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| Child Youth and Family’s decision to remove child from care |
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| Legislation Ombudsmen Act 1975  Ombudsman Mel Smith  Case number(s) W49783  Date 2003 |

*The Department of Child, Youth and Family (CYF), now Ministry for Children - Oranga Tamariki, agreed to apologise and reimburse couple’s legal fees following Ombudsman’s finding that CYF’s decision to decline custody of a child was unreasonable and then, when CYF acquiesced following the commencement of a court proceedings, CYF was unreasonable not to reimburse legal costs incurred by the couple*

For some years a couple had acted as caregivers for the Department of Child, Youth and Family Services. During this time, they had cared for a number of children on behalf of the Department.  In 2001, the couple were advised that the Department had decided to end the placement of a child who had been in their care for approximately 15 months. The couple were concerned that this decision was not in the child’s best interests, particularly since they were keen to care for the child on a long term basis. They began court proceedings to prevent the Department from removing the child from their care. These proceedings were adjourned in the Family Court to allow specialist evidence to be produced about the child’s placement. After considering this evidence, the Department agreed that the child should remain with the couple. As a result, the couple were granted additional guardianship and custody by the Family Court.

At the conclusion of the court proceedings, the couple complained to the Department about its original decision to remove the child and requested that the Department reimburse their legal costs. The Department declined to do so.

The couple were dissatisfied with the response from the Department and lodged several complaints with the Ombudsman about how the matter had been handled.

The Ombudsman investigated this complaint to see whether:

1. the decision by the Department to remove the child from the couple's care was reasonable;
2. the Department had acted reasonably in opposing the couple’s application to the Family Court for guardianship and custody of the child; and
3. the Department’s decision not to reimburse the legal costs incurred was reasonable.

The Ombudsman found the lack of documentation relating to the actions and processes followed by the Department were of concern and without accurate records, it was difficult for the Ombudsman to determine the reasons for the decision to remove the child. The Ombudsman considered the best way to progress his investigation was to have the Office of the Chief Social Worker undertake a practice review of the case. The review showed that the recorded information did not adequately explain the decision to remove the child from the couple’s care; that attempts were not made to work with the couple on a resolution to address each concern; there were alternatives to removing the child from the couple’s care and these were not explored prior to taking action; and the decision to oppose the application by the couple for guardianship and custody of the child was subject to the same flaws in the decision-making process which had occurred earlier.

The Ombudsman’s view was that the decision by CYF to remove the child from the couple’s care was unreasonable and that CYF acted unreasonably in opposing the couple’s application to the Family Court for guardianship and custody of the child. In light of the conclusions reached in the practice review, it was also the Ombudsman’s view that it was unreasonable for the Department to refuse to reimburse the legal costs which the couple incurred.

The complaints were sustained and CYF was asked to apologise to the couple and reimburse the legal expenses they had incurred. CYF accepted the Ombudsman’s findings and gave effect to the recommendations.

*This case note is published under the authority of the* [*Ombudsmen Rules 1989*](http://legislation.govt.nz/regulation/public/1989/0064/latest/DLM129834.html?src=qs)*. 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.*