IN THE HUMAN RIGHTS REVIEW TRIBUNAL **[2018] NZHRRT 22**

	Reference No. HRRT 008/2016
UNDER	**THE PRIVACY ACT 1993**
BETWEEN	**KATHY APOSTOLAKIS**
	PLAINTIFF
AND	**PETER GILBERT**
	DEFENDANT

AT WELLINGTON

BEFORE:
Mr RPG Haines QC, Chairperson
Ms WV Gilchrist, Member
Hon KL Shirley, Member

REPRESENTATION:
Mrs K Apostolakis in person
Mr PC Gilbert in person

DATE OF HEARING: **29 and 30 November 2017; 14 May 2018**

DATE OF DECISION: **5 June 2018**

DECISION OF TRIBUNAL[1]

INTRODUCTION

[1] Mr Gilbert is a Wellington lawyer who in January 2011 was instructed by Mrs Apostolakis to lodge a Notice of Claim of Interest under the Property (Relationships) Act 1976 against the title of an Auckland property owned by a Ms Jana De Polo, daughter of Mr Damir De Polo who was at one time in a de facto relationship with Mrs Apostolakis. Mr Gilbert had never previously acted for Mrs Apostolakis. She had arrived in his office without an appointment after first approaching a search company on The Terrace which had told her a caveat could only be lodged through a lawyer. It was then Mrs Apostolakis went to the nearest law firm she could find and had spoken with Mr Gilbert.

[1] [This decision is to be cited as: *Apostolakis v Gilbert (Decision)* [2018] NZHRRT 22.]

He agreed to prepare and lodge a notice of claim on the strict understanding that if the claim proved to have no foundation, Mrs Apostolakis would withdraw the claim.

[2] When it subsequently transpired Mrs Apostolakis could not support her claim Mr Gilbert required her to withdraw the caveat. Mrs Apostolakis refused. Mr Gilbert thereupon ceased acting for Mrs Apostolakis and eventually, at his own expense, reached a settlement with Ms De Polo in the sum of $5,000 in respect of proceedings taken by her for the removal of the caveat. It can be seen the period during which Mr Gilbert acted for Mrs Apostolakis was brief.

[3] In August 2011 Mrs Apostolakis made a request under information privacy principle 6 that she be given access to all of her personal information held by Mr Gilbert. Mr Gilbert duly provided her with his entire file.

[4] After a gap of three years and eight months, Mrs Apostolakis by letter dated 22 April 2015 requested "a copy of the lapse of caveat". She also requested correction of a miscellany of "facts". Mr Gilbert, having already provided Mrs Apostolakis with his entire file, replied on the same day declining the requests.

[5] Mrs Apostolakis then made complaint to the Privacy Commissioner. The Commissioner's investigation revealed no breach of any information principle, finding that Mr Gilbert had previously in 2011 provided Mrs Apostolakis with all the requested information held about her and he no longer held readily retrievable copies. The Commissioner's Certificate of Investigation was issued on 8 September 2015.

[6] In these proceedings (filed five months later on 10 February 2016) Mrs Apostolakis makes two allegations. First, that Mr Gilbert failed to comply with her Principle 6 access request and second, that he did not comply with a related request that certain information on the notice of claim be corrected, particularly the date of her separation from Mr De Polo.

[7] The issues for determination are whether the requests under Principles 6 and 7 were made as alleged, the terms of the requests and whether they were complied with.

PRELIMINARY MATTERS

The question of Mrs Apostolakis' fitness to participate in the November 2017 hearing

[8] By November 2017 these proceedings had accumulated a substantial history. That history is recorded in the eight *Minutes* and decisions issued in the period between 22 September 2016 and 27 November 2017. It is not necessary that all details be repeated here. However, in view of the claim made by Mrs Apostolakis during the course of the hearing on 29 and 30 November 2017 that she was unwell it is necessary to draw attention to the following:

> **[8.1]** By *Minute* dated 22 September 2016 Mrs Apostolakis and Mr Gilbert were given notice these proceedings would be heard at the Tribunals Unit, Ministry of Justice, Level 1, 86 Customhouse Quay, Wellington on 9 and 10 March 2017.
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> **[8.2]** On 13 February 2017 Mrs Apostolakis filed an adjournment application based on a number of grounds. No mention was made of ill-health. That application was dismissed by the Chairperson by *Minute* dated 15 February 2017.

[8.3] At 1:20pm on 8 March 2017 ie the afternoon before the hearing, Mrs Apostolakis filed a further application for adjournment based on various grounds. No mention of illness was made in that application apart from a claim to her having been "destabilised" by a hearing in the High Court at Auckland on 7 March 2017. The next morning (9 March 2017) Mrs Apostolakis attended the hearing in person but claimed to be unwell. She was given an opportunity to file a medical certificate. Such certificate was filed that afternoon. While it was framed in unpersuasive terms ("Mrs Apostolakis … is unfit to resume work for a period of three days from 09 Mar 2017") and offered no illumination as to the reason why Mrs Apostolakis was adjudged to be unfit for work for three days, the adjournment was reluctantly granted. See the *Minute* dated 10 March 2017. In that *Minute* the parties were given notice the new hearing date was 29 and 30 November 2017.

