

Reference No. HRRT 009/2011

IN THE MATTER OF A CLAIM UNDER THE PRIVACY ACT 1993

BETWEEN GRAEME FREDERICK HALE

PLAINTIFF

AND CHESTER BURT FUNERAL HOME LTD

DEFENDANT

AT PALMERSTON NORTH

BEFORE:

Mr RPG Haines QC, Chairperson
Ms S Ineson QSM, Member
Hon K Shirley, Member

APPEARANCES:

Mr JR Reid, agent for Plaintiff
Mr MB Ryan for Defendant

DATE OF HEARING: 1 February 2012

DATE OF DECISION: 26 April 2012

DECISION

The claim

[1] In these proceedings Mr Hale alleges that Chester Burt Funeral Home Ltd breached information privacy principle 11 (Principle 11) which stipulates that an agency that holds personal information “shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds” that disclosure of the information is permitted by one or more of the nine grounds enumerated in Principle 11. Chester Burt Funeral Home Ltd acknowledges that it has breached Principle 11. The issue in these proceedings is the nature of the remedy to be granted to Mr Hale.

The background circumstances

[2] Mr Hale lives in Woodville. When his mother died in March 2008 her funeral was held at Woodville on 26 March 2008. The funeral director was Rose City Funeral Home Ltd. A dispute subsequently arose as to the amount owed by Mr Hale to Rose City Funeral Home Ltd for the funeral expenses. On 19 December 2008 Rose City Funeral Home Ltd obtained judgment by default against Mr Hale for his share of the funeral expenses; Mr Hale's brother and sister had already paid their share. Following an examination as to means in the District Court in 2009, Mr Hale was ordered to pay the judgment debt by instalments. Approximately six months later Rose City Funeral Home Ltd applied for a distress warrant and a motor vehicle belonging to Mr Hale was seized by collections officers and sold.

[3] While Rose City Funeral Home Ltd operates in Palmerston North, the defendant in these proceedings, Chester Burt Funeral Homes Ltd operates in Pahiatua. Mr Chester Burt is a funeral director and director of both companies.

[4] The judgment debt owed by Mr Hale to Rose City Funeral Home Ltd and the circumstances in which Mr Hale's motor vehicle was seized led to ill feeling. In January 2010 Mr James Robert Reid, who describes himself as a community advocate, published in his *Woodville Bulletin* an item in which he referred to Mr Chester Burt in uncomplimentary terms alleging (inter alia) that Mr Burt had "ripped-off" Mr Hale over his mother's funeral.

[5] On 6 February 2010 Mr Burt, on the letterhead of Chester Burt Funeral Home Ltd, responded to the *Woodville Bulletin* item in the following terms:

In 2007 Graeme Hale apparently defrauded his family of their family inheritance by using their late mother's home as security for a personal loan. The loan was not paid back and the financial institution auctioned off the home to recover their money. Such act brought personal embarrassment to sister Faye and brother Brian. In April, 2009 Graeme was dismissed from the Woodville Rotary Club for failing to account for funds. Graeme Hale has also been laid off from Tararua Television. In April the Wharekaka Rest Home for the elderly in Martinborough advised me that Graeme Hale is using delaying tactics to avoid payment the amount of \$6,500.00 for his late mother's care and the Visa Card payment to Waireka Home in Pahiatua for \$4,500.00. Also some businesses in Woodville refuse to give Graeme Hale any credit.

...

On 25th March, 2009, (one year and one week after arranging the Late Mrs Hale's funeral) Graeme Hale appeared in the Palmerston North Court and faced personal charges of not having made any payment for his mother's funeral expenses. We did not charge the refreshment fees as we were sympathetic towards sister Faye and brother Brian as they are lovely people. It was discovered by the Officer of the Court that Graeme Hale pays \$200.00 rent to the new owner of his mother's home. Graeme Hale has also bought a new Toupee which cost some \$500.00 and a new pair of upmarket spectacles that cost in the vicinity of \$600.00, bought a 1997 Ford Falcon sedan car instead of first paying his mother's funeral expenses, has a personal Trust Account at a Bank and will not withdraw money from it to pay for his mother's funeral. On 25 March, 2009 the Court was promised by Graeme Hale that he would sell his surplus Nissan Navara 4 wheel vehicle, but after six months had made no effort to do so. The Court is still to auction the vehicle in order that the funeral expenses may be paid as they have been owing nearly two years.

