

IN THE MATTER OF
BETWEEN

AND

Reference No. HRRT 022/2011

A CLAIM UNDER THE PRIVACY ACT 1993

MARCUS JAMES STEELE

PLAINTIFF

BOARD OF TRUSTEES OF SALISBURY
SCHOOL

DEFENDANT

AT NELSON

BEFORE:

Mr RPG Haines QC, Chairperson

Ms J Grant MNZM, Member

Ms S Ineson QSM, Member

REPRESENTATION:

Mr Steele in person

Mr DM O'Neill for Defendant

DATE OF HEARING: 16 December 2011 and 23 January 2012

DATE OF DECISION: 7 September 2012

DECISION OF TRIBUNAL

Introduction

[1] The case for Mr Steele is that when on 19 November 2010 he made a request under information privacy principle 6 for access to personal information about him held by the Board of Trustees of Salisbury School, the Board failed to make a decision on that request within the time limit fixed by s 40(1) of the Privacy Act 1993 and thereby interfered with his privacy. The relief sought in the statement of claim is:

- (a) Internet, telephone and travel costs of approximately \$100.

- (b) \$2,000 for “the interference with the care of my child”.
- (c) \$5,000 for humiliation, loss of dignity and injury to feelings.

[2] While some documents containing personal information were provided by the Board almost immediately, the Board admits that certain documents were not provided to Mr Steele until after an investigation by the Privacy Commissioner and the delivery by her of a preliminary ruling on 10 February 2011.

[3] The issue in these proceedings is the nature of the remedy to be granted.

Procedural matters

[4] The hearing was held at Nelson where Salisbury School and all but one of the witnesses are situated. Mr Steele, however, lives in Kawakawa. At his request he participated in the hearing from the District Court at Whangarei by way of audiolink.

[5] While the hearing was originally scheduled for one day, a second day became necessary after a witness (Mr WJ Heal) for Mr Steele was unable to reach Nelson on the first day of the hearing after heavy rain in the Nelson area caused widespread flooding, slips and road closures. The circumstances are fully set out in the decision of the Tribunal given on 16 December 2011 granting Mr Steele’s application that the hearing be adjourned part-heard to allow Mr Heal to appear before the Tribunal.

Salisbury School

[6] Salisbury School is a state school in Nelson for intellectually disabled girls in Years 7 to 10. It is a boarding school which provides 24 hour, seven days per week curricula for the pupils. It provides academic and life skill components and the Tribunal was told it is the only school of its kind in New Zealand.

[7] Mr Steele’s daughter was enrolled at Salisbury in February 2010 for a two year period, completing her time at the school at the end of 2011.

[8] The daughter’s mother, Gina Thompson, was at the relevant time a member of the Board of Trustees of Salisbury School.

[9] Relations between Ms Thompson and Mr Steele are less than cordial. Unfortunately the Board of Trustees and the school management became enmeshed in their unhappy relationship.

Background

[10] On Tuesday 16 November 2010 Ms Thompson sent an email to Mr Steele about access rights to their daughter. The language used by Ms Thompson left much to be desired. To compound matters, she inappropriately made reference to a claimed ability, as a member of the Board of Trustees, to give directions to school management as to how they should deal with Mr Steele:

Hey Dick!

The Management team at Salisbury have a copy of the latest parenting order. We all know what it states ...

However, being the idiot you are, let me spell it out for you ...

You do not have my permission, written or otherwise, to take [our daughter] away from Salisbury for access again. In fact, I, as Board of Trustee Chairperson, have instructed the appropriate network of people involved with [our daughter] to dial 111 for Police should you persist in disrupting [her] 7-day programme. You will be removed and may be trespassed indefinitely. "de ja vu .."

[Our daughter] will have made friends for life from Salisbury and around Nelson ... you are the transient, sleep-in-my-truck, caravan park hobo in [her] life, and I'm kinda hoping that you may die of something horrible sooner than later, meaning you won't be around for too much longer! It's you she doesn't need ... all because you think you are better than everyone else ...

FYI – I receive all the communication you make with Salisbury. I will arrange to have your emails blocked and any phonecalls or demands made by you will be filed under "C" for "Chicken shit"!!

