9(2)(g)(i) OIA

24. I considered whether INZ ought to have ensured that it had an RPO present at the hearing to advance the RSB case and potentially counter the appellant's case. This case was not (at this stage) a complex or unusual refugee claim and in the ordinary course would not have warranted the presence of an RPO. The IPT hears claims afresh and makes its own determination on the facts. Without the benefit of hindsight in this case, to ensure that an RPO attending this particular hearing INZ would have needed to have a policy ensuring representation at every hearing (because this case was no different than others – at this point). It is difficult to predict whether that would have made any difference in this case. I cannot, therefore, conclude that INZ or RSB ought to have acted differently. The logic of the RSB was available to the IPT and it was clearly available to them to dismiss the appeal. It is speculative to assume that RSB attendance at the hearing would have made any difference.

### **INZ activity from 2014 through to 2017**

25. Samsudeen applied for permanent residence on 22 January 2014 and this was granted on 2 April 2014. Health and character requirements were met. A clear NZ Police Certificate was received and a National Security Check was undertaken, with the NZSIS response returned as “no comment”; no concerns were identified at that stage. The Immigration Officer concerned noted that Samsudeen met all the relevant requirements under the Refugee Protection category (an updated Sri Lankan Police clearance was waived). The grant of permanent residence appeared orthodox in the circumstances.
26. There is little activity recorded on the file for 2015 and 2016, although it is during this period that Samsudeen came to the attention of NZ Police for his online activities. In April and May 2016 NZ Police warned Samsudeen in respect to graphic Facebook posts he had made including comments advocating violent extremism. Samsudeen apologised and advised he had closed down his Facebook account.
27. In July 2016 Samsudeen resumed posting violent and objectionable material on new Facebook accounts.
28. In November 2016 Samsudeen travelled to Samoa for 5 days and returned to New Zealand.

### **The events of 2017 onwards**

29. In April and May 2017, INZ received informant information alleging Samsudeen's support for ISIS and possession of a large hunting knife. INZ officers were in contact with NZ Police. RSB treated the receipt of that report as the receipt of information directly relevant to Samsudeen's status as a refugee.
30. On 19 May 2017 Samsudeen attempted to travel to Malaysia (and Singapore) with family members. He was arrested by NZ Police at Auckland Airport and his laptop was seized; it was later found to



contain numerous objectionable images and videos. On 20 May 2017 a search warrant was executed at his home and the large hunting knife was located under his bed. Samsudeen was remanded in custody.

31. INZ commenced an assessment of whether and how Samsudeen could be deported from NZ. MBIE legal advice was taken. INZ needed to assess whether deportation was a viable option under the Immigration Act and international obligations. This required a complex process of consultation with various government agencies (including MFAT, Crown Law, NZSIS, DPMC and NZ Police).

## Section 9(2)(h) OIA

### **The referral to RSB in August 2017**

36. On 4 August 2017, the Compliance, Risk and Intelligence Services (CRIS) of INZ referred Samsudeen's case to the RSB. The referral letter stated that CRIS continued to assess whether and how Samsudeen might be deported from NZ. The referral noted a statement from his flatmate that if Samsudeen had said that if he was prevented from leaving New Zealand he would carry out an act of violence in New Zealand. The referral requested that RSB assign an RPO to consider a

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<sup>3</sup> Refer the definitions in ss 130 and 131 of the Immigration Act.

determination under s164(3) that Samsudeen may be deported despite being a refugee as permitted by Article 32.1 or 33 of the Refugee Convention.

37. RSB started work under the refugee status review framework. That framework is set out in RSB's *Review of Refugee or Protected Person Status: Process and Procedures Manual* (Review Manual). A summary of key steps is included in **Appendix 1**; the Manual is also relevant. The Review Manual sets out a principled framework, which the Samsudeen case tested. It appears to me that the spirit of that framework was adopted appropriately, even if a "normal" step-by-step process according to the Review Manual was not possible in this case.<sup>4</sup>
38. RSB received the referral and assigned an RPO to consider the case. In accordance with the Review Manual, a prima facie assessment was commenced by a technical officer. Requests were made of NZ Police for information from Samsudeen's laptop. By December 2017 the prima facie assessment was still in draft due to outstanding information. The RPO went on maternity leave and another was assigned. The new RPO continued to gather information from NZ Police and monitored the progress of the criminal matters.
39. The case was referred to the RSB Cancellation Assessment Panel (CAP) as per RSB policy set out in the Review Manual. The recommendation was to investigate further, await the trial outcome and obtain further information (from NZ Police and specific country information).
40. I have not seen a written record of the CAP decision and understand that there may not be one. If that is so I do not consider the lack of a written record material, given that the decision was to investigate further.
41. The process continued as per the recommendation in early 2018. It was supervised by the Branch Manager with an assigned RPO. The RPO continued to gather material from the NZ Police in early 2018.
42. In April 2018 the material on Samsudeen's laptop was classified by the Classification Office as "objectionable" unless publication was restricted to 18+ years old. This was relevant to the seriousness of the charges against Samsudeen. The Crown sought a review of that classification and it was upheld by the Film and Literature Review Board on 26 June 2018.
43. In an unusual turn of events, on 9 May 2018, INZ received a handwritten note from Samsudeen wanting to "*deannounce my Permenant Residency and my Refugee Status*" [sic]. He asked for an Immigration Officer to come to Rimutaka prison as soon as possible so he could "sign off" his residency status. Such a request is unusual and is not addressed in the policy documents I was given.
44. An INZ officer (CRIS branch) attended Rimutaka prison on 17 May 2018 and met with Samsudeen. Samsudeen confirmed his desire to renounce his refugee status and said that a return to Sri Lanka

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<sup>4</sup> By which I mean that the Review Manual does not, for instance, tell you what to do when you have multiple criminal charges on foot, someone who changes counsel repeatedly, tries to leave voluntarily, etc.