[8.4] By letter dated 6 November 2017 Mrs Apostolakis advised the Tribunal that owing to ill-health she would be unable to attend the hearing. She said she did not foresee any improvement in her health "for at least several months". By letter dated 7 November 2017 the Secretary advised Mrs Apostolakis that a medical certificate was required setting out in clear and detailed terms the reasons why Mrs Apostolakis could not attend the hearing. On 15 November 2017 a medical certificate was filed stating that the registered medical practitioner issuing the certificate had recommended that Mrs Apostolakis be encouraged "to take a couple of weeks off from working on this court case as medically it appears to be exacerbating poor mental health and exacerbating her anxiety state". By *Minute* dated 17 November 2017 the Chairperson directed that the hearing scheduled for 29 November 2017 proceed:

> **[4]** The consultation with Dr Hodgins was on Monday 13 November 2017. Because the hearing will not commence until Wednesday 29 November 2017 Mrs Apostolakis does in fact have the two clear weeks recommended by Dr Hodgins.
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> **[5]** In addition, the hearing is unlikely to last a full day. The issues in this case appear to be within a narrow compass and simple to prepare. Mrs Apostolakis alleges she made a request under principle 6 for her file and claims Mr Gilbert did not respond to that request. Similarly, she alleges she made a request under principle 7 for information to be corrected and again there was no response. Mr Gilbert's defence is that Mrs Apostolakis uplifted her entire file in August 2011 with the result that when the principle 6 and principle 7 requests were made he was entitled to refuse both under s 29(2)(a) and (b) of the Privacy Act.
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> **[6]** Account must also be taken of the fact that these proceedings were originally set down for hearing on 9 and 10 March 2017. On 13 February 2017 Mrs Apostolakis filed an application for an adjournment. That application was dismissed by *Minute* dated 15 February 2017 but on the afternoon preceding the hearing Mrs Apostolakis delivered a new application for adjournment and on the morning of the hearing claimed to be ill and in need of seeing a doctor. Ultimately an adjournment was granted. See the *Minute* dated 10 March 2017.
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> **[7]** The current application for adjournment is suggestive of a pattern of conduct.
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> **Decision**
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> **[8]** As stated in the *Minute* dated 15 February 2017, hearing time before the Tribunal is a limited resource and adjournments cannot be lightly granted. Where the parties have received more than ample notice of a date of hearing the Tribunal must insist on the hearing going ahead unless there are truly proper grounds for an adjournment.
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> **[9]** In the present case no such grounds have been shown given that Mrs Apostolakis will have two weeks off, as recommended by Dr Hodgins.

> **[10]** The history of adjournment applications made by Mrs Apostolakis in the present case is suggestive of more than a passing reluctance to get on with the case. In addition, her letter dated 6 November 2017 asserts she wants an adjournment "for several months". On this basis the case will not be heard until late in the first half of 2018. Even then there is no guarantee a further adjournment will not be sought.
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> **[11]** Mr Gilbert has been facing these proceedings since they were filed on 10 February 2016 and is no doubt anxious that the hearing proceed without further delay so that the proceedings are brought to a determination. It is inherently unfair that events which occurred in 2011 be litigated at such a distance of time.

[8.5] On the afternoon of the day preceding the hearing ie on 28 November 2017 Mrs Apostolakis filed two applications. First, an application for an order removing the proceedings into the High Court and second, an application for an order striking out Mr Gilbert's defence on the grounds he had made unfounded allegations of fraud in relation to the caveat referred to.

[8.6] On the morning of 29 November 2017, minutes before the commencement of the hearing, Mrs Apostolakis filed a Notice to Admit Facts.

[8.7] When the hearing commenced at 10am on 29 November 2017 Mrs Apostolakis made no complaint about her health.

[8.8] Only after all three of her applications had been dismissed did Mrs Apostolakis make the very general claim that her health had suffered from "being continually gagged and prevented from being heard anywhere". When she commenced giving her evidence a few moments later she claimed to have been unwell for the past two weeks.

[8.9] It is necessary we record that at no time during the course of the two day hearing did we detect any sign of illness, fatigue or other impediment affecting Mrs Apostolakis. Indeed, she gave her evidence in forceful terms. She had a clear grasp of what it was she wished to communicate to the Tribunal and seemed to relish the opportunity to cross-examine Mr Gilbert.

[8.10] She also appeared to derive some satisfaction from the fact that in her evidence in chief she announced that three weeks earlier (on 13 November 2017) she had lodged a complaint with the Human Rights Commission alleging Mr Gilbert and her own brother (Dr JD Kennelly, a lecturer at Auckland University) had discriminated against her because she is related to a criminal, being her former husband as well as her son (Kosta).

