

Reference No. HRRT006/2018

UNDER THE PRIVACY ACT 1993

BETWEEN C

PLAINTIFF

AND ACCIDENT COMPENSATION CORPORATION

DEFENDANT

AT WELLINGTON

BEFORE:

Ms MA Roche, Co-Chairperson

Ms DL Hart, Member

Hon KL Shirley, Member

REPRESENTATION:

Mr C in person

Ms S Shaw and Mr S Kinsler for defendant

DATE OF HEARING: 9 April 2019

DATE OF LAST SUBMISSIONS: 19 July and 9 August 2019 (defendant)
1 August 2019 (plaintiff)

DATE OF DECISION: 3 February 2020

REDACTED DECISION OF TRIBUNAL¹

[1] Mr C is a longstanding client of ACC. In 2014, ACC provided WorkAon (Aon) with medical information about him. Mr C had signed an authority in respect of this but considers that the information provided to Aon by ACC exceeded the terms of this authority. ACC says Mr C authorised the disclosure. It also says that the disclosure to Aon was one of the purposes for which the information was collected. It is necessary for the Tribunal to determine whether ACC's actions breached the Health Information Privacy Code 1994.

¹ [This decision is to be cited as *C v Accident Compensation Corporation* [2020] NZHRRT 3.]

Background

[2] In 1994 Mr C was in a severe car accident which resulted in serious injuries including a head injury and multiple fractures, including an L1 vertebral compression fracture. His treatment for those injuries and his rehabilitation was covered by ACC and, over the years, ACC accumulated a large file about Mr C which included a number of reports about him that contained information of a sensitive nature.

[3] On 16 July 2014, Mr C injured his back while ten pin bowling on a work outing. At the time he was employed by [redacted]. His General Practitioner diagnosed him with a lumbar and thoracic sprain and submitted a claim form to ACC.

[4] Because the back injury had occurred at a work outing, it was identified as a work claim. [The employer] was an accredited employer pursuant to ss 181 to 189 of the Accident Compensation Act 2001. Aon was contracted by [the employer] to provide accident and injury cover for its employees. Accordingly, Aon was the insurer with respect to Mr C's back injury.

[5] In August 2014, Mr C lodged another claim with ACC concerning a left foot blister that had arisen due to walking. This was a non-work claim and was covered by ACC.

[6] On 18 September 2014, ACC requested Dr A, a specialist occupational physician, to carry out a medical case review (MCR) concerning the injuries suffered by Mr C in July 2014 (lumbar sprain and thoracic sprain). Dr A was asked to advise whether Mr C's current symptoms were caused by the accident on 16 July 2014, and to comment on the relationship between Mr C's current condition and fractures and sprains he had sustained previously. Dr A was also asked for his recommendations as to further treatment, investigations, pharmaceuticals and rehabilitation options, whether Mr C was fit for his employment, and if not, whether this was due to the July 2014 injury.

[7] ACC provided a selection of documents to Dr A from Mr C's file relating to his 1994 injuries and subsequent treatment ("the referral documents"). In the referral letter from ACC the referral documents were described as, "Prior claim information due to complexity and relevance of ongoing impairment allowance". The referral documents included [redacted].

[8] A number of the reports included in the referral documents contained details concerning Mr C's [redacted] health and family matters, in addition to other sensitive information.

[9] On 19 September 2014, Aon requested a copy of the referral documents sent to Dr A by ACC and provided ACC with a copy of a "consent for the collection and release of information" form signed by Mr C on 26 July 2014. The consent form signed by Mr C included the following statement:

I give my consent for information about me to be collected, used and disclosed to:

- Assess my entitlement to compensation, rehabilitation and medical treatment

I understand that:

- This consent applies to all aspects of my claim, and includes external agencies and service providers such as general practitioners, specialists, my employer(s) or ACC from whom WorkAon asks for information. This may include obtaining information from ACC about other injuries that may be relevant to the claim.

...

- The information collected will only be used or disclosed in relation to the purposes of the Accident Compensation Act 2001

[10] On 23 September 2014, Mr C's ACC case manager at the time sent Aon the referral documents. Mr C became aware of this disclosure some time later when his case manager at Aon told him that she had copies of his psychologist's notes.