....

And lastly ... [our daughter] will be going to Hanmer Springs as this is part of the curriculum and I will be attending as well ... Again ... any attempts by you to manipulate the staff with your aggressive and angry outbursts will be dealt with by your friends ... THE PIGS!!

Oh, one more thing ... your racist comments don't do your pseudo-intellect any justice ... at all ... just magnifies your mental illness ...

Look forward to hearing from you ...

[11] Mr Steele forwarded this email to the barrister representing him in the Family Court proceedings referred to by Ms Thompson. That barrister is Mr WJ Heal of Pakawau, Golden Bay.

[12] On Thursday 18 November 2010 at 12:19pm Mr Heal wrote to the Acting Principal of the school, Ms Sarah Kennedy, enquiring whether, in light of Ms Thompson's email, the school intended involving the Police. For reasons which will become apparent, it is significant that this email was copied to Mr Steele.

[13] At the same time Mr Steele was becoming concerned that the school, through Ms Kennedy, might not be fully aware of developments in the Family Court. Mr Steele was about to file an application to that Court for determination of the question whether he should be permitted further contact with his daughter. He was equally concerned that the school might be in communication with Mr DB Dennis of Hammonds, solicitors in Dargaville who had in earlier proceedings been appointed as Counsel for the Child.

[14] By email dated 18 November 2010 sent at 4:01 Ms Kennedy wrote to Mr Steele (with a copy to Mr Heal) regarding a request made by Mr Steele that the school facilitate access to his daughter on the coming Saturday. Ms Kennedy cited the terms of a Family Court order which she believed was relevant and asked Mr Steele to provide certain information. On Friday 19 November 2010 at 10:43am Mr Steele, replying in inappropriately confrontational terms, asked to see Ms Kennedy immediately:

Don't try and be so clever. If Gina wants to dispute the application of the September 2010 Order; It was drafted under the care and Protection of Children Act 2004. Remedies are stated quite clearly, should a party to the Order want to dispute the application of the Order. Nothing really to do with you is it?? Where are you getting your legal advice? I am in Richmond. Can I come see you now?

[15] As requested, Ms Kennedy met with Mr Steele almost immediately on Friday 19 November 2010. The file note made by Ms Kennedy gives her account of the meeting. It is necessary for an understanding of what follows that much of the file note be reproduced. It explains the perception on the part of Ms Kennedy that Mr Steele was acting in an aggressive manner:

Background of events

...

Following many emails some of which used abusive terms towards the Principal Mr Steel came on site and demanded a meeting. This I agreed to in the Principal's office. At that meeting I had a copy of the September the 6th court orders and attempted to read to Mr Steele the part about the visitation procedures. Mr Steele continually interrupted me and claimed to know the document off by heart. His demeanour was agitated and v verbally aggressive.

When I explained that I was not willing to continue the meeting with him he demanded to have a copy of the photocopy of the court order and snatched it out of my hands. On the back of the photocopy were my handwritten notes from a conversation I'd had over the phone with a Board of Trustees member who is a lawyer in preparation for a letter I had already written to Mr Steele's lawyer about the interpretation of the court orders. I said I would photocopy the court order but that the notes were personal. I made a copy for him and he left still agitated and verbally threatening.

I felt shaken following that meeting and consequently sent an email to Mr Heal that I would not be prepared to communicate directly with Mr Steele until I had an assurance that he would act with integrity. This was in addition of a number of emails that used highly abusive language (see attachments).

...

[16] Mr Steele identifies this meeting on Friday 19 November 2010 as the occasion on which he made an oral request under Principle 6 for access to the personal information held by the Board of Trustees. Following the meeting, at 1:55pm on 19 November 2010, he sent an email to his lawyer (Mr Heal) instructing Mr Heal to immediately request a copy of the handwritten personal notes which Ms Kennedy had withheld. The instructions were explicit:

Please read the attachments. Counsel For Child has contacted the Principal at Salisbury and deliberately misquoted the September 2010 Court Order. We must request the removal of Hammonds as Counsel For Child to the Court immediately. This person does not reflect the interests of the child in any way ... I received a partial copy of correspondence between Hammonds and Salisbury. The Principal has refused to disclose the documents in thier entirety. Some written script has been retained. She stated, "It belongs to me". **You must immediately request this information from her again in writing. Principle 6 of the Privacy Act 1993 and the OIA 1982.**