[8.11] The fact that the afternoon before the hearing Mrs Apostolakis had filed two interlocutory applications (with a third following just as the hearing commenced) was indicative that notwithstanding the general assertion that she was unwell, there was in truth no health impediment and no lack of capacity to meaningfully participate in the hearing. This level of pre-hearing activity confirmed the Tribunal's own observations that there had been no inhibition on Mrs Apostolakis' ability to prepare for or to conduct her case before the Tribunal.

[9] In these circumstances we attach no weight to the claim made by Mrs Apostolakis that she was unwell. Given the history of the case we saw the claim as being more in the nature of the taking out of an insurance policy to provide a platform for any later challenge to the Tribunal's decision.

The late interlocutory applications of November 2017

[10] It was in these circumstances that at the commencement of the hearing on 29 November 2017 the Tribunal was required to determine the three interlocutory matters referred to, being:

> **[10.1]** An application that the proceedings be removed into the High Court.
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> **[10.2]** An application that Mr Gilbert be barred from defending the claim.
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> **[10.3]** The notice to admit facts.

[11] After hearing the parties we dismissed all three applications, stating that our reasons would be given at a later date. Those reasons were subsequently given in *Apostolakis v Gilbert (Late Interlocutory Applications)* [2017] NZHRRT 54 (6 December 2017). In that decision the Tribunal dismissed all three applications on the following grounds:

> **[11.1]** Delay.
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> **[11.2]** The applications were unsupported by evidence.
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> **[11.3]** The application for removal to the High Court under s 122A was misconceived.
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> **[11.4]** The application to strike out Mr Gilbert's defence was similarly hopelessly misconceived.
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> **[11.5]** The notice to admit facts related to matters well outside the Tribunal's jurisdiction and had in any event been made too late.

Events subsequent to hearing being adjourned part-heard

[12] After the hearing on 29 and 30 November 2017 ran out of time, the Tribunal on 15 February 2018 gave notice that the hearing would resume on 9 and 10 April 2018. By letter dated 19 February 2018 Mrs Apostolakis responded that that date was "unsuitable" for her. She did not elaborate.

[13] On 20 February 2018 Mrs Apostolakis was advised the Chairperson had dismissed the adjournment application and was further told that in the event of her not appearing before the Tribunal on 9 April 2018 at 10am, there would be a real risk of her proceedings being dismissed.

[14] Undeterred, by letter dated 28 February 2018 Mrs Apostolakis renewed her application for adjournment, stating that on 9 April 2018 she would be in Whanganui attending a family gathering of some importance to her.

[15] That application for adjournment was reluctantly granted but on the express basis that it would be the final adjournment in these proceedings and that any further application would not be entertained. Mrs Apostolakis was given notice that the resumed hearing would now commence on 14 May 2018. Formal notice of the hearing date was given to her and to Mr Gilbert.

[16] On Monday 26 March 2018 Mrs Apostolakis filed a further adjournment application in the following terms:

1. I, the plaintiff, in the above proceeding make an application for an adjournment of the above proceeding due to new information received by me in relation to Judge Geoffrey Fraser Ellis (alias Geoffrey Griffith Ellis) and many more aliases, used for financial gain.
2. I spoke to Mr Peter Channing Gilbert on 22nd March 2018 re my application for adjournment.
3. Mr Peter Channing Gilbert gave me his sympathetic response that he would not oppose my application for adjournment, given the disturbing and disgraceful conduct of the retired Family Court Judge Geoffrey Fraser Ellis.
4. The behaviour of Judge Ellis has caused a rift in all my family relationships because I am a Roman Catholic and oppose Freemasonry, especially Freemasonry distress signals, and, the number 13. The remedy lies against Jana Pierrina De Polo and spouse, Scott.
5. On further grounds that I have submitted further complaints to the Human Rights Commission about identity fraud committed by Judge Geoffrey Ellis and by Jana De Polo, JPDP Ltd and Scott MacDonnell Jiggy's Fishing Ltd.

[17] Mr Gilbert by email dated 27 March 2018 advised he neither consented to nor opposed the application.

[18] On 27 March 2018 Mrs Apostolakis, without explanation, filed in support of her adjournment application a document comprising nine pages of material downloaded from Ancestry.com. These pages relate to various persons who share (or shared) the surname of "Ellis" or who were married to spouses with that surname. It is impossible to see the relevance of this information in the context of a claim Mr Gilbert allegedly failed to comply with information privacy principle 6.

[19] By *Minute* dated 28 March 2018 the Chairperson dismissed the adjournment application dated 26 March 2018.

