

Reference No. HRRT 11/2020

UNDER THE PRIVACY ACT 2020

BETWEEN ALISHA MARIE COOK

PLAINTIFF

AND LEGACY CHURCH

DEFENDANT

AT WELLINGTON

**BEFORE:**

Ms K Anderson, Deputy Chairperson

Ms BL Klippel, Member

Ms L Ashworth, Member

**REPRESENTATION:**

Mr CJ Tennet for plaintiff

Mr J Faiz and Mr S Clark in person for defendant

**DATE OF HEARING:** 20 July 2023

**DATE OF DECISION:** 9 October 2023

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

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[1] From June to November 2019 Ms Cook was a Legacy Housing boarding house tenant. Legacy Housing is a registered charitable trust that provides emergency housing. It is one of a number of registered charitable trusts in what Mr Faiz, the lead pastor of Legacy Church, described as the Legacy group or as being under the Legacy umbrella. The defendant, Legacy Church is also one of the legal entities within the Legacy group.

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<sup>1</sup> [This decision is to be cited as *Cook v Legacy Church* [2023] NZHRT 31].

[2] On 27 September 2019 Ms Cook's lawyers sent a Privacy Act 1993 (PA, 1993)<sup>2</sup> request to Legacy Housing's General Manager for Ms Cook's personal information relating to her tenancy (the IPP6 request). No response was received.

[3] Following Legacy Housing's lack of response to that IPP6 request, Ms Cook's lawyer made a complaint to the Privacy Commissioner, but in respect of Legacy Church. The Privacy Commissioner conducted an investigation and subsequently issued a Certificate dated 4 February 2020 confirming that an investigation into Ms Cook's complaint against Legacy Church had been discontinued.

[4] On the face of that Certificate, the first of several requirements under s 83 of the PA 1993 enabling a claim to be made in this Tribunal was met (namely that a complaint had been made to the Privacy Commissioner).

[5] This proceeding was then filed in the Tribunal naming Legacy Church as the first defendant and Legacy Trust as the second defendant. However, Legacy Trust was removed as a defendant at the first case management conference.<sup>3</sup>

[6] The unusual circumstances of this proceeding include that the agency to whom the IPP6 request was made (Legacy Housing) was not the agency that was investigated by the Privacy Commissioner and is not named as a defendant in this claim. It is beyond doubt that the Tribunal can have no jurisdiction over a legal entity that is not a party to this claim.

[7] Legacy Church's defence to Ms Cook's claim has always been that "Legacy Church holds no personal information about Alisha Cook." For reasons explained below, the Tribunal accepts that Legacy Church was not Ms Cook's landlord, that no request was made to it for access to Ms Cook's personal information relating to her tenancy, and that therefore Legacy Church was not required to decide whether or not to grant the IPP6 request and did not refuse the request.

[8] However, Mr Tennet submitted that Legacy Church should be held liable for any interference with Ms Cook's privacy by Legacy Housing. In other words, he says that any liability arising from Legacy Housing's lack of response to Ms Cook's IPP6 request could somehow be sheeted home to Legacy Church. The basis for this submission is that they are both legal entities under the Legacy umbrella and share a common trustee (Mr Faiz). In addition, Mr Tennet pointed to the way these two separate legal entities present themselves to the world via their on-line presences. He suggested this conveyed they were either interchangeable entities or the same entity. For reasons explained below, this submission is not accepted.

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<sup>2</sup> The actions in question occurred in 2019. The Privacy Act 1993 was repealed from 1 December 2020 by the Privacy Act 2020 (PA 2020) which came into force on that date. The effect of the transitional provisions in PA 2020 (Sch 1, Part 1, cl 9(1)) is that the present proceedings must be continued and completed under the 2020 Act but does not alter the relevant legal rights and obligations in force at the time the actions subject to this claim were taken. In this decision the provisions of the PA 1993 will be referred to unless otherwise expressly indicated.

<sup>3</sup> *Minute* dated 12 March 2021. The claim against Legacy Trust could not proceed because the Tribunal lacked jurisdiction in respect of Legacy Trust. This was because no complaint against Legacy Trust had been made to the Privacy Commissioner. The consequence was that the requirements of s 83 of the PA 1993 were not met. In any event there was no legal entity known as Legacy Trust. There was no suggestion by Mr Tennet during the hearing that Legacy Trust was a relevant entity, or that a claim against Legacy Trust was maintained.

