IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2015] NZHRRT 15**

	Reference No. HRRT 022/2014
UNDER	**THE PRIVACY ACT 1993**
BETWEEN	**BRETT JAMES TAYLOR**
	PLAINTIFF
AND	**ORCON LIMITED**
	DEFENDANT

AT PALMERSTON NORTH

BEFORE:
Mr RPG Haines QC, Chairperson
Mr RK Musuku, Member
Hon KL Shirley, Member

REPRESENTATION:
Ms SN Taylor for plaintiff
Mr ML O'Connell, Human Resources Director, for defendant

DATE OF HEARING: **20 April 2015**

DATE OF LAST SUBMISSIONS: **24 April 2015 and 1 May 2015**

DATE OF DECISION: **14 May 2015**

DECISION OF TRIBUNAL

Introduction

[1] Orcon Limited (Orcon) is a telecommunications company which provides broadband and telephone services. Claiming Mr Taylor owed $208.58, Orcon on 27 July 2012 instructed the debt collection agency, Baycorp, to recover the alleged debt. This had an immediate effect on Mr Taylor's credit rating. Specifically, it became almost impossible to find rental accommodation for his family comprising himself, his partner Ms Chloe Tasker and their young daughter then aged 12 months. This caused enormous stress because as a soldier in the New Zealand Army Mr Taylor is frequently transferred from one army base to another.

[2] Mr Taylor claims Orcon had earlier advised all amounts owed by him had been waived. As no debt existed Orcon provided Baycorp with inaccurate and misleading personal information in breach of information privacy Principle 8 and in terms of s 66(1) of the Privacy Act 1993 Orcon's action was an interference with his privacy.

[3] The issues in these proceedings are whether the evidence establishes an interference with Mr Taylor's privacy and if so, the appropriate remedy to be granted.

THE EVIDENCE

The evidence of Mr Taylor and Ms Tasker

[4] Mr Taylor gave evidence as did Ms Tasker. We found them to be conscientious, reliable and honest witnesses. Their account is supported by the contemporary documentary evidence including the internal file notes kept by Orcon and by Baycorp.

[5] The summary of events which follows is largely based on the evidence given by Mr Taylor and by Ms Tasker but supplemented where necessary by information drawn from the documentary exhibits.

[6] On 2 February 2012 Mr Taylor ordered from Orcon a home package known as Genius Full which included a modem and broadband package with a connection for the home telephone. As a result of an error by Orcon, the modem provided was for a different service known as Genius Lite. Connection of the broadband service was delayed while the incorrect modem was returned and the replacement sent. Unfortunately even after the correct modem arrived neither the broadband connection nor the telephone worked. Repeated calls to the Orcon support line proved of little help. Mr Taylor and Ms Tasker say at no time were they able to access the internet or to use their home telephone.

[7] On 7 March 2012 Ms Tasker telephoned Orcon to request cancellation of the account. When she asked how much was owing she was told that because of the problems she and Mr Taylor had experienced, Orcon would waive all the charges on the account and there was nothing to pay. Ms Tasker thanked the person with whom she was speaking but double checked that nothing had to be paid. The person she spoke to confirmed that was the case and that a courier bag would be sent for the return of all Orcon hardware. The bag duly arrived and the hardware was received by Orcon in early April 2012. The modem for the Genius Lite service initially (and mistakenly) supplied had been returned on an earlier date.

[8] When a bill from Orcon for $138.90 was subsequently received, Mr Taylor on 25 March 2012 telephoned Orcon to protest, pointing out Ms Tasker had been advised there would be nothing to pay because of the difficulties experienced. Mr Taylor was told there was nothing in the Orcon records to record the discussion between Ms Tasker and Orcon on 7 March 2012. Mr Taylor nevertheless disputed the charge and the person he was speaking to told him she would have to check with other staff. Account notes kept by Orcon confirm Mr Taylor repeatedly emphasised a promise had been made all fees would be waived:

> Brett called re: a/c – ID'd
> -Cust wanting to know why he receive a invoice
> -Adv him it's for full install and hardware rental
> **-Cust keeps talking about a credit, but cannot find any notes regarding credit**
> **-Cust stated that he was promised that everything will be waived by the person who put thru the cancelation**
> -Emailed Matt to contact cust

[Emphasis added]

[9] Mr Taylor continued to receive accounts asserting he owed money to Orcon, including a letter dated 13 April 2012 saying the services provided by Orcon were in the process of being blocked because of non-payment of the account. This made no sense to Mr Taylor as no services had been or were being provided by Orcon and the Genius Lite and Genius Full modems had been returned on much earlier dates. There was nothing to be blocked. Orcon's own records for 13 April 2012 state Mr Taylor disputed owing money to Orcon:

> … customer states they have been adv all charges would be withdrawn.

Orcon says the letter of 13 April 2012 was automatically triggered by the outstanding balance regardless whether the account was then receiving service.

[10] Mr Taylor says that over the course of his subsequent efforts to resolve the matter with Orcon he was ridiculed by their staff. Providing an example, he mentioned an occasion when a person called "Migs" laughed when Mr Taylor asked to speak to a manager. On two other occasions he was hung up on and put on hold for very long periods of time.

[11] On 27 July 2012 Orcon instructed Baycorp to recover the $208.58 alleged to be then outstanding. Shortly after this Mr Taylor received a text message from Baycorp but had no opportunity to respond as he was then leaving for Waiouru where he entered the Army on 6 August 2012. He could not thereafter communicate with Baycorp or with Ms Tasker because on arrival at Waiouru, all modes of communication had been confiscated.

[12] In her partner's absence, Ms Tasker on 2 August 2012 telephoned Orcon to tell them once again she and Mr Taylor had been advised all charges for the account would be waived as no service had been provided. This call is recorded in an Orcon file note. Ms Tasker was told to contact Baycorp. On 7 August 2012 Ms Tasker sent an email to Baycorp recounting the history of the matter as summarised above, emphasising she and Mr Taylor had been told there would be no charge by Orcon and therefore the debt was disputed. It is not intended to reproduce the whole of the email. The most relevant part follows:

> We had an account with Orcon earlier this year as we signed up for an internet plan at the address [in Hamilton]. We received the modem etc and started setting up. We had a lot of problems with the connection (or lack there of) and so I called up Orcon and complained. They said that they would send us out a courier bag to send the modem and all the wires back to them and that the account would be terminated and once the modem was returned there would be no charge for anything because of all the complications so I said great thank you. The account was terminated March 7th and the modem was noted to be returned to Orcon in the middle of April.
>
> About a week ago Brett received a message saying to call a number urgently so he did and it turned out to be Baycorp saying that we owe around $300 for the Orcon account. We are both confused as to how this is because everything was returned and we thought the account had been cleared up as Orcon said we would owe nothing more to them.
>
> We would like this to be investigated thoroughly. We are disputing this.