[20] Subsequent to 28 March 2018 the Tribunal continued to receive letters from Mrs Apostolakis repeating her claims that Judge Ellis was guilty of various offences. See the following letters:

10 April 2018	Judge Ellis was guilty of identity fraud, an allegation also made against Ms Jana De Polo.
17 April 2018	Judge Ellis was "an unauthorised migrant", had "committed crimes" under the Crimes Act 1961 and had committed acts which "makes one's flesh creep".
26 April 2018	Judge Ellis was "morally unfit".
26 April 2018	Judge Ellis was guilty of "serious misconduct" at "the AGM at 1:30pm on 30 October 2016 and other incidents, ie near my house and at Wellington Airport".
30 April 2018	Judge Ellis is "a compulsive, pathological liar".

The late interlocutory applications of May 2018

[21] At 4:35pm on 7 May 2018 (four working days prior to the resumption of the hearing on 14 May 2018) Mrs Apostolakis filed an application described as "HRRT008/16 Rejection of insulting and defamatory comments date of decision 28 March 2018 and recusal and/or disqualification of Chairperson and/or removal to High Court section 122A HR Amendment Act 2001". On 14 May 2018 (the morning of the hearing) she filed a document described as "Application for recusal and/or disqualification of Chairperson by way of an oral hearing and removal to High Court on a question of law and/or point of law under s 122A Human Rights Act 1993 and ss 122A, 122B Human Rights Amendment Act 2001".

[22] When the hearing commenced at 10am Mrs Apostolakis said that she objected to the jurisdiction of the Tribunal on the grounds that she was not represented at the hearing by a lawyer. She said she had lodged an application for civil legal aid "last week". In response to questions from the Tribunal she said the application had been filed on Wednesday 9 May 2018, which was only two working days prior to the commencement of the Tribunal hearing.

[23] Anticipating the extreme late filing of these applications would expose her to criticism, Mrs Apostolakis said she had assumed the applications would be dealt with immediately and that "people would run around". She also explained there was no material difference between the two documents. That dated 7 May 2018 was in letter form whereas the 14 May 2018 document was in application form.

[24] Mrs Apostolakis also renewed her attack on Judge Ellis, alleging that he was stalking her and that she needed protection because he was parking his vehicle near her house. She claimed he had done many things "unbecoming of a judge". When the Tribunal pointed out that none of these allegations were helping her case, Mrs Apostolakis said that she wanted a lawyer and adequate time to apply for legal aid.

[25] Mr Gilbert opposed any adjournment of the hearing and opposed the application filed earlier that morning.

[26] After hearing the parties on the new application filed by Mrs Apostolakis and on the adjournment application the Tribunal announced that for reasons which would be given later all of the applications were dismissed.

[27] We now give those reasons.

The application for an adjournment to allow Mrs Apostolakis to apply for legal aid

[28] Mrs Apostolakis has had every opportunity to obtain legal assistance. A *Minute* issued as early as 10 March 2017 instructed her that if she intended obtaining legal representation, steps to that end had to be taken immediately and not left to the last minute. That instruction was repeated in the later *Minute* of 3 October 2017. If, subsequent to the hearings on 29 and 30 November 2017 Mrs Apostolakis was to make any genuine attempt to find legal representation or to apply for legal aid she had ample time in which to do so but inexplicably failed to lodge the legal aid application until two working days prior to the resumed hearing, a hearing she had successfully applied to have adjourned from 9 and 10 April 2018 to 14 and 15 May 2018.

The application for recusal of the Chairperson

[29] As best can be discerned from the documents filed on 7 and 14 May 2018 the application for recusal is based on an allegation the Chairperson has an "economic interest". The unfounded if not incoherent nature of this allegation is apparent from the terms in which it is framed:

> 13. The Tribunal chairperson Mr Rodger Haines QC has an economic interest because the above case is to decide a point of law which affects the judge in his personal capacity. The effect of his decision exists on others, with whom the judge has a relationship actual or foreseeable, that is, the plaintiff's siblings John and Jane and on the plaintiff's children, Steve, Kosta and John.

[30] The bias test was succinctly expressed in *Siemer v Heron [Recusal]* [2011] NZSC 116, [2012] 1 NZLR 293 at [11]:

> [11] It is well-established that apparent bias arises only if a fair-minded and informed lay observer might reasonably apprehend that there is a real and not remote possibility that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide. The observer will not adopt the perspective of a party seeking recusal unless objectively it is a justified one. It is necessary for those making decisions on whether there is apparent bias in a particular situation first to identify what is said that might lead a judge to decide the case other than on its merits and, secondly, to evaluate the connection between that matter and the feared deviation.

[31] In *Muir v Commissioner of Inland Revenue* [2007] NZCA 334, [2007] 3 NZLR 495 at [62] it was said that where an allegation of bias is made the factual inquiry should be rigorous:

> First, it is necessary to establish the actual circumstances which have a direct bearing on a suggestion that the Judge was or may be seen to be biased. This factual inquiry should be rigorous, in the sense that complainants cannot lightly throw the "bias" ball in the air.