...

It is a shame that Graeme Hale and Jay Reid are deceitful and untruthful, but as the old proverb reads, "birds of a feather flock together". Graeme Hales brother and sister have paid their share of the funeral expenses, but he has not...

[6] On 8 February 2010 Chester Burt Funeral Home Ltd distributed this letter via a weekly publication known as the *Bush Telegraph* which is distributed in the Tararua

region, including the townships of Woodville and Pahiatua. Mr Ryan told the Tribunal that it was a loose leaf insert and would have reached all households in the circulation district.

The statement of claim

[7] Mr Hale, who is retired, on 10 May 2011 filed a statement of claim based on the 6 February 2010 letter from Chester Burt Funeral Home Ltd. The relevant complaint is in the following terms:

1. On 6 February 2010 Chester Burt of Chester Burt Funeral Home Limited published an open letter to the people of Woodville outlining details of a debt owed Mr Burt for my mother's funeral as well as other personal information about me.

[8] The orders sought in the statement of claim are:

[8.1] A public apology from Mr Burt to be distributed throughout the Woodville community.

[8.2] Damages for pecuniary loss amounting to \$5,000 "caused by false District Court claim and loss of motor vehicle".

[8.3] Damages for loss of benefit amounting to \$30,000 from "non-reinstatement as Manager of Tararua Television; delaying the establishment of a private music school and fewer engagements as organist for funerals".

[8.4] Damages for humiliation, loss of dignity and injury to feelings amounting to \$5,000.

[9] On the filing of an amended statement of claim only the relief in the form of a public apology and damages of \$5,000 for humiliation, loss of dignity and injury to feelings were ultimately pursued before the Tribunal.

[10] Mr JR Reid has acted as Mr Hale's agent throughout these proceedings.

The statement of reply

[11] In the statement of reply filed by Chester Burt Funeral Home Ltd key elements of the claim by Mr Hale are admitted. In particular, there is an admission that Chester Burt Funeral Home Ltd breached Mr Hale's privacy rights by circulating the letter in question and an apology is made to Mr Hale for so doing. The statement of reply goes on to say that Chester Burt Funeral Home Ltd is prepared to publish in Woodville a written apology to Mr Hale and to pay him \$5,000 for humiliation, loss of dignity and injury to feelings.

[12] At the hearing on 1 February 2012 Chester Burt Funeral Home Ltd sought leave (which was granted) to amend the statement of reply in several respects. In the extracts from the statement of reply which follow the deletions are shown alongside the amendments:

1. Chester Burt Funeral Home Limited ... acknowledges that on 8 February 2010 it circulated in Woodville a letter dated 6 February 2010 which contained details of a debt owed to ~~Ches~~
~~Burt~~ Rose City Funeral Home by Mr Hale for his late mother's funeral as well as other personal information about Mr Hale...

...

4. However Chester Burt Funeral Home acknowledges that it breached Mr Hale's privacy rights by circulating the letter in Woodville and apologises to Mr Hale for so doing.

5. Chester Burt Funeral Home is prepared to publish in Woodville a written apology to Mr Hale in the following terms or on similar terms agreed upon.

Chester Burt Funeral Home Limited unreservedly apologises to Mr Graeme Hale of 74 McLean Street, Woodville for publishing in its open letter of 6 February 2010 which was circulated in Woodville details of his finances and personal circumstances.

6. Chester Burt Funeral Home is also prepared to ~~pay the \$5,000.00 sought by~~ compensate Mr Hale for humiliation, loss of dignity and injury to feelings by

- ~~canceling~~ arranging for Rose City Funeral Home to cancel the balance of the funeral account debt owing namely \$2,500.00.
- And by paying to Mr Hale the sum of \$2,500.00

7.

The evidence before the Tribunal

[13] By *Minute* dated 15 August 2011 the parties were required to give discovery and inspection on an informal basis, Mr Hale was to file his briefs of evidence by 26 September 2011 and Chester Burt Funeral Home Ltd was to file its briefs of evidence by 17 October 2011. Subsequently, following a dispute over discovery, the Chairperson by *Minute* dated 13 October 2011 directed that the parties give formal discovery. The affidavits of documents of both parties were to be filed and served by 4 November 2011 with the briefs of evidence by Mr Hale following on 25 November 2011 and those by Chester Burt Funeral Home Ltd on 23 December 2011. While Chester Burt Funeral Home Ltd complied with the discovery order, Mr Hale did not. Neither party filed their briefs of evidence by the required date.