[13] On 21 August 2012 Baycorp sent a reply email advising Ms Tasker the matter had been referred to Orcon for comment and further instruction. In the meantime the file had been placed on hold and the debt noted as disputed.

[14] At this point it is helpful to refer to the evidence given by Mr O'Connell, Human Resources Director, who was the only witness for Orcon. Mr O'Connell was not personally involved in dealing with Mr Taylor's case. Working entirely from the written records kept by Orcon, Mr O'Connell accepts Orcon was notified by Baycorp that the debt was disputed. It is further conceded by Mr O'Connell that over the next nine months Orcon did nothing to investigate the dispute. It was only when Baycorp sent a reminder in May 2013 that Orcon looked into the account. Mr O'Connell was unable to say whether the nine month delay was attributable to a failure by Baycorp to advise Orcon the debt was in dispute or to a failure by Orcon to investigate the dispute.

[15] When eventually on 17 May 2013 Orcon (at the urging of Baycorp) looked into Mr Taylor's account it was some 12 months after Orcon had been put on notice Mr Taylor believed all charges had been waived. The outcome was a decision by Orcon to raise a "goodwill credit" of $158.48, leaving a debt of $50.10. In an email dated 21 May 2013 Orcon told Mr Taylor that while Orcon conceded the service it contracted to provide "was not fully connected" and that a credit had been applied for inconvenience for the days the telephone did not work, Orcon believed it had been possible for Mr Taylor, at least to a limited extent, to use the broadband service. In addition, it was asserted some telephone calls had been made.

[16] The assertion there had been limited usage of the Orcon service is disputed both by Mr Taylor and Ms Tasker. They say there was no such usage. It must be observed that no evidence of usage has been produced by Orcon either to Mr Taylor or to the Tribunal.

[17] Acting on advice from Orcon, on 8 October 2013 Baycorp removed the "under dispute" reservation and on the same date registered the much reduced debt with Veda Advantage (NZ) Ltd (Veda), a leading provider of credit reports in relation to individuals and businesses.

[18] At almost exactly the same time Mr Taylor, having been relocated to Linton Military Camp in Palmerston North and being unaware of these developments, was trying to find rental accommodation for himself, Ms Tasker and their daughter. He had also just been ordered to return temporarily to Burnham Military Camp south of Christchurch. It was in these circumstances he applied to GE Money for a consolidation loan to assist with his relocation and related expenses. Ms Tasker and their daughter were then living in a very old and cold motel room.

[19] Ms Tasker told the Tribunal that through real estate agents such as LJ Hooker, the Professionals and Ray White she and Mr Taylor put in applications to rent almost 20 houses in Palmerston North but without success. When they asked Ray White and the Professionals for the reasons why their applications had been declined, they were told no record of this information was kept. However, at LJ Hooker they were told by the property manager the reason why their applications through that firm had been declined was the bad debt with Orcon. That property manager has provided a letter, which although undated, was clearly written in October 2013. It confirms not only that the debt with Orcon was the cause of the difficulty but also that Mr Taylor and Ms Tasker were desperate for a house and were also very distressed. Only because the property manager took a personal interest in them and spoke directly to one of the landlords was a property eventually let to the family:

> Brett Taylor and Chloe Tasker applied for a home from our company on the 4th of October, 2013 however because they had a bad debt with Orcon the application was declined by the owner. They then applied for another one and the same thing happened.

> Owners are very reluctant to rent to people with bad debts and I believe this disadvantaged them.
>
> They seemed a very nice couple and wonderful parents to their little girl. They came in to see me very distressed because ours was not the only company that had declined them and they were getting very desperate for a house. I felt very sorry for them so spoke to one of my owners and said I believed that we should give them a chance.
>
> They are now living in one of the properties I manage and have it looking very nice.

[20] While the property manager at LJ Hooker found accommodation for the family, the offer by the landlord was contingent on the Orcon debt being paid and they had to get a receipt from the bank to prove payment. The sum of $112.40 was accordingly paid to Orcon on 10 October 2013. On 14 October 2013 Orcon recalled the debt and on 17 October 2013 refunded the entire amount.

[21] Difficulty finding rental accommodation was not the only problem faced by Mr Taylor. He had had a successful relationship with GE Money and over a period of two years had built up a good credit history, his approved limit being increased six times in that period. However, when on 9 October 2013 he applied for a consolidation loan, he was declined. The reason given was the Orcon debt which had just been listed. Mr Taylor's evidence is supported by an email from GE Money dated 28 May 2014 in which it is stated:

> As per our phone conversation and as per your request, your GE Creditline limit increase request was declined due to an adverse credit report.
>
> One of the listings on this report was with Orcon Internet Limited with a default date of 23/04/2012.

[22] Even after Orcon cancelled the debt GE Money declined to reconsider its decision, telling Mr Taylor no matter the reason for the decline of the application, he would not thereafter for at least six months be considered for any type of loan.

[23] Speaking of the difficulties encountered in obtaining rental accommodation, Mr Taylor said it was a really difficult time for him and his partner and his confidence had been knocked around. Because his partner was emotional he in turn became emotional, stressed and anxious:

> … Whilst looking for a home, a motelier agreed to let us rent one of his older rooms. However, we could only do so for 3 weeks. We had our belongings in storage which was costly. What was really tough for me was not being able to provide a home for my family. Living out of a motel room was mentally tough for me.

[24] Ms Tasker added that Mr Taylor had had to beg the property manager at LJ Hooker for assistance and after it was learned she had found a property owner willing to give the couple a chance if the Orcon debt was paid, Mr Taylor was too embarrassed to face the property manager again and arrangements were left to Ms Tasker to complete.

