

Volume 2, Issue 4. December 1996

ISSN 1173-4736

Editorial

ASSISTANT OMBUDSMAN'S EDITORIAL

*Susan Elizabeth Richards,
Assistant Ombudsman, retired on 8 November 1996
following a period of unbroken service
from 1970 to 1996*

**A PERSONAL REFLECTION OVER THE PAST
QUARTER CENTURY IN THE OFFICE OF THE
OMBUDSMEN**

Over the past 26 years I have worked with successive Ombudsmen, and while there have been some significant changes in their role and functions, impartiality and independence have remained the cornerstone of the operations of each Ombudsman.

I did not imagine, when I first joined the Office in 1970 as the Administrative Assistant, that 26 years later I would be completing a long and satisfying career which has given me a unique opportunity to develop skills and gain insights into the deepest corners of the New Zealand governmental system. In 1970, the Office was small - a total of six, including the Ombudsman - and received about 65 cases a month concerning central government departments and organisations, and education and hospital boards.

By 1976 the Ombudsmen Act 1975 had been enacted, extending the Ombudsman's jurisdiction to local government.

The enactment of the Official Information Act 1982 represented a major addition to the Ombudsman's jurisdiction. The Act came into force on 1 July 1983 and had a significant impact on the work of the Office, not simply because the Office had to deal with more complaints, but because of the different nature of the investigations and reviews. Put simply, an investigation under the Ombudsmen Act looks at the reasonableness and fairness of the actions and decisions of those subject to the Act. An investigation and review under the Official Information Act requires assessment of whether

the decision on a request under the Act meets the legal tests set out in the Act.

Further changes which impacted on the workload of the Office in the late 1980s and early 1990s were the extension of the Ombudsmen's jurisdiction following the enactment of the Local Government Official Information and Meetings Act 1987, and the major restructuring in the public sector. By 1990, the average intake of complaints had risen to approximately 280 a month. It is currently running at over 400 a month, due in part to the increased intensity of the Ombudsmen's work in the prisons.

The range of problems an Ombudsman can be called upon to consider is as extensive as the involvement of the state, at both central and local government level, in the lives of individuals. If I were asked what was the major cause of complaints, the answer would have to be inadequate communication between citizen and state.

I have indeed been fortunate to have spent the past 26 years working in a field which I have found constantly stimulating, challenging, and occasionally frustrating. Without the support and encouragement I have received from all the Ombudsmen (and I've worked with them all) I would never have dreamed of such a career being open to me, the pinnacle being the two occasions on which the Governor-General, on the recommendation of Parliament, appointed me as a temporary Ombudsman (1992 and 1993). However, those appointments also confirmed for me the collegial nature of the working environment in the Office and that without the commitment and hard work of all the staff, the Office would not have been the success it undoubtedly has been in smoothing the rough edges which can arise at the interface between citizen and state.

Sue Richards
Assistant Ombudsman

WHEN NO INTEREST



IS OF INTEREST

A recent complaint concerned the advice provided to contributors to the Government Superannuation Fund who seek to exercise their right to withdraw from the fund by giving three months notice of their wish to do so. The form provided for the purpose specifies that the contributor is electing to-

“Withdraw from the Fund in three months time, and have payment made to my account...”

The complainant assumed that interest would be included in such payment and was shocked to find this was not the case.

The legislation relating to the matter is quite specific, and precludes the payment of interest in the situation where the contributor in question has not ceased government service. Interest is payable only where service has also ceased.

The Ombudsman suggested that the form should be amended to make the position clear to contributors considering withdrawal from the Fund. The Fund agreed with this view and advised that the form would be amended to include a reference to the relevant legislative provision and the fact that any such withdrawal is without interest.

INVESTIGATION OR ENQUIRY, WHAT'S THE DIFFERENCE?