## **MS COOK'S CLAIM**

**[9]** Ms Cook's claim alleged that on 27 September 2019 a request was made to "Legacy Church/Legacy Trust" for access to her personal information relating to her tenancy but that no response was received.

**[10]** Ms Cook seeks:

**[10.1]** A declaration that "Legacy Church/Legacy Trust" has breached Information Privacy Principle 6 (IPP6).

**[10.2]** An award of damages that "reflects the deliberate nature of the interference of privacy by the defendant."

**[10.3]** A declaration that the defendant has committed an offence under s 127(c) of the PA, 1993 by providing a false statement of reply purporting to not hold any information about Ms Cook.

**[10.4]** An order fining the defendant under s 127(c) of the PA, 1993 and a commensurate award of damages.

**[11]** The precise heads of damages are not particularised in the statement of claim. In submissions at the hearing Mr Tennet outlined damages of around \$1,000.00 were sought for:

**[11.1]** Humiliation, loss of dignity and injury to feelings; and

**[11.2]** Loss of a benefit, being the loss of the use of the tenancy related documents sought for use in the Tenancy Tribunal (although both he and Ms Cook accepted that Ms Cook chose not to make a claim in that forum).

**[12]** Sensibly Mr Tennet did not advance the claims described in paragraphs [10.3] and [10.4].

## **FACTUAL BACKGROUND**

**[13]** The factual background to the IPP6 request is as follows.

**[14]** Shepherd's Rest Trust had been incorporated as a charitable trust in 2002. Its name was formally changed to Legacy Housing in December 2017. Legacy Housing is one of a number of legal entities under the 'Legacy' umbrella. Legacy Housing provides emergency housing in Palmerston North.

**[15]** Mr Faiz gave evidence for Legacy Church. He said that he was the founder of what he described as the Legacy group of registered charitable trusts, with Legacy Church being one such trust. He confirmed he was the lead pastor of Legacy Church and also a trustee of both Legacy Church and Legacy Housing. Documents from the Charities Register website confirm those trusteeships.

**[16]** Mr Faiz's evidence is that Mr Bellworthy had been employed by Legacy Housing as its General Manager (but was no longer employed) and was not a Legacy Church employee. We accept his evidence on that employment relationship.

**[17]** Mr London, a witness for the plaintiff, agreed that Legacy Church and Legacy Housing had each been constituted as separate formal legal entities (registered charities) and were two of approximately sixteen 'Legacy' related legal entities.

**[18]** In June 2019 Ms Cook became a tenant in Legacy Housing's facility in Palmerston North. She says that it was a very unsatisfactory tenancy. Most of her evidence related to what caused her to be unhappy with the accommodation. She accepted however that issues about the quality of her accommodation and her interactions with Legacy Housing's General Manager (Mr Bellworthy) were matters over which the Tribunal has no jurisdiction.

**[19]** On 27 September 2019 Ms Cook's lawyer, Mr Tennet, sent an email to Mr Bellworthy. Mr Tennet provided a privacy waiver signed by Ms Cook and requested:

Please provide by return-email a copy of all documents you hold relating to Ms Cook's tenancy. For the sake of expediency, I prefer to receive this electronically.

**[20]** Sometime in late October 2019 (or very early November 2019) Ms Cook gave notice by text message to Mr Bellworthy that she would be vacating the Legacy Housing accommodation on 4 November 2019 and provided bank account details for the bond refund. Mr Bellworthy sent Ms Cook a text message on 11 November 2019 advising the bond refund was being processed overnight and asked, "Is there anything else you need from us?" No further response was provided by Ms Cook.

**[21]** Mr Faiz's evidence is that he has no recollection of being aware of Ms Cook's IPP6 request at the time it was made or of the complaint made to the Privacy Commissioner. We accept his evidence on this point. He said that after these proceedings were filed in the Tribunal, he asked Mr Bellworthy about Ms Cook's information request. Mr Bellworthy's email response on 19 June 2020 included that the reason for the lack of response to Mr Tennet's email requesting Ms Cook's personal information was that in his text exchange with Ms Cook relating to the ending of the tenancy, he had asked if Ms Cook needed anything else, and she had not replied with any request.