[25] Describing the events Mr Taylor spoke of the stress he had experienced over the past three years. He said it had burdened him and caused Ms Tasker and him to feel almost every emotion nameable. Their relationship had been tested. The events had been extremely stressful and exhausting. His advancement in rank in the Army had also been adversely affected and he felt particularly keenly the adverse impact on his credit history:

> I had no choice, but to keep up with this dispute because a debt in Baycorp is almost like a sentence. It would have affected my ability to obtain credit for 5 years. The debt will be a blemish on my credit history regardless of payment in full. Basically, I would have struggled

> immensely to obtain credit, and in today's commercialised world, the adverse affect would be substantial. As a young family, we need to be able to gain credit. My credit rating also affects my position in the Army, and advancements in Rank. I needed peace of mind that I would not have adverse credit for 5 years.

[26] Describing Mr Taylor's reaction after being told by GE Money that the debt consolidation loan had been declined Ms Tasker said:

> After that call, I was really emotional, Brett was comforting me, and although he was putting on a brave front, he too was distraught because at that time we were a young family, experiencing some very tough times. Brett is our main earner, and having bad credit hurt us.

The principal points made by Orcon

[27] Three main points were made by Mr O'Connell in his evidence and in his submissions:

> **[27.1]** First, Mr Taylor signed up for services and agreed to being charged for those services. He was connected on 14 February 2012 and had the use of a broadband service until 7 March 2012. Despite having phone issues, he was able to use the calling services and calls were made on the account. No evidence of usage was produced in evidence, however.
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> **[27.2]** Second, the fact that Orcon subsequently decided as a goodwill measure to waive the entire debt was not a concession of error. It was no more than a recognition the service provided had undoubtedly been below standard.
>
> **[27.3]** Third, in a letter dated 2 July 2014 the Privacy Commissioner reported it was his opinion that while Orcon had breached Principle 8 by failing to ensure the default listed on Mr Taylor's credit report was accurate, that breach had not caused him harm. In particular, the listing of the Orcon debt with Baycorp and Veda was not "the sole reason" for the decline of rental accommodation and the loan application to GE Money.

[28] When questioned by Ms Taylor and by the Tribunal Mr O'Connell gave additional evidence significantly undermining Orcon's defence.

> **[28.1]** First, Mr O'Connell's attention was drawn to Ms Tasker's evidence that on 7 March 2012 she had been told all charges would be waived. Orcon's own file notes record that on 25 March 2012 and 13 April 2012 Mr Taylor telephoned to advise he had been told all charges would be withdrawn. Mr O'Connell was asked why, in these circumstances, on 27 July 2012 Orcon had sent the debt to Baycorp. To this Mr O'Connell responded that when the debt was sent to Baycorp Orcon did not consider Mr Taylor had disputed the debt. This, however, is an untenable view given Orcon's own file notes of 25 March 2012 and 13 April 2012 record the debt was in dispute.
>
> **[28.2]** Second, Mr O'Connell said it was the practice of Orcon to investigate any complaint or dispute over a charge before referring the debt to Baycorp and Orcon would not send a debt to Baycorp if it knew the charge was under dispute. We observe this practice was not followed in Mr Taylor's case and no credible explanation has been given for this failure.
>
> **[28.3]** Third, asked why there had been no thorough investigation into the charge debited to Mr Taylor prior to it being sent to Baycorp for collection Mr O'Connell's first response was that he did not know such investigation had **not** been carried

out. This suggested it was for Mr Taylor to prove there had been no such investigation and in the absence of such evidence the Tribunal should presume an investigation had been carried out. Such view is fundamentally misconceived. Pressed on the point Mr O'Connell was asked whether there was any evidence on the file that an investigation had been carried out. Mr O'Connell conceded there was no such evidence. He also conceded Mr Taylor had received a "disastrous service", if not a "bum deal" but as he had used the connection to access the internet and to make telephone calls, a charge for that service had to be paid. No information of the claimed usage was produced in evidence. The equally fundamental point is that the issue before the Tribunal is not whether there was usage in fact, but whether the dispute as to whether money was owing was properly investigated before the alleged debt was sent to Baycorp on 27 July 2012. Even Orcon concedes no debt should be sent for collection if that debt is in dispute and no proper investigation has been carried out.

[28.4] After Mr Taylor called Orcon on 13 April 2012 to advise he had been told that all charges would be withdrawn, the only step taken by Orcon had been to send an email advising Orcon still expected him to pay. No investigation of the charge appears in Orcon's records prior to the debt being sent to Baycorp.

Broadband used?

[29] In his post-hearing submissions dated 1 May 2015 Mr O'Connell stated that according to Orcon records, 67 calls were made from Mr Taylor's home telephone and 6.16 Gb of broadband data was consumed. This is consistent with Mr O'Connell's assertion at the hearing that there had been usage. But there are fundamental impediments to the Tribunal accepting this assertion as evidence. First, no evidence of usage was produced at the hearing when Mr Taylor and Ms Tasker had opportunity to meaningfully engage with the claim. Second, even after the hearing Orcon has provided no evidence of the dates on which the calls were allegedly made and on which the broadband data was allegedly consumed. Third, when cross-examined, both Mr Taylor and Ms Tasker firmly rejected the suggestion they had received any service whether by way of telephone connection or consumption of broadband data. Fourth, Orcon itself accepts there were times when service was not available.

[30] In the end the Tribunal has only a mere assertion by Orcon that notwithstanding its admitted inability to provide the service contracted for, there was broadband usage on unspecified dates and telephone calls to unspecified numbers on dates unknown. Put simply, there is an evidentiary vacuum. The relaxed rules of evidence which apply in proceedings before the Tribunal must not allow unsubstantiated and untested assertions to affect the decision-making process. Given this evidentiary vacuum and further given the Tribunal has had the benefit of seeing and hearing Mr Taylor and Ms Tasker as witnesses we find on the evidence, contrary to the claim by Orcon, there was no usage.

A goodwill gesture?

[31] The assertion the debt was eliminated by goodwill credits must be tested against Orcon's internal records. We do not intend going through every file note. The ones we have found of greatest significance follow.