[11] On 10 October 2014, Dr A reported to ACC. The report was lengthy (some 20 pages) and set out biographical information about Mr C in detail, including his work history and medical history and included extracts from various psychiatrist and psychologist reports which contained sensitive information about Mr C's [redacted] health, [redacted], family issues, and other matters that were private to Mr C. The report concluded that Mr C's foot problems (the blisters) were not related to the events of 16 July 2014 and that his back injury was essentially resolved and did not provide him with any functional limitations that would affect his capacity to work as a [redacted]. Dr A also commented that the July 2014 lumber injury "exacerbated the soft tissue in the region of the L1 vertebra region previously compromised by a compression fracture".

[12] On 16 October 2014, Aon requested a copy of Dr A's report from ACC. By now, Mr C had a different case manager at ACC, Jarod Stevens. Mr Stevens advised Aon that he would need to discuss their request for the report with Mr C and would only provide a copy after Mr C had been given the opportunity to make redactions.

[13] Subsequently, Mr C and Mr Stevens spent an hour going through Dr A's report and produced a redacted version of it. The redactions requested by Mr C removed all references to [redacted], the details of his family issues, and references to a number of other matters that were sensitive.

[14] On 21 November 2014, Mr Stevens telephoned Aon. His file note about the call records that he advised that Mr C's file was ready to "go over" to Aon with a redacted version of the MCR. He was advised that Aon had already obtained an unredacted version of the MCR directly from Dr A. The file note records that Mr Stevens advised the person he spoke to at Aon that Mr C was very concerned about the storage and disclosure of information between Aon and his employer and that Aon assured Mr Stevens that this would be treated with great respect.

[15] Sometime later Aon provided [the employer] with the unredacted copy of Dr A's report. After becoming aware that [his employer] had this information about him, Mr C became anxious about who at [his employment] had accessed his personal information, including information about his former mental health issues and other sensitive matters. He was concerned by instances he knew of other employees accessing personal information without authority and lacked confidence that [the employer] would protect his privacy. Around this time, he began to have problems at work whereas previously he had been a successful employee.

[16] In October 2015, Mr C lodged a complaint with ACC Customer Support Services about the breach of his privacy.

[17] On 2 November 2015, Mr C met with the ACC Centre Manager and Rebecca Reid, the Team Manager, to discuss the release of the referral documents to Aon by ACC. The file note for that meeting recorded that:

[The plaintiff] was unhappy however that sensitive information was released to Aon (the MCR referral documents). Acknowledged that this happened in [September] 2014 and if we were in the same position now, we would not do the same thing again – rather we would talk to him to ensure he understood what information was being released and give him the

opportunity to discuss redactions. We reiterated that the information ACC released went to Aon only, who was acting in the same capacity as ACC in this situation.

[18] The file note recorded that compensation was discussed. No compensation was paid by ACC to Mr C but on 17 November 2015, ACC sent a letter of apology to him, apologising for poor communication with him regarding the request for his information by Aon.

[19] On 16 November 2015, Ms Reid advised ACC's Privacy Officer in an email that a retrospective review carried out by ACC Clinical Services (as a result of Mr C's complaint to the Office of the Privacy Commissioner) had concluded that the referral documents were properly released as:

...the information was required to determine whether the Accredited Employer Claim was the cause of ongoing incapacity, and the information was in relation to the ongoing management and rehabilitation needs of Mr C.

[20] Mr C experienced problems with his employment at [redacted]. Whereas in June 2014 he had set a new weekly sales record for [his employer], by 1 February 2016, he had received a final written warning regarding regulatory compliance breaches during a customer enquiry call. In Mr C's view, his transgression amounted to omitting a single word from a set script. He gave evidence that a [redacted] manager asked why he had not told [his employer] about his previous medical history, leading him to believe that information about his mental health issues and other matters were known within the [employer]. Anticipating that his employment would be terminated, Mr C resigned [redacted] and thereafter experienced a period of considerable financial and emotional hardship.

[21] Following an investigation into his complaint, the Office of the Privacy Commissioner (OPC) issued a Certificate of Investigation advising the Commissioner's opinion was that as Mr C had signed a consent form to allow Aon to collect the information, disclosure by ACC to Aon was allowed under Rule 11(1)(b)(i) and 11(1)(c) of the Health Information Privacy Code 1994. The Certificate recorded the Commissioner's opinion that there had been no interference with Mr C's privacy.