[14] In an amended statement of claim filed on 24 November 2011 at para [5] Mr Hale advised that he would “not be appearing as a witness for cross-examination” as he wished to “limit further opportunities for his public humiliation and risk to his health”. A medical certificate dated 21 November 2011 attached to the amended statement of claim said that due to ongoing illness the certifying medical practitioner did not believe that Mr Hale was capable of withstanding cross-examination.

[15] On 20 January 2012 a teleconference was convened at the request of the parties. Mr Reid confirmed that Mr Hale would not call evidence at the hearing on 1 February 2012 but would rely on the admissions made by Chester Burt Funeral Home Ltd in the statement of reply dated 22 June 2011. For his part, Mr Ryan advised that in view of the confirmation that Mr Hale would not be calling any evidence at the hearing, Chester Burt Funeral Home Ltd, in turn, would call no evidence. In the result, both parties having elected not to file evidence the Chairperson directed that the Tribunal convene in Palmerston North on 1 February 2012 to hear the submissions of the parties. The *Minute* issued on 20 January 2012 recorded that Mr Ryan would object to the Tribunal relying on any documents not formally proved, including the open letter dated 6 February 2010 on which these proceedings are based.

The non-appearance of Mr Hale at the hearing on 1 February 2012

[16] By email dated 30 January 2012 Mr Hale sought an adjournment on the grounds that he wished to attend the funeral in Lower Hutt of an old friend who had just passed away. The funeral was scheduled for 1.30pm on the day of the hearing, namely 1 February 2012. Mr Ryan opposed the adjournment application and the Tribunal determined that the application would be declined. Notice of this decision was given to Mr Hale at 11.26am on Tuesday 31 January 2012.

[17] The Tribunal duly convened at the Palmerston North District Court on 1 February 2012 and was ready to commence the hearing at 10am. Mr Hale, however, was not present. The only persons in attendance in the courtroom were Mr Ryan and Mr Reid. The commencement of the hearing was postponed until 10.30am in case Mr Hale had encountered difficulty travelling to the courthouse.

[18] In response to an enquiry from the Tribunal, Mr Reid advised that he had spoken to Mr Hale at 8am that morning and had confirmed with Mr Hale that he (Mr Hale) intended being at the hearing at 10am.

[19] As time was getting on the Tribunal resolved to proceed with the hearing and heard from Mr Ryan who helpfully tendered written submissions. Mr Reid remained present. During the course of his submissions Mr Ryan:

[19.1] Sought amendments to the statement of reply. Some of those amendments are recorded earlier in this decision.

[19.2] Abandoned his opposition to the receipt by the Tribunal of the letter dated 6 February 2010 on the letterhead of Chester Burt Funeral Home Ltd and to the receipt of the *Woodville Bulletin* (January 2010), the publication of which preceded the circulation of the open letter by Mr Chester Burt.

[20] After the morning adjournment had been taken at 11.30am Mr Reid told the Tribunal that it had not been possible to reach Mr Hale over the break on his landline or cellphone. At his (Mr Reid's) request an acquaintance had made a visit to Mr Hale's home. No one was present and Mr Hale's motor vehicle could not be seen.

[21] The hearing continued until submissions closed at 3.10pm.

[22] Early the following morning (2 February 2012) the Secretary received an email from Mr Hale apologising for his absence and laying out what he described as the "unfortunate series of events" which had led to his absence. He did in fact attend the Palmerston North District Court on 1 February 2012 but was directed by court staff to the wrong hearing room and advised to wait in the corridor until his case was called. When he later made enquiry with the court staff at the public counter he was told that no sitting by the Human Rights Review Tribunal was recorded as being scheduled for 1 February 2012. The stress caused his heart to fibrillate and he accordingly left the courthouse.

[23] The Tribunal has no reason to doubt Mr Hale's explanation and unreservedly accepts his apology for not being present at the hearing.

[24] While it is unfortunate that Mr Hale was not present during the hearing it is to be noted that his authorised agent, Mr Reid, was present throughout and made able submissions in support of the claim. We were much assisted by his submissions.

