IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2014] NZHRRT 58**

	Reference No. HRRT 019/2014
UNDER	**THE PRIVACY ACT 1993**
BETWEEN	**DIRECTOR OF HUMAN RIGHTS PROCEEDINGS**
	PLAINTIFF
AND	**KYLIE MARIE VALLI**
	FIRST DEFENDANT
AND	**HADLEIGH HUGHES (ALSO KNOWN AS HADLEIGH GASS-HUGHES)**
	SECOND DEFENDANT

AT INVERCARGILL

BEFORE:
Mr RPG Haines QC, Chairperson
Hon KL Shirley, Member
Ms M Sinclair, Member

REPRESENTATION:
Ms JV Emerson for Director of Human Rights Proceedings
No appearance by first and second defendants

DATE OF HEARING: **19 November 2014**

DATE OF DECISION: **15 December 2014**

DECISION OF TRIBUNAL

Introduction

[1] Kylie Marie Valli and her partner Hadleigh Hughes (also known as Hadleigh Gass-Hughes) manage a diary farm in the Invercargill district. At times they have traded as Marinui Heights but no legal entity of that name exists. In the period between February

2011 and October 2012 they employed the aggrieved individual to work on the farm as a dairy assistant. The name of the aggrieved individual is Aaron James Valli, the younger brother of Kylie Valli.

[2] It is alleged by Aaron Valli that shortly after commencing employment he began experiencing a number of difficulties arising from the failure by his sister and her partner to provide information. Specifically, despite a number of requests beginning in about March 2011 he was not provided with a copy of his Individual Employment Agreement (IEA) until on or about 12 October 2012 and despite requesting pay slips from about April 2011, he did not receive any record detailing his wages until about June 2012.

[3] On or about 16 October 2012 Mr Valli was told by Mr Hughes that he (Mr Valli) would be made redundant and on the morning of 31 October 2012 received a text message from a work colleague advising him not to come into work as he was no longer required.

[4] Through the Southland Community Law Centre Mr Valli on 5 November 2012 made a request to the defendants for access to personal information comprising:

[4.1] A complete copy of his wage and time records.

[4.2] A copy of his IEA.

[4.3] A complete copy of his personal and employment files.

[4.4] Written reasons why he was no longer employed.

[5] Neither Kylie Valli nor Mr Hughes responded to this request nor did they respond to further requests dated 30 November 2012, 24 January 2013, 8 March 2013 and 21 October 2013.

[6] In these proceedings brought by the Director of Human Rights Proceedings (the Director) under s 82(2) of the Privacy Act the issue is whether the defendants thereby interfered with the privacy of Mr Valli and if so the nature of the remedies to be granted.

Preliminary matters

[7] There are two preliminary matters. First, the question of the defendants' bankruptcy and second, their non-appearance at the hearing.

[8] These proceedings were filed on 20 June 2014. Unbeknown to the Director both Kylie Valli and Hadleigh Hughes were adjudicated bankrupt by the High Court at Invercargill on 3 April 2014. That fact, however, does not bring to a halt the present proceedings. See the analysis of ss 76, 231 and 232 of the Insolvency Act 2006 in *Fehling v Appleby (Bankruptcy)* [2014] NZHRRT 17 (1 May 2014) at [7] to [12].

[9] The defendants have taken no steps in these proceedings and did not appear at the hearing on 19 November 2014. They were, however, served with the proceedings by letter dated 23 June 2014 from the Secretary to the Tribunal. On 5 August 2014 they were sent a further letter advising that the time for filing a statement of reply had passed and that if they declined to cooperate or to be involved in the case, a determination would be given in their absence. The defendants also failed to respond to further letters from the Secretary dated 25 August 2014 and 9 September 2014 regarding the teleconference scheduled for 6 October 2014 and did not participate in that conference. Notice of the fixture date was given by letters dated 6 October 2014 and 30 October 2014. All correspondence from the Secretary to the defendants was sent to 286 Rimu

Road, Invercargill. None of the letters were returned to sender. When the Tribunal convened at the Invercargill District at 10am on 19 November 2014 the defendants were called but did not appear. According to the Invercargill Electoral Roll dated 20 August 2014 both defendants are listed as living at 286 Rimu Road, Invercargill and the oral evidence of Mr Aaron Valli was that down to the present time both defendants continue to live at this address. In these circumstances we are satisfied the defendants are well aware that these proceedings have been brought and have elected not to participate in them, as is their right. However, the consequence is that the case falls to be determined solely on the evidence called by the Director.