- would no longer be unsafe for him. He said he had family support in Sri Lanka, including his mother, and that as long as Karuna were not in power he could stay in Sri Lanka. He also spoke of intending to travel to Qatar where his brother could provide him a job. The INZ officer advised that any such process of return would require advice from the NZ government to the Sri Lankan government about his stay in New Zealand.
45. An RPO visited Samsudeen in Rimutaka prison on 25 May 2018. Samsudeen refused to speak to the RPO. At this point the RPO advised of the intention to initiate a reconsideration of his refugee status and his need for international protection. The RPO advised that the process would commence with a Notice of Intended Determination Concerning Loss of Refugee Status.<sup>5</sup>
  46. At around this time Samsudeen's then counsel in the criminal case was negotiating (without prejudice) with the Crown Solicitor to resolve the charges against him on the basis that he would leave New Zealand as soon as possible. Those discussions continued behind the scenes including at a later stage with the involvement of Crown Law. As is obvious, this did not eventuate.
  47. The Notice of reconsideration of refugee status was finalised on 31 May 2018 and served by the RPO on Samsudeen's then lawyer on 1 June 2018. The notice specified that the ground relied on for cancelling his refugee status was that it may have been procured by fraud (etc., per s145(b)(i)). This was in turn based on the NZ Police information from Samsudeen's laptop, which suggested that Samsudeen had written some of the family references himself. An interview with Section 9(2)(a) OIA gave further reason to believe that Samsudeen had fabricated his evidence about the threat he faced in Sri Lanka. The notice concluded that Samsudeen was granted refugee status in New Zealand by the IPT and the IPT decision may have been improperly made (as a result of the false evidence Samsudeen submitted).
  48. This notice appears to follow the substance of INZ policy and outlined in detail the procedural history, the legal test, the evidence gathered, the considerations related to refugee and protected person status, and finally the ability for Samsudeen to provide written submissions and to have an interview on request. This conforms with the natural justice rights of Samsudeen and INZ process.
  49. On 29 June 2018, Samsudeen pleaded guilty in the High Court to the charges he then faced (some of which were reduced in seriousness due to the classification decisions above). He had now been in custody for 13 months and it was agreed he would not receive any further term of imprisonment. He was released on bail by the High Court, with conditions.
  50. On 2 July 2018 Mr Samsudeen requested an interview in response to the "intended cancellation notice" (above). An interview was scheduled for 7 September 2018.
  51. A further RPO was assigned in July 2018 after the assigned RPO expressed discomfort at continuing with the case. The new RPO also questioned the level of protective security available, in particular

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<sup>5</sup> Section 146 Immigration Act 2009 and Regulation 7 Immigration (Refugee and Protection Status Processing) Regulations 2010.



- if there was to be an interview with Samsudeen. Discussions were had as to this within MBIE, RSB and with NZ Police. Personal safety advice was provided by the Head of Security and Emergency Management, MBIE. It transpired that a different and new RPO undertook the interview of Samsudeen on 7 September 2018. I will return to the subject of protective security for RSB officers below.
52. Having been released on bail on 29 June 2018, Samsudeen reoffended and on 9 August 2018 he was arrested and charged. His offending included accessing further ISIS material such as instruction videos on how to kill non-Muslims with a knife. The charges included possession of an offensive weapon (an identical knife as before) and further offences against the Films, Videos, and Publications Classification Act 1993. He was remanded in custody.
  53. On 3 September 2018 Samsudeen made written submissions in response to the intended cancellation notice and on 7 September 2018 he was interviewed by the RPO now assigned to the case.
  54. On 19 September 2018 Samsudeen was sentenced to 1 year of supervision by the High Court at Auckland in relation to the offending he had pleaded guilty to on 29 June. Before sentencing, Samsudeen decided to instruct a different lawyer and the original lawyer on the criminal proceedings withdrew from representing him. Changes of lawyer by Samsudeen in both the immigration and the criminal contexts caused a measure of delay.
  55. As per RSB procedure, the RPO produced an interview report, summarising the considerations arising as to whether Samsudeen's refugee claim may have been procured by fraud and whether notwithstanding that, he was a refugee or protected person. Again, this followed the orthodox and somewhat laborious natural justice process prescribed by RSB policy. The interview report outlined the credibility concerns that remained and further potential prejudicial evidence that had come to light.
  56. That evidence included (i) **Section 9(2)(a) OIA** (ii) documents submitted as genuine appeared to have been manufactured by Samsudeen and (iii) medical reports located on his computer seemed to indicate he had obtained different versions of the reports which he was able to alter himself. Further concerns were raised in the interview report as to the statement from **Section 9(2)(a) OIA** to the NZ Police (which failed to support the details of Samsudeen's claim).
  57. The interview report was (again) a very thorough and meticulous record of the RSB's concerns. It was provided to Samsudeen's lawyer on 8 October 2018.
  58. Because of the risks Samsudeen posed, the interview report stated that if Samsudeen was to be returned to Sri Lanka, NZ Police would raise an Interpol Green Notice and Samsudeen would be escorted to Sri Lanka by NZ Police. In short this was to discharge NZ's obligations to other countries to inform them of his criminal activities and future risk of the same. Both Samsudeen and his lawyer





commented that

Section 6(a) OIA

59. The interview report recorded that Samsudeen had advocated support for ISIS and a holy war or jihad. Samsudeen declined to comment on this at the interview and was given a further opportunity to respond on the impact of his religious and political views upon return to Sri Lanka.
60. It is worth noting at this point that Samsudeen's Sri Lankan passport expired in October 2018. From that point on, he did not have a current travel document and a replacement passport or alternative travel document would have to be arranged for him to leave New Zealand. This in turn required an element of cooperation from him (in a practical sense).
61. Samsudeen, through his lawyers, made preliminary submissions in response to the interview report (13 November) and sought further time and assurances regarding further evidence. Further evidence was submitted in December 2018 and further time was sought.
62. On 7 January 2019, the RPO advised Samsudeen's lawyers that the decision was being made and submissions would be accepted up until the completion of the decision.

### **The cancellation of Refugee Status**

63. On 1 February 2019 the RPO wrote to Samsudeen (care of his lawyers) advising that he had determined that Samsudeen was not a refugee and his recognition as a refugee was cancelled as of 1 February 2019. The RPO advised that the initial recognition of refugee status may have been procured by fraud, forgery or false or misleading representations, or concealment of relevant information (s 145(b)(i)). The RPO determined that Samsudeen's current circumstances meant he should not be recognised as a refugee or a protected person. The RPO advised that appeal rights against this decision only arose after Samsudeen was served with a deportation liability notice (then an appeal arose on the facts and humanitarian grounds).<sup>6</sup>
64. The cancellation decision was recorded in a 40-page document which traced the INZ and IPT history of Samsudeen, the circumstances of his refugee claim and whether it was properly made, and finally whether notwithstanding that, Samsudeen was a refugee or protected person. The decision determined that he was not.
65. The process followed by the RPO was considered and consistent with the Review Manual and the considerations set out in the Manual were factored in. There were some technical errors in the decision letter and reasons, primarily an incorrect statutory reference, which were later noted by MBIE legal and Crown Law. In their view (and mine) the errors did not impact upon the substance of the decision and were not material. MBIE legal and Crown Law were involved and a revised decision document was issued (dated 27 February). Nothing turned on that, although it was not optimal. The substance of the decision and the reasoning in it was thorough and professionally done following RSB procedure.