[32] In *Bradbury v Judicial Conduct Commissioner* [2014] NZCA 441, [2015] NZAR 1 at [66] the Court emphasised the statement by Blanchard J in *Saxmere* at [20] that the party alleging apparent bias must also articulate a logical connection between the alleged disqualifying factor and the "feared deviation" from the course of deciding the case on its merits. In the more recent decision of *A (SC 106/2015) v R* [2016] NZSC 31 at [16] the Supreme Court noted that judges should not recuse themselves without sufficient cause.

[33] All these principles apply with equal force to tribunals and to their members.

[34] There being no evidence to satisfy the recusal test, the application for recusal must be dismissed.

The application that the Tribunal make an order under s 122A of the Human Rights Act 1993

[35] The Tribunal may make an order under s 122A of the Human Rights Act 1993 only with leave of the High Court and only if (inter alia) an important question of law is likely to arise in the proceedings or if the Tribunal is of the opinion that, in all the circumstances, the High Court should determine the proceedings or matter.

[36] The first application under s 122A was dismissed on three grounds. See the decision in *Apostolakis v Gilbert (Late Interlocutory Applications)* [2017] NZHRRT 54 at [15]:

> **[15]** The application filed by Mrs Apostolakis fails on the following grounds:
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> > **[15.1]** Leave of the High Court has not been obtained.
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> > **[15.2]** The application does not identify the allegedly "important" question or questions of law likely to arise in the proceedings. Indeed no question of law at all is identified and the Tribunal itself can see no potential important question of law arising on the facts. The main challenge in this case will be determining the facts. In addition, determining questions of law are part of the routine function of the Tribunal. We can see no possible basis for taking the extraordinary step of removing all or part of these proceedings into the High Court.
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> > **[15.3]** If Mrs Apostolakis is unsuccessful in her claim against Mr Gilbert, she has a right of appeal to the High Court. On such appeal she can raise any question of law which then genuinely arises for determination on the facts as ultimately found by the Tribunal. In the meantime the ordinary statutory process must be allowed to work without resort to the highly unusual step of removing the proceedings into the High Court.

[37] In her renewed application filed on 14 May 2018 Mrs Apostolakis has argued that leave of the High Court is not required and that the Tribunal may make an order on its own initiative. This is a misreading of s 122A(1) and (2). But an equally fundamental obstacle which Mrs Apostolakis cannot overcome is that no important question of law arises in these proceedings and if Mrs Apostolakis is unsuccessful in her claim, she has a right of appeal to the High Court. In that context she can raise any question of law which then genuinely arises for determination on the facts as ultimately found by the Tribunal.

[38] On any view of the case removal of these proceedings into the High Court cannot be justified. For the second time, the application is dismissed.

[39] All preliminary matters having been disposed of it is now possible to turn to the determination of the case itself.

THE EVIDENCE

The evidence given by Mrs Apostolakis

[40] As far as the Tribunal is aware there is no single, coherent explanation of the background circumstances to the present case. The Tribunal has been left to piece together a series of fragments. Doing the best we can, it would seem Mrs Apostolakis believes that Ms Jana De Polo, daughter of Mr Damir De Polo (who was at one time in a de facto relationship with Mrs Apostolakis) has wrongfully received the proceeds of a life insurance policy, proceeds which Mrs Apostolakis contends should have been paid to her. Mrs Apostolakis further believes that a property situated at Colville Street, Wellington, is her rightful property but has been lost owing to dishonest conduct by a number of persons. In early 2011 this led to Mrs Apostolakis wanting to lodge a caveat on an Auckland property owned by Ms De Polo.

[41] As mentioned in the introduction to this decision, in January 2011 Mrs Apostolakis went to a search company on The Terrace to request that a caveat be lodged on the Auckland property. She was told only a lawyer could lodge a caveat. Mrs Apostolakis accordingly left their office and immediately went to the nearest law firm she could find, being that of Mr Peter Gilbert whom she had never met before. She contends Mr Gilbert agreed to act for her not only in respect of the lodging of a caveat on the Auckland property but also in proceedings then before Judge Ellis of the Family Court in which Mrs Apostolakis was involved. After a brief discussion Mr Gilbert, in the presence of Mrs Apostolakis, completed a notice under s 42(2) of the Property (Relationships) Act 1976 claiming an interest in the Auckland property. This document was subsequently lodged with Land Information New Zealand. The effect was to forbid the registration of any Memorandum of Transfer or other instrument affecting the land in question.

[42] Mrs Apostolakis says she was given a copy of the notice by Mr Gilbert. On her return home she realised the date on which she separated from Damir De Polo had been incorrectly stated as 2009 whereas the date should have been 2004. She claims she contacted Mr Gilbert to request that the error be corrected. However, she has no record of when she spoke to Mr Gilbert and cannot recollect whether the request was conveyed in person or by telephone.