THE EVIDENCE

The evidence of Aaron Valli

[10] In February 2011, when 21 years of age, Aaron Valli was invited by his sister and her partner Hadleigh Hughes to work for them as a dairy assistant on a dairy farm they managed at 286 Rimu Road, Invercargill. His job was to feed and milk cows and to help out with general farm work. He lived in a house on the farm approximately 400 metres from where his sister and Mr Hughes lived with their family. He worked long hours, sometimes 15 hours a day with 14 days on before having two days off. He had previously been employed at freezing works run by Alliance Group Ltd.

[11] In his first week on this new job he asked his sister and Mr Hughes for an employment agreement. They told him that it was "with Federated Farmers" and that they were still waiting for it to be sent through. His request for an employment agreement was repeated a number of times over the next 18 months but none was provided until some time around 12 October 2012. It recorded that his employers were "Hadleigh Hughes and Kylie Valli, Marinui Heights" of 286 Rimu Road, RD1, Invercargill. The document incorrectly asserted that Mr Valli's first day of work was 1 June 2012. Aaron Valli did not sign the agreement as he was told just a few days later that he was being made redundant.

[12] At the start of his employment Mr Valli was paid every fortnight but the payments soon became less regular. They were sometimes every three weeks or every month and were direct-credited into his bank account. For a long time he was not given any pay slips and would only find out how much he had been paid when he checked his bank balance by telephone. He became worried that he was being underpaid.

[13] In about April 2011 he asked either his sister or Mr Hughes for pay slips so that he could work out whether he was being paid the correct amount. No pay slips were provided so he kept asking for them between April 2011 and June 2012.

[14] In mid-2012 Mr Valli logged onto the website of the Inland Revenue Department and found there was no record at all of his more than 12 months work on the farm. In particular, no transactions were recorded for the whole of the calendar year 2011. He spoke to both his sister and Mr Hughes but got nowhere. His mother called Malloch McClean Ltd, the accountants for Ms Valli and Mr Hughes, but with little effect.

[15] On contacting Inland Revenue to explain that their records were incomplete it became clear to Mr Valli that even though the payments received into his bank account were net after tax, that tax was not being paid to Inland Revenue. On the advice of Inland Revenue Mr Valli asked his sister and Mr Hughes to contact Inland Revenue so that his tax records could be updated. Mr Valli again asked for all information about his

salary, explaining that he needed the information for tax purposes. However, neither his sister nor Mr Hughes gave him any of the requested information.

[16] Finally, in about August 2012 Mr Valli began receiving pay slips. This was about the time the accountants (Malloch McClean Ltd) took over responsibility for paying him. He received in total approximately three pay slips dated 27 August 2012, 24 September 2012 and 8 October 2012 respectively. He accepts that there may have been one or two others which have been mislaid.

[17] On 16 October 2012 Mr Valli was told by Mr Hughes that he (Aaron Valli) was being made redundant because "Marinui Heights was going bankrupt". Mr Hughes added that Mr Valli would receive a letter confirming the reasons for his redundancy and giving him two weeks' notice. However Mr Valli was never given such letter. Instead he received a text message from a work colleague on the morning of 31 October 2012 telling him not to come in to work as he was no longer required.

[18] At this point Mr Valli's biggest concern was Inland Revenue. He feared that as his PAYE deductions had not been paid to Inland Revenue he now owed a large amount of tax. In addition he had not received holiday pay and was concerned about his Kiwisaver payments. In confirmation of this fear Mr Valli produced in evidence documentation from Inland Revenue showing that in the period 1 April 2011 to 31 March 2012 there is no record of him being employed or of tax payments being received. Furthermore, in the period 1 April 2012 to October 2012 only four instalments of PAYE are recorded as having been received in respect of his work on the farm.