### **ISSUES: LIABILITY**

**[22]** The following liability related issues are for the Tribunal's determination:

**[22.1]** Whether Legacy Church was subject to obligations under ss 39 and/or 40 of the PA, 1993 requiring it to decide whether to transfer or whether or not to grant the IPP6 request made to Legacy Housing. Related factual sub-issues include:

**[22.1.1]** Whether Legacy Church received the IPP6 request?

**[22.1.2]** Whether Legacy Church was providing Ms Cook's accommodation and therefore holding the requested information?

**[22.2]** If not, whether Legacy Church can otherwise be liable for any interference with Ms Cook's privacy arising from the lack of response to the IPP6 request made to Legacy Housing?

**[23]** In the event liability is established, the question of the appropriate remedy or remedies arises.

## THE LEGAL FRAMEWORK

**[24]** Part 5 of the PA, 1993 contains the procedural provisions relating to access to and correction of personal information. There are specific provisions detailing the responsibilities of every agency. These agency responsibilities include:

**[24.1]** A duty to give reasonable assistance to an individual who wishes to make an information privacy request, or who in making the request has either not complied with the Act's requirements or had not made the request to the appropriate agency.<sup>4</sup>

**[24.2]** Where the agency that has received the request is not the relevant agency, that agency is obliged to transfer the request to the relevant agency and advise the requester of the transfer.<sup>5</sup>

**[24.3]** Where an agency receives an information privacy request, it must as soon as reasonably practicable, and no later than 20 working days (unless a valid extension of time is made), decide whether the request is to be granted or refused and advise the requester of its decision.<sup>6</sup>

**[25]** Section 66 of the PA, 1993 sets out when an action of an agency is an interference with the privacy of an individual. In relation to an IPP6 request for personal information, s 66(3) provides that a failure to comply with the statutory timeframe is a deemed refusal of the request, with a refusal to make information available being an interference with the individual's privacy.<sup>7</sup> In the present case, Legacy Housing's lack of response within the statutory timeframe is a deemed refusal of Ms Cook's IPP6 request.

**[26]** Where there has been an interference with privacy the Tribunal may grant one or more of the remedies set out in s 85 of the PA, 1993, including a declaration of interference with privacy and damages in accordance with s 88 PA, 1993.

**[27]** Where there is an issue as to whether the Tribunal has jurisdiction, it is for the plaintiff to establish the Tribunal has jurisdiction.<sup>8</sup>

### DID SECTIONS 39 OR 40 PA 1993 APPLY TO LEGACY CHURCH?

**[28]** Whether Legacy Church was subject to the obligations under ss 39 and/or 40 of the PA 1993 turns on whether it received the IPP6 request. If the request was made to Legacy Church and it was not the relevant agency, Legacy Church would have been required to transfer the request to the relevant agency and advise the requester of the transfer.<sup>9</sup>

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<sup>4</sup> Privacy Act 1993, s 38.

<sup>5</sup> Section 39.

<sup>6</sup> Section 40.

<sup>7</sup> Section 66(2)(a).

<sup>8</sup> *Waugh v New Zealand Association of Counsellors Inc* [2003] NZHRRT 9.

<sup>9</sup> Privacy Act 1993, s 39.

### **Did Legacy Church receive the IPP6 request?**

[29] As above, the September 2019 IPP6 request was sent by email to Mr Bellworthy. Mr Bellworthy was employed by Legacy Housing as its General Manager. It appears obvious that the IPP6 request was made directly to Legacy Housing.

[30] We accept that there is no evidence the IPP6 request was made to a Legacy Church official or employee. Because Mr Faiz did not receive an information privacy request made to Legacy Church, he had no obligation under the PA, 1993 to deal with it.

[31] Mr Tennet suggested that the fact that Mr Bellworthy reported directly to Mr Faiz as the Legacy Housing's trustee, with Mr Faiz having dual trustee roles (including as trustee of Legacy Church) was significant. In effect his submission was that Legacy Church had constructive knowledge of the IPP6 request, because Mr Faiz would have been made aware of the request, and/or that therefore Legacy Church had received the IPP6 request.

