

IN THE DISTRICT COURT
AT AUCKLAND

CIV-2017-004-2861

IN THE MATTER of the Harassment Act 1997

BETWEEN JACQUELINE ANNE VERONICA TURNER

Applicant

AND KAZUFUMI IKEDA

Respondent

CLOSING SUBMISSIONS FOR THE RESPONDENT

DATED 25 JUNE 2019



K3 LEGAL LIMITED
83 Albert Street
(entrance on Kingston
Street)
Auckland 1010
New Zealand

**K3
LEGAL**

PO Box 2137
Auckland 1140
New Zealand

P + 64 9 366 1366
F + 64 9 366 1363

Solicitors Acting:

Zhu (Margaret)
Chen / Joo Yeon
(Julia) Leenoh

email:
margaret@k3.co.nz
julia@k3.co.nz

CLOSING SUBMISSIONS FOR THE RESPONDENT

May it please the Court:

Introduction

- 1 This matter was heard by his Honour Judge Harrison on Tuesday, 11 June 2019.
- 2 The applicant, Jacqueline Anne Veronica Turner (**Ms Turner**) seeks a restraining order against the respondent, Kazufumi Ikeda (**Mr Ikeda**) preventing Mr Ikeda from contacting Ms Turner.
- 3 The respondent submits that the applicant has failed to establish harassment in accordance with sections 3, 4 and 16 of the Harassment Act 1997 (the **Act**) and that a remedy cannot be granted to the applicant.
- 4 In the event, the applicant is found to have satisfied the requirements of sections 3, 4 and 16 of the Act, the respondent submits the specified acts were done for a lawful purpose pursuant to section 17 of the Act.
- 5 The respondent **attaches** at **Schedule 1** of these submissions a chronology of facts to assist the Court.

Harassment – Sections 3, 4 and 16 of the Act

- 6 Ms Turner relied on a number of different occasions to support her application for a restraining order:
 - a) Receiving a note saying she was “cancer” of the Body Corporate in August 2015;¹
 - b) Having a camera situated towards one of her apartments in 2016;²
 - c) Receiving an email dated 17 July 2017;³
 - d) Receiving an email dated 22 July 2017;⁴

¹ Ms Turner’s first affidavit sworn 14 November 2017 at paragraph 8.

² Ms Turner’s first affidavit sworn 14 November 2017 at paragraph 10.

³ Exhibit “B” of Ms Turner’s first affidavit sworn 14 November 2017.

⁴ Exhibit “C” of Ms Turner’s first affidavit sworn 14 November 2017.

- e) Receiving an email dated 14 August 2017;⁵
- f) Being told to “watch out” at the Annual General Meeting on 17 August 2017;⁶
- g) Receiving an email dated 8 March 2018;⁷
- h) Following and/or stalking and/or spying;⁸
- i) Wilful damage of property in April 2019.⁹

- 7 The respondent responds to each of the specified acts that Ms Turner seeks to rely on to support her restraining order application in the **attached** Appendix I.
- 8 During the course of the hearing, Ms Turner accepted that the majority of the grounds relied on did not distress her and that her only concern was with the email correspondence Mr Ikeda had been sending to her.
- 9 In *C v L*, Justice Cooke discussed the importance of satisfying all requirements of section 16 of the Act:¹⁰

“The meaning of harassment is closely defined, and there are carefully formulated tests before the statutory threshold for making a protection order can be met. The purposes of the legislation are also clearly articulated in the objects section. It is directed towards the distress that can be caused by behaviour of this kind. Section 16 sets an appropriate standard for determining whether an order should be made which involves standards directed not only the person applying for the order, but a reasonable person in that person’s circumstances. Moreover, an order can only be made if it is justified, and only if it is “necessary to protect the applicant from further harassment”. The requirement of necessity may be particularly important in establishing a justified limit on fundamental rights.”

- 10 