[19] Within two weeks of being made redundant Mr Valli went to the Southland Community Law Centre for advice on his rights as an employee and in particular what he could do about the wages and holiday pay owed to him. It was at this point that through the Southland Community Law Centre Mr Valli sought access to his personal information held by his sister and Mr Hughes as his employer. The terms of those requests will be described shortly. None of the repeated requests were responded to in any way.

[20] Describing the impact of not being given access to his personal information Mr Valli highlighted the following:

> **[20.1]** By ignoring all his information requests his sister and Mr Hughes made him "feel like rubbish". He said they acted as if he did not exist notwithstanding all the work he had done on the farm. He still finds it frustrating that he did so much work for them yet by withholding the information he is made to feel as if he is lying about the 18 months he spent as their employee.
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> **[20.2]** He has almost nothing to evidence his employment on the farm. There are three pay slips plus his bank statement. The latter, however, records only 20 payments and of those 20 only four were coded "wages" and three "Marinui". The balance either have no description or are coded with words such as "buckchoy", "sanbo", "suxy suxy yo", "koc gems" or "gems". In relation to "koc gems" Mr Valli believes this is a reference to Kingdom of Camelot Gems, a computer game he was playing around that time. The balance of the entries were described to him by a bank teller in Winton as looking like drug deals. That is, the bank statement evidencing his employment by the defendants is at best a dubious looking document.

[20.3] After his employment ended Mr Valli applied for the unemployment benefit and suffered anxiety as he had nothing to show WINZ why his employment had ended.

[20.4] When he re-applied for a position at the freezing works (Alliance Group Limited) he was asked for evidence of the work he had been doing for the past 12 months. Mr Valli was embarrassed by the fact that he could not do so and had real difficulty explaining the almost complete absence of any record of what he had been doing in the preceding 18 months.

[20.5] His biggest concern, however, is that Inland Revenue has no record of his employment on the farm in the period 1 April 2011 to 31 March 2012 and for the period 1 April 2012 to October 2012 only four instalments of PAYE were received. From the outset he became highly stressed at the prospect of Inland Revenue asserting that he was not an employee at all, but a contractor responsible for his own tax payments. He developed a feeling that he had somehow done something wrong and that he had failed to keep what he described as "straight records". Indeed, in March 2014 he received a notice from Inland Revenue to the effect that he was late with his tax payment due on 7 February 2013. He was required to make immediate payment of $2,483.75 for the tax year ended 31 March 2012. He had many conversations with Inland Revenue to try to satisfy them that he was not a contractor and not responsible for paying his own tax. This they now appear to accept but he still has a gap in his IRD record for the period he worked for his sister and Mr Hughes.

[20.6] Mr Valli is also concerned about the ongoing consequences of having no documentation to evidence his employment on the farm. His ambition is to buy a house and to start a business. Because he will not be able to account for over 18 months of his recent employment history he worries this may affect his ability to obtain a loan.

[20.7] As he still does not have the personal information requested Mr Valli feels there has been no closure and that this matter still hangs over him. He has lost confidence and feels uncertain.

Southland Community Law Centre – the evidence of Ms Fa'amoe-Ioane

[21] Ms Fa'amoe is a case worker at the Southland Community Law Centre which provides free legal advice and information to the community. She gave evidence that in November 2012 Mr Valli sought legal information about his employment rights as he had just been made redundant, believed that his employment rights had been breached and required assistance. At his first meeting he stressed to Ms Fa'amoe that his main concern was that his sister and Mr Hughes had not paid his tax to Inland Revenue and that he would be liable for the tax as a result.

[22] By letter dated 5 November 2012 addressed to Ms Valli and Mr Hughes Ms Fa'amoe requested the following:

[22.1] A complete copy of Mr Valli's wages and time records.

[22.2] A copy of Mr Valli's Individual Employment Agreement.