[43] When Ms De Polo took steps to have the caveat removed Mr Gilbert had in April 2011 called her (Mrs Apostolakis) into his office. There he told her the caveat had to come off. Mrs Apostolakis responded she would not agree until she got her money back from Ms De Polo. She left his office with the understanding he would resist removal of

the caveat and would also be representing her in the Family Court. It was only one or two weeks later that Mr Gilbert told her he could not continue to act for her because he was being sued by the Public Trust and by Ms De Polo. Mrs Apostolakis asserts Mr Gilbert dropped her as a client simply because she is related to criminals. In November 2017 (6.5 years after the event) she filed with the Human Rights Commission a complaint against Mr Gilbert alleging unlawful discrimination.

[44] Sometime in August 2011 Mrs Apostolakis asked Mr Gilbert for her file. He promptly complied with this request and gave it to her but Mrs Apostolakis claims some (unspecified) documents which should have been on the file were missing. She further claims that many times she contacted Mr Gilbert by telephone asking for these documents. On a date Mrs Apostolakis cannot now recall but believes to be sometime in the second half of 2011, Mr Gilbert sent her a letter advising he had given her everything.

[45] Mrs Apostolakis asserts that in February 2012 her sons gave all her belongings to the Mary Potter Hospice, including most of her court documents and most of the file given to her by Mr Gilbert. These papers were thrown out by the hospice with the result that Mrs Apostolakis was left with few documents from Mr Gilbert's file.

[46] It is asserted by Mrs Apostolakis that sometime after February 2012 she asked Mr Gilbert for a further copy of the file. She has no record or recollection of the dates or occasions of these requests.

[47] Regarding her request for the correction of the date of separation from Mr De Polo, Mrs Apostolakis said later in her evidence that these requests were made in August 2011 over the phone as well as in one letter she had sent to Mr Gilbert. She does not have a copy of the letter as it was lost when her possessions were given to the hospice.

[48] In 2015 Mrs Apostolakis made a decision to lodge a complaint with the Privacy Commissioner alleging Mr Gilbert had failed to provide her with a copy of her file and had failed to correct the date of separation. To this end she wrote to Mr Gilbert on 22 April 2015 with the intention that this letter be used as the vehicle for her complaint to the Privacy Commissioner. As the terms of this letter are directly relevant to the issues to be determined by the Tribunal, the text follows:

> Dear Sir,
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> Under the Privacy Act 1993 official request for access Principle 6 and Principles 1-5, 7-10 and 11 and section 11, and correction of information principle 7 and section 66(2)(iv) section 40 and damages section 88(1)(a)(b)(c) (2) and (3).
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> 1. Please provide me with a copy of the lapse of caveat over the property at 67 King St Auckland. You failed to include this document on my previous request. LINZ advised me that the signature is illegible and the name is not printed next to the signature. I did not give my instruction for the caveat to lapse.
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> 2. Please correct the year of separation from "2009" to the year "2004" to Mr Josh McBride. This error is significant because within the space of five years $278,293.23 and $128,049.32 and $54,000 have not been litigated, but obstructed consistently.
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> 3. Please correct the information concerning $183,345.47 which is my deposit and trust money which Mr De Polo and De Polo Trust are not entitled to, being an "error of law".
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> 4. Please correct your written statement that I was not entitled to lodge a caveat over the property at King Street Auckland to protect my interest in the trust of Mrs DC Kennelly as a discretionary beneficiary and my rights to purchase 12 Colville Street in 2011 from my son Kosta who was illegally forced to settle on the grounds that I was not allowed to bid on the grounds that 12 Colville St was a "mortgagee" sale advertised on "Trademe" and yet my

mortgage was most certainly not in default. I was the highest bidder at the fall of the hammer for the purchase price of $554,000 and fulfilled all the conditions of the auction by paying by bank cheque an amount of $54,000 and promising to settle in August 2010 having arranged finance. Unfortunately Peter Batchelor was convinced it was a "Mortgagee Sale".

5. "De Polo Family Trust" and Westpac Bank deposited $183,345.47 which comprises Trust property $128,049.32 and my deposit $54,000. Your assertion that my claim was "invalid" is wrong. Please issue a statement of correction.

6. I seek exemplary, punitive and general damages under section 88.

   (1) (a) pecuniary loss etc.
   (b) loss of benefit etc.
   (c) Humiliation, loss of dignity and injury to my feelings.

   Section 88
   (2) Mr Simon Meikle submitted a medical certificate to the court to have D De Polo to be declared incapacitated under the PPPR Act 1988 linked to property/protection orders Domestic Violence despite section 11(3)(c).

   (3) Money that is trust money and an "error of law" paid to Public Trust and De Polo Family Trust on sale of King Street and used in purchase of 59 Kiwi Road Point Chevalier Auckland to be returned to me the rightful owner and to Mrs DC Kennelly.

   De Facto partners have no entitlement to Trust property. An error of law has occurred.

7. I seek title of 12 Colville Street Newtown WN 817/71 to be restored to my name.

8. The issue is what do right-thinking members of society with reasonable minds think about the atrocity which has occurred when FP 29/94 has still not been divided and an alcoholic steps in to grab "trust" property with forcible entry under section 91 Crimes Act 1961 on 22nd April 2010 by demanding $228,782.44 which is more than the court order of $205,102.10.