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<sup>6</sup> Section 162 of the Act.



## Deportation Liability

66. On 11 February 2019, the RSB Branch Manager referred Samsudeen's case to the Manager, Immigration Resolutions. This accorded with the usual process for persons liable to deportation.
67. The case was assigned to a technical specialist (TS) and a deportation liability assessment was commenced. As per INZ procedure, Samsudeen was notified through his lawyer of consideration of his liability for deportation. On 19 February 2019, the TS wrote to Samsudeen notifying him that he was liable for deportation (under s 162) because of the cancellation of his refugee status and inviting him to make submissions before 8 March. Following further consideration, the TS considered other grounds on which Samsudeen could be deported.
68. On 27 February 2019 a similar letter was sent to Samsudeen again via his lawyer notifying him of his liability for deportation under s 161 of the Act as a result of the convictions in the High Court (on 19 September 2018). He was invited to make submissions before 8 March 2019.
69. At this point Samsudeen was in custody on the further charges and a case review hearing was scheduled for 27 February 2019 in the Auckland District Court. He was now represented by different counsel on the criminal matters.
70. In February 2019, the Crown Solicitor and Crown Law were involved in negotiations with his immigration lawyer in an attempt to negotiate Samsudeen's voluntary departure from New Zealand. INZ, through Crown Law, signalled it was willing to facilitate this.
71. On 5 March 2019 his then immigration lawyer wrote to Crown Law advising that she no longer acted for Samsudeen on immigration matters.
72. On 6 March 2019 Samsudeen contacted the TS by telephone and said he would not be making any comment in response to the deportation liability letters. He declined to provide updated information about his personal circumstances (which would be relevant to consideration of whether deportation should proceed). The TS described him as appearing to be smart, but confused and erratic.
73. On 13 March 2019 Deportation Liability Notices (DLNs) for each ground were signed by a Delegated Decision Maker on behalf of the Minister of Immigration. The Deportation Liability Assessment (DLA) document had not yet been finalised. This was unusual and did not accord with normal procedure. The DLA was completed on or about 9 April 2019. During an interview with me, the TS concerned confirmed this was not normal procedure and ought not occur, yet said it made no difference in substance to the outcome. In these circumstances, I agree. I have reviewed the applicable section of the operations manual (D3.55) and the timing of the DLA is not specified there. It should occur before the signing of the DLN as a matter of practice and evidence.
74. The DLNs went to the Minister on 9 April 2019 and on 11 April 2019 the Minister decided the deportation should proceed (the existing signed notices would be served).



75. An immigration officer saw Samsudeen at Mt Eden prison on 15 April 2019 and served the DLNs on him. Samsudeen refused to sign to acknowledge service. The DLNs contained details of his appeal rights to the IPT.

### Country Research – Sri Lanka

76. It is worth noting in this chronology that on 21 April 2019, three churches and three hotels in Sri Lanka were targeted by a series of coordinated Islamist terrorist suicide bombings (known as the Easter bombings). A total of 269 people were killed and at least 500 injured. Sri Lankan government officials suggested the attack was linked to the Christchurch mosque shootings on 15 March 2019 [redacted] **Section 6(a) OIA** Irrespective, there is no doubt that the Easter bombings in Sri Lanka changed the landscape materially for someone in Samsudeen's position (who was being prosecuted for his public support of Islamic extremism). Ultimately, in accordance with its policies, RSB utilised its Country Research Branch to obtain information as to the situation in Sri Lanka [redacted] **Section 6(a) OIA** [redacted]

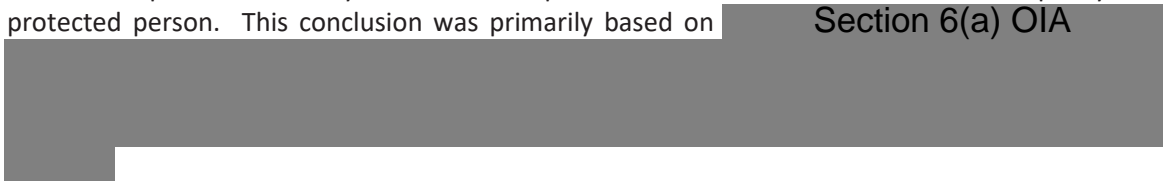
### Second IPT Appeal and Criminal Proceedings

77. On 26 April 2019 Samsudeen's previous immigration lawyer advised she was now instructed again to act for Samsudeen. On 29 April that lawyer lodged an appeal on behalf of Samsudeen to the IPT. By operation of s 164 of the Act, Samsudeen could not be deported under the Act until his appeal was finally determined (assuming it was unsuccessful). That would ultimately be in the hands of the IPT.
78. The chronology of the IPT appeal and the concurrent court proceedings are best captured by the chronologies issued by the IPT and the Court themselves. The IPT chronology is attached at **Appendix 2** and the Court summary is attached as **Appendix 3**. As is clear from the IPT and Court chronologies, Samsudeen's case became mired in the forensic process controlled by the IPT, the Court, Samsudeen, his lawyers, Crown Law and the Crown Solicitor. INZ was not in control of those processes, although it was informed of and engaged in them.
79. From the point of the second appeal to the IPT (from 29 April 2019), the case became markedly more complex and there was no standard procedure for such a case. That was confirmed in many of my interviews.
80. One of the key considerations in the Court and Tribunal processes was consideration of whether the IPT should await the criminal trial. In this case, it was considered that the determinations from the criminal trial would be relevant to the determination to be made by the IPT, particularly as to whether refugee status could be maintained if Samsudeen was considered a risk to security or was convicted of a particularly serious crime and constituted a danger to the community. From an early stage, the Crown, Samsudeen's counsel and the IPT agreed that the IPT process should await the criminal trial. The criminal trial originally scheduled for July 2020 had to be adjourned to May 2021. That in turn caused significant delay.
81. It is self-evident that the provisions of the Immigration Act are not designed to hold persons who are dangerous to the public or to detain them pending the outcome of criminal proceedings. Detention

may be used if it is for the purpose of deportation but that must be pursuant to a Court-sanctioned and relatively short-term process. As was clear throughout, INZ was not able to utilise the Immigration Act provisions to hold Samsudeen unless it was to facilitate near-term deportation. If that was not a reasonable prospect then to attempt to do so would arguably be contrary to the Act and unlawful. This was the subject of legal advice from Crown Law and others throughout the process. In 2021, Crown Law gave differing advice on this but ultimately settled on the conclusion that to pursue holding Samsudeen in custody on the grounds of likelihood of deportation was not tenable.