[22] In February 2018, Mr C filed proceedings under the Privacy Act in the Tribunal against ACC, Aon, [his employer], and Dr A. Because the OPC had only notified ACC of Mr C's complaint, Aon, [the employer], and Dr A were removed as defendants at a procedural telephone conference convened on 31 May 2018. Mr C has since attempted to have the Privacy Commissioner investigate his complaint against Aon, [the employer] and Dr A, but has been unsuccessful.

The legal framework

[23] Rule 11 of the Health Information Privacy Code 1994 places limits on the disclosure of health information. It provides:

- (1) A health agency that holds personal information shall not disclose the information to a person or body or agency unless the agency believes, on reasonable grounds, that-
 - ...
 - (b) the disclosure is authorised by:
 - (i) the individual concerned;
 - ...
 - (c) the disclosure of the information is one of the purposes in connection with which the information was obtained.
 - ...

[24] Section 66 of the Privacy Act 1993 provides:

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;
... 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.

The issues

[25] On the facts of the case, the issues to be determined are as follows:

[25.1] Does the Tribunal have jurisdiction to consider whether the disclosure of the referral documents to Aon was in breach of Rule 11?

[25.2] Did ACC release an unredacted copy of Dr A's report to Aon?

[25.3] Did ACC believe on reasonable grounds that the disclosure of Mr C's health information to Aon was authorised by Mr C?

[25.4] Did ACC believe on reasonable grounds that the disclosure of the information was one of the purposes in connection with which the information was obtained?

Burden of proof

[26] ACC accepts that it disclosed Mr C's health information to Aon when it provided them with the referral documents. Its position is that this disclosure was authorised by Mr C (Rule 11(1)(b)) or, alternatively, that the disclosure was one of the purposes in connection with which the information was obtained (Rule 11(1)(c)). ACC bears the onus of proof to establish that either of the exceptions it seeks to rely on apply. Section 87 of the Privacy Act 1993 provides:

87 Proof of exceptions

Where, by any provision of the information privacy principles or of this Act or of a code of practice issued under section 46 or section 63, conduct is excepted from conduct that is an interference with the privacy of an individual, the onus of proving the exception in any proceedings under this Part lies upon the defendant.

Jurisdiction to consider disclosure of the referral documents to Aon

[27] In Mr C's statement of claim he alleged that ACC had sent his near full medical file to Aon that included sensitive information from the past, including psychiatric and psychology notes. In its statement of reply, ACC admitted sending Aon the referral documents that had been prepared for Dr A prior to his medical case review.

[28] The Certificate of Investigation issued at the conclusion of the OPC’s investigation stated that the “matters investigated” were “whether ACC had inappropriately disclosed a medical case review (‘MCR’) report authored by Dr A to Work Aon”.

[29] In opening submissions, counsel for ACC, Ms Shaw, challenged the jurisdiction of the Tribunal to consider whether the disclosure of the referral documents to Aon was in breach of Rule 11 of the Code on the basis that the Tribunal has jurisdiction only to consider the alleged breach of privacy considered by the OPC. Ms Shaw submitted that as the Certificate of Investigation recorded only that the OPC had considered the alleged disclosure of Dr A’s report, it followed that there was no jurisdiction to consider the release of the referral documents.

[30] Part 8 of the Privacy Act sets out the process for the investigation and resolution of complaints by the Commissioner. A thorough analysis of the purpose of these processes was conducted in *Toia v Corrections (Jurisdiction)* [2018] NZHRRT 46. Sections 82 and 83 set out the circumstances in which proceedings under the Privacy Act can be brought in the Tribunal. Their effect is that proceedings before the Tribunal are permitted only where an investigation by the Commissioner has been conducted under Part 8, or where conciliation (under s 74) has not resulted in settlement: *Director of Human Rights Proceedings [NKR] v Accident Compensation Corporation* [2014] NZHRRT 1, (2014) 10 HRNZ 279 at [19]. Sections 82 and 83 have been described as a deliberate legislative filtering mechanism that applies before cases can be brought to the Tribunal: *Gray v Ministry for Children (Strike-Out Application)* [2018] NZHRRT 13 at [23] to [24].

[31] In assessing whether the Tribunal has jurisdiction with respect to a matter, the critical question is “whether the Commissioner has in fact conducted an investigation into the matters that are to be the subject of a hearing in the Tribunal”: *Mitchell v Privacy Commissioner* [2017] NZHC 569, [2017] NZAR 1706 at [36].

