

Inland Revenue Department not unreasonable to decline ex gratia payment

Legislation	Ombudsmen Act 1975, Tax Administration Act 1994
Agency	Inland Revenue Department
Ombudsman	David McGee
Case number(s)	A12781 (previously unpublished)
Date	2008

Inland Revenue Department (IRD) refused to provide financial compensation for error—complainant not affected financially by error—Ombudsman concluded IRD reasonable to offer apology and instalment plan for repayment of money sent in error to complainant

The complainant was aggrieved by a situation he considered had been created by the Inland Revenue Department's (IRD) error. He had received a refund for child support paid, of a reasonable amount, which he accepted in good faith. There appeared to be no reason for the complainant to query the basis for the refund, however it later eventuated that he was not entitled to the refund, and IRD required that the amount be returned.

The Ombudsman noted that in most instances, members of the public are highly reliant on IRD to assess their child support liability and were not in a position to dispute matters of a technical nature. IRD had attempted to correct its error, but the complainant considered that he should receive compensation by way of an ex gratia payment for the errors made.

While the Ombudsman could understand that the complainant felt aggrieved by the situation that had arisen, he did not consider that IRD's error and the distress caused to the complainant in correcting it, justified compensation being granted. The Ombudsman noted that there are certain factors which can be expected to be taken into account in deciding whether an ex gratia payment is warranted, and these include the financial impact of the error on the complainant and the particular terms of the repayment required of the complainant. It was noted that the complainant had never referred to any financial loss or hardship as a result of IRD's error, and IRD had allowed him to repay the refund by way of instalment payments

rather than a lump sum. The complainant was also allowed to determine the amount of his instalment payments.

The Ombudsman concluded that by allowing an instalment arrangement, IRD had showed him some latitude. Also, it was apparent that the complainant had use of funds to which he was not legally entitled, albeit through no fault of his own. Overall, it appeared that there were no grounds for concluding that IRD's error had caused financial hardship.

The Ombudsman accepted that the error may well have caused the complainant personal stress and difficulties in his relationship with his former wife. However, the Ombudsman was not persuaded that IRD could be expected to financially compensate for this. The Ombudsman advised the complainant that there are many situations where IRD's decisions may cause taxpayers anxiety and stress. There will always be instances where mistakes will be made. Unless it could be shown that there has been significant maladministration on the part of IRD and that this resulted in an identifiable loss or hardship to a person, a case for compensation is not made out.

The Ombudsman considered that overall IRD had sought to address its error in an appropriate manner and the decision by IRD to decline to provide the complainant with further relief was not unreasonable. The complaint was not sustained.

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