

Reference No. HRRT 032/2018

UNDER THE PRIVACY ACT 1993

BETWEEN NAGINBHAI NEIL GHELABHAI PATEL

PLAINTIFF

AND JOHN DEAN

DEFENDANT

AT WELLINGTON

BEFORE:

Mr RPG Haines ONZM QC, Chairperson

Ms SJ Eyre, Deputy Chairperson

Ms DL Hart, Member

Ms ST Scott QSM, Member

REPRESENTATION:

Mr G Manktelow for plaintiff

Mr J Dean in person

DATE OF HEARING: 12 and 13 August 2019

DATE OF DECISION: 31 August 2020

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**DECISION OF TRIBUNAL<sup>1</sup>**

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[1] Mr Dean is a lawyer and Mr Patel his former client. In February 2018 Mr Patel requested a copy of his file from Mr Dean. Five weeks later, Mr Dean responded and told Mr Patel he would charge him \$19,175.47 for the provision of his file. Mr Patel refused to pay. Mr Patel filed this claim seeking his file and damages for the interference with his privacy.

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<sup>1</sup> [This decision is to be cited as *Patel v Dean* [2020] NZHRRT 37.]

[2] Mr Dean subsequently provided Mr Patel's file on 25 October 2018. Mr Dean acknowledges this was later than required by the Privacy Act 1993, but he disputes that there has been any interference with Mr Patel's privacy.

## **BACKGROUND**

[3] Mr Dean provided legal services from January 2013 to March 2014 to Mr Patel and his wife Nalini Naginbhai Patel in their personal capacity, and to Mr Patel and Ratilal Patel as trustees of the Vishnu Trust (the Trust).

[4] In March 2014 Mr Dean stopped providing legal services to Mr and Mrs Patel and the Vishnu Trust and there was a disagreement over legal fees. Mr Patel considered Mr Dean had overcharged him and the Trust. This was denied by Mr Dean and in November 2015 Mr Dean assigned the right to recover the claimed fees to Rajjo Nominees Limited (Rajjo). Rajjo also registered caveats over 11 of the Trust's and Mr Patel's properties even though the assigned debt was \$96,626.09, a fraction of the value of the properties. The properties were estimated by Mr Patel at a value of approximately \$12 million. The caveats immediately inhibited use of the properties.

[5] Rajjo is a company closely associated with Mr Dean. Its registered address for service is Mr Dean's office and it was represented by Mr Dean in the Court proceedings against Mr Patel. Mr Dean's legal executive (who is also his de facto partner) is its sole director and shareholder.

[6] Rajjo filed proceedings in the District Court to recover the assigned debt. It received judgment by way of formal proof on 10 March 2017.

[7] On 4 January 2018 Mr Patel filed an application to set aside the judgment against him for unpaid legal fees. The application was made on the basis that he had difficulty finding a lawyer to act for him as Mr Manktelow, who normally represented him, was unwell.

[8] On 8 February 2018 Mr Patel emailed Mr Dean with an urgent request for a copy of his file. The following day Mr Patel sent a follow-up email. Neither email was responded to and Mr Patel complained to the New Zealand Law Society (NZLS).

[9] On 19 February 2018 Mr Patel made a third request to Mr Dean for his file. There continued to be no response so Mr Patel complained to the Office of the Privacy Commissioner.

[10] On 28 February 2018, Rajjo obtained a sale order in the High Court, for the sale of ten of Mr Patel's and the Trust's properties, to obtain payment of the judgment debt which by then was \$111,039.27. The Sale Order was advertised in the *Dominion Post* on 3 and 17 March 2018.

[11] The trustees of the Trust paid the judgment debt on 16 March 2018 to avoid the sale of any properties. Despite this payment Mr Dean, on behalf of Rajjo, would not agree to the discharge of the charging orders and the removal of the caveats on the properties.