[32] A file note dated 16 October 2013 records a Customer Care Manager (Mr David McGhie) telephoned Mr Taylor. He acknowledged the file could have been handled differently, that there had been different interpretation of charges, inconsistency

regarding information previously communicated and that the debt should not have been sent to Baycorp. The relevant parts of the file note follow:

> 2013-10-16
>
> ECB: Follow up call to Brett – discussed account/enquiry further
> - advised that all service charges have now been fully applied – due to the different interpretation of charges/credits/external collection fees & timeframe given
> - mentioned inconsistency with information previously advised/communicated
> - advised account has been reviewed further by management and could have been handled differently
> - mentioned customer experience issues surrounding the 10-10-2013
> - advised this information would be followed up internally to assist with customer experience
> - **mentioned that it shouldn't have been sent to BayCorp**
> - advised that correct process was followed regarding customer notification based on the account details at the time, before debt sent to collection agency
> - **advised processes have been modified since then regarding account review/investigation and will continue to evolve as systems are updated** …
> [Emphasis added]

[33] A few days later, on 24 October 2013, another employee of Orcon (possibly called Melody Hieatt) made the following entry acknowledging Mr Taylor had been billed incorrectly. Her note reads:

> Recall was requested as investigation showed we had billed incorrectly. Once credits applied showed that the customer did not owe us anything and in fact was left in credit.

[34] This is a significant entry not only for what it says, but also because it was provided by Orcon to the investigator from the Office of the Privacy Commissioner. It was also provided to Baycorp where the entry is repeated verbatim in its own records.

[35] For Orcon it is submitted the entries of 16 and 24 October 2013 made by Mr McGhie and Ms Hieatt contained "significant error". It is said both Mr McGhie and Ms Hieatt were factually wrong when making their respective entries, did not have full knowledge of the account and were speaking out of turn. It was simply a case of employees having an internal discussion. The difficulty with this submission is that the information in question was given first to Mr Taylor, second to Baycorp and third to the Privacy Commissioner in the course of the investigation. The attempted disowning of the statements so late in the piece has the regrettable appearance of an opportunistic forensic submission. The inescapable point is the file notes held by Orcon contain no detectable trace of meaningful investigation of the claim made by Mr Taylor and Ms Tasker that they were promised all charges would be waived. Such was eventually acknowledged by Mr O'Connell in cross-examination.

[36] Our conclusion is that prior to the debt being sent to Baycorp on 27 July 2012 for collection, Orcon was on clear notice Mr Taylor strongly disputed the debt on the grounds Orcon had told Ms Tasker no money was owing. Then, notwithstanding a policy that disputed debts not be sent to Baycorp, this debt was sent for collection without any investigation into the claim that nothing was owing.

[37] Even when Baycorp placed the file on hold and asked Orcon for comment and further instruction, no or no meaningful investigation was carried out by Orcon. It was only when the disputed debt was paid on 10 October 2013 that the account was investigated by Mr McGhie and Ms Hieatt who concluded Mr Taylor had been billed incorrectly.

The relevance of the findings made by the Office of the Privacy Commissioner

[38] In his preliminary conclusions of 16 May 2014 the investigating officer at the Office of the Privacy Commissioner advised Mr Taylor that while it was his view Orcon had breached Principle 8 by failing to ensure the default listed on his credit report was accurate, that breach had not caused harm. In this regard the officer related having contacted both LJ Hooker and GE Money. In relation to LJ Hooker the officer reported he had been told the Orcon default was "not the primary reason" for the decision to decline the rental applications. As to this three points must be made:

> **[38.1]** The implicit claim that an interference with privacy is established only if there is a "primary" connection between the breach of the information privacy principle and the relevant harm is a misdirection in law. This is an issue addressed in greater detail below.
>
> **[38.2]** Mr Taylor and Ms Tasker challenge the "not the primary reason" assertion. They point out the property manager at LJ Hooker who provided the letter produced in evidence was the only person Mr Taylor and Ms Tasker dealt with. If there were other reasons for the rental applications being declined one would have expected these to have been mentioned first to them and second, in the letter produced to the Tribunal. Yet they were not. It is improbable, to say the least, the property manager omitted this information through oversight.
>
> **[38.3]** The third point is that the assertions of fact made by the investigating officer in his letter are not evidence. Orcon's view that it is for Mr Taylor to disprove assertions and findings made during the course of an investigation by the Office of the Privacy Commissioner is a mistaken one. Hearings before the Tribunal proceed on a de novo basis and a decision is reached by the Tribunal solely on the evidence produced at the Tribunal hearing.

[39] Similarly, in relation to GE Money the investigating officer reported that when he contacted GE Money it had been explained the application was declined because there were other defaults on Mr Taylor's credit report. It is, however, irrelevant whether there were other defaults. The causation standard, properly applied, is satisfied where two or more causes operate together. The email dated 28 May 2014 from GE Money confirms the Orcon debt was one of the listings on the adverse report. It is clearly established the Orcon debt was a material reason for the GE Money decision.

Conclusions on the evidence

[40] Summarising, our main findings are:

> **[40.1]** Mr Taylor and Ms Tasker are credible witnesses and we accept their evidence without reservation.
>
> **[40.2]** It follows we accept Ms Tasker's evidence that on 7 March 2012 she was told by Orcon all charges on the account would be waived and nothing had to be paid. When a bill was nevertheless sent out, Mr Taylor telephoned Orcon to emphasise he had been told there was nothing to pay. Orcon file notes of 25 March 2012 and 13 April 2012 confirm Mr Taylor's evidence.
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> **[40.3]** Notwithstanding being put on notice the debt was disputed and notwithstanding its own policy of not sending disputed debts to Baycorp for collection, Orcon on 27 July 2012 instructed Baycorp to recover the "debt".

[40.4] In so doing Orcon sent to Baycorp personal information about Mr Taylor in the form of the alleged debt. Prior to sending this information Orcon took no steps to ensure that personal information was accurate, up to date, complete, relevant, and not misleading.

[40.5] After Ms Tasker contacted Baycorp on 7 August 2012 Baycorp noted the debt as disputed and placed recovery action on hold. Orcon was asked for comment and further instruction.

[40.6] Following a nine month delay and a reminder from Baycorp, Orcon looked at the account but did not investigate the fundamental claim that Mr Taylor had been told all charges had been waived. After certain "goodwill" deductions had been made from the sum claimed, Baycorp was instructed to continue recovery action. In turn, Baycorp registered the reduced debt with Veda.