The facts – discussion

[25] The unique feature of the case is that neither party adduced evidence in the normal way. Indeed, Mr Hale adduced no evidence at all. He elected to rely on the admissions made in the statement of reply. It is in fact trite law that once admitted, facts are no longer in issue and there is no need to prove them by evidence. Through Mr Ryan, Chester Burt Funeral Home Ltd properly admitted that which it could not responsibly deny. It acknowledged:

[25.1] Authorship of the letter dated 6 February 2010 and the fact that Mr Chester Burt arranged for it to be circulated via the *Bush Telegraph* on 8 February 2010.

[25.2] That it breached Mr Hale's privacy rights.

[25.3] That it was appropriate for an apology to be made to Mr Hale.

[25.4] That it was further appropriate that Mr Hale be compensated for humiliation, loss of dignity and injury to feelings in the sum of \$5,000 (subject to a claimed set-off of the debt owed to Rose City Funeral Home Ltd).

[26] It was also appropriate that without opposition from Mr Reid, Mr Ryan was able to provide some background to the case by way of his written submissions and by way of oral supplementation.

[27] For present purposes Mr Ryan stressed two points:

[27.1] The election by Mr Hale not to give evidence meant that the claims for \$5,000 pecuniary loss and \$30,000 for loss of benefits were no longer live issues. The Tribunal observes that these claims had in any event been abandoned by Mr Hale in the amended statement of claim.

[27.2] The terms of s 66(1) of the Privacy Act 1993 require Mr Hale to establish not only a breach of an information privacy principle but also that such breach has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to the feelings of that individual.

Whether an interference with privacy – the s 66 point

[28] Although the legal onus on Mr Hale is undoubtedly that submitted by Mr Ryan, the facts of the case are singular. On any view, the "open" letter dated 6 February 2010 circulated by Chester Burt Funeral Home Ltd on 8 February 2010 breached information privacy Principle 11. Such has been acknowledged by Chester Burt Funeral Home Ltd in para [4] of its statement of reply.

[29] Equally clearly the publication of the open letter by Chester Burt Funeral Home Ltd has resulted in "significant humiliation, significant loss of dignity, or significant injury to the feelings" of Mr Hale.

[30] On the admitted facts the terms of s 66(1)(b)(iii) have been satisfied because:

[30.1] Such harm can reasonably be inferred from the content of the "open letter" and the circumstances in which it was circulated; and

[30.2] At para [6] of the statement of reply Chester Burt Funeral Home Ltd stipulates that it is prepared to compensate Mr Hale for humiliation, loss of dignity and injury to feelings by payment of \$5,000 (subject to a claimed set off).

[31] Mr Ryan, while accepting that such inferences could be drawn, nevertheless submitted that the concession in the statement of reply did not necessarily concede that the various forms of harm were "significant" as required by s 66(1)(b)(iii). Indeed he suggested that the open letter could be construed as assertions of truth or as assertions which would have no impact on Mr Hale.

[32] Our clear view is that on a fair reading of its terms, the open letter together with the circumstances of its publication would inevitably result in significant humiliation,

significant loss of dignity or significant injury to the feelings of Mr Hale. See for example the allegation that Mr Hale “apparently defrauded his family of their family inheritance by using their late mother’s home as security for a personal loan”, his alleged dismissal from the Woodville Rotary Club for failing to account for funds, the making of false promises to the District Court and being “deceitful and untruthful”.

[33] The real difficulty faced by Mr Hale is not his failure to satisfy the cumulative requirements of s 66 of the Act but that his election not to give evidence means that the Tribunal is handicapped in assessing the quantum of damages to be awarded under s 88(1). In this regard the Tribunal can rely only on the admissions made by Chester Burt Funeral Home Ltd. A fair reading of those admissions is that there is an acceptance that the damages to be awarded under s 88(1)(c) are properly assessed at \$5,000. Although a set-off to Rose City Funeral Home Ltd is claimed it will be seen that the Tribunal does not accept that a set-off is possible or appropriate.