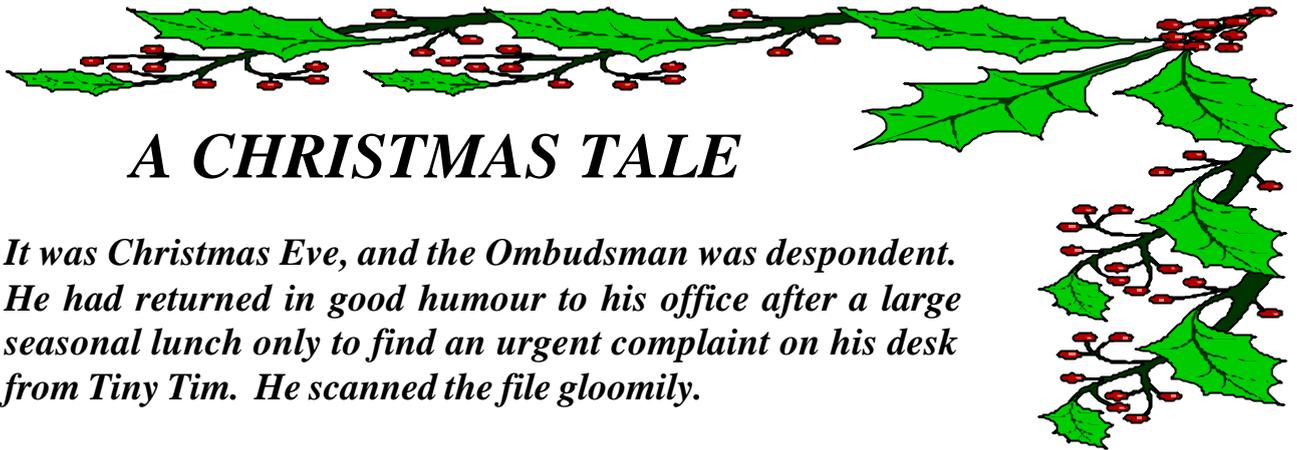
Informal enquiries are often made with government departments and organisations when it is believed that these may lead to resolution of a complaint, or provide details to enable an explanation or assistance to be given to a complainant.

For instance, a complainant who was living in Western Samoa and in receipt of a portable pension paid by the New Zealand Income Support Service to his bank account in Western Samoa decided to return to New Zealand. He wrote to the Service to request the payments to his bank account in Western Samoa be stopped. On his return, payments were made to a New Zealand bank account.

He noticed there was a gap of approximately one month between the final payment in Western Samoa and the beginning of the period for which payment was made in New Zealand.

The complainant made enquiries with the Service about the apparently missing payment and was advised that it had been paid to his bank account in Western Samoa. However, upon contacting the bank, the complainant was informed that no such payment had been made. Over a period of six months the complainant attempted five times to follow the matter up with the New Zealand Income Support Service, without success.

Finally, the complainant wrote to the Ombudsman. It seemed possible the complaint could be resolved informally, and so to reduce any further delays contact was made with the Service by telephone. The Service agreed to look into the matter and check the bank details. Shortly afterwards, the complainant wrote to the Ombudsman stating that he had received the missing payment together with an apology. A happy complainant resulted.



A CHRISTMAS TALE

It was Christmas Eve, and the Ombudsman was despondent. He had returned in good humour to his office after a large seasonal lunch only to find an urgent complaint on his desk from Tiny Tim. He scanned the file gloomily.

It appeared that Tiny Tim had decided to stay awake on Christmas Eve in order to meet Santa. Over the years, Tiny Tim had noted increasing disparities between the presents requested by him from Santa, and the presents which were actually delivered. He was now 27 years old and wanted answers. He felt he could best obtain these by speaking directly to Santa. However, in previous years he had always fallen asleep and missed Santa's night-time visit to his home. This year, in order that he might ensure being awake at the relevant time, he had made a request under the Official Information Act to the Chief Elf (Department of Christmas) for Santa's delivery schedule. This request had been refused pursuant to section 9(k) of the Act which provides that good reason to withhold information exists where withholding is necessary to prevent the disclosure or use of official information for improper gain or improper advantage.

The Ombudsman sighed.