[12] On 29 March 2018 Mr Dean replied to Mr Patel's information privacy request made on 8 February 2018. He advised Mr Patel he would charge him \$19,175.47 for the release of his file. Mr Dean stated this was calculated using the Ministry of Justice charging

guidelines, based on an estimate of the number of pages in the file. Mr Patel did not consider this charge was reasonable and did not pay it.

**[13]** On 14 May 2018 Mr Patel's application to set aside the judgment debt was heard in the High Court. The application was stayed to enable Mr Patel to obtain copies of his documents, specifically his file from Mr Dean, which were necessary to assist his application.

**[14]** The Privacy Commissioner released his finding on Mr Patel's complaint on 2 August 2018. He determined there had been a breach of IPP 6. The Commissioner fixed the charge for the release of the documents under s 78 of the Privacy Act 1993 at the cost of a USB drive.

**[15]** On 21 September 2018 Mr Dean told Mr Patel the files were available for him to collect, however he would not confirm what the charge would be, so Mr Patel did not pick them up. On 25 September 2018 Mr Dean sent Mr Patel an email advising the files would be destroyed in accordance with the retainer.

**[16]** On 23 October 2018 the High Court ordered the discharge of the charging orders and the removal of the caveats on the Patel and Trust owned properties. Johnston J stated that the trustees were entitled to be relieved of the burden of caveats registered over their properties and it would be a gross injustice if they were not removed.

**[17]** The next day at the Tribunal teleconference Mr Dean offered the files to Mr Patel and he delivered them to Mrs Patel's grocery store on 25 October 2018.

**[18]** Despite receiving the files in October 2018, Mr Patel considers there are documents and files missing, including over 60 phone messages, invoices and potentially other documents which Mr Patel has no knowledge of. Mr Dean acknowledged in an email to the NZLS on 7 November 2018 that he had removed what he described as draft and extraneous documents from the file.

### **THE CLAIM BY MR PATEL**

**[19]** Mr Patel filed these proceedings to obtain a full copy of the file, a declaration of an interference with his privacy and damages up to the Tribunal's jurisdictional limit of \$350,000.

**[20]** Mr Dean accepts he was late responding to Mr Patel's request and that he was outside the statutory timeframe. However, he maintains he has now provided the full file and rejects the claim that he should pay any damages.

**[21]** The matters to be considered by this Tribunal are:

**[21.1]** Whether Mr Dean's response to Mr Patel's information privacy request was in accordance with the requirements of the Privacy Act 1993;

**[21.2]** Whether there was an interference with Mr Patel's privacy;

**[21.3]** If there has been an interference with Mr Patel's privacy, what is the appropriate remedy?

## THE INFORMATION PRIVACY REQUEST

### Was Mr Dean's response to Mr Patel's information privacy request in accordance with the requirements of the Privacy Act 1993?

**[22]** The Privacy Act 1993 entitles an individual to make an information privacy request under IPP 6 and sets out the requirements for responding to that request and the limited range of grounds for refusing to respond.

**[23]** Section 40 sets out the timeframe within which a decision on an information privacy request must be made:

#### **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.
- (2) Where any charge is imposed, the agency may require the whole or part of the charge to be paid in advance.

**[24]** Section 40(1) imposes a mandatory requirement on agencies to make a decision on an information privacy request no later than “20 working days after the day on which the request is received”. The information does not necessarily have to be provided within this timeframe, but a decision must be made whether to grant the request, in what manner, and for what charge (if any). If a charge is to be imposed, s 35(5) of the Privacy Act 1993 requires it to be a reasonable charge.

**[25]** Mr Patel first requested his file on 8 February 2018 and Mr Dean first responded to that request on 29 March 2018. This response was provided 35 working days after the request was received.

**[26]** Mr Dean has therefore correctly accepted that he did not comply with the statutory timeframe of 20 working days. This is a clear breach of s 40 of the Privacy Act 1993.