[32] In *NKR*, the Tribunal noted that it was not unusual for challenges to the Tribunal’s jurisdiction to be made on the basis that the alleged interference with the privacy of an individual was not the subject of an investigation by the Privacy Commissioner. This necessitates an enquiry into what matters were investigated. The Tribunal noted that the Certificate of Investigation, particularising that the subject of the investigation, is issued by the Commissioner for the assistance of the Tribunal. However, the Certificate does not have any statutory basis and in that respect is informal and capable of challenge: *NKR* at [33].

[33] In *NKR*, the Tribunal noted at [37] that a narrow and technical construction of certificates of investigation would be inconsistent with the purposive interpretation of the Privacy Act mandated by s 5 of the Interpretation Act 1999 and would be consistent with s 105 of the Human Rights Act 1993 (incorporated into the Privacy Act by s 89 of that Act) which provides:

105 Substantial merits

- (1) The Tribunal must act according to the substantial merits of the case, without regard to technicalities.
- (2) In exercising its powers and functions, the Tribunal must act—
 - (a) in accordance with the principles of natural justice; and
 - (b) in a manner that is fair and reasonable; and
 - (c) according to equity and good conscience.

[34] In *Geary v Accident Compensation Corporation* [2013] NZHRRT 34 the Tribunal commented at [63] that:

It cannot have been intended that a plaintiff show that each particular document has been the subject of a specific investigation by the Privacy Commissioner. Indeed, at a practical level it would in most cases not be possible for a plaintiff to establish such. ... We accordingly reject the submission, implicit in the argument advanced by ACC, that Mr Geary must establish document by document, that each was the subject of an investigation by the Privacy Commissioner. ...

[35] The Tribunal noted at [64] that a pedantic interpretation to jurisdiction would raise the prospect of multiple claims in the Tribunal arising out of essentially the same facts.

[36] Mr C's claim is that ACC sent an extensive medical file to Aon which included sensitive information from his past. ACC has denied providing Dr A's report to Aon but has agreed that it provided Aon with the referral documents upon which the report was based. The evidence of Rebecca Reid was that ACC considered and responded to enquiries by the OPC regarding disclosure of the referral documents. The report was based on the referral documents and quoted them extensively. Given the similarity between the referral documents and the MCR we find that the Tribunal has jurisdiction to consider whether the release of both the referral documents and the report were in breach of Rule 11.

Did ACC release an unredacted copy of Dr A's report to Aon?

[37] There was some confusion as to whether ACC had released the unredacted report of Dr A to Aon. An email from Rebecca Reid to an ACC Privacy Officer sent on 12 May 2016 advised that the unredacted report had been provided to Aon prior to the change of case manager. Ms Reid emailed the Privacy Officer again four days later, advising that her previous advice had been incorrect, and that ACC had sent the referral documents to Aon but did not send the unredacted MCR report at that time. In the email she stated that the unredacted report had been sent to Aon a year later as part of a reimbursement process.

[38] Ms Reid gave evidence at the hearing that when re-checking the file for the purpose of preparing her brief, she discovered that the advice she had given the Privacy Officer was incorrect and that ACC received a copy of the claim file from Aon containing the unredacted report on 16 November 2015 rather than releasing it to Aon. The contacts entry on ACC records, which was provided at page 489 of the common bundle indeed records that the copy claim file was provided by Aon and was recorded as "incoming".

[39] We accept that Ms Reid was in error when she advised that the unredacted report had been released. We accept that the contacts entry record provided in the common bundle is accurate. It follows that ACC did not release the unredacted report to Aon.

Did ACC believe on reasonable grounds that the disclosure of Mr C's health information to Aon was authorised by Mr C?

[40] The position of ACC is that their release of the referral documents to Aon was permitted under Rule 11(1)(b)(i) because Mr C had signed a consent form, in which he gave consent for information about him to be collected, used and disclosed to assess his

entitlement to compensation, rehabilitation and medical treatment. The consent form that he signed stated “this may include obtaining information from ACC about *other injuries* that may be relevant to the claim” (emphasis added). The position of ACC is that the consent expressly provides for Aon to obtain health information from ACC that may be relevant to the claim Aon was managing. The disclosure of the referral documents was consistent with that consent and therefore was permitted under Rule 11(1)(b)(i).