The Englishwoman I spoke to has been manipulated by Dave DENNIS to believe that she is acting as a deputy of the Court and has authority to enforce Orders. The attachment hereto is a few misquoted sentences from an eight page document. Very vague and misleading. I told this woman that I would remove [the daughter] from the School immediately to relieve the School af any perceived role of Court Deputy. Silly tart. The last School principal had enough common sense to know that it wa not their role. [Emphasis added]

[17] The email, ordinarily a private communication between client and lawyer, was copied by Mr Steele to Ms Kennedy.

[18] At 2:21pm on 19 November 2010 Mr Heal wrote to Ms Kennedy (copied to Mr Steele) asking that if there was any suggestion that the daughter was to be removed from the School, would Ms Kennedy please let Mr Heal know urgently.

[19] At 2:59pm on 19 November 2010 Ms Judi Davies, the secretary to Ms Kennedy, sent to Mr Steele a copy of the letter he had requested at the meeting earlier in the day, being a letter dated 18 November 2010 from Ms Kennedy to Mr DB Dennis, the lawyer in Dargaville who at one point had been Counsel for the Child. In her letter, Ms Kennedy sought the comments of Mr Dennis and his advice on several issues relating to an order made by the Family Court.

[20] At 11:21am on Sunday 21 November 2010 Mr Steele wrote to Ms Davies (copied to Mr Heal) an email written in offensive terms. It concluded:

Do you understand you stupid cunt?

Where did you get this email address from? I never gave you this address. Who are you and what is your role?

[21] Because of her experiences with Mr Steele and given the terms of this email to Ms Davies, at 9:36am on Monday 22 November 2010 Ms Kennedy wrote to Mr Heal (who, as mentioned, had been copied by Mr Steele into all correspondence between him (Mr Steele) and the school stating that she was:

... unprepared to enter into any communication with Mr Steele until I receive an assurance that he will do so with integrity. This example [the email to Judi Davies] does not demonstrate that. Please advise.

[22] At 11.30am on 22 November 2010 Mr Heal replied to Ms Kennedy. The terms of that reply are significant:

Thank you for your email. I have already seen a copy of this unfortunate email. My response at the time was to tell Marcus that I thought it was a completely inappropriate response from him to Julie Davies' email.

In defence of Marcus he did not know who Julie was, as she fails to identify herself in her email. I doubt very much if he would have responded in such a way had he known that she was associated with your school.

Incidentally, could you tell me who she is and what role she has to play in this matter?

I have advised Marcus that it would be in his interests if he left the negotiating with the school to me. Marcus has had some really unfortunate experiences dealing with officials in the past and it appears to bring out the worst in him when he has to do so.

Marcus has informed me that he believes that Mr Dennis a previous Counsel for [the daughter], has been in touch with you and they have supplied you with some incorrect information.

I would be grateful if you could advise if this is so and in such case provide me with a copy of Mr Dennis's correspondence. Please consider this as a formal request under the Official Information Act on behalf of Mr Steele.

I look forward to hearing from you.

[23] Also on Monday 22 November 2010 Mr Steele sent an email plus attachment to Ms Kennedy and it was soon followed by a repeat email resending the attachment. It is necessary to refer only to the first email and attachment. That email was sent at 10:43am and bore the subject heading "Information Request". It was copied to Mr Heal and relevantly stated:

Ideally I need to a response to this request within 5 days.

[24] The attachment was a letter dated 22 November 2010 addressed to Ms Kennedy and had the subject line "Privacy Act and Official Information Act Request". Only the first three paragraphs are relevant:

I have made a verbal request to you for Personal Information that your agency has accumulated and propagated to Hammonds Law and School Trustee, Gina THOMPSON of which I am the topic.

The verbal request dated 20 November 2010 was responded to by yourself by saying "Those documents belong to me." You also stated, "What do you need a copy for? You should know

this off by heart by now.” You then copied a document that I had never seen before and omitted to supply a page of the document stating, *“It belongs to me”*.