82. My review of the documentation and interviews reinforced this conclusion.
83. As is well known the Crown attempted to add a charge under the Terrorism Suppression Act. The dismissal of that application to add a charge of planning or otherwise preparing to cause death or serious bodily injury (by Downs J in his judgment of 16 July 2020) also changed the evidence to be considered by the IPT. A conviction on that charge would have simplified some of the considerations required to be undertaken by the IPT and streamlined the evidence and hearing. It was not to be. The Crown and Samsudeen's lawyers had agreed that the IPT should await the resolution of this issue.
84. In early 2020, Immigration officials, MBIE legal and Crown Law were involved in discussions as to whether Samsudeen could leave NZ voluntarily and how that could be effected. The criminal charges and the lack of a travel document were identified as issues beyond the control of INZ.
85. Throughout 2020 and 2021, INZ officials were involved in communications with all relevant stakeholders, in particular Crown Law, NZ Police, DPMC, MFAT and others. From my interviews, there appeared to be regular informal and formal briefings to relevant parties. Not all involved were kept fully informed although this was to be expected given the complexity and sensitivity of the situation. For example, some were surprised Samsudeen was eventually released from custody without them knowing.
86. Since 2016, government agencies (and the national security system) had been aware of Samsudeen and risk mitigation activities were being co-ordinated under the ODESC committee. A national security "Watch Group" met on occasions to consider Samsudeen (amongst other matters). I have not seen all the documentation relating to that group. As the criminal trial approached in May 2021, INZ and other agencies became more active in examining options to detain Samsudeen.
87. On 17 May 2021 ODESC briefed the Prime Minister and other relevant Ministers of the risks of Samsudeen's release after trial. The briefing noted INZ were exploring options for detention under a warrant of commitment pending deportation and had obtained Crown Law advice (7 May 2021) that such an option was feasible (although not without complexity). The briefing noted that Samsudeen posed a high risk to public safety if released and at that time the plan was to take him into custody whilst applying for a warrant of commitment under the Immigration Act. The briefing noted that while Samsudeen was in the community, no mitigations would be able to eliminate all risk. The briefing cited a similar and chilling UK example from 2020 where a male stabbed members of the public in a store shortly after release from prison.



88. At this time, INZ also considered whether it should prepare a case for the Minister of Immigration to certify Samsudeen as a threat or risk to security under s 163 of the Act (as earlier signalled). When this occurs, the Governor-General may by Order in Council order the deportation of the individual. The person thereby becomes liable for deportation. This was seen as potentially adding weight to the warrant of commitment application. It would not have overridden the restriction on deportation in s 164 in respect of a refugee or protected person claimant.
89. On 27 May 2021 Samsudeen was found guilty by a jury of some of the charges against him. He was acquitted on the possession of a knife charge. On 6 July 2021 Samsudeen was sentenced in the High Court. As can be seen from the Court summary, he had been in custody since his arrest in August 2018. On the convictions before the judge, there was no prospect of continuation of a custodial sentence. Fitzgerald J sentenced Samsudeen to 12 months supervision. He remained in custody on fresh charges arising from alleged assaults in custody (before the District Court).
90. Between May 2021 and July 2021, INZ, MBIE legal, Crown Law, NZ Police and others were involved in intense consideration of options as to how to keep Samsudeen in custody and other potential options to facilitate public safety.
91. On 6 July 2021, in light of the non-custodial sentence from the High Court, and the possibility of bail on the further charges at any stage, INZ officials (following Crown Law advice) requested that RSB consider afresh the position of Samsudeen. The RSB was asked whether he was likely to be a protected person in light of the inevitability that Sri Lankan officials would be notified of his activities in New Zealand by virtue of the "Green Notice", Police escort and publicity around his criminal cases on deportation.
92. The RSB responded on 7 July 2021 with the provisional view that Samsudeen would qualify as a protected person. This conclusion was primarily based on **Section 6(a) OIA**  

93. On the basis of that updated assessment, Crown Law gave further advice dated 8 July 2021. The advice stated that it was likely that the IPT would find that Mr Samsudeen was a protected person (for the reasons above). The advice stated that if that was the case, he would not be able to be deported. No realistic option for deportation to a third country existed. I note there did not appear to be extensive consideration of this in the documents other than a clear view existed that no other country was a possibility.
94. The advice continued that INZ could only properly seek to detain Samsudeen under the Act for the purpose of making a deportation order if the making of such an order was a reasonable prospect. The Immigration Officer giving evidence in support of the application would have to make a statement on oath that the purpose of detention is to detain him pending the making of a



deportation order. That would not be possible if the officer did not believe deportation was a reasonable possibility. This returns to the earlier consideration that the Immigration Act is not able to be used to detain people for reasons other than reasonably imminent deportation.

95. For a similar reason, any counsel appearing for MBIE/INZ in support of the warrant would have difficulty fulfilling their obligations to the Court and submitting with a reasonable basis that deportation was the purpose of detention in this case.
96. The position that was reached, as summarised by INZ at the time, was as follows:
- Samsudeen had an active appeal before the IPT;
  - He remained a permanent resident pending the IPT appeal;
  - He was considered highly likely to be assessed as a protected person; and
  - He could not be deported or detained under the Immigration Act.
97. The decision was therefore taken not to pursue a warrant of commitment to hold Samsudeen in custody if he was released on bail.
98. Samsudeen was released on bail on 13 July 2021 and on 3 September 2021 the knife attacks occurred.