[41] The consent relied on by ACC is a three-part form. The first part has a number of fields where details such as Mr C’s date of birth and address have been filled in. The last field on this part of the form states “Body Site/Injury”. Next to this the word “Back” has been filled in. Mr C’s evidence was that he understood from this that he had only authorised the release of information concerning his back. It will be recalled that one of his 1994 injuries was a compression fracture of his L1 vertebrae which is in the lumbar region. Instead, an extensive file, including private information about his [redacted] health, family issues, and other sensitive matters was provided to Aon.

[42] Mr C relies on the actions of his case manager, Mr Stevens, who upon receiving the request for a copy of Dr A’s report from Aon, took the view that it was necessary for Mr C to be consulted about the redaction of references to sensitive information about him before the report was provided. Mr C also relies on the acknowledgement he received at his meeting on 2 November 2015, with the Centre Manager and Rebecca Reid, that the referral documents contained sensitive information and that, while these were released to Aon in September 2014, ACC would not do the same thing again, but rather would talk to Mr C to ensure he understood what information was being released and to give him the opportunity to discuss redactions.

[43] While it is accepted that Mr C understood that he had only consented to documents being released that related to his back, it is ACC’s belief that is relevant. The exception relied on by ACC to Rule 11 (Rule 11(1)(b)(i)) requires ACC to establish that at the time of disclosure, it believed on reasonable grounds that the disclosure was authorised by Mr C. There is both a subjective component (the belief) and an objective component (the reasonable grounds). ACC must establish that both elements existed as at the date of disclosure: *Geary* at [201] to [203].

[44] Turning first to the subjective requirement, the decision to release the referral documents to Aon, containing sensitive information concerning Mr C’s mental health, in addition to other matters unrelated to his back, was made by his former case manager upon her receipt of the request from Aon and the consent form, signed by Mr C several months earlier, that accompanied it.

[45] It is accepted for the purpose of this decision, that the case manager, on receiving the signed consent form, believed that Mr C had authorised the disclosure of the referral documents to Aon. The case manager did not give evidence, but it seems unlikely she would have provided the referral documents had she not believed that doing so had been authorised by Mr C.

[46] We turn now to the objective component (the reasonable grounds). As noted earlier, Mr C had a long history with ACC. His 1994 accident had ended his hopes for a professional sporting career and left him with significant injuries. His evidence was that he presented himself as a fit young man and that most people would not know what he had been through. He was extremely sensitive about the disclosure of his health

information, particularly that relating to his mental health issues, and particularly to his employer. Mr Stevens advised Aon of the extreme sensitivity Mr C had about the storage and disclosure of his health information.

[47] Although in possession of the same consent relied upon by the previous case manager, his next case manager, Mr Stevens, believed that Mr C was entitled to review and to redact sensitive personal information from Dr A's report before it was sent to Aon. In a meeting, Rebecca Reid and the Centre Manager acknowledged to Mr C that they would not have made the same decision as the former case manager to release the referral documents, and rather they would talk to him to ensure he understood what information was being released and would give him the opportunity to discuss redactions. This statement and the actions of Mr Stevens indicate a view, that we find objectively reasonable, that Mr C had not authorised the disclosure of sensitive information to Aon, not obviously related to his back injury.

[48] The tranche of health information released in the referral documents included psychologists' reports, psychiatric history and assessments, records of treatment for [redacted] and family issues. A number of these matters were, on their face, irrelevant to Mr C's July 2014 lumbar strain claim. This sensitive information, although tangentially relevant to Mr C's work capacity, goes outside what Mr C could be reasonably understood to understand he had authorised as information about "other injuries" in the context of a consent form signed in relation to a minor back injury.

[49] For the reasons which follow we find that there was no objectively reasonable basis for the previous case manager to believe that Mr C understood from the consent form he signed, that he had authorised a wide range of health information about him held by ACC, including that relating to his mental health, to be released to Aon. Our reasons are:

[49.1] ACC was aware that Mr C was extremely sensitive about the security of his health information.

[49.2] The consent form Mr C signed for the collection and release of information concerned a back injury.

[49.3] No one else at ACC appears to have understood themselves to be authorised by Mr C to release all the information without first checking with him. Mr C's ACC case manager considered that Mr C was entitled to redact various items of information before it was sent to Aon. Ms Reid and the Centre Manager told Mr C that they would not have released the documents to Aon without consultation with him.

[50] Ms Reid gave evidence that a retrospective opinion she obtained from ACC Clinical Services as a result of Mr C's complaint to the OPC had concluded the referral documents were properly released as the information was required to determine whether the work claim was the cause of on-going incapacity and was relevant to the ongoing management and rehabilitation needs of Mr C. This opinion may well be correct but it does not establish that it was objectively reasonable to have believed that Mr C understood his consent to authorise the release of that information.