Pursuant to Principle 6 of the Privacy Act 1993 and the Official Information Act 1982, you must supply a copy of all electronic files and hard copy documents that holds information of which I am the topic.

...

[25] The letter goes on to assert that Mr Steele was of the view that Ms Kennedy was “probably not listening to anything I am saying” and that she was “trying to groom [the daughter] to a life of being institutionalized”.

[26] The point to note is that the first three paragraphs of the letter twice make reference to the Privacy Act. In the first paragraph there is a reference to the verbal request for the information provided to former Counsel for the Child at Hammonds and the third paragraph refers to the request being not only under the Privacy Act but also the Official Information Act for “all electronic files and hard copy documents that holds information of which I am the topic”.

[27] Not wishing to correspond with Mr Steele directly because of the offensive way he was communicating with the School and given the terms of Mr Heal’s email of 22 November 2010 sent at 11.30am (ie after Mr Steele’s email sent at 10.43am that day), Ms Kennedy regarded Mr Heal as having taken over the Privacy Act and Official Information Act matter. She deposed in her brief of evidence (affirmed at the hearing):

38 Salisbury had received a lengthy e-mail from Mr Dennis of Hammonds. Following Mr Heal’s request, I forwarded it to him on 22 November 2010 Following the e-mail from Mr Heal to me dated 20 November 2010 ... where he stated that he was of the view that it would be in Mr Steele’s interests if Mr Steele left the negotiating with Salisbury to him (Mr Heal) I took the view that Mr Heal’s request in that same e-mail where he asked for a copy of Mr Dennis’ correspondence, had superseded Mr Steele’s request and when I forwarded the Hammonds e-mail to Mr Heal. I was of the view that I had met my obligations under the Privacy Act.

[28] Acting promptly (within 1.5 hours of receipt of the request) Ms Kennedy at 1:59pm on 22 November 2010 sent to Mr Heal the information he had requested:

As per request on Monday 22 November from Warwick Heal under the Official Information Act I am forwarding this email to Mr Warwick Heal.

The attachment was an email addressed to Ms Kennedy from Mr Dennis dated 17 November 2010 sent at 9:41am.

[29] On the following day, Tuesday 23 November 2010 at 12:35pm Mr Heal wrote to Ms Kennedy thanking her for the email from Mr Dennis and asking that she confirm it was the only contact the school had had with him (Mr Dennis).

[30] This appears to be the last correspondence from Mr Heal and Mr Steele in relation to the Privacy Act request until Mr Steele made a complaint to the Privacy Commissioner in December 2010 complaining that the requested information had not been provided. Correspondence did, however, pass between the parties on other issues.

[31] On 23 November 2010 at 2:05pm Mr Heal wrote to Mr Steele (copied to Ms Kennedy) forwarding email correspondence with the Family Court at Whangarei regarding the appointment of Mr Dennis as Counsel for the Child. Mr Steele replied at 3:28pm and at 3.44pm forwarded the email chain to Ms Kennedy.

[32] On Wednesday 24 November 2010 Mr Heal sent a fax and an email to Ms Kennedy. The documents are slightly different but not materially so. Writing “on behalf of Marcus Steele” Mr Heal set out his views on the question whether Mr Dennis was still Counsel for the Child, whether it was the responsibility of Salisbury School to interpret Family Court contact orders, a request by Mr Steele to uplift his daughter the following day for a few hours and related matters. Ms Kennedy replied on the same day.

[33] On Thursday 25 November 2010 Mr Steele copied Ms Kennedy into an email he had sent that day to Mr Dennis making a Principle 6 request for access to personal information held by Mr Dennis about Mr Steele and announcing Mr Steele’s intention to lodge a complaint with the New Zealand Law Society. The email was couched in offensive terms:

I am drafting a complaint to the Law Society in Wellington. Would you like to make any comment on this matter before I shaft your ass with this?

...

What do you think you were doing, you stupid little man? I'm going to rump your ass via the Privacy Commission and the Law Society.