He picked up the telephone to Tiny Tim. As the Ombudsman had anticipated, Tiny Tim couldn't care less about Santa's delivery schedule; he only wanted to discover why his toy requests were not being granted. The Ombudsman gently pointed out in his kindly fashion that if that was what Tiny Tim wanted to know, then that is what Tiny Tim should have asked.

Tiny Tim brightened considerably. It had only been the day before that he had been enjoying a lively discussion in his works canteen about the scope of section 23 of the Official Information Act, which gives persons the right of access to reasons for decisions affecting them. He grasped the Ombudsman's point without difficulty. He would put a section 23 request on the fax immediately.

With Tiny Tim's consent, the Ombudsman closed his file. As he wended his way homewards through the quiet streets, the Ombudsman mused, "Why do not people think more carefully about their requests for information? Why do they make life difficult for themselves and everybody else by asking for information they do not want, and not asking for the information which they do?"



By Investigating Officer Quenten Ford.

UNINSURED???

Not being insured can prove a nightmare - a recent case highlights the dangers when building.

Work was being done on a carport when a landslip destroyed it. The owner had a Maxi-policy; but cover for landslip was excluded as a condition of the policy. His insurer referred him to the Earthquake Commission. Under the Earthquake Commission Act the Commission's cover is limited to "residential buildings" that are "used for the purposes of the household".

As the carport had not been capable of being used by the householder for its intended purpose at the time it was destroyed the Commission's decision to decline the claim accorded with the Act, but it draws attention to the need for home owners to arrange additional insurance cover when doing construction work. The question of whether those who need to know are being told of this is a matter the insurance industry may want to consider. It could be of mutual advantage to the insurers and the insured that they do so.

MINISTERS, MEMBERS OF PARLIAMENT, AND OFFICIAL INFORMATION

In the wake of the recent election, with many new Members of Parliament commencing their first term, it may be helpful to draw attention to a distinction mentioned in the Ombudsmen's Annual report for the year ending 30 June 1994. The distinction relates to information held by politicians which is "official information", and information that is not.

In brief, information held by a Minister of the Crown, *in that official capacity*, is official information, and consequently subject to request under the Official Information Act 1982. Information held by a Minister in any other capacity is not. Thus, information held by Ministers as members of their caucus is not official information, although if that information is subsequently attached to or incorporated into advice by a Minister to Cabinet, its status changes.

By way of illustration, a recent request for letters sent to the Prime Minister by one of his back-bench MPs concerning the sale of Forestry Corporation was declined on the ground that the material related to the National caucus and "exchanges between caucus members is not discoverable under the Act".

The investigation centred on the question of whether any of the letters in question were held by the Prime Minister purely in the course of dealings with a fellow caucus member, or whether the letters had been sent to and held by him in his official capacity as a Minister of the Crown. It was confirmed that the material was a personal political note from a caucus member to the leader, and not correspondence from an MP to the Prime Minister in his official capacity. Consequently, the information was not official information, and not subject to the Act.

RINGING IN THE CHANGES

Sue Richards, Deputy Assistant Ombudsman, has retired after 26 years with the Office of the Ombudsmen. At her farewell function, Sir Brian Elwood, Chief Ombudsman, said, "*Sue represents the institutional memory of the office; she is irreplaceable.*" Ombudsman Anand Satyanand said that "*Sue Richards could properly be described as a legend.*"

Sir Brian has announced the following appointments consequent to Sue Richards' retirement:

Leo Donnelly, (formerly Senior Investigating Officer), has been appointed to the position of **Assistant Ombudsman, Wellington.**

Jeremy Blake-Palmer, (formerly Senior Investigating Officer), has been appointed to the new position of **Deputy Assistant Ombudsman, Wellington.**

In addition, the positions of Deputy Assistant Ombudsman in Auckland and Christchurch, held by Richard Fisher and Trevor Dawson respectively, have been redesignated Assistant Ombudsman, Auckland, and Assistant Ombudsman, Christchurch.