[22.3] A complete copy of Mr Valli's personnel and employment file.

[22.4] Reasons in writing why Mr Valli was no longer employed.

Enclosed with the letter was a form signed by Mr Valli authorising provision of this information to the Southland Community Law Centre.

[23] As there was no response to this letter Ms Fa'amoe wrote again on 30 November 2012 requesting the same information. No response was received to that letter or to follow up letters sent on 24 January 2013 and 8 March 2013. None of these letters were returned to Southland Community Law Centre.

[24] On 11 March 2013 Ms Fa'amoe made a complaint to the Privacy Commissioner on behalf of Mr Valli.

[25] Initially the Privacy Commissioner determined that "Marinui Heights" had interfered with Mr Valli's privacy but on it being discovered there is no such legal entity the Southland Community Law Centre was asked to address a further request to the defendants seeking access to personal information held by them about Mr Valli. In these circumstances by letter dated 21 October 2013 Ms Fa'amoe wrote to the defendants again requesting the same information as before but omitting any reference to "Marinui Heights". After receiving no response a further complaint was made to the Privacy Commissioner and the present proceedings eventually followed.

[26] In the period between 30 November 2012 and the end of 2013 Ms Fa'amoe met with Mr Valli on ten occasions. She described him as upset, hurt and angry that there was no response from his sister and Mr Hughes to the letters and no acknowledgement that he had worked for them.

[27] To her he appeared animated, stressed and worried about the consequences of not having proper evidence of his previous employment and the circumstances in which it had ended. She observed that he was clearly upset and concerned that he would have difficulty convincing Inland Revenue that he had been an employee, not a contractor and that this in turn could impact on his goal of purchasing a house. He thought a bank would not look at lending him money without proper evidence of his work history. He presented as a person normally quite laid back but when he started talking about his employment concerns he would get worked up and start to stutter. He would also become teary eyed and on those occasions when his mother accompanied him to the interview, his mother had to complete some of his sentences. He did not think that his own sister would treat him as he had been treated.

THE LEGAL ISSUES

[28] Information Privacy Principle 6 establishes an entitlement to personal information. Alone among the information privacy principles that entitlement is enforceable in a court of law. See s 11(1) of the Privacy Act 1993. Principle 6 provides:

> Principle 6
>
> *Access to personal information*
>
> (1) Where an agency holds personal information in such a way that it can readily be retrieved, the individual concerned shall be entitled—
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> (a) to obtain from the agency confirmation of whether or not the agency holds such personal information; and
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> (b) to have access to that information.
>
> (2) Where, in accordance with subclause (1)(b), an individual is given access to personal information, the individual shall be advised that, under principle 7, the individual may request the correction of that information.
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> (3) The application of this principle is subject to the provisions of Parts 4 and 5.

Agency

[29] As the employers of Mr Valli, Kylie Valli and Mr Hughes were "an agency" as defined in s 2(1) of the Privacy Act and all the requests for access to personal information were addressed by Southland Community Law Centre to them in their own names. We are satisfied that all those requests were received by the defendants and that in each instance the requests were not responded to.

Personal information

[30] We are further satisfied that information relating to a person's personal finances is personal information. See *Sievwrights v Apostolakis* HC Wellington CIV2005-485-527, 17 December 2007 (Ronald Young J, Dr A Trlin and G Kerr) at [12] applied by the Tribunal in *Director of Human Rights Proceedings v Hamilton* [2012] NZHRRT 24 at [57]. Similarly a person's employment record, timesheets, pay slips, employment agreement and the information on their personal employment file is undoubtedly personal information.