[49] The several points to note at this stage are:

[49.1] It is this request on which the present proceedings are based, not on the events of 2011.

[49.2] Request is made for a specific document (a copy of the lapse of caveat), not for Mr Gilbert's file which had already been obtained from him.

[49.3] The correction regarding the year of separation was to be communicated to Mr McBride in relation to transactions on unknown dates. Mr Gilbert had not acted for Mrs Apostolakis in these transactions.

[49.4] The balance of the correction requests are not in truth corrections of information allegedly held by Mr Gilbert, but an attempt by Mrs Apostolakis to revisit and reargue matters in dispute between her, the De Polo family and other actors.

[50] It is plain from this document that the Privacy Act "request" was conceived by Mrs Apostolakis as a vehicle to correct a number of injustices she believes to have been inflicted on her and that, as stated in the penultimate paragraph, through the Privacy Act she will obtain title to 12 Colville Street, Newtown.

The evidence given by Mr Gilbert

[51] Mr Gilbert said that when in January 2011 Mrs Apostolakis arrived in his office he agreed to lodge a notice of claim to interest under the Property (Relationships) Act 1976 on the strict understanding that should the claim prove to have no foundation, Mrs

Apostolakis would withdraw the claim. When a short time later he found she could not support her claim or provide any evidence to support it, he requested that she withdraw the caveat which had by then been registered against the King Street property in Auckland. Mrs Apostolakis refused. Mr Gilbert regrets that he did not, on the occasion of her first visit to his office, obtain from her an irrevocable undertaking to withdraw. As a consequence he was required to pay from his own funds $5,000 to recompense Ms De Polo for the cost of proceedings she was required to take to have the caveat removed.

[52] From the point in time Mrs Apostolakis refused to comply with Mr Gilbert's request that she withdraw the caveat Mr Gilbert ceased acting for her and was not involved in the withdrawal of the caveat and related proceedings.

[53] In August 2011 Mrs Apostolakis telephoned him and made an appointment. At the request of Mrs Apostolakis Mr Gilbert provided her with his entire file and did not retain a copy.

[54] Mrs Apostolakis then complained to the New Zealand Law Society which on 20 December 2012 decided to take no action. Mrs Apostolakis then took the matter to the Legal Complaints Review Officer who subsequently decided the decision of the Standards Committee was correct.

[55] Mr Gilbert has no record or memory of the phone calls which Mrs Apostolakis claims to have made to his office and in which Mrs Apostolakis requested further information from his file. It was only when he was served with the 22 April 2015 letter that Mr Gilbert became aware that Mrs Apostolakis wanted correction of the year of separation from "2009" to "2004".

[56] Regarding the request in the letter dated 22 April 2015 for a copy of the lapse of caveat over the King Street property, Mr Gilbert said that this is a document he has not seen nor has it ever formed part of his file. He did not act for Mrs Apostolakis in the proceedings which led to the removal of the caveat. He pointed out that Mrs Apostolakis was perfectly aware that he had had no part in the removal or lapse of the caveat over the King Street address.

[57] Regarding the correction request made in para 2 of the letter, Mr Gilbert noted that no document is identified in which the error occurred. He could not make sense of the request that he notify Mr McBride of the claimed error or of the sums of money referenced in the paragraph. As to the balance of the "corrections" sought in paras 3 to 8, Mr Gilbert said the requests were unintelligible and he was unable to comprehend the required response.

[58] As to whether a copy of the file was held in electronic format, Mr Gilbert said no such copy existed. He nevertheless accepted it might be possible to retain a computer expert to see whether any documents could be recovered from a hard drive. He went on to say that he did not think that in April 2015 (when the request was received) he still had the computer he was using in 2011. He pointed out that on the installation of a new computer the hard drive is cleaned so it can be disposed of. He believed the computer he had in 2011 probably did not exist in April 2015. The salient points, however, were that he had ceased acting for Mrs Apostolakis at an early point and had not been involved in the withdrawal of the caveat and related proceedings. He had also in August 2011 given her his entire file.

[59] In cross-examination Mr Gilbert reiterated the following points:

[59.1] Mr Gilbert gave to Mrs Apostolakis his entire file and it included a copy of the notice of claim.

[59.2] At the first meeting with Mrs Apostolakis there had been no discussion at all about the Family Court proceedings and had Mr Gilbert known of them he would not have lodged the caveat. Mr Gilbert was never instructed by Mrs Apostolakis to represent her in the Family Court.

[59.3] The lodging of the caveat was done by Mr Gilbert pro bono. He did not get paid for it nor did he render an invoice.

[59.4] As far as Mr Gilbert is aware the first time he was made aware of a request to amend the date of separation on the notice of claim was when he received the letter dated 22 April 2015.