[32] That submission is not accepted. That is because we have accepted Mr Faiz's evidence that he has no recollection of being aware of the IPP6 request until much later. Therefore, the link Mr Tennet relied upon to establish constructive knowledge is missing. Even if that was not the case, the fact a trustee of Legacy Church was aware of an IPP6 request to Legacy Housing does not establish that an access request was made to Legacy Church.

[33] We conclude that the IPP6 request was made exclusively to Legacy Housing. As it was not made to Legacy Church, no issue of failure to transfer under s 39 or to determine the request under s 40 arises.

### **Whether Legacy Church provided Ms Cook's accommodation and held her information?**

[34] We address the fundamental basis on which Legacy Church has defended Ms Cook's claim, namely that it has never held Ms Cook's personal information. The question of who was Ms Cook's landlord is relevant in this context.

[35] Ms Cook's boarding house tenancy agreement had been signed by Ms Cook and Mr Bellworthy on 19 June 2019. As above, Mr Bellworthy was employed by Legacy Housing. The first page of the agreement has the words "Legacy Housing" in large font at the top of the page. However, in the detail it identifies the landlord as "Shepherd's Rest Trust." That is the name of the Trust which later formally changed its name to Legacy Housing.

[36] In contrast, page two of the tenancy agreement expressly provides that certain obligations must be fulfilled by Legacy Housing (such as providing blankets, linen, towels or pillows).

[37] Considering the June 2019 boarding house tenancy agreement as a whole, we are satisfied that the tenancy agreement was between Ms Cook and Legacy Housing. On the face of the agreement, Legacy Church had no express role in relation to the tenancy arrangements.

[38] In addition, the Tribunal accepts that Ms Cook had been dealing exclusively with Mr Bellworthy of Legacy Housing in relation to her tenancy arrangements.

[39] We also accept the defendant's evidence that Legacy Church was not directly involved in Ms Cook's accommodation arrangements.

[40] The legal relationship of landlord and tenant was therefore between Legacy Housing and Ms Cook. This supports the conclusion that it was Legacy Housing that was collecting and storing information relating to Ms Cook's tenancy and that Legacy Church did not hold the requested tenancy related information.

[41] Accordingly, even if the IPP6 request had been made to Legacy Church, it was not the agency that held the information.

## **Conclusion**

[42] The conclusion on these two factual matters is fatal to Mr Tennet's suggestion that Legacy Church has breached Ms Cook's privacy. It did not receive Ms Cook's personal information relating to her tenancy and nor did it receive her IPP6 request. It therefore did not have any legal obligations arising under ss 39 and 40 of the PA 1993. It also follows that it did not make a decision refusing Ms Cook's request and did not fail to provide access to the requested information within the relevant time period.

[43] In conclusion, Legacy Church was not subject to obligations under ss 39 and 40 of the PA 1993 in the circumstances.

## **IS LEGACY CHURCH OTHERWISE LIABLE FOR ANY ALLEGED INFRINGEMENT BY LEGACY HOUSING?**

[44] As briefly outlined in paragraph [8] above, Mr Tennet invited the Tribunal to conclude that information held by Legacy Housing should also be considered to be held by Legacy Church. He pointed to the following factors:

[44.1] Mr Faiz's multiple trustee roles across the Legacy umbrella of registered charities.

[44.2] The way Legacy Church presents itself to the world through its on-line web pages. He said it would not be apparent to the world at large that the emergency housing was not being provided by Legacy Church.

[45] We consider that the fact that an individual may have multiple trusteeships is not a reason, in itself, to treat agencies as the same or interchangeable in respect of IPP6 requests and complaints to the Privacy Commissioner. A difficulty Mr Tennet faces is that the request was not made to Mr Faiz and he was not aware of it.

[46] In relation to the website information, Legacy Church's response was that it was very easy to search the Charities Register web site and get information on each of the Legacy related charities. The evidence of Mr London for the plaintiff confirmed that was the case. We agree.

[47] Legacy Church also submitted that the separate legal character of each of the two entities was decisive and meant that Legacy Church was not the agency holding Ms Cook's tenancy related information.