Key obligations of agency

[31] As recently pointed out by the Tribunal in *Armfield v Naughton* [2014] NZHRRT 48 at [70], an agency which receives a request under Information Privacy Principle 6 for access to personal information has three key obligations:

> **[31.1]** First, to make a **decision whether the request is to be granted**. This decision must be made "as soon as reasonably practicable" and in any case not later than 20 working days after the day on which the request is received by that agency. See s 40(1) of the Privacy Act 1993:
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> > **40 Decisions on requests**
> >
> > (1) Subject to this Act, the agency to which an information privacy request is made or transferred in accordance with this Act shall, as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request is received by that agency,—
> > (a) decide whether the request is to be granted and, if it is to be granted, in what manner and, subject to sections 35 and 36, for what charge (if any); and
> > (b) give or post to the individual who made the request notice of the decision on the request.
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> Failure to comply is deemed to be a refusal to make available the information to which the request relates (s 66(3)). The governing test is "as soon as reasonably practicable". The 20 working day period is the upper limit to what can be said to be "as soon as reasonably practicable". See further *Koso v Chief Executive, Ministry of Business, Innovation and Employment* [2014] NZHRRT 39 at [1] to [6] and [62].
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> **[31.2]** Second, **to make the information available** without "undue delay". This obligation is contained in s 66(4) of the Act. Where undue delay occurs there is similarly a deemed refusal to make the information available (s 66(4)).
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> **[31.3]** Third, where the request is refused, **to give reasons for the refusal**.

[32] As no response was made by the defendants to the various access requests it follows that they breached the s 40 duty to make a decision whether the request was to be granted "as soon as reasonably practicable, and in any case not later than 20 working days after the day on which the request was received".

[33] This was an interference with the privacy of Mr Valli as defined in s 66(2)(a)(i) by reason of s 66(3) and we are satisfied there was no proper basis for that deemed refusal.

REMEDIES

[34] 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**
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> (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.

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

> **88 Damages**
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> (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.

[36] The remedies sought by the Director are:

[36.1] A declaration that Ms Valli and Mr Hughes have interfered with the privacy of Mr Valli.

[36.2] Damages for loss of benefit.

[36.3] Damages for humiliation, loss of dignity and injury to feelings.

[36.4] An order directing that Ms Valli and Mr Hughes make the personal information available to Mr Valli.

[36.5] Costs.

[37] It is no defence that the interference with privacy was unintentional or without negligence. The Tribunal must nevertheless take the conduct of Ms Valli and Mr Hughes into account in deciding what, if any, remedy to grant. See s 85(4) of the Act.

[38] In this regard we see no mitigating circumstances. Almost from the outset and over the next 18 months both Ms Valli and Mr Hughes evinced a clear intention to stonewall Mr Valli's repeated requests for an IEA, pay slips and tax information. When Southland Community Law Centre requested access to Mr Valli's personal information, the same studied indifference was shown, an indifference which followed through to the failure by Ms Valli and Mr Hughes to participate in the present proceedings. Ms Kylie Valli and Mr Hughes simply do not care about Ms Valli's younger brother and the situation in which they have placed him. On the evidence we have heard it matters not to them that he is a member of their family.

Declaration

[39] 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].

[40] On the facts we see nothing that could possibly justify the withholding from Mr Valli a formal declaration that Kylie Valli and Hadleigh Hughes interfered with his privacy and such declaration is accordingly made.

Loss of benefit

[41] 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.

[42] In seeking an award of damages for loss of benefit the Director relies on the decision of the Tribunal in *Director of Human Rights Proceedings v Hamilton* [2012] NZHRRT 24 and submits:

[42.1] The loss of benefit need not be of a monetary kind.

[42.2] The failure by Kylie Valli and Mr Hughes to give access to the requested personal information meant Mr Valli lost the benefit of having his tax liability ascertained simply and efficiently by the production of his wage and time records. He lost the benefit of peace of mind in relation to his obligations to Inland Revenue.