[34] But as mentioned, there was no further correspondence from Mr Heal and Mr Steele on the Privacy Act request verbally made to Ms Kennedy on 19 November 2010 and repeated and enlarged upon in Mr Steele’s later letter dated 22 November 2010.

Whether requested information provided by Salisbury School

[35] There is no doubt that on 19 November 2010 a copy of the court order the subject of the oral request made by Mr Steele to Ms Kennedy at the meeting that day was provided at the meeting itself. Later that same day the letter from Salisbury School to Mr Dennis dated 18 January 2010 was sent to Mr Steele by Ms Kennedy’s secretary, Ms Judi Davies and the email from Mr Dennis dated 17 November 2010 addressed to the school was released to Mr Heal less than two hours after it was requested by Mr Heal on 22 November 2010.

[36] Ms Kennedy also gave evidence at the hearing that she believed that on 22 November 2010 she requested Ms Davies to copy all communications between the School and Mr Steele. The bundle of documents was then sent to Mr Heal. In his oral evidence to the Tribunal Mr Heal said that he could not exclude the possibility that the bundle of documents had indeed been sent to him.

[37] On the other hand it is conceded by Mr O’Neill for Salisbury School that other documents containing personal information about Mr Steele were not provided until after a complaint had been made by Mr Steele to the Privacy Commissioner. The documents the subject of this concession are those at pp 48-68 of the Common Bundle of Documents and comprise Case Notes Report (5 pages), Holiday Reports (7 pages), correspondence relating to the terms of the Family Court order (7 pages) and a letter from CYFS.

Whether Salisbury School justified in dealing with Mr Heal in relation to Privacy Act matters

[38] Mr Steele says that apart from the twenty pages of documents being provided out of time, those documents which were provided by the school to Mr Heal cannot be regarded as having been provided to him (Mr Steele) in time because Mr Heal was

never instructed by him in the matter of the Privacy Act request. The position of Mr Steele, as repeated in his evidence, is summarised in the letter he sent to the Privacy Commissioner on 2 February 2011:

...

Be aware that Warwick HEAL has never had anything to do with information requests. He has always told me that it is nothing to do with him. HEAL is not suppose be passing or receiving correspondence relating to personal information requests made by myself. Salisbury School have been made aware of this fact on many occasions and are still well aware of this fact.

[39] This is an untenable submission as it is unsupported by the facts.

[40] Lying at the heart of the difficulties between Mr Steele and Salisbury School was the acrimonious relationship between Mr Steele and his former partner, Gina Thompson. Mr Steele believed that his access to their daughter could be denied by Ms Thompson manipulating the School and the Police. It was in this context that Mr Heal wrote to the School on 18 November 2010 announcing "I am a family law Barrister and I act for Marcus Steele". He then requested certain information from the School and this led to a difference of opinion over the interpretation of a Shared Parenting Order made in the Family Court and the duty of the School to act consistently with that order. The request by Mr Steele for access to personal information held about him by the School was made entirely in this context.

[41] Mr Steele himself shared this view. Communications between him and Mr Heal were openly copied by him to Ms Kennedy notwithstanding their otherwise confidential nature.

[42] In particular, on the very day Mr Steele made a verbal request to Ms Kennedy for personal information, Mr Steele wrote to Mr Heal (copied to Ms Kennedy) instructing him:

I received a partial copy of correspondence between Hammonds and Salisbury. The Principal has refused to disclose the documents in thier entirety. Some written script has been retained. She stated, "It belongs to me". You must immediately request this information from her again in writing. Principle 6 of the Privacy Act 1993 and the OIA 1982.

[43] Any sensible reading of this communication will reasonably lead to the conclusion that Mr Heal was given authority to represent Mr Steele in the request for personal information and Ms Kennedy was intended to know of that authority. At the same time Mr Steele's aggressive and offensive communications with school management led even Mr Heal to observe on 22 November 2010 (the day of Mr Steele's written request for access to information):

I have advised Marcus that it would be in his interests if he left the negotiating with the school to me ...

...

I would be grateful if you could advise if this is so and in such case provide me with a copy of Mr Dennis's correspondence. Please consider this as a formal request under the Official Information Act on behalf of Mr Steele.