[40.7] It was only after full payment of $112.40 was made on 10 October 2013 by Mr Taylor to Baycorp that Orcon recalled the debt after an internal investigation by Mr McGhie and Ms Hieatt (and others) showed Mr Taylor had been billed incorrectly and did not owe anything to Orcon.

[40.8] The assertion by Orcon that the assessment reached by its junior employees was a mistaken one is an assertion made so late we are not prepared to give any weight to it, the more so given it is unsupported by evidence and Orcon relied on this assessment when communicating with Mr Taylor, Baycorp and the Privacy Commissioner.

THE LEGAL ISSUES

[41] In view of these findings of fact, there are two primary legal issues. First, whether Principle 8 was breached and second, whether in terms of s 66(1) of the Privacy Act there was a consequential interference with Mr Taylor's privacy.

Principle 8

[42] Information Privacy Principle 8 provides:

> Principle 8
>
> *Accuracy, etc, of personal information to be checked before use*
>
> An agency that holds personal information shall not use that information without taking such steps (if any) as are, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used, the information is accurate, up to date, complete, relevant, and not misleading.

[43] In the present case the key phrase is:

> … in the circumstances, reasonable to ensure that, having regard to the purpose for which the information is proposed to be used….

[44] A creditor who instructs a debt collection agency knows not only there is a good chance that legal debt recovery proceedings will follow, but also that the claimed debt will be registered with a credit reporting agency such as Veda. For many alleged debtors, it is the latter step which is potentially the most harmful and the most feared. In legal proceedings there is opportunity to challenge the claim before a court or tribunal skilled in the adjudication of disputes and bound by the rules of fairness. At a minimum a hearing of the dispute can be required. None of these protections apply when a credit reporting agency provides a credit rating. The request for a credit rating and the

response occurs without notice to the person inquired about, without their knowledge and without an opportunity to be heard. There is little or no practical recourse when a person's credit rating is reported in negative terms and there is no right of appeal. The right to request correction of credit information under the Credit Reporting Privacy Code is most often an ex post facto exercise and the individual affected may not even know an adverse credit report has been provided.

[45] The present facts vividly illustrate the point. A disputed debt which then amounted to $50.10 led to a soldier serving in the New Zealand Army unable to find rental accommodation for his family. Only the intervention of a sympathetic property manager brought resolution to the crisis. Even then the offer of help was conditioned on the disputed debt and accumulated charges being paid. Yet within days of such payment Orcon refunded the amount in full after concluding no debt was owed after all.

[46] The language of Principle 8 makes it clear that the more serious the potential consequences of using the personal information held by the agency, the greater the degree of care which must be exercised **before** the information is used. The agency must be able to demonstrate it took such steps as were, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information was proposed to be used, the information was accurate, up to date, complete, relevant, and not misleading.

[47] Given the clear and explicit terms of Principle 8, an agency (as defined in s 2 of the Act) which provides personal information to a debt collection agency or to a credit reporting agency bears a clearly defined legal responsibility to make sure the information is (inter alia) accurate, up to date and not misleading.

[48] Given the findings of fact made earlier, our conclusion on Principle 8 is that:

> **[48.1]** Notwithstanding it was on clear notice the claimed charge was disputed, Orcon took no steps, prior to instructing Baycorp on 27 July 2012, to investigate whether a debt was in fact owed by Mr Taylor.
>
> **[48.2]** Even after Baycorp advised Orcon the debt was disputed and that Orcon needed to carry out an investigation, Orcon did nothing to comply with Principle 8.
>
> **[48.3]** Without any effective investigation having been undertaken, Orcon in May 2013 instructed Baycorp to continue recovery action, albeit for a reduced amount.

[49] It follows we find Orcon's actions breached information privacy Principle 8.

[50] We turn now to the question whether there was an interference with Mr Taylor's privacy.

Whether an interference with the privacy of Mr Taylor has been established

[51] The term "interference with privacy" is defined in s 66. Only subs (1) is relevant on the facts:

> **66 Interference with privacy**
>
> (1) For the purposes of this Part, an action is an interference with the privacy of an individual if, and only if,—
> (a) in relation to that individual,—
> (i) the action breaches an information privacy principle; or

(ii) the action breaches a code of practice issued under section 63 (which relates to public registers); or
(iia) the action breaches an information privacy principle or a code of practice as modified by an Order in Council made under section 96J; or
(iib) the provisions of an information sharing agreement approved by an Order in Council made under section 96J have not been complied with; or
(iii) the provisions of Part 10 (which relates to information matching) have not been complied with; and

(b) in the opinion of the Commissioner or, as the case may be, the Tribunal, the action—
(i) has caused, or may cause, loss, detriment, damage, or injury to that individual; or
(ii) has adversely affected, or may adversely affect, the rights, benefits, privileges, obligations, or interests of that individual; or
(iii) has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to the feelings of that individual.

[52] This provision requires Mr Taylor to establish:

[52.1] That in relation to Mr Taylor an action of Orcon breached an information privacy principle; **and**

[52.2] In the opinion of the Tribunal the action:

[52.2.1] has caused or may cause Mr Taylor loss, detriment, damage or injury; **or**

[52.2.2] has adversely affected, or may adversely affect, his rights, benefits, privileges, obligations, or interests; **or**

[52.2.3] has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to his feelings.

[53] As to the first requirement, we have found that Principle 8 was breached in the manner summarised earlier.

[54] As to the second requirement, on the balance of probabilities we find in favour of Mr Taylor that because Orcon failed to enquire whether Mr Taylor owed the amount sent to Baycorp for collection, Mr Taylor was exposed to legal proceedings and to listing of the disputed debt with Veda. This led to credit checks which made it impossible for him to obtain rental accommodation for his family. It also brought to an end his hitherto good record with GE Money and the ability to obtain credit. This was a loss, detriment, damage or injury contemplated by s 66(1)(b)(i).

[55] For similar reasons the evidence establishes that breach of Principle 8 adversely affected Mr Taylor's rights, obligations or interests in terms of s 66(1)(b)(ii).