[43] The following passages from *Director of Human Rights Proceedings v Hamilton* are relevant:

> **[83]** As s 88(1)(b) makes explicit, the loss of benefit need not be of a monetary kind but the benefit must be one which the aggrieved individual might reasonably have expected to obtain but for the interference.
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> **[84]** The submission for the Director was that the refusal by Mr Hamilton to release the personal information meant that Ms Powell lost the benefit of providing information and returns to the Inland Revenue Department in a timely fashion. The situation is said to be analogous to those

> circumstances where the personal information was either required for or could have been deployed in court or tribunal proceedings as in *Proceedings Commissioner v Health Waikato Ltd* (2000) 6 HRNZ 274, *Winter v Jans* and *MacMillan v Department of Corrections* (Decision No. 08/04, HRRT40/03, 16 April 2004). The submissions for the Director emphasised the evidence of Ms Powell to the effect that she has for some time sought peace of mind in relation to her obligations to Inland Revenue, a benefit she has clearly lost. This loss of peace of mind is a provable damage under this heading. See *Winter v Jans* at [45] and [48].
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> **[85]** While it may be a matter of phrasing, we are of the view that an alternative formulation of the benefit lost is that were it not for Mr Hamilton's sustained and obdurate refusal to provide the requested personal information, Ms Powell would have been able to obtain advice and assistance from a competent accountant able to provide effective representation. The benefit of timely and competent accounting advice which Ms Powell has lost is underlined by the letter from Inland Revenue dated 7 April 2010 set out in the first few paragraphs of this decision threatening prosecution. But however framed we are satisfied a loss of benefit is established by the evidence.

[44] In our view the Director is correct in submitting that Mr Valli lost a benefit in the terms framed.

[45] 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]. No sufficiently comparable awards have been made since then (1 November 2012). In both *Director of Human Rights Proceedings v Grupen* [2010] NZHRRT 22 and in *Director of Human Rights Proceedings v Hamilton* the awards were $5,000. In the present case, the circumstances of Mr Valli being similar we are of the view that an award under s 88(1)(b) in the present case is also to be fixed at $5,000.

Injury to feelings

[46] We turn now to the question whether damages should be awarded under s 88(1)(c). The Director submits that in the circumstances it would be appropriate for the Tribunal to make an award for "injury to feelings" rather than for "humiliation" or "loss of dignity". We are content to proceed on that basis.

[47] As observed by the Tribunal in previous cases, the very nature of the heads of damages in s 88(1)(c) means there is a substantial subjective element to their assessment. Not only are the circumstances of humiliation, loss of dignity and injury to feelings fact specific, they also turn on the personality of the aggrieved individual.

[48] As to what is included in "injury to the feelings", it was held in *Winter v Jans* HC Hamilton CIV-2003-419-854, 6 April 2004 at [36] that "injury to the feelings" can include conditions such as anxiety and stress. In *Director of Proceedings v O'Neil* [2001] NZAR 59 at [29] injury to feelings was described in the following terms:

> [29] The feelings of human beings are not intangible things. They are real and felt, but often not identified until the person stands back and looks inwards. They can encompass pleasant feelings (such as contentment, happiness, peacefulness and tranquillity) or be unpleasant (such as fear, anger and anxiety). However a feeling can be described, it is clear that some feelings such as fear, grief, sense of loss, anxiety, anger, despair, alarm and so on can be categorised as injured feelings. They are feelings of a negative kind arising out of some outward event. To that extent they are injured feelings.

[49] Having seen and heard Mr Valli give evidence we are satisfied there has been clear injury to his feelings and that this has been caused by the repeated failure by the defendants to provide him with his employment and tax records. Our assessment is supported by the evidence given by Ms Fa'amoe who described him as often being upset, hurt and angry and at times so animated and stressed that he would begin to stutter and become teary eyed.

[50] Mr Valli's abiding dread of an investigation by Inland Revenue became an actuality when the late payment notice materialised at the end of March 2014. As he had feared all along, the nearly complete absence of his employment records left him vulnerable. The fact that he has been placed in this situation by his own sister and her partner exacerbated the injury to feelings. There is a direct causal connection between the injury to feelings and the failure to provide the employment records.

[51] We also take into account the fact that at the relatively young age of (now) 25 years each year of Mr Valli's employment history will count when seeking finance for the purchase of a home and indeed when seeking other employment opportunities. At this stage in his life the large gap in his tax, accounting and employment records could have long term effects. Mr Valli is well aware of this dynamic and it weighs heavily on him.