[59.5] As for the balance of the paragraphs in this letter (paras 3 to 8), Mr Gilbert says that no other information was given to him when he acted for Mrs Apostolakis in 2011. He believes Mrs Apostolakis deliberately kept to an absolute minimum the information he was given. He does not know who Mrs DC Kennelly is, knows nothing about the De Polo Family Trust and knows nothing about Mr Meikle allegedly submitting a medical certificate. In short, if any of these events occurred prior to the first few months of 2011 they are not within his knowledge.

[60] Other allegations made against Mr Gilbert by Mrs Apostolakis include that he was lying, that it was "very prolix" of him to put in a 31 paragraph statement of evidence against her 9 paragraphs, that he had discriminated against her on the grounds of her family status and that at their first meeting Mrs Apostolakis had told him she had suffered harm at the hands of Mr Meikle and Ms J Rennie. All of these allegations Mr Gilbert denied.

Credibility determination

[61] The Tribunal has no hesitation preferring the evidence of Mr Gilbert and rejecting the evidence of Mrs Apostolakis. Mr Gilbert was sincere, ready to concede points against his own interests and despite the verbal attacks made by Mrs Apostolakis during the hearing, particularly during her cross-examination of him, Mr Gilbert remained professional, dispassionate and focused on the facts. He was unfailingly polite and did not respond to her provocations. If anything, his evidence was understated.

[62] By way of contrast, Mrs Apostolakis is an angry, if not obsessed individual. Her evidence was largely unstructured and answers were delivered more in the nature of a stream of consciousness, at times incoherent. In her view, everyone is at fault but not her. She is quick to take offence when none is offered. Mr Gilbert has become a lightning rod for all her obsessive complaints against the De Polo family, the Family Court and any lawyer who has represented an opposing party. We have no confidence at all that Mrs Apostolakis is able to remember or to recount events objectively. Everything is coloured by her preconceived ideas as to why she is in her current predicament.

[63] She is also susceptible to making up allegations against those who have had dealings with her. We refer, by way of example, to her allegations against Judge Ellis. Those allegations include a claim that he has been stalking her, was parking his vehicle

near her house, was guilty of identity fraud, is an unauthorised migrant, had committed crimes, was morally unfit and is a compulsive, pathological liar.

[64] It follows that this decision is to be determined on the evidence given by Mr Gilbert.

FINDINGS OF FACT

[65] The Tribunal's findings of fact follow.

> **[65.1]** In August 2011, at the request of Mrs Apostolakis, Mr Gilbert provided her with her entire file and did not retain a copy. Mrs Apostolakis did not thereafter request any further document or any correction to any document until 22 April 2015.
>
> **[65.2]** By letter dated 22 April 2015 (the text of which is set out above) Mrs Apostolakis made a request for a single document, namely "a copy of the lapse of caveat over the property at 67 King Street, Auckland". Mr Gilbert has not seen the document and it has never formed part of his file. He did not act for Mrs Apostolakis in the proceedings which led to the removal of the caveat. If the requested document exists, it has not been held by Mr Gilbert and accordingly lies outside Principle 6.
>
> **[65.3]** The correction request made in para 2 of the letter dated 22 April 2015 is incoherent. The statement "Please correct the year of separation from '2009' to the year '2004' to Mr Josh McBride" is so vague and unintelligible it is not a correction request within Principle 7. In any event the information to which the request related was not held by Mr Gilbert.
>
> **[65.4]** The balance of the correction requests do not apply to Mr Gilbert as his sole interaction with Mrs Apostolakis was to lodge the notice of claim. Neither before then nor at any subsequent time did he act for Mrs Apostolakis in relation to any other matter. He simply did not hold any personal information to which the balance of the correction requests related.
>
> **[65.5]** The correction requests are not in truth requests. Rather they are a series of allegations about a range of events and circumstances and amount to a relitigation of the Family Court proceedings and the outcome of disputes Mrs Apostolakis has had with the De Polo family and various lawyers. The "corrections" are rather a statement of why Mrs Apostolakis believes that the title of 12 Colville Street, Newtown should be restored to her name. Principle 7 was never intended to be applied in this way.

[66] In these circumstances the claim by Mrs Apostolakis must be dismissed.

Name suppression

[67] At the conclusion of the hearing on 14 May 2018 Mrs Apostolakis made oral application for name suppression. She feigned surprise when the Tribunal responded that an earlier application had already been dismissed. See *Re Apostolakis No. 3 (Refusal of Name Suppression)* [2018] NZHRRT 4 (22 February 2018). Since that decision Mrs Apostolakis has provided no proper grounds for name suppression to be granted and none were advanced on 14 May 2018. The renewed application made on that date is accordingly dismissed.

ORDER

[68] For the reasons given the claims under information privacy principles 6 and 7 are dismissed on their merits.

[69] Costs are reserved

.....	.....	.....
Mr RPG Haines QC	**Ms WV Gilchrist**	**Hon KL Shirley**
Chairperson	**Member**	**Member**