[56] While it is not necessary for Mr Taylor to establish each of s 66(1)(b)(i), (ii) and (iii), we address also the question whether he has established significant humiliation, significant loss of dignity or significant injury to the feelings in terms of s 66(1)(b)(iii). As to what comprises loss of dignity and injury to feelings, we refer to the case law recently reviewed in *Hammond v Credit Union Baywide* [2015] NZHRRT 6 (2 March 2015) at [152] and [153]. Human dignity includes self respect and self worth, while injury to the feelings can include conditions such as anxiety and stress. We are satisfied on the balance of probabilities there was significant humiliation, significant loss of dignity and significant injury to the feelings of Mr Taylor:

[56.1] Mr Taylor was on occasion ridiculed by staff at the Orcon call centre. Reference has already been made to the example when he was laughed at

because he asked to speak to a manager. On other occasions he was hung up on and put on hold for very long periods of time.

[56.2] The difficulties experienced in obtaining rental accommodation made Mr Taylor feel he was unable to provide a home for his family. This undermined his confidence to a substantial degree and the relationship with his partner was tested. He was reduced to the position where, as described by Ms Tasker, he had to beg the property manager at LJ Hooker to find accommodation. He was thereafter too embarrassed to face the property manager again. She, herself described Mr Taylor and his partner as "very distressed" and "desperate for a house". Ms Tasker also described the upset and stress experienced by Mr Taylor when he learnt the application for a debt consolidation loan had been declined notwithstanding a previously good credit history conscientiously built up with GE Money. Both Ms Tasker and Mr Taylor were devastated. His advancement in the Army was also adversely affected because questions had been raised about his credit history.

[57] On this evidence we are satisfied on the balance of probabilities there was significant humiliation, significant loss of dignity and significant injury to the feelings of Mr Taylor in terms of s 66(1)(b)(iii).

Causation

[58] Breach of an information privacy principle does not on its own satisfy the statutory definition of "interference with the privacy of an individual" in s 66(1) of the Privacy Act. Before the Tribunal can grant a remedy a harm threshold must be crossed and a causal connection established between the harm and the defendant's "action" as defined in s 2(1). That is, it must be shown the breach of the information privacy principle:

[58.1] has caused, or may cause, loss, detriment, damage, or injury to that individual; or

[58.2] has adversely affected, or may adversely affect, the rights, benefits, privileges, obligations, or interests of that individual; or

[58.3] has resulted in, or may result in, significant humiliation, significant loss of dignity, or significant injury to the feelings of that individual.

[59] While it has been accepted causation may in appropriate circumstances be assumed or inferred (see *Winter v Jans* HC Hamilton CIV-2003-419-8154, 6 April 2004 at [33]), it would appear no clear causation standard has yet been established in relation to s 66(1).

[60] As pointed out by Gaudron J in *Chappel v Hart* (1998) 195 CLR 232, 238 (HCA), questions of causation are not answered in a legal vacuum. Rather, they are answered in the legal framework in which they arise. In the present context that framework includes the purpose of the Privacy Act which is to "promote and protect individual privacy" and second, the fact that s 66(1) does not require proof that harm has actually occurred, merely that it may occur. Given the difficulties involved in making a forecast about the course of future events and the factors (and interplay of factors) which might bring about or affect that course, the causation standard cannot be set at a level unattainable otherwise than in the most exceptional of cases. Even where harm has occurred it is seldom the outcome of a single cause. Often two or more factors cause the harm and sometimes the amount of their respective contributions cannot be

quantified. It would be contrary to the purpose of the Privacy Act were such circumstance to fall outside the s 66(1) definition of interference with privacy. The more so given multiple causes present no difficulty in tort law. See Stephen Todd "Causation and Remoteness of Damage" in Stephen Todd (ed) *The Law of Torts in New Zealand* (6th ed, Thomson Reuters, Wellington, 2013) at [20.2.02]:

> Provided we can say that the totality of two or more sources caused an injury, it does not matter that the amount of their respective contributions cannot be quantified. The plaintiff need prove only that a particular source is more than minimal and is a cause in fact.

[61] Given these factors a plaintiff claiming an interference with privacy must show the defendant's act or omission was a contributing cause in the sense that it constituted a material cause. The concept of materiality denotes that the act or omission must have had (or may have) a real influence on the occurrence (or possible occurrence) of the particular form of harm. The act or omission must make (or may make) more than a de minimis or trivial contribution to the occurrence (or possible occurrence) of the loss. It is not necessary for the cause to be the sole cause, main cause, direct cause, indirect cause or "but for" cause. No form of words will ultimately provide an automatic answer to what is essentially a broad judgment.

[62] The facts in the present case are uncomplicated and straightforward. The failure to ensure that Mr Taylor's personal information (that he allegedly owed money to Orcon) was used by Orcon in compliance with Principle 8 led directly to the forms of harm earlier identified. Causation can hardly be said to be an issue. Whether there were other adverse listings in the report held by GE Money becomes irrelevant once it is accepted the alleged Orcon debt was also taken into account (as it was).

[63] In so holding we disagree with the preliminary findings made by the investigating officer from the Office of the Privacy Commissioner and with the final view adopted by the Assistant Commissioner (Investigations). Both applied a causation standard unrealistically high and at odds with the text of s 66(1) and the purpose of the Act. The investigating officer required Mr Taylor to establish that the presence of the Orcon default on his (Mr Taylor's) credit report was **the** reason for his inability to obtain accommodation from LJ Hooker and a loan from GE Money. The Assistant Commissioner applied a standard which required Mr Taylor to establish the Orcon default was "the sole reason" for the decline of his application.

[64] In our view the causation standard, understood as a contributing or material cause, has been comfortably established to the probability standard in relation to each of s 66(1)(b)(i) to (iii).

[65] For all these reasons we conclude in terms of s 66(1) of the Privacy Act there has been an action by Orcon which was an interference with the privacy of Mr Taylor.

REMEDY

[66] Where 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 one or more of the remedies allowed by s 85 of the Act:

> **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.

(2) In any proceedings under section 82 or section 83, the Tribunal may award such costs against the defendant as the Tribunal thinks fit, whether or not the Tribunal makes any other order, or may award costs against the plaintiff, or may decline to award costs against either party.

(3) Where the Director of Human Rights Proceedings is the plaintiff, any costs awarded against him or her shall be paid by the Privacy Commissioner, and the Privacy Commissioner shall not be entitled to be indemnified by the aggrieved individual (if any).

(4) It shall not be a defence to proceedings under section 82 or section 83 that the interference was unintentional or without negligence on the part of the defendant, but the Tribunal shall take the conduct of the defendant into account in deciding what, if any, remedy to grant.