[51] While the previous case manager may have believed by signing the consent in relation to his back injury, that Mr C had authorised the release of the entirety of his health information to Aon, it is not established that this belief was held on reasonable grounds. The exception at Rule 11(1)(b)(i) is not made out.

Did ACC believe on reasonable grounds that the disclosure of the information was one of the purposes in connection with which the information was obtained?

[52] We turn next to the second exception to Rule 11 relied on by ACC, Rule 11(1)(c). The various exceptions to Rule 11 are in the alternative. The exception in Rule 11(1)(c) may therefore apply even though we have found the exception in Rule 11(1)(b) does not.

[53] There is little case law concerning the interpretation of Rule 11(1)(c). ACC submits that it illustrates the balancing of interests under the Privacy Act and that while an individual's right to privacy and access to their personal information is protected, the flow of that information may be required in certain circumstances. ACC take the position that the disclosure of the referral documents by ACC to Aon was permitted under Rule 11(1)(c) of the Code because ACC believed, on reasonable grounds, that the disclosure of the referral documents was one of the purposes in connection with which the information in them was obtained.

[54] ACC submit that the referral documents were prepared for the purpose of assessing Mr C's entitlements under the Act. As Aon was acting as the insurer and administrator for Mr C's accredited employer, Aon therefore "stepped into the shoes" of ACC for injuries sustained at work and was liable to provide Mr C's entitlements under the Accident Compensation Act 2001. It follows that Aon had a proper interest in the referral documents in the same way that ACC did. It is submitted that the disclosure of the referral documents, which were collected for the purpose of determining Mr C's ACC entitlements, was for the purpose of enabling Aon to assess the extent to which it was liable to provide entitlements to Mr C under the Act, and was therefore permitted under Rule 11(1)(c).

[55] We accept this submission. It will be recalled that Dr A was requested to make recommendations as to further treatment, investigations, pharmaceuticals and rehabilitation options for Mr C. The information provided to him, including records concerning Mr C's head injury and mental health, could have been relevant in this regard. As noted earlier Ms Reid gave evidence that a retrospective opinion she obtained from ACC Clinical Services as a result of Mr C's complaint to the OPC had concluded the referral documents were properly released as the information was required to determine whether the work claim was the cause of on-going incapacity, and was relevant to the on-going management and rehabilitation needs of Mr C.

[56] The information at issue included a number of detailed assessments about Mr C that were carried out over the years in order to determine and manage his entitlements under the Act. In the case of the work injury, Mr C's information, in the form of part of his ACC file, was required in order for Aon to assess, determine and manage Mr C's entitlements. The breadth of the information provided in the referral documents was very wide. We have found that it was wider than Mr C could reasonably have been understood to authorise when he signed a consent in Aon's favour with respect to his back injury that allowed the disclosure of information about "other injuries". However, the information was collected for the purpose of determining Mr C's entitlements and his ongoing management and rehabilitation needs and was provided to Aon for this purpose.

[57] It follows that ACC did not breach Rule 11 by releasing the referral documents to Aon without Mr C's authorisation. It is accepted that ACC reasonably believed that their disclosure was one of the purposes in connection with which they were obtained.

[58] It is acknowledged that Mr C was concerned that the information provided by ACC to Aon was then transferred to [his employer] and allegedly accessed by employees there

including the manager who questioned him as to why he had not previously disclosed his medical history. He was also concerned that Dr A's report was provided by Aon to [the employer]. He makes a connection between the disclosure of this information to [his employer] and the demise of his employment relationship with them. We have found that Dr A's report was not provided to Aon by ACC. Aon received it directly from Dr A. There is no jurisdiction for us to consider the disclosure of information between Aon and [the employer] and between Dr A and Aon and [the employer] as neither of these three were notified by the OPC of any complaint against them by Mr C. Confining ourselves to the issues with respect to which we have jurisdiction, we find that an interference with the privacy of Mr C is not established. His claim is dismissed.

Costs

[59] Costs are reserved. Any application for costs is to be filed within 15 working days from the date of this decision. Should such application be received, the Tribunal will set a timetable for the filing of opposition and reply submissions.

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Ms MA Roche
Co-Chairperson

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Ms DL Hart
Member

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Hon KL Shirley
Member