**Did INZ properly follow its own internal processes and guidelines and appropriately utilise tools under its control in making its various determinations and assessments, given the circumstances?**

99. For the reasons outlined above, where the situation was governed by process and guidelines, INZ appears to have followed its usual internal processes and guidelines, in particular following the referral in 2017.
100. The appropriate branches/divisions of INZ were utilised, orthodox processes were followed, and legal advice was taken throughout:
- All reasonably available options appear to have been considered.
  - Some minor discrepancies in process were observed but ultimately were not material.
  - I do not consider there is any step which INZ could have taken which would have materially changed the course of events.

**Did INZ adequately document and communicate its decisions and decision-making processes, including to Ministers, the Prime Minister, MBIE Secretary and Deputy Secretary Immigration?**

101. It appears so. A considerable amount of communication occurred through meetings which were not always documented (understandably), but these ensured those officials and Ministers were kept updated as to INZ decisions and processes. My interviews suggested that relevant personnel were kept regularly informed by emails, formal briefings, watch group briefings and other informal communications. The national security system and ODESC committee were involved from 2016 onwards.





102. The key decisions made by INZ in the course of the process were adequately documented. In particular:

- The prima facie assessment of cancellation of refugee status;
- The notice of intention to cancel;
- The decision to cancel refugee status;
- The deportation liability assessment (albeit in an irregular order);
- The consideration of INZ decision-making in the course of the criminal proceedings;
- The consideration of the approach to the appeal before the IPT; and
- The decision not to pursue a warrant of commitment should Samsudeen ultimately be granted bail (as occurred).

103. Again, there were some areas where documentation and communication were not entirely consistent or optimal, but these were not material.

**Was there adequate clarity of roles, responsibilities and assurance mechanisms within INZ for assessing high risk individuals and was the relevant delegation framework adequate?**

104. Yes. Whilst this case was unique, INZ mechanisms responded appropriately, with sufficiently senior employees having delegated authority for decision-making at key junctures.

105. The delegation framework appeared to be adequate, with suitable supervision and seniority involved in key decision-making. The final and crucial decision was the culmination of careful consideration, legal advice and relevant factual input. Whilst the documentation was not always formal (much was done by email), it was thorough and robust.

106. The delegation framework appeared flexible and robust enough to accommodate re-allocation where required without compromising the integrity of the overall process.

**Are there any lessons that can be learned in determining how INZ should deal with similar high risk individuals and is the overall internal review process within MBIE for such individuals adequate?**

107. The issues which INZ was likely to face in dealing with Samsudeen (revocation of refugee status and possible protected person status) were identified in 2017. They were largely a product of legislative design and the international refugee and protection system.

108. Given the risk posed to the public by Samsudeen (bearing in mind this was not a universal view), I posed some further questions for comment from MBIE/INZ.<sup>7</sup> My intention was to test the reality of any potential learning opportunities.

109. My questions were:

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<sup>7</sup> In a draft preliminary report dated 23 February 2022.



- Whether the interface between s 163 and s 164 could or should have been tested at an earlier stage, such that INZ may have obtained a definitive answer from the Courts as to the ability to deport Samsudeen (assuming cancellation of refugee status).
- Whether the likelihood of protected person status ought to have been tested more forcefully such that an IPT decision was obtained (which in turn raises a question as to the decision to await the criminal matters).
- Whether, given the likelihood of cancellation for fraud, and the unlikelihood of refugee status being affirmed, more assertive steps to **Section 6(a) OIA** ought to have been pursued.
- Whether the protective security regime for RPO's (and other employees personally interacting with Samsudeen) is adequate and appropriate in the circumstances faced here, to meet INZ's obligations to keep its employees safe and well.

110. The Ministry provided answers in response to each of those questions in its response of 7 March 2022. I set these out below, with my further comments.

*Q1: Whether the interface between s 163 and s 164 could or should have been tested at an earlier stage, such that INZ may have obtained a definitive answer from the Courts as to the ability to deport Samsudeen (assuming cancellation of refugee status).*

111. In relation to Q1, the Ministry responded that:

The Ministry considers that this issue was tested in the Supreme Court in the *Zaoui* case. Official decisions to deport a person found to be a security risk must consider New Zealand's international obligations. The question is whether New Zealand is prepared to override its international protection obligations under CAT and ICCPR for such persons. This would require legislative amendment.

With the benefit of hindsight, the use of section 163 could have been tested earlier, but the question of whether the threshold was met for finding him a "threat or risk to national security" was complicated by the criminal charges that he was facing.

112. That response is appropriate in the context: the *Zaoui* case would appear to render the rights and interests of a refugee or protected person paramount where the question is about their potential deportation. As the Ministry identifies, New Zealand's international obligations and domestic practice require such an approach. However, INZ should keep this matter under review and in an appropriate future case it may need to consider its approach afresh, particularly *if* global circumstances and domestic priorities change. Of course, if the Samsudeen case prompts legislative change, the amended law will receive judicial consideration.



*Q2: Whether the likelihood of protected person status ought to have been tested more forcefully such that an IPT decision was obtained (which in turn raises a question as to the decision to await the criminal matters).*

113. The Ministry responded:

The Ministry notes that the decision to await the outcome of the criminal trial was ultimately a decision for the Immigration and Protection Tribunal (IPT) to make. The IPT is responsible for its own procedures and timetable bearing in mind the views of the parties to the hearing (including Samsudeen's views).

There was discussion regarding the risks and benefits of opposing Samsudeen's application to delay the IPT appeal. However, even if successful (and the IPT decided to proceed) it may have delayed proceedings even further, with Samsudeen potentially mounting a procedural challenge by way of Judicial Review. Also, it is the view of the Ministry, that it was in the best interests of all parties to have the full facts (including the outcome of the criminal charges) before the IPT as this information was directly relevant to the enquiries that the IPT needed to make.

114. That is a rational view. An earlier referral of this matter to the IPT *may* have provided an opportunity to determine Mr Samsudeen's status once and for all at an earlier stage, but I am of the view that the outcome would likely have been the same (the IPT would have adjourned the appeal to await the outcome of the criminal proceedings).

*Q3: Whether, given the likelihood of cancellation for fraud, and the unlikelihood of refugee status being affirmed, [REDACTED] Section 6(a) OIA [REDACTED] ought to have been pursued.*

115. The response:

In preparing for the IPT hearing there was a conversation between MBIE Legal, Crown Law and the Ministry of Foreign Affairs and Trade (MFAT) regarding [REDACTED] Section 6(a) OIA [REDACTED]. This is a matter for MFAT, and ultimately it was not considered a feasible approach in this case.