[52] As to quantum, the Director submits the harm in this case is broadly comparable to that suffered by the aggrieved person in *Director of Human Rights Proceedings v INS Restorations Ltd* [2012] NZHRRT 18. That too was a case under Principle 6 and $20,000 was awarded for injury to feelings. However, there was a substantial element of deliberate fraud in that case, a feature absent from the present case. The Director does have a point, however, that the decision was given two years ago and may have been even then at the lower end of the scale.

[53] We have found the circumstances of this case to be closer to the following cases, all of which involved breaches of Principle 6:

> **[53.1]** *Director of Human Rights Proceedings v Hamilton*. The award was $15,000 for emotional harm and $5,000 for loss of a benefit.
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> **[53.2]** *Lochead-MacMillan v AMI Insurance Ltd* [2012] NZHRRT 5. The award was $10,000.
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> **[53.3]** *Fehling v South Westland Area School* [2012] NZHRRT 15. The award was also $10,000.

[54] As *Director of Human Rights Proceedings v Hamilton* is closest on the facts we have decided that the appropriate award under s 88(1)(c) in the present case is $15,000.

An order to make the personal information available

[55] For the reasons earlier explained, it is important that the information first requested by Southland Community Law Centre on 5 November 2012 be provided and an order is so made under s 85(1)(d) and (e) of the Act.

[56] It is noted that by virtue of ss 7(1)(a) and 64(1)(e) of the Insolvency Act 2006 the property of Kylie Valli and Mr Hadleigh Hughes has vested in the Official Assignee. Presumably if any of the documents covered by this order are held by the Official Assignee (see for example s 142 of the Insolvency Act), they will be made available to Mr Valli.

Costs

[57] The Director seeks costs from the defendants at the rate of $3,750 per sitting day together with disbursements of $1,420.50 comprising counsel's travel and accommodation costs of $903 and a licensed investigator's fee of $517.50. That fee was incurred when the Director caused enquiries to be made to confirm that the

defendants still resided at their last known address and had therefore been properly served. It was necessary to ensure that they were aware of the proceedings.

[58] As the hearing lasted half a day we award $1,875 in that regard. The disbursements sought were properly incurred and we award the full amount sought, namely $1,420.50. In the result the total award of costs is $3,295.50.

FORMAL ORDERS

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

> **[59.1]** A declaration is made under s 85(1)(a) of the Privacy Act 1983 that Kylie Marie Valli and Hadleigh Hughes interfered with the privacy of Aaron James Valli by failing to respond to his personal information requests dated 5 November 2012, 30 November 2012, 24 January 2013, 8 March 2013 and 29 October 2013.
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> **[59.2]** Damages of $5,000 are awarded against Kylie Marie Valli and Hadleigh Hughes under ss 85(1)(c) and 88(1)(b) of the Privacy Act 1993 for loss of a benefit.
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> **[59.3]** Damages of $15,000 are awarded against Kylie Marie Valli and Hadleigh Hughes under ss 85(1)(c) and 88(1)(c) of the Privacy Act 1993 for injury to feelings.
>
> **[59.4]** An order is made under s 85(1)(c) and (d) that Kylie Marie Valli and Hadleigh Hughes are to make available to Mr Valli all of the personal information to which he has sought access in the requests dated 5 November 2012, 30 November 2012, 24 January 2013, 8 March 2013 and 29 October 2013 being:
>
> > **[59.4.1]** A complete copy of Mr Valli's wages and time records.
> >
> > **[59.4.2]** A copy of Mr Valli's Individual Employment Agreement.
> >
> > **[59.4.3]** A complete copy of Mr Valli's personnel and employment file.
> >
> > **[59.4.4]** Reasons in writing why Mr Valli is no longer employed by them.
>
> **[59.5]** Costs of $3,295.50 are awarded against Kylie Marie Valli and Hadleigh Hughes in favour of the Director of Human Rights Proceedings.

.....	.....	.....
Mr RPG Haines QC	**Hon KL Shirley**	**Ms M Sinclair**
Chairperson	**Member**	**Member**