[67] Section 88(1) relevantly provides that damages may be awarded in relation to three specific heads of damage:

88 Damages

(1) In any proceedings under section 82 or section 83, the Tribunal may award damages against the defendant for an interference with the privacy of an individual in respect of any 1 or more of the following:
(a) pecuniary loss suffered as a result of, and expenses reasonably incurred by the aggrieved individual for the purpose of, the transaction or activity out of which the interference arose:
(b) loss of any benefit, whether or not of a monetary kind, which the aggrieved individual might reasonably have been expected to obtain but for the interference:
(c) humiliation, loss of dignity, and injury to the feelings of the aggrieved individual.

Section 85(4) – the conduct of the defendant

[68] Section 85(4) provides that while it is no defence that the interference was unintentional or without negligence, the Tribunal must nevertheless take the conduct of the defendant into account in deciding what, if any, remedy to grant.

[69] On the evidence we have heard Orcon appeared not to comprehend the significance of Mr Taylor's and Ms Tasker's repeated statements they had been told that because of service failure (largely acknowledged by Orcon at the Tribunal hearing), all charges had been waived. There is no evidence Orcon engaged with them over this issue by, for example, producing evidence of the alleged broadband usage and of the alleged telephone calls. Even at the hearing the alleged usage was asserted, not established by evidence. There was simply no investigation into the dispute prior to the debt being sent to Baycorp for collection and accordingly no attempt to ensure the information was accurate, up to date, complete, relevant, and not misleading.

[70] Orcon's case has not been assisted by the unexplained nine month delay which followed Baycorp's August 2012 request that the dispute be investigated. It was suggested to the Tribunal the delay could have been the responsibility of Baycorp. But Orcon had the opportunity to call evidence on the point and did not do so. Its submission is speculative. Mr O'Connell conceded some of Orcon's records are incomplete, information having been lost during various system upgrades. What we do have is Baycorp's email of 21 August 2012 to Ms Tasker advising her the matter had

been referred to Orcon for comment and further instruction. It is more probable than not Baycorp simultaneously wrote to Orcon in similar terms.

[71] Nor has Orcon been assisted by the fact that even though the Baycorp request offered Orcon an opportunity to carry out the Principle 8 investigation which should have been undertaken before the debt was sent to Baycorp in the first place, there were only "goodwill" credits, not the investigation which Principle 8 and the circumstances reasonably required. There seemed to be little awareness by those involved of the existence of the information privacy principles, let alone of the importance of Principle 8 when a debt collection agency is instructed.

[72] Conversely we do not see any conduct by Mr Taylor and Ms Tasker which might affect the discretionary grant of a remedy. They consistently notified Orcon and in turn, Baycorp, the charge was disputed and the factual basis for that dispute.

Declaration

[73] While the grant of a declaration is discretionary, declaratory relief should not ordinarily be denied. See *Geary v New Zealand Psychologists Board* [2012] NZHC 384, [2012] 2 NZLR 414 (Kós J, Ms SL Ineson and Ms PJ Davies) at [107] and [108].

[74] On the facts we see nothing that could possibly justify the withholding from Mr Taylor of a formal declaration that Orcon interfered with his privacy and such declaration is accordingly made.

Damages for loss of benefit

[75] Under s 88(1)(b) of the Act the Tribunal has jurisdiction to award damages for the loss of any benefit, whether or not of a monetary kind, which the aggrieved individual might reasonably have been expected to obtain but for the interference.

[76] In seeking an award of damages for loss of benefit Mr Taylor relies on the decisions of the Tribunal in *Director of Human Rights Proceedings v Hamilton* [2012] NZHRRT 24 (1 November 2012) at [83] to [85] and in *Director of Human Rights Proceedings v Valli & Hughes* [2014] NZHRRT 58 (15 December 2014) at [41] to [45]. In the present case the loss of benefit was Mr Taylor's good credit rating. That loss made finding a home for him and his family extremely difficult.

[77] As to the quantum of damages, the awards made by the Tribunal in the period 2010 to 2012 were reviewed in *Director of Human Rights Proceedings v Hamilton* at [86]:

> **[86]** In *Director of Human Rights Proceedings v Grupen* [2010] NZHRRT 22 a barrister was found to have interfered with the privacy of a client by failing to provide that client with access to a diary in which the barrister had recorded her attendances relating to the affairs of the client and the nature of those attendances. The Tribunal awarded the client $5,000 for "loss of any benefit" under s 88(1)(b) and $3,500 under s 88(1)(c) for emotional harm. Both awards were upheld by the High Court in *Grupen v Director of Human Rights Proceedings*. In the much earlier decision of *Winter v Jans* the High Court awarded damages under s 88(1)(b) of $8,000 and under 88(1)(c) of $7,000 against a real estate agent who had declined to make available to Mr and Mrs Jans a file relating to the mortgagee sale of their property. The file later went missing. This April 2004 award requires upward adjustment to make it comparable to current money values.

[78] In *Director of Human Rights Proceedings v Valli & Hughes* the award was the same as that in *Director of Human Rights Proceedings v Grupen* [2010] NZHRRT 22 and in *Hamilton*, namely $5,000. All of these cases involved Principle 6 and a refusal or failure to release personal information resulting in the loss of a benefit loosely defined as being

able to utilise the requested information either in court or tribunal proceedings or otherwise.

[79] The quantum of $5,000 has its origins in *Proceedings Commissioner v Health Waikato Ltd* HC Hamilton AP39/00, 12 July 2000 where $5,000 was awarded for loss of the benefit of being able to utilise two letters in cross-examination and in submissions before the Employment Tribunal. In *Winter v Jans* HC Hamilton CIV-2003-419-854, 6 April 2004 the award was $8,000 (being $4,000 each for Mr and Mrs Jans) for not knowing what may have been on a lost file. These 2000 and 2004 awards are in need of upwards adjustment to take into account the fifteen and eleven years respectively which have since elapsed. Allowing simple interest at (say) 5% per annum the award in *Proceedings Commissioner v Health Waikato Ltd* approximates $9,000 while the $8,000 in *Winter v Jans* should be adjusted to $12,800.

