

## Ministry of Transport makes ex-gratia payment following its oppressive unreasonable decision

<b>Legislation</b>	Ombudsmen Act 1975
<b>Agency</b>	Ministry of Transport
<b>Ombudsman</b>	John Robertson
<b>Case number(s)</b>	W27170
<b>Date</b>	1992

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*Decision to issue Traffic Offence Notice and proceed to prosecute for 'Careless Use Causing Injury' alleged to be unreasonable*

The complainant was involved in a car/motorcycle accident. The complainant was the driver of the car. A motorcyclist collided with her car, at night, at an intersection in an urban area. The motorcyclist sustained serious injuries as a result of the accident. It was attended by two local traffic officers.

Subsequent to the accident, the investigating traffic officer contacted the complainant and conveyed to her a variety of details regarding the motorcyclist, including the likelihood of him being charged for non-possession of a motorcycle licence and an alcohol related charge. The traffic officer also informed the complainant he did not believe she was at fault. The conversation led the complainant to reasonably conclude no action would be taken against her by the Ministry.

Despite the fact that two investigating officers who attended the accident did not believe on the face of the evidence that a prima facie case had been established against the complainant, the District Manager who belatedly reviewed the file believed there was. The District Manager formed the opinion the collision occurred because the complainant failed to perform the duty required of a normal prudent driver and applied the dictum 'Contributory Negligence is no Defence'. As a result of the District Manager's decision, three months after the accident occurred a Traffic Offence Notice was issued to the complainant. The case proceeded to Court,

the motorcyclist gave evidence, and on that basis the case was dismissed. The complainant was not required to testify.

Given the complainant had been told by the investigating traffic officer that she was not at fault, and had a reasonable expectation that she would not be prosecuted, the Ombudsman concluded the decision to prosecute was not only unreasonable but oppressive, especially given the time lapse involved. The Ombudsman recommended the Ministry of Transport make an ex-gratia payment to the complainant equal to the legal costs incurred by her to engage counsel for a defended hearing. The Ministry of Transport agreed to make the ex-gratia payment recommended.

*This case note is published under the authority of the [Ombudsmen Rules 1989](#). It sets out an Ombudsman's view on the facts of a particular case. It should not be taken as establishing any legal precedent that would bind an Ombudsman in future.*