Whether remedies to be granted

[34] By relying on the admissions made in the statement of reply and on the two documents admitted into evidence by Chester Burt Funeral Home Ltd Mr Hale has satisfied the Tribunal on the balance of probabilities that, in terms of s 66 of the Act, there has been a breach of information privacy Principle 11 and that the action of Chester Burt Funeral Home Ltd has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to his feelings. The Tribunal having been so satisfied it has power under s 85(1) of the Act to make a declaration that there has been an interference with Mr Hale’s privacy, to award damages and to require Chester Burt Funeral Home Ltd to remedy the interference or to redress any loss or damage suffered by Mr Hale, or both:

85 Powers of Human Rights Review Tribunal

(1) If, in any proceedings under section 82 or section 83, the Tribunal is satisfied on the balance of probabilities that any action of the defendant is an interference with the privacy of an individual, it may grant 1 or more of the following remedies:

- (a) a declaration that the action of the defendant is an interference with the privacy of an individual:
- (b) an order restraining the defendant from continuing or repeating the interference, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the interference, or conduct of any similar kind specified in the order:
- (c) damages in accordance with section 88:
- (d) an order that the defendant perform any acts specified in the order with a view to remedying the interference, or redressing any loss or damage suffered by the aggrieved individual as a result of the interference, or both:
- (e) such other relief as the Tribunal thinks fit.

[35] In terms of s 88(1) an award of damages can be made in respect of the humiliation, loss of dignity and injury to feelings of Mr Hale as the aggrieved individual.

Declaration of interference

[36] There is no dispute that the action of Chester Burt Funeral Home Ltd in publishing the “open letter” dated 6 February 2010 was an action which interfered with Mr Hale’s privacy. He is accordingly entitled to a declaration to that effect.

Damages

[37] Mr Hale having satisfied the Tribunal on the balance of probabilities that the action of Chester Burt Funeral Home Ltd has resulted in, or may result in, significant humiliation, significant loss of dignity, or a significant injury to his feelings, an award of damages should follow under s 88(1)(c). However, as Mr Hale has chosen not to give evidence the Tribunal is handicapped in its assessment of the proper quantum. It has only the concession by Chester Burt Funeral Home Ltd that such harm should be compensated for to the level of \$5,000. It is accordingly directed that Chester Burt Funeral Home Ltd pay to Mr Hale \$5,000 for humiliation, loss of dignity and injury to feelings.

[38] As to the claimed set off, the remedies under the Privacy Act are autonomous. Their purpose is to promote and protect individual privacy. There is nothing in the Long Title or in the Act itself to suggest that the integrity of the remedies in s 85 can be compromised by reading into them civil law notions such as set off.

Apology

[39] Chester Burt Funeral Home Ltd properly accepts at para [5] of the statement of reply that a written apology to Mr Hale should be published. The text (“or similar”) of the apology proposed in this paragraph is in the following terms:

Chester Burt Funeral Home Limited unreservedly apologises to Mr Graeme Hale of 74 McLean Street, Woodville for publishing in its open letter of 6 February 2010 which was circulated in Woodville details of his finances and personal circumstances.

[40] At the hearing before the Tribunal, Mr Ryan, while resisting the more elaborate apology sought by Mr Hale, properly conceded that to contextualise the apology it should make reference to the accepted breach of the Privacy Act and in particular, Principle 11. In the result the Tribunal is of the view that the wording of the apology should be as follows:

Chester Burt Funeral Home Limited unreservedly apologises to Mr Graeme Hale of 74 McLean Street, Woodville for publishing in its open letter of 6 February 2010, which was circulated in Woodville, details of his finances and personal circumstances.

It is acknowledged that publication of this letter was an interference with Mr Hale’s privacy and in breach of the Privacy Act 1993, particularly information privacy principle 11.

This apology is published pursuant to an order made by the Human Rights Review Tribunal on [insert date of publication of decision] in proceedings brought by Mr Hale against Chester Burt Funeral Home Ltd under the Privacy Act 1993. In those proceedings the Tribunal made a declaration that Chester Burt Funeral Home Ltd interfered with the privacy of Mr Hale by publishing and distributing in the Tararua region the open letter referred to. The Tribunal also awarded Mr Hale damages of \$5,000 for humiliation, loss of dignity and injury to feelings. The Tribunal further ordered that this apology be published.

[41] As to the manner and extent of circulation of the apology, the position taken by Mr Ryan was that the apology letter should be sent out in the same format, by the same

method and in the same number of copies as that which applied to the offending letter of 6 February 2010.

[42] The Tribunal agrees. This means that the apology will need to be on the letterhead of Chester Burt Funeral Home Ltd, signed by Mr Chester Burt and distributed as an insert to the *Bush Telegraph* and circulated in the same region(s) as the original letter. It goes without saying that Chester Burt Funeral Home Ltd must bear all the costs involved. If, for some reason it proves impossible for the apology to be circulated in this way, Chester Burt Funeral Home Ltd is to distribute the apology letter directly to each household in the Woodville postal district.

