

Ministry of Transport should convey outcome of review into traffic accident involving its staff and public

Legislation	Ombudsmen Act 1975
Agency	Ministry of Transport
Ombudsman	John Robertson
Case number(s)	W25321
Date	1992

Adequacy of investigation into complaints about an accident—adequacy of investigation into accident—case for administrative review of accident and complaint procedures where accidents occur involving a traffic officer and a member of the public

In July 1989 a complaint was received from a motorcyclist who had been involved in an accident with a Ministry of Transport vehicle. Significant leg injuries were sustained by the motorcyclist. The investigation into this complaint focused, first, on the adequacy the Ministry's investigation into complaints about the actions and behaviour of the traffic officer driving the vehicle and, secondly, of the adequacy of the Ministry's investigation into the accident. The Ombudsman found the Ministry's investigation into the complaints about the actions and behaviour of the traffic officer to be inadequate and insufficient. The complainant's solicitor had made extensive submissions to the Ministry, including evidence from further witnesses, which suggested that the traffic officer may have acted improperly. However, the Ministry had not investigated the allegations but had simply confirmed the outcome of the accident investigation. In addition the Ombudsman found that a full statement had not been taken from the complainant.

The Ombudsman advised the Ministry that, in instances where a traffic officer was involved in an accident involving injury, and questions are raised about the conduct of the traffic officer, he considered a separate investigation should be conducted into any such complaint. The Ombudsman drew the Ministry's attention to the procedures adopted by the Police on receipt of a complaint about an officer. A separate investigation into the merits of the complaint is

always carried out, independent of enquiries into any offence committed. The outcome of the investigation, including any remedial action to be taken is reported to the complainant.

The Ombudsman also found the Ministry's investigation into the accident itself inadequate and concluded that the Ministry had not taken sufficient account of all of the facts and evidence available. The Ministry preferred the evidence of one witness over that of four others who had raised serious questions about the behaviour and actions of the traffic officer. The Ministry was also alerted to the danger of accepting the traffic officer's version of the events as being correct without giving a complainant the opportunity to comment on that traffic officer's account. The Ombudsman stressed to the Ministry of Transport the need to be seen by the public to conduct impartial investigations into accidents involving traffic officers. Such an approach is crucial where there no specific independent review authority.

The Ombudsman was informed that two Chief Traffic Officers and a Senior Traffic Sergeant had reviewed all the facts before a decision had been made on the appropriate charges. However, the complainant had not been made aware that such a review had been conducted or told the outcome of the review. In my opinion, the outcome of the review should have been conveyed to the complainant.

Having sustained both complaints, the Ombudsman made the following recommendations:

1. That the Ministry of Transport review and determine appropriate procedures to be followed in the investigation of any complaint alleging misconduct or neglect of duty of any traffic officer, and, as part of the review and determination to specifically examine:
 - a. the situation where a traffic officer is involved in an accident affecting a member of the public; and
 - b. whether or not the Police should be involved.
2. That the Ministry review and determine appropriate procedures and methodology for investigating any accident involving a traffic officer and a member of the public, whether or not the accident results in personal injury to any party.

Recognising in this investigation both complaints were sustained, the Ministry agreed to make an ex gratia payment towards the legal costs incurred by the complainant. The Ministry accepted the Ombudsman's recommendations and has given effect to them by redrawing its instruction.

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