There is also no certainty that Sri Lanka would have agreed to provide assurances in this case. This would have been a deportation under the Immigration Act and the leverage to [REDACTED] Section 6(a) OIA [REDACTED] that may have been present in an extradition context was not present in this case.

116. I accept the Ministry's response and note that I am not privy to any information regarding MFAT's interaction with the Samsudeen case. It seems to me that there is a real practical difficulty here and I can do more than opine that it is clearly in the public interest for such an option to be fully explored in cases like this.

*Q4: Whether the protective security regime for RPO's (and other employees personally interacting with Samsudeen) is adequate and appropriate in the circumstances faced here, to meet INZ's obligations to keep its employees safe and well.*

117. The Ministry responded at length:



Staff safety is a clear MBIE priority. The overwhelmingly majority of persons in refugee and protection processes do not present a significant risk to staff.

In general, Refugee Protection Officer's (RPO) are given security training during induction which includes processes for identifying risk prior to interview and for conducting of interviews. All refugee status claims are triaged, and this includes an assessment of whether any protective security risks are present.

RPOs conduct a risk assessment for in-person interviews, with set criteria including protective security risks, and record this in MBIE's risk management software. Precautions for standard on-premises interviews include a safe interview room set up, panic alarms and designated security officers and panic alarm response protocols.

If any risk is identified through the steps outlined above, it is escalated to a manager to consider options to manage the risk appropriately for the case. This may involve consultation with MBIE Protective Security.

Previously, it may also have involved the additional step of having a security guard present on site to further mitigate any risk. Nowadays security guards are routinely at INZ receptions, including the Refugee Status Unit, every day.

In terms of the specific cancellation of refugee and protection status process in this case, Samsudeen was identified as a case with protective security issues from the start. In preparing for the Refugee Status Unit interview NZ Police were consulted and arrangements were made that if the interview was to take place at an MBIE premises, a Police Officer to be present in the room while the interview was taking place. In the event, Samsudeen was arrested again before the interview, which later took place in the controlled environment of a Corrections facility.

Following the release of Samsudeen from prison in 2021, the Refugee Status Unit contacted MBIE Protective Security for advice on security measures to be adopted by staff. The Refugee Status Unit staff involved in the Samsudeen case were given a security briefing by MBIE Protective Security as were public facing Refugee Status Unit staff at reception.

MBIE Protective Security were then in contact with Police and the MBIE Intelligence Unit in relation to the risk posed to INZ staff by Samsudeen. However, it seems this Police engagement wasn't communicated to the RPO at the time. The RPO has indicated that they would have felt much more assured had they known that MBIE Protective Security had consulted with Police on the risk to INZ staff, rather than thinking tips on social media security settings etc were all that MBIE Protective Security had to offer.

The RPO was also directly in touch with a Police Officer involved in the case who offered a risk assessment. This offer was accepted, but it was overtaken by events.



MBIE staff have access to funded counselling services through the Employee Assistance Programme and additional support beyond that can be accessed through MBIE Health & Safety. These services provide confidential support for staff. Given the nature of this case, including exposure to distressing material and stress related to the nature of the case, staff involved were specifically reminded about the availability of this service and additional support was accessed by some staff involved.

118. I accept that MBIE treats staff safety as a priority. Nonetheless, this was not always the view of certain members of staff, who held very real concerns for their safety in this case. Given how events played out, I do not begrudge them that.

119. As the Ministry acknowledged, it is clear that relevant staff were not always aware of the degree of police involvement and the option for police presence during interviews with Samsudeen (at least at the planning stage); that is regrettable and caused some real distress.

120. I understand that MBIE will review its process in relation to protective security and I wholly support that. If I may, I suggest that that review engage meaningfully with staff at all levels, and that future security measures, training and communication focus on the needs of those on the front line, ensuring that communication with them is full, two-way, and constructive.

## **General comment**

121. Whilst INZ processes and procedures appear to me to be overly laborious and cautious, they are heavily influenced by concerns of natural justice, which ultimately are shaped by the Courts. A more streamlined process would be preferable but creates legal risk for INZ.

122. The Samsudeen case provided a terrible conundrum for INZ officials. All involved knew that the outcome which happened was a real and significant risk. The provisions of the Immigration Act, however, do not allow deportation of a potential terrorist refugee posing a risk to the safety of New Zealanders, if that person's beliefs and actions expose them to the risk of torture in their home country. It may be a difficult position to accept but that is the law as it stands and INZ were bound by that.

**Michael Heron QC**  
**14 March 2022**



## Appendix 1 INZ Procedure for Refugee Claims

The process for making a refugee and protection status determination is set out in RSU's *Making refugee and protection status determinations: standard operating procedures for RPOs 2020/2021* (draft July 2021) (the SOP). The Manual and the Review Manual also inform the processes for determinations of status at the first and review stage.

A standard "flow" claim is expected to progress as follows:

1. RSU receives a person's intention to claim refugee/protected person status (per s 133 pf the Act).
2. RSU receives the *Confirmation of Claim to Refugee and Protection Status in New Zealand* forms from the claimant or their representative.
3. The RSU support team raises the claim in AMS.
4. The support officer requests the visa files.
5. Any requirements for an interpreter are identified by the interview coordinator (in preparation for an eventual interview).
6. The support team enters the claimant's information into the CRM database and MAKO.
7. A Manager, Refugee and Protection, receives the claim and is notified that it is ready for allocation. The Manager reviews and triages the claim.
8. The Manager allocates the claim to an RPO.
9. The RPO schedules an interview with the claimant. The interview will generally be scheduled for within the next 14 – 16 weeks.
10. RPO identifies key documents and any special needs.
11. The RPO:
  - a. cross-checks information with AMS/Visa applications, considering any consistencies, discrepancies;
  - b. identifies any basis of claim issues from the Confirmation of Claim form (e.g., reason for claim, basis, fear of harm, home-state protection. One of the questions posed in the SOP is whether there are any indications that the claimant has acted to deliberately create a risk of persecution for the purposes of being recognised as a refugee and therefore may have acted otherwise than in good faith). The RPO must consider what the turning point of the claim is, the need for further investigation, what claimant/country information is required, etc;