**[27]** Mr Dean advanced explanations for why he was slow to respond to Mr Patel's request. However, none of these reasons provide a legal defence to the mandatory requirements in s 40(1) of the Privacy Act 1993. In particular:

**[27.1]** Mr Dean explained in his evidence to this Tribunal, to the NZLS and to the Privacy Commissioner that he was unwell for a period in 2018. However, the evidence indicates his period of ill-health was from late April to September 2018. The response to Mr Patel's request was due in March 2018, which is prior to Mr Dean's period of ill-health. In any event ill-health is neither a ground for extending the statutory period pursuant to s 41 nor a defence to non-compliance with s 40.

**[27.2]** Mr Dean stated Mr Patel already had the documents and therefore Mr Dean did not need to provide Mr Patel with them again. This is irrelevant. Mr Patel is still entitled under the Privacy Act 1993 to request and receive his file.

**[27.3]** Furthermore, Principle 7 entitles an individual to require an agency to correct information or affix a statement of correction to information. Mr Dean's

misinterpretation of his Privacy Act obligations provides no opportunity for an individual to correct information or require a statement of correction to be affixed to the information.

### **Was there an interference with Mr Patel's privacy?**

**[28]** To obtain a remedy under the Privacy Act 1993, Mr Patel is required to prove the failure to provide the file was an interference with his privacy.

**[29]** An interference with privacy is defined in s 66. The definition in subsection (2) is the most relevant for this proceeding. It reads:

#### **66 Interference with privacy**

(1) ...

(2) Without limiting subsection (1), an action is an interference with the privacy of an individual if, in relation to an information privacy request made by the individual, —

(a) the action consists of a decision made under Part 4 or Part 5 in relation to the request, including—

(i) a refusal to make information available in response to the request; or

(ii) a decision by which an agency decides, in accordance with section 42 or section 43, in what manner or, in accordance with section 40, for what charge the request is to be granted; or

(iii) a decision by which an agency imposes conditions on the use, communication, or publication of information made available pursuant to the request; or

(iv) a decision by which an agency gives a notice under section 32; or

(v) a decision by which an agency extends any time limit under section 41; or

(vi) a refusal to correct personal information; and

(b) the Commissioner or, as the case may be, the Tribunal is of the opinion that there is no proper basis for that decision.

(3) If, in relation to any information privacy request, any agency fails within the time limit fixed by section 40(1) (or where that time limit has been extended under this Act, within that time limit as so extended) to comply with paragraph (a) or paragraph (b) of section 40(1), that failure shall be deemed for the purposes of subsection (2)(a)(i) of this section, to be a refusal to make available the information to which the request relates.

**[30]** Section 66(2) imposes a two stage test:

**[30.1]** First, s 66(2)(a) requires one of the decisions listed to have been made regarding the information privacy request; and

**[30.2]** Secondly, the Tribunal must be of the opinion that there is no proper basis for that decision.

**[31]** Mr Dean's failure to respond to the information privacy request within the time limit fixed by s 40(1) is deemed by s 66(3) to be a refusal to make information available as referenced in s 66(2)(a)(i). Accordingly, the first part of the two stage test is met.

**[32]** The next matter to consider is whether Mr Dean had any proper basis for his failure to respond within the time limit fixed by s 40(1). There is no provision within the statute for an agency to simply not respond at all within the timeframe, nor has Mr Dean established that he relied on any of the exceptions in ss 27 to 29 of the Act for his refusal to respond.

**[33]** Accordingly, Mr Dean's explanations for his delayed response (his ill-health and that Mr Patel already had some of the documents) have already been addressed and are in any event not relevant. The reference in s 66(2)(b) to "proper basis" is a cross-reference to s 30 of the Act which states that no reason other than those permitted by ss 27 to 29

can justify a refusal to disclose information requested pursuant to IPP 6. The second limb of the definition of an interference with privacy is met.

**[34]** The Tribunal finds Mr Dean has interfered with Mr Patel's privacy.

## **REMEDY**

**[35]** When the Tribunal determines on the balance of probabilities that there has been an interference with privacy it may grant one or more of the remedies set out in s 85 of the Privacy Act 1993.

### **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.  
...
- (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.

**[36]** The damages the Tribunal may order under s 85(1)(c) are set out in s 88 under three specific heads.

### **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.

**[37]** The remedies sought by Mr Patel are:

**[37.1]** A declaration that Mr Dean interfered with his privacy;

**[37.2]** Damages of up to \$350,000;

**[37.3]** An order that Mr Dean provide him with a complete copy of his file; and

**[37.4]** Costs.

## **Declaration**

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

[39] The Tribunal sees nothing to justify the withholding from Mr Patel of a formal declaration that Mr Dean interfered with his privacy. This declaration is accordingly made.

## **Damages for pecuniary loss and expenses incurred**

[40] Mr Patel seeks damages for pecuniary losses. He initially claimed a generic sum of \$350,000 for unspecified damages, however in the hearing a table of losses was presented (Exhibit 2). It included property rates, lawyers' fees and extra hours worked by staff as well as losses of potential rent. The stated expenses and losses based on Exhibit 2 totalled \$487,151.

[41] However, Exhibit 2 only recorded a few words and a monetary amount for each item. It was not supported by any detail or accounting evidence. The only evidence is Mr Patel's own assertions of the amounts and the link between these losses and Mr Dean's action. That evidence does not contain sufficient detail to substantiate what the expenses were and how they were caused by Mr Dean interfering with Mr Patel's privacy.

[42] Mr Patel is not entitled to any damages under s 88(1)(a) for pecuniary loss or expenses incurred.

## **Damages for loss of any benefit**

[43] Mr Patel also seeks damages for loss of a benefit. As with the pecuniary losses a global sum of \$350,000 was sought by Mr Patel.

[44] To award damages under s 88(1)(b) the Tribunal must be satisfied the interference with privacy was a contributing or material cause of the loss of benefit.

[45] Where the loss of a benefit is, as it was for Mr Patel, the inability to use documents in a court proceeding, Churchman J noted in *Attorney-General v Dotcom* [2018] NZHC 2564 (1 October 2018) (*Dotcom*) that:

It is necessary to consider the extent to which the information requested is likely to have actually affected the outcome of the litigation for which it was said by [the plaintiff] to be required.

[46] His Honour also noted it did not have to be inevitable that the information would influence the outcome, but there must be some evidential basis for assuming it was potentially relevant.

[47] Mr Patel filed an application to set aside the judgment debt for legal fees owed to Mr Dean. To enable success in that application, Mr Patel has given evidence that he required his file from Mr Dean, so the legal fees could be independently assessed. When Mr Dean refused to give Mr Patel his file, Mr Patel submits that denied him the opportunity to have his fees assessed and therefore the benefit of potentially being successful in setting aside the judgment debt.

**[48]** Mr Patel and Mr Reeve provided consistent evidence that a lawyer had told them they would require the full file to independently assess the reasonableness of Mr Dean's fees; otherwise any missing documents would undermine the overall assessment. The Tribunal accepts this evidence. The level of detail provided by Mr Reeve regarding the attempts to obtain the file and the need for there to be a full file for assessment was compelling. Furthermore, it is logical that a file cannot be assessed unless it is viewed in its entirety. The Tribunal finds that this evidence established the file was relevant and necessary to assist in the application to set aside the judgment debt.

**[49]** The importance of the file to Mr Patel's intended defence was also impliedly accepted in the High Court. Cooke J stayed the proceedings to set aside the judgment debt to allow Mr Patel time to continue his attempts to obtain these documents. See paragraphs [1] and [4] of the *Minute* dated 14 May 2018.

**[50]** The Tribunal accepts that if Mr Patel had the file it may have actually affected the High Court proceedings. The failure of Mr Dean to provide the file was therefore a material factor in the loss of this benefit to Mr Patel.

**[51]** In reaching this finding, the Tribunal is mindful that Mr Dean argues there was no loss of benefit to Mr Patel. He submitted that the application to set aside the judgment debt was based on Mr Patel's lack of legal representation, not on the fact he required the file. However, Mr Patel and Mr Reeve both explained in evidence that they were attempting to find a lawyer to assist Mr Patel and they had been told the full file would be needed by any lawyer intending to review the fees. The release of the file and the need for a lawyer were interrelated. The Tribunal accepts that the failure to have the file was a material cause of the loss of benefit. The file was required for Mr Patel's benefit in the proceedings to set aside the judgment. The fact a lawyer was also required does not change this.

**[52]** Mr Dean's suggestion that his failure to provide the file did not result in a loss of any benefit to Mr Patel is not tenable, nor is the submission by Mr Dean that there was no loss of a benefit to Mr Patel because of delay on Mr Patel's part. Mr Patel explained the delays were because he was struggling to find legal representation. The Tribunal accepts there was a lapse of time between when Mr Patel could have first taken the actions he did, and when he did. However, there is no time limit on making an information privacy request. Accordingly, any delay in requesting the file does not diminish the consequences of Mr Dean's interference with Mr Patel's privacy.

**[53]** Mr Dean's interference with Mr Patel's privacy was a contributing and material factor in Mr Patel losing the benefit of having his file assessed for the purposes of his proceedings to set aside the judgment debt. Mr Patel is entitled to compensation for this loss.

**[54]** Damages for loss of a benefit cannot be an exact calculation, but they are intended to be a meaningful recognition of the benefit that has been lost.

**[55]** The Tribunal has previously accepted that a delay or a failure to provide documents intended for use in Court or other legal processes, constitutes the loss of a benefit. See *Watson v Capital and Coast District Health Board* [2015] NZHRRT 27 (7 July 2015) (*Watson*) at [127] and *Director of Human Rights Proceedings v Schubach* [2015] NZHRRT 4 (19 February 2015) (*Schubach*) at [97]. In both *Watson* and *Schubach*, awards of \$5,000 for the loss of benefit were awarded.

[56] The Tribunal accepts that in this claim the interference with Mr Patel's privacy was material in the loss of benefit to Mr Patel and the Tribunal considers an award of \$5,000 is appropriate.

### **Damages for humiliation, loss of dignity and injury to feelings**

[57] Mr Patel also claims damages for humiliation, loss of dignity and injury to feelings.

[58] The principles for damages of this type were reviewed in *Hammond v Credit Union Baywide* [2015] NZHRRT 6 (2 March 2015) at [170]. In summary, the award of damages is intended to be an appropriate response to compensate for the humiliation, loss of dignity or injury to feelings. Its purpose is not to punish the defendant.

[59] In *Hammond* it was noted that damages are fact-driven and vary widely. Nevertheless, it is possible to recognise three bands. At the less serious end of the scale awards have ranged upwards to \$10,000. For more serious cases awards have ranged from \$10,000 to about \$50,000. For the most serious category of cases it was contemplated awards would be in excess of \$50,000. The Tribunal in *Hammond* emphasised, however, that these bands are descriptive, not prescriptive.

[60] The evidence provided by Mr Patel and corroborated by Mr Reeve, confirms that Mr Patel has experienced humiliation and injury to feelings. The Tribunal was provided with clear and direct evidence of the immense stress, anxiety and all-consuming worry that Mr Patel experienced when Mr Dean would not provide his file. In particular:

[60.1] Mr Patel stated that after the notice of sale of his properties was advertised, he received a phone call from a builder working for him, who stated that he would not continue working after seeing the advertisement in the *Dominion Post*.

[60.2] Mr Patel's sister also phoned him after becoming aware of the sale order and suggested the family could rally around him and provide money to assist him with his predicament. Mr Patel gave evidence of his distress and humiliation at this suggestion, given his position as the eldest in his family and the first to arrive in New Zealand.

[60.3] The fact that Mr Dean was Mr Patel's former lawyer and that he and Rajjo continued to pursue legal proceedings against Mr Patel, while refusing to provide his file, left Mr Patel feeling "helpless and hopeless".

[60.4] Mr Patel provided medical evidence of the ill-health of himself and his wife. Mr Patel accepted that the interference with his privacy did not cause their adverse health conditions, but he says it worsened them. Mr Reeve supported this evidence by commenting that he had witnessed significantly increased stress levels for Mr Patel as legal proceedings continued and the file was still not released.

[60.5] Mr Reeve and Mr Patel both gave evidence that the fact that Mr Dean did not release the file even after Mr Patel had pursued complaints through the NZLS and the Privacy Commissioner caused significant stress as Mr Patel struggled to know what to do next.

[60.6] Mr Patel was scared that he was going to lose his whole property portfolio once Mr Dean advertised his properties for sale, which caused him immense upset as it was important to him and his wife that the Trust grow and provide a benefit to his family when Mr Patel's son passed away.

**[61]** The Tribunal accepts that the evidence by Mr Patel regarding these incidents and the community response to his predicament is credible. It is corroborated by Mr Reeves, it is logical, consistent with the timeline of events that occurred, and Mr Dean has presented no evidence to dispute this.

**[62]** The Tribunal is required by s 85(4) of the Privacy Act 1993 to take into account the conduct of the defendant. The purpose is not to assign moral culpability. The nature of a defendant's conduct is, however, relevant to the seriousness of the impact that conduct has had on the plaintiff and the assessment of damages for any consequential humiliation, loss of dignity or injury to the feelings of the plaintiff. As stated in *Hammond* at [170.3]:

**[170.3]** The award of damages is to compensate for humiliation, loss of dignity and injury to feelings, not to punish the defendant. The conduct of the defendant may, however, exacerbate (or, as the case may be, mitigate) the humiliation, loss of dignity or injury to feelings and therefore be a relevant factor in the assessment of the quantum of damages to be awarded for the humiliation, loss of dignity or injury to feelings.

**[63]** There are no mitigating factors in Mr Dean's conduct. Mr Dean's response to Mr Patel's legitimate request was to ignore it until after the statutory timeframe for compliance had passed. Mr Dean waited 35 days to respond, when the Privacy Act requires a response within 20 working days.

**[64]** Mr Dean also ignored the subsequent requests by Mr Patel for his file and did not accept the offer by the NZLS to facilitate his compliance with the request for the file. While Mr Patel was kept waiting for Mr Dean to provide his file, Mr Dean represented Rajjo in obtaining a sale order for ten of Mr Patel's properties. Mr Dean estimated the value of the properties the sale order was obtained over was approximately \$12 million. This contrasts sharply with the judgment debt of \$111,039.27.

**[65]** After the judgment debt was paid, Rajjo (represented by Mr Dean) would not agree to the removal of the caveats and charging orders on Mr Patel's properties. This was criticised by the High Court when Mr Patel successfully instigated proceedings to remove the caveats and charging orders on Mr Patel's properties. The actions of Rajjo and Mr Dean in withholding the file while pursuing a publicly advertised sale order and opposing the removal of the caveats and charging orders was significant in exacerbating the humiliation and injury to feelings experienced by Mr Patel. In particular, it resulted in greater public awareness of Mr Patel's business affairs, increasing the humiliation.

**[66]** If Mr Patel had his file and had been successful in setting aside the judgment against him, then Rajjo would have been unable to obtain a sale order. This would have significantly reduced the publicity of Mr Patel's predicament and the subsequent humiliation. Even if Mr Patel's application had been unsuccessful, he would at least have had a resolution and not been left humiliated by being unable to mount a defence.

**[67]** The Tribunal accepts that this humiliation and injury to feelings was caused by Mr Dean's interference with Mr Patel's privacy. Mr Patel is entitled to damages for this humiliation and injury to feelings.

**[68]** The Tribunal considers the humiliation and injury to feelings experienced by Mr Patel is in the middle band of damages referred to in *Hammond*. It is not in the lower band as the degree and intensity of harm being experienced by Mr Patel was significant and clearly evidenced by Mr Patel. Furthermore, the failure of Mr Dean to provide the file had a substantial and ongoing impact on Mr Patel's ability to defend himself against the concerted actions taken by Mr Dean (through Rajjo) over a protracted period and resulted in publicity of Mr Patel's business affairs.

[69] The Tribunal finds the humiliation and injury to feelings suffered by Mr Patel sits slightly higher than the lowest part of the middle band of damages and at the higher end of the cases referred to. Accordingly, the Tribunal considers an award of damages of \$15,000 is appropriate compensation for the humiliation and injury to feelings experienced by Mr Patel.

### **Order for complete disclosure of Mr Patel's file**

[70] When this claim was filed Mr Patel had waited over six months to receive his file from Mr Dean. He eventually received what Mr Dean says was the file on 25 October 2018. However, Mr Patel remains concerned that he has not been provided with the complete file. In particular, Mr Patel notes that the 60 plus phone messages that Mr Dean said he had on his phone have not been provided, neither have the invoices from Mr Dean to Mr Patel. The Tribunal adds to that list the documents that Mr Dean told the NZLS he removed from the file.

[71] Mr Dean has provided no assurances to the Tribunal that he did provide the complete file to Mr Patel and has admitted he has not provided the phone messages. Phone messages are required to be provided along with other personal information, in a manner appropriate to the information.

[72] Mr Dean is ordered to provide a full and complete response to Mr Patel's original request made on 8 February 2018 for all files relating to Mr Patel, Mrs Patel, the Vishnu Trust and Global Immigration and Emigration Services Limited.

### **FORMAL ORDERS**

[73] The Tribunal is satisfied on the balance of probabilities that an action of Mr Dean was an interference with the privacy of Mr Patel and:

[73.1] A declaration is made under s 85(1)(a) of the Privacy Act 1993 that Mr Dean interfered with Mr Patel's privacy by failing to respond to his information privacy request within 20 working days as required.

[73.2] An order is made under s 85(1)(d) of the Privacy Act 1993 that Mr Dean provide Mr Patel with a full and complete response to Mr Patel's request made on 8 February 2018 for all files relating to Mr Patel, Mrs Patel, the Vishnu Trust and Global Immigration and Emigration Services Limited. Mr Dean is to comply with this request within 20 working days of the date of this decision.

[73.3] Mr Dean is to pay Mr Patel damages of \$5,000 for the loss of a benefit under s 85(1)(b) of the Privacy Act 1993.

[73.4] Mr Dean is to pay Mr Patel damages of \$15,000 for humiliation and injury to feelings under s 85(1)(c) of the Privacy Act 1993.

### **COSTS**

[74] Mr Patel has sought costs. No specific amount has been sought, but as Mr Patel was represented by Mr Manktelow at the hearing, it is accepted that he has incurred legal costs. Unless the parties can reach agreement on the question of costs, the following procedure is to apply:

**[74.1]** Mr Patel is to file submissions within 14 days after the date of the decision. The submissions for Mr Dean are to be filed within a further 14 days with a right of reply to Mr Patel within 7 days after that.

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

**[74.3]** In case it should prove necessary, we leave it to the Chairperson or the Deputy Chairperson to vary the foregoing timetable.

.....  
**Mr RPG Haines ONZM QC**  
**Chairperson**

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**Ms SJ Eyre**  
**Deputy Chairperson**

.....  
**Ms DL Hart**  
**Member**

.....  
**Ms ST Scott QSM**  
**Member**