[44] In good faith the School accordingly dealt with Mr Heal and provided all requested information virtually instantaneously. Neither Mr Heal nor Mr Steele at any relevant time told the School that Mr Heal was not acting in the Privacy Act matter.

[45] We are not prepared to accept Mr Steele's evidence on this point. His evidence relied on an affidavit (the first affidavit) sworn by Mr Heal on 20 October 2011. At paragraphs 3 and 4 Mr Heal then deposed:

3 It has come to my attention that Salisbury School is the defendant in these proceedings has informed the Human Rights Review Tribunal that I received a response to the personal information requests made by Marcus Steele to the Defendant.

4 Marcus Steele made these requests to the Defendant and I was at no time involved. Mr Steele in fact instructed me that I was to have nothing to do with his applications under the Privacy Act and the Official Information Act.

[46] In a subsequent affidavit sworn on 21 December 2011 Mr Heal resiled from this evidence:

15 Very shortly after my email to the school of the 22nd of November 2010 (a matter of approximately one week) Mr Steele and I agreed that I would have no further involvement with either his Official Information Act requests or any steps he took under the Privacy Act and I had no such involvement.

16 As can be seen I was incorrect in my first affidavit to say that I did not have any involvement on behalf of Mr Steele in his Official Information matters. When I swore the affidavit I did not peruse my file and I had quite forgotten the part of the email that I had sent to Sarah Kennedy containing an official information request.

[47] In his oral evidence to the Tribunal Mr Heal conceded that at no time did he communicate to the School the instructions he refers to at para 15 of his second affidavit.

[48] In the circumstances we conclude that Mr Heal did have ostensible authority to act in the Privacy Act matter in the period from at least 19 November 2010 to 24 November 2010 and that all information provided to him is to be taken as having been provided to his client, Mr Steele.

[49] An alternative argument which seemed to be advanced at one point by Mr Steele was that Mr Heal was acting in relation to the privacy request concerning custody and Mr Steele was acting for himself in relation to everything else. As to this, there wasn't anything else that did not relate to or arise out of the custody issues. The claimed distinction is exceedingly fine and was not made at the time and in any event was never made clear to the School.

Conclusion as to breach

[50] It follows that the only breach of Principle 6 established by the evidence is the admitted failure by the School to provide the twenty pages of documents included in the Bundle of Documents.

The seriousness of the breach

[51] While these twenty pages of personal information were initially withheld the cause was the confusing way in which the requests of 19 November 2010 and 22 November 2010 were worded as well as by the school having to deal simultaneously with Mr Steele and his lawyer. It is to be noted that whenever the request for personal information was clear and unambiguous, the school complied within a matter of hours. These factors are relevant to the assessment to be made in terms of s 85(4) of the Act.

[52] Mr Steele claimed that the failure to provide the twenty pages of personal information caused him to go into "apathy and depression". He says the humiliation was

“immense” and that the “acrimonious environment created by the interference affected my family relationship with my child, badly”.

[53] We have received no credible evidence from Mr Steele or from anyone else to support these claims. In his communications produced in evidence before the Tribunal, in his evidence before the Tribunal and in his conduct of his own case, Mr Steele has impressed as a forceful and at times overtly aggressive individual. He is quick to take offence when none is intended and blind to any point of view different to his own. In his evidence he has exaggerated to a gross degree and has been highly selective in what he discloses. He is also prone to making unfounded allegations. We cite by way of example only:

[53.1] In his brief of evidence, when referring to the email of 16 November 2010 from his former partner (Gina Thompson), he describes it as an email from “Board of Trustee Chairperson, Gina Thompson”. The failure to mention that Ms Thompson is in fact the mother of his child and also his former partner was, in the context, nothing less than misleading.

[53.2] The assertion that Mr Heal “never had anything to do with the information requests” is completely wrong, as is the assertion that the School was made aware of this fact. Mr Steele in fact sought the Tribunal’s “adverse comment” on the School submitting “false information” so that he could advance the complaint he made to the Police at Kawakawa on 22 November 2011 alleging that the Board of Trustees had “misled justice”. The finding of the Tribunal, however, is that the allegation made by Mr Steele is unfounded.