- c. identifies any *prima facie* credibility issues arising;
  - d. Prepares a chronology;
  - e. Identifies and initiates investigation and verification opportunities (e.g. country information, offshore verification, Interpol checks, open source searching, etc);
  - f. Makes country research unit (**CRU**) requests). This includes requesting Country of Origin Information (**COI**);
  - g. Conducts legal research;
  - h. Records all correspondence;
  - i. Records the date when the claimant's statement is received;
  - j. If necessary, instigates the process for the cloning of personal devices.
12. The RPO interviews the claimant. A written statement should be received prior to the interview, but the interview can proceed without it. Interview notes need to be made and retained. A pre-interview risk assessment should be completed prior and there should be a check-in with a Manager. Biometric information is collected at the start of the interview and an audio recording is taken.
13. An interview report is produced and should be sent to the claimant within 20 working days of the interview. The claimant/their representative can make written submissions in response within a further 20 working days. In cases where the claim is "strongly unmeritorious or clearly abusive" the RPO may dispense with the interview report and proceed to a potentially prejudicial information (**PPI**) letter.
14. RPO considers the claimant's final submissions.
15. RPO proceeds to make a decision. Fairness and natural justice require the RPO to address in all the matters raised by the claimant and/or that stand out as requiring a decision. The RPO must draft a decision using the relevant template. The decision will generally need to have the following sections:
  - a. Summary of Claim;
  - b. Credibility – findings of fact;
  - c. Nationality/protection elsewhere;
  - d. Country information;
  - e. Refugee Convention matters (which may include: real chance of serious harm, state protection, convention reason, internal protection alternative, Article 1F);
  - f. CAT; and
  - g. ICCPR.It may also include:
  - h. Bad faith per s 134;
  - i. Limitations on subsequent claims per s 140; or
  - j. Excludable factors for protected persons per s 137(2).
16. The draft decision then goes to a second person check (**2PC**) for review/sign-off.



17. The decision is then issued alongside the appropriate letter.

## INZ Process for Refugee and Protection Review Cases

The process for “review” cases (where a person’s refugee status might be cancelled, cease, or where s 164 of the Act might apply) is set out in the Review Manual. The review process is handled by RSB and focuses heavily on rights and obligations under the Act, international law, and the dictates of natural justice. Set out below is a high-level summary of the steps involved (sourced from the Review Manual).

1. RSB receives potentially prejudicial information (PPI).
2. The review manager assess the information and may write it off, refer it out, or proceed to initiate an RSB investigation.
3. If the matter is to be investigated, the review manager places the PPI in the blue folder and requests the relevant file from the support team.
4. Once the file arrives, the PPI is placed on file and the file is assigned to an RPO for a prima facie assessment (PFA).
5. The PFA entails reading the file and assessing the PPI/evidence to see whether it meets the legal test.
6. There are 4 possible recommendations that may arise from the PFA:
  - a. Proceed to notify the person.
  - b. Write-off the matter because proceeding is not justified.
  - c. Investigate further.
  - d. Defer further consideration (for instance, if the person is not in NZ).
7. The completed PFA is given to the review manager, who collects and stores it pending the next Cancellation Assessment Panel (CAP) meeting.
8. The CAP considers the collected PFAs and decides whether to confirm the recommendations or suggest alternatives.
9. Where the CAP decision is to proceed, the case is allocated to an RPO. The RPO has 20 working days to write the Notice informing the claimant of the review.
10. Once the Notice has been served, the support team is informed and the review is raised as an application in AMS. It is then passed to the allocation person for allocation to an RPO.





11. The person has 20 working days to respond in writing to the Notice or to request an interview. The process here essentially mirrors that for a claim, per s 148. That includes, per RSB policy:
  - a. Provision of an interview report within 15 working days of the interview;
  - b. Allowing the claimant 15 working days to respond to the interview report;
  - c. Requiring the RPO to draft a decision within 20 working days; and
  - d. Allowing 10 working days for that draft decision to be quality controlled.
  
12. If the decision is to remove status, the person can appeal to the IPT.

The Review Manual notes that RSB has capacity to review 10 decisions each financial year. It generally gives priority to cases involving organised or serious crime, then terrorism, and so on. To proceed with a cancellation review, RSB must have information to suggest that the original determination was improperly made.

The Review Manual sets out three possible outcomes of a cancellation decision, being:

- a. Recognition that refugee status was properly made, with status being retained.
  
- b. Recognition that the grant of refugee status was not properly made, but the person is a refugee, so status is retained.
  
- c. Recognition that the grant of refugee status was improperly made, and the respondent is not a refugee or protected person, with the result that status is cancelled.

The Review Manual does not expressly refer to the possibility that a person is not a refugee but is a protected person.



# MHQC

Michael Heron QC | Barrister

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## Appendix 2 IPT Timeline of Events



**BRITOMART**  
CHAMBERS

Section 18(c)(i) OIA

Section 18(c)(i) OIA

Section 18(c)(i) OIA

Section 18(c)(i) OIA

Section 18(c)(i) OIA



# MHQC

Michael Heron QC | Barrister

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## **Appendix 3**

### **R v Samsudeen – Summary of Court Engagement**



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## *R v Samsudeen* – Summary of court engagement

5 September 2021

### High Court matters

- On 29 June 2018, Mr Ahamed Aathill Mohamed Samsudeen pleaded guilty in the High Court to five charges, namely using a document for pecuniary advantage (x 2), knowingly distributing restricted material (x 2) and failing to assist Police in their exercise of a search power (x 1). Mr Samsudeen had been held in custody to that point for a period of some 13 months. It was common ground at the hearing on 26 June 2018 that any sentence to be imposed on the charges to which Mr Samsudeen had pleaded guilty would not exceed 13 months. On Mr Samsudeen's application, Justice Wylie granted Mr Samsudeen bail pending sentence, on conditions. Those conditions included restrictions on and monitoring of his online activity and electronic devices. A link to Justice Wylie's bail decision is [available here](#) (PDF, 126 KB). Mr Samsudeen had been refused bail on two earlier occasions when he was facing more serious charges. These bail decisions are [available here](#) (Courtney J) (PDF, 156 KB), and [here](#) (Venning J) (PDF, 140 KB).
- Mr Samsudeen had been granted refugee status by immigration officials on 20 December 2013. On 31 May 2018, the Refugee Status Branch served Mr Samsudeen with notice of intention to cancel his refugee status. On 3 July 2018, Justice Wylie heard Mr Samsudeen's application for suppression of his name and other identifying details, pending resolution of his refugee status. Justice Wylie granted the application and suppressed Mr Samsudeen's name, address, occupation and any identifying particulars, on the basis there was a real and appreciable possibility that in the event Mr Samsudeen's refugee status was revoked and he was deported to Sri Lanka, his safety could be in danger. That suppression was to remain in place until Mr Samsudeen's refugee status was finally determined. A link to Justice Wylie's suppression orders is [available here](#) (PDF, 215 KB).
- Mr Samsudeen was sentenced by Justice Wylie on 19 September 2018. Given Mr Samsudeen's prior remand in custody pending sentence, Justice Wylie concluded that a custodial sentence could not be imposed and proposed to sentence Mr Samsudeen to one year of supervision, with conditions. Both the Crown and counsel for Mr Samsudeen agreed that such a sentence was appropriate. Justice Wylie accordingly sentenced Mr Samsudeen to one year of supervision, subject to a number of conditions,



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largely related to the monitoring of Mr Samsudeen's online activity, as well as attending any directed psychological assessments. A link to Justice Wylie's sentencing notes is [available here](#) (PDF, 194 KB).