[80] We are also of the view that a lost benefit framed as not being able to use letters in court proceedings or not knowing what may have been on a lost file is qualitatively less significant than a family being unable to find rental accommodation because a hitherto good credit rating has been forfeited consequent upon a disputed debt being provided to a collection agency without the accuracy of the debt being first checked. In our view the award under s 88(1)(b) in the present case is to be fixed at $10,000. Good credit ratings are hard earned and the loss often of significant consequence. As Mr Taylor pointed out, his "default" could show up on his credit report for five years.

Damages for humiliation, loss of dignity and injury to feelings

[81] We turn now to s 88(1)(c), namely the assessment of damages for humiliation, loss of dignity and injury to feelings.

[82] The principles were recently reviewed in *Hammond v Credit Union Baywide* [2015] NZHRRT 6 (2 March 2015) at [170] and will not be repeated here. It is sufficient to note that where, as here, it has been found for the purpose of s 66(1)(b)(iii) there was significant humiliation, significant loss of dignity and significant injury to the feelings of the plaintiff, it follows humiliation, loss of dignity and injury to feelings has been established for the purpose of s 88(1)(c) as this provision does not require that these forms of emotional harm be "significant".

[83] Bearing in mind the findings we have made on the question of emotional harm we believe an appropriate response is an award of damages towards the lower end of the middle band discussed in *Hammond v Credit Union Baywide* at [173]. An award of $15,000 is made for humiliation, loss of dignity and injury to feelings.

Training order

[84] In this decision we have drawn attention to the fact there seemed little awareness by those involved of the information privacy principles, let alone the importance of Principle 8 when a debt collection agency is instructed. We refer also to our earlier finding that prior to the debt being sent to Baycorp on 27 July 2012 for collection, Orcon was on clear notice Mr Taylor and Ms Tasker strongly disputed the debt on the grounds Orcon had told Ms Tasker no money was owing. Notwithstanding a policy that disputed debts not be sent to Baycorp, the debt alleged to be owing by Mr Taylor was sent for collection. No attempt was made to comply with Principle 8 with the result the information sent to Baycorp was not accurate, up to date, complete, relevant and not misleading. After Ms Tasker contacted Baycorp on 7 August 2012 Baycorp noted the debt as disputed and placed recovery action on hold. Orcon was asked for comment

and further instruction. Had Principle 8 been observed, none of the steps would have been required and Ms Tasker and Mr Taylor would have been spared considerable anxiety and stress. The nine month delay which then followed of itself speaks volumes of Orcon's failure to understand its responsibilities under Principle 8. "Reasonableness" in Principle 8 includes timeliness. It is remarkable that even when asked by its own debt collection agency to investigate the alleged debt (a request which simply mirrored the obligation under Principle 8), Orcon did nothing. Only after a reminder from Baycorp was the account looked at but even then there was no investigation of the fundamental claim Mr Taylor had been told all charges had been waived. Adjustments were made for commercial or "good will" reasons only. It was only after payment of $112.40 was made on 10 October 2013 that the debt was recalled and after an internal investigation the money was refunded once it was concluded Mr Taylor had been billed incorrectly.

[85] In view of the seeming complete failure by Orcon to evidence an understanding of its obligations under the information privacy principles, it is our view a training order is necessary. Hopefully this will assist Orcon to comply in the future with its obligations under the Privacy Act.

[86] We accordingly order that Orcon, in conjunction with the Privacy Commissioner and at its own expense, provide training to its staff in relation to Orcon's obligations under the Privacy Act.

FORMAL ORDERS

[87] For the foregoing reasons the decision of the Tribunal is that it is satisfied on the balance of probabilities that an action of Orcon was an interference with the privacy of Mr Taylor and:

> **[87.1]** A declaration is made under s 85(1)(a) of the Privacy Act 1993 that Orcon interfered with the privacy of Mr Taylor by using personal information about him without taking such steps as were, in the circumstances, reasonable to ensure that, having regard to the purpose for which the information was proposed to be used, the information was accurate, up to date, complete, relevant, and not misleading.
>
> **[87.2]** Damages of $10,000 are awarded against Orcon under ss 85(1)(c) and 88(1)(b) for the loss of a benefit Mr Taylor might reasonably have expected to obtain but for the interference, namely his good credit rating.
>
> **[87.3]** Damages of $15,000 are awarded against Orcon under ss 85(1)(c) and 88(1)(c) of the Privacy Act 1993 for humiliation, loss of dignity and injury to feelings.
>
> **[87.4]** An order is made under s 85(1)(d) and (e) of the Privacy Act 1993 that Orcon, in conjunction with the Privacy Commissioner and at its own expense, provide training to its staff in relation to Orcon's obligations under the Privacy Act 1993.

COSTS

[88] Costs are reserved.

[89] It is noted the submissions filed by Orcon on 1 May 2015 make reference to the fact that Mr Taylor has been represented in these proceedings by his mother, Ms SN Taylor, who is a lawyer. For Orcon it is suggested she will not be charging her son for his legal

expenses. As to this point, reference should be made to *Nakarawa v AFFCO New Zealand Ltd (Costs)* [2014] NZHRRT 15 (17 April 2014) at [10]:

> **[10]** As to the submission that Mr Nakarawa has incurred no costs, three points are made. First, Mr Benefield has confirmed that he represented Mr Nakarawa on a fee paying basis though the quantum was not fixed and if Mr Nakarawa was ultimately unsuccessful, the fee would be waived. Second, it is also necessary to bear in mind that s 92L does not require a party to the proceedings to have received or paid a bill of costs. It is sufficient that the party has been represented and there is an expectation that a fee will be payable on success. Third, s 105 of the Act requires the Tribunal to act according to the substantial merits of the case, without regard to technicalities, in a manner that is fair and reasonable and according to equity and good conscience. With these obligations in mind the Tribunal should not, by withholding costs, discourage an impecunious but ultimately successful plaintiff from being represented by a public spirited lawyer who has agreed to waive his fee if the plaintiff does not succeed.

[90] Unless the parties are able to reach agreement on the question of costs, the following procedure is to apply:

[90.1] Mr Taylor is to file his submissions within 14 days after the date of this decision. The submissions for Orcon are to be filed within a further 14 days with a right of reply to Mr Taylor within 7 days after that.

[90.2] The Tribunal will then determine the issue of costs on the basis of the written submissions without any further oral hearing.

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

.....	.....	.....
Mr RPG Haines QC	**Mr RK Musuku**	**Hon KL Shirley**
Chairperson	**Member**	**Member**