[53.3] Ms Kennedy described how the School sought to avoid being caught as “the meat in the sandwich” between Mr Steele and Ms Thompson. In his closing submissions Mr Steele nevertheless characterised the actions of the School as “attempts to infiltrate our Family Court process”. The submissions also asserted that “The defendant set out on a deliberate course of action to remove those rights [to have the Privacy Act correctly implemented]” and this began before [Mr Steele’s email of Sunday 21 November 2010 to Judi Davies]. The defendant was already conspiring before the email”.

[53.4] Mr Steele also alleged in his closing submissions at para [28]:

I believe they only wanted my daughter at that school because they get funding for her enrolment. I believe they were simply protecting their income.

[53.5] On the question of costs, his closing submissions at para [29] were:

I have always tried to settle this matter before the hearings started. Coony Law always rejected that. They have never tried to mediate. I have always told them that the Defendant is not credible in their evidence. The “indulgence” as has been described by having HEAL appear is an insult. I didn’t know that KENNEDY would keep making up these silly and incredible stories that would keep wasting peoples time and resources. Coony Law was well aware that interference with privacy had been found. In an effort to make money they simply took a gamble and flipped a coin and if they lose they still want their money back. Please reject any claim for costs by Coony Law. I am pretty sure that next time in similar circumstance they will settle the matter.

Relief

[54] Against this background we have reached the clear conclusion that, while there has been an admitted interference with Mr Steele’s privacy by the out of time delivery of the

documents mentioned, he has not, in terms of s 88 of the Privacy Act, suffered any pecuniary loss, loss of benefit or humiliation, loss of dignity or injury to feelings. As to the claim for \$2,000 for “interference with the care of my child”, this is not relief of the kind encompassed by ss 85 and 88 of the Act. In any event, we would not be minded to grant such relief even if it was within our jurisdiction to do so.

[55] The only remaining issue is whether a declaration should be made under s 85(1)(a) of the Privacy Act that there has been an interference with Mr Steele’s privacy.

[56] We are of the view that no such declaration should be made. Mr Steele’s communications with school management on 19 November 2010 (the email addressed to Mr Heal and copied to Ms Kennedy) and on 21 November 2010 (the email to Ms Davies) were written in aggressive and offensive terms. So too was the email he sent to Mr Dennis on 25 November 2010 making a request under the Privacy Act. His submissions to the Tribunal have contained unfounded allegations against the School, including an assertion that Ms Kennedy has made up “stories” and that the lawyers representing the School have advised their client to defend the proceedings so that they (the lawyers) could make money in preference to settling the case.

[57] In our view there has been a clear and serious breach of the standards to be expected of a litigant in terms of *Geary v New Zealand Psychologists Board* [2012] NZHC 384 at [108]. For this reason we have decided that our discretion to grant declaratory relief should be denied.

[58] On the same basis we decline to award internet, telephone and travel costs.

Summary of findings

[59] The only breach of Principle 6 established by the evidence is the admitted failure by the School to provide the twenty pages of documents included in the Bundle of Documents. However, we decline to make a declaration that there has been an interference with Mr Steele’s privacy.

Formal orders

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

[60.1] A declaration of interference with privacy is denied.

[60.2] No damages or other forms of remedy under ss 85 and 88 of the Act are to be awarded.

[60.3] The proceedings brought by Mr Steele are dismissed.

Costs

[61] We hope that our decision will be sufficient to bring an end to these proceedings. But should either party wish to apply for costs that application will be dealt with according to the following timetable:

[61.1] Any application is to be filed and served, along with any submissions or other materials put forward in support of the application, within 28 days after this decision is issued to the parties.

[61.2] Any notice of opposition to the making of an award of costs is to be filed and served, along with any submissions or other materials put forward in opposition to the application, within a further 28 days.

[61.3] The Tribunal will then determine the issue of costs on the basis of the papers that will by then have been filed and served and without any further oral hearing.

[61.4] In case it should prove necessary, we leave it to the Chairperson of the Tribunal to vary the foregoing timetable.

.....
Mr RPG Haines QC
Chairperson

.....
Ms J Grant MNZM
Member

.....
Ms S Ineson QSM
Member