Costs

[43] Mr Reid frankly accepted that Mr Hale, who has not been legally represented at any stage, is not entitled to an award of costs. For his part, Mr Ryan advised that Chester Burt Funeral Home Ltd had incurred costs of approximately \$5,000 and a contribution of \$2,500 was sought whether Mr Hale was successful in whole or in part or entirely unsuccessful in his claim. He referred to the concessions made in the statement of reply which reflected an offer of settlement earlier made to Mr Hale and which had been rejected. He reminded the Tribunal that there had been three telephone conferences and the filing of an amended statement of claim.

[44] We are of the view that the question of costs must be approached on a broad basis. Here, a funeral home has distributed within a small and close-knit community an open letter containing personal information about Mr Hale in a context in which that information is deployed to give credence to the most damaging of allegations including that he is “deceitful and untruthful”. The interference with Mr Hale’s privacy was serious. From the terms of the statement of reply it can be inferred that Chester Burt Funeral Home Ltd, or at least Mr Chester Burt himself, now regrets writing and circulating the letter. While there is some force to the submission that the case could have been settled at the mediation stage it would seem that the sticking point for Mr Hale has been the claimed set-off of a debt which was originally said to be owing to Chester Burt Funeral Home Ltd. It was only on the morning of the hearing that the Tribunal learnt from Mr Ryan that this was not the case and that the judgment debt was owed to a different legal entity, namely Rose City Funeral Home Ltd. The overriding point, however, is that Mr Hale is entitled to an award of damages for humiliation, loss of dignity and injury to feelings without any set-off which may or may not exist as between him, the defendant or other legal entity over which the defendant may have direction or control.

[45] In the final analysis we are of the firm view that closure must be brought to these unhappy events and that the fairest outcome is that all costs are to lie where they fall. The application by Chester Burt Funeral Home Ltd for costs is refused.

Formal orders

[46] For the foregoing reasons the decision of the Tribunal is that:

[46.1] A declaration is made under s 85(1)(a) of the Privacy Act 1993 that Chester Burt Funeral Home Ltd interfered with the privacy of Mr Graeme Frederick Hale by publishing and distributing in the Tararua region the letter dated 6 February 2010 on the letterhead of Chester Burt Funeral Home Ltd and signed by Mr Chester Burt.

[46.2] Chester Burt Funeral Home Ltd is to publish an apology in the terms set out below. That apology is to be on the letterhead of Chester Burt Funeral Home Ltd, signed by Mr Chester Burt and distributed as an insert to the *Bush Telegraph* and circulated in the same region(s) as the letter dated 6 February 2010. Chester Burt Funeral Home Ltd must bear all the costs involved. If for some reason it proves impossible for the apology to be circulated in this way, Chester Burt Funeral Home Ltd is to distribute the apology letter directly to each household in the Woodville postal district. The terms in which the apology is to be published are:

Chester Burt Funeral Home Limited unreservedly apologises to Mr Graeme Hale of 74 McLean Street, Woodville for publishing in its open letter of 6 February 2010, which was circulated in Woodville, details of his finances and personal circumstances.

It is acknowledged that publication of this letter was an interference with Mr Hale's privacy and in breach of the Privacy Act 1993, particularly information privacy principle 11.

This apology is published pursuant to an order made by the Human Rights Review Tribunal on [insert date of publication of decision] in proceedings brought by Mr Hale against Chester Burt Funeral Home Ltd under the Privacy Act 1993. In those proceedings the Tribunal made a declaration that Chester Burt Funeral Home Ltd interfered with the privacy of Mr Hale by publishing and distributing in the Tararua region the open letter referred to. The Tribunal also awarded Mr Hale damages of \$5,000 for humiliation, loss of dignity and injury to feelings. The Tribunal further ordered that this apology be published.

[46.3] Damages of \$5,000 are awarded against Chester Burt Funeral Home Ltd under ss 85(1)(c) and 88(1)(c) of the Act for the humiliation, loss of dignity and injury to the feelings of Mr Hale.

[46.4] The parties are to bear their own costs.

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Mr RPG Haines QC
Chairperson

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Ms S Ineson QSM
Member

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Hon K Shirley
Member