- In parallel, and while on bail pending being sentenced by Justice Wylie, Mr Samsudeen had been charged with further alleged offending (including possession of objectionable material and possession of a knife in a public place). Mr Samsudeen was remanded in custody on those charges. Accordingly, at the conclusion of Justice Wylie's sentencing, Mr Samsudeen remained in custody.
- Mr Samsudeen's trial on the new charges was due to commence in mid-2020, but was adjourned due to the COVID-19 lockdown.
- In mid-2020, the Crown applied to the High Court to also charge Mr Samsudeen under s 6A of the Terrorism Suppression Act 2002. The charge would have alleged that Mr Samsudeen, on or about 9 August 2018, planned or otherwise prepared to cause death or serious bodily injury. Justice Downs heard the Crown's application 9 July 2020. On 16 July 2020, the Judge concluded the charge could not be sustained because the proposed offence did not exist in law. Justice Downs directed the Crown to provide a copy of the judgment to the Attorney-General, Solicitor-General and Law Commission. A copy of Justice Downs' judgment is [available here](#) (PDF, 244 KB)
- Mr Samsudeen's trial before Justice Fitzgerald and a jury commenced on 17 May 2021. Mr Samsudeen faced charges of knowingly possessing objectionable material without reasonable cause (x 3), possession of a knife in a public place without reasonable excuse (x 1) and failing to assist a police officer exercise a search power (x 1). The objectionable material related to ISIS propaganda. Mr Samsudeen had originally faced two additional charges alleging possession of an offensive weapon. They were dismissed by Venning J following a pre-trial hearing on 12 November 2020 as on the evidence a properly-directed jury could not reasonably have convicted Mr Samsudeen on those charges. That decision is [available here](#) (PDF, 203 KB)
- On 27 May 2021, the jury found Mr Samsudeen guilty on two of the three possession of objectionable material charges, and the charge of failing to assist a police officer exercise a search power. The jury found Mr Samsudeen not guilty of possession of a knife in a public place and of the remaining charge of possession of objectionable material.
- Justice Fitzgerald sentenced Mr Samsudeen on 6 July 2021. By that time, Mr Samsudeen had been in custody for approximately three years. The Crown proposed a starting point of six months' imprisonment for the two charges of possession of



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objectionable material, with a one month uplift for failing to assist police exercise a search power. Justice Fitzgerald accepted the Crown's suggested starting point and uplift. Given Mr Samsudeen's remand in custody to that point, a custodial sentence could not be imposed. Justice Fitzgerald sentenced Mr Samsudeen to one year of supervision, again subject to conditions relating to monitoring of Mr Samsudeen's online activity and engaging in rehabilitative assessments. A link to Justice Fitzgerald's sentencing notes is [available here](#) (PDF, 208 KB).

- The suppression orders made by Justice Wylie in 2018 continued to have effect.
- Separately, Mr Samsudeen had been charged in relation to alleged assaults while in custody. The District Court had remanded Mr Samsudeen in custody on those charges. At the conclusion of his High Court sentencing in July 2021, Mr Samsudeen therefore remained in custody. He was granted bail by the District Court on 13 July.
- Following the events at the New Lynn Mall on 3 September 2021, the Crown filed an urgent application seeking orders rescinding Justice Wylie's 2018 suppression orders. A hearing before Justice Wylie was held on the evening of 3 September 2021. Justice Wylie granted the Crown's application and rescinded the 2018 suppression orders. The Judge made a further order, however, that the order rescinding suppression was not to take effect for 24 hours (until 11pm, 4 September 2021), in the event Mr Samsudeen's family made a fresh application for suppression. A copy of Justice Wylie's ruling of 3 September 2021 is [available here](#) (PDF, 1.1 MB)
- A further hearing was convened before Justice Wylie at 4pm on 4 September 2021 to consider the application of s 151 of the Immigration Act 2009 to previous minutes and judgments of the Court. Section 151 imposes statutory confidentiality of details concerning persons applying for and granted refugee status, and related matters. After hearing from counsel for the Crown, Mr Samsudeen's family and the media, Justice Wylie ruled that the statutory confidentiality obligations pursuant to s 151 no longer apply. The Judge declined an application made on behalf of Mr Samsudeen's family that the effect of the ruling be extended for a further 12 hours. Justice Wylie ordered that his ruling take effect as of 11pm, 4 September 2021, that is, the same time as his ruling of 3 September 2021. A link to Justice Wylie's ruling of 4 September 2021 is [available here](#) (PDF, 613 KB)

### District Court matters

- One charge of injuring with reckless disregard (single complainant), and another charge of assault with intent to injure (different complainant) at Mt Eden on 23 June 2020 were both filed in the District Court against Mr Samsudeen on 5 September 2020. Mr Samsudeen pleaded not guilty and was remanded in custody. He was granted bail by



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Judge Peter Winter in the Auckland District Court on 13 July 2021. Judge Winter granted bail after receiving and considering a “Joint Memorandum in respect of Admission to Bail” filed by Crown and defence counsel.

- On 16 July 2021, Judge Winter varied the bail conditions at the request of counsel. This decision is [available here](#) (PDF, 116 KB). Mr Samsudeen was due to appear again in the District Court for call-over of his judge-alone trial on 21 October 2021. Judge Winter directed that the terms and conditions of bail were to be reviewed on 21 October 2021.
- Orders made by the District Court relating to suppression are available [here](#) (PDF, 112 KB) and [here](#) (PDF, 101 KB)