

# **TRANSPORT DEPARTMENT (TD)**

**Case No. OMB 1728/95**

## **Complaint against TD - unreasonably refusing to grant exemption for the payment of First Registration Tax (FRT) on a motor vehicle**

The complainant, physically disabled and wheel-chair bound, had intended to import a customised motor vehicle specially fitted out for his own use. In this connection, the complainant, being unfit to drive, used a personal driver. He was aggrieved by the TD's initial negative response to his application for First Registration Tax (FRT) exemption and thus he complained to this Office.

2. In 1995, the complainant made an initial enquiry with the TD about exemption from FRT for his vehicle. The enquiry met with a negative response from the TD because of the department's long-held practice of granting exemption to disabled drivers only, as against disabled persons, which would appear to be the original intention of the 1983 Ordinance provisions, although a 1993 amendment had rendered such an interpretation short of unequivocal.

3. In May 1996 whilst the complainant further pursued for exemption of FRT, the Administration made further legislative amendment which purports to restrict FRT exemption to disabled drivers only. The TD had nevertheless considered the complainant's application as one filed before the amendment and had therefore offered FRT exemption to the complainant before the commencement of the new legislative amendment, subject to his producing medical certification as required by the relevant Ordinance.

4. After copious deliberation amongst the Secretary for the Treasury (S for Try), the Attorney General (AG) and the Commissioner of Transport (C for T), this Office was advised of a seemingly consensus opinion about the position and intention of the law on the subject, its application and interpretation, and the rationale behind the established practice of the TD regarding FRT exemption, generally indicating of support of the TD's action with regard to the complainant's application. In the course of the investigation, this Office also has uncovered no substantive evidence indicating maladministration on the part of the TD in arriving at the decision about the complainant's application.

5. Nevertheless the Ombudsman finds the complaint **substantiated** on the ground that in spite of the state of the law at the time, the TD had failed to realise its benefit by the apparent dichotomisation of the disabled community in the process of granting exemption to only those fit to drive.

6. This Office is of the view that the attributed legislative intent to have disabled drivers alone, as against disabled persons as a whole, benefit from FRT exemption ostensibly stems from the much taunted problems of enforcement and screening of bona fide applicants. This self imposed segregation however in the view of this Office wreaked injustice on a proportion of the disabled who for being unfit to drive are excluded from the largesse through no fault of their own but for the result of an administrative technicality, patently contrary to the social purpose of the law (as against the intention of lawmakers and enforcers). Far from attempting to perpetuate dichotomisation amongst disabled persons, the concession could have been made available to all disabled persons alike and ways and means should have been explored to confine the concession to bona fide applicants with appropriate policing functions to match. This category of the disabled is not expected to outgrow the TD's resource and capacity to manage them, nor should policing against impostors be beyond their wits. By leaving out a section of the disadvantaged community on administrative ground the TD ostensibly through disparity treatment failed to adequately consider the position of one of society's most vulnerable, and thus appears not to have fully realised the benefit of the then existing legislation thereby creating injustice to an unfortunate few.

7. The Ombudsman recommends the TD consider and suggest how the exemption of FRT eventually can in practice be accorded to all disabled persons alike whilst discouraging any abuse be it through legislative and/or administration means, suitably accompanied by the necessary enforcement and policing measures.

8. The C for T contended that in reaching a decision on the complainant's application it had only acted in accordance with established policy and that the complainant's application had since been approved in principle.

9. The S for Try had strong reservation about the tax exemption being offered to all disabled persons, and considered that the policy of granting exemption to disabled drivers was not discriminatory nor contrary to the social purpose of the law. The policy intention of the law had been clearly set out in the Hansard to enhance the mobility of those who were fit to drive. The S for Try had further pointed out that the interests of those disabled persons who were not fit to drive were catered for by various forms of government subventions to enhance their mobility that were less prone to abuse, and that it was not necessary to extend tax exemption to disabled persons who were not fit to drive.

10. The S for Try's alleged defence of the existing system does not appear to this Office to be well supported. This Office considers that if it is the intention of the law to enhance the mobility of the disabled who are fit to drive through FRT exemption, then those who are not as in the case of the complainant would have been by definition discriminated against. The discrimination in this instance is on technical ground per se and is a priori contrary to the social purpose of the law, especially in view of the various other forms of government subventions which are apparently non-discriminatorily applied to all disabled alike.

11. The Ombudsman maintains the view that the community would only benefit from the recommendation referred to in para. 7 being given due consideration by the C for T as the executive department vested with the necessary statutory discretion to grant FRT exemption, in consultation with the AG, the S for Try and the Secretary for Health and Welfare where appropriate.