[48] The submission Mr Tennet makes is that this Tribunal can (and should) look behind the separate legal personality of Legacy Church and Legacy Housing. He has not

however, advanced any legal authority to support that proposition. We do not accept we can do so, because:

**[48.1]** It runs counter to the core concept of separate legal personality of incorporated entities and the core concept of ‘agency’ in the PA, 1993 to which the Information Privacy Principles apply.

**[48.2]** The provisions in Part 5 of the PA, 1993 would be unworkable if Legacy Church had legal obligations relating to access to personal information in Legacy Housing’s possession (or other Information Privacy Principles) in the circumstances.

**[49]** In conclusion, we do not accept that personal information held by Legacy Housing is also held, or can be deemed to be held, by Legacy Church.

### **WHETHER THE TRIBUNAL WOULD HAVE JURISDICTION IN RELATION TO LEGACY HOUSING**

**[50]** For completeness we briefly address the question of whether the Tribunal would have jurisdiction in relation to Legacy Housing in the circumstances if it had been named as a defendant.

#### **Jurisdiction**

**[51]** Under ss 82 and 83 of the PA 1993, persons can bring a claim to the Tribunal only where there has first been a complaint made and investigated by the Privacy Commissioner or dealt with under s 74 and the Privacy Commissioner has decided that the complaint does not have substance or that the matter ought not to be proceeded with.<sup>10</sup> When these criteria are satisfied, the gateway to the Tribunal is open.

**[52]** The Privacy Commissioner’s certificate dated 4 February 2020 confirms that:

**[52.1]** The matter investigated was “Whether Legacy Church had responded to Ms Cook’s access request dated 27 September 2019.”

**[52.2]** Legacy Church was the respondent.

**[52.3]** The investigation had been discontinued under s 71(2).

**[53]** On the face of the Certificate the Tribunal clearly has jurisdiction in relation to Ms Cook’s claim against Legacy Church. Legacy Church did not suggest otherwise in the course of the hearing.

**[54]** Ms Cook put in evidence some of the correspondence between Mr Tennet and the Office of the Privacy Commissioner. All of that documentation supports the conclusion the complaint was not made against Legacy Housing.

**[55]** In this case there is no evidence that a complaint was made to the Privacy Commissioner about Legacy Housing or that the Privacy Commissioner either investigated a complaint against Legacy Housing or dealt with it under s 74 PA 1993.

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<sup>10</sup> Privacy Act 1993, s 83(a), *Re Stryder (Rejection of Statement of Claim)* [2019] NZHRRT 34 and *Waugh v New Zealand Association of Counsellors Inc*, as above n 8.



[56] No application was made to add Legacy Housing as a party to this claim. Although this option looked doubtful on the face of the Privacy Commissioner's Certificate, Ms Cook could have made a fresh complaint relating to Legacy Housing. We have not seen any evidence that that step was taken.

[57] On the available evidence, a complaint was not made to the Privacy Commissioner relating to Legacy Housing that was investigated or dealt with under s 74. Therefore, the Tribunal would not have had jurisdiction in relation to an allegation that Legacy Housing has interfered with Ms Cook's privacy, even if an attempt had been made to add it as a party to this proceeding.

## **CONCLUSION**

[58] As Legacy Church has not interfered with Ms Cook's privacy, no remedy can be ordered, and Ms Cook's claim is unsuccessful.

[59] It is therefore not necessary to consider whether any of the claimed remedies should be granted. Nor is it necessary to determine the defendant's application (made two weeks before the hearing) to strike out Ms Cook's claim on the basis it is frivolous or vexatious or otherwise an abuse of process.

[60] The claim filed by Ms Cook against Legacy Church is dismissed.

## **COSTS**

[61] The defendant has been successful. However, in accordance with the Tribunal's usual approach to costs,<sup>11</sup> costs are to lie where they fall.

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**Ms K Anderson**  
**Deputy Chairperson**

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**Ms BL Klippel**  
**Member**

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**Ms L Ashworth**  
**Member**

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<sup>11</sup> *Beauchamp v B & T Co (2011) Limited (Costs)* [2022] NZHRRT 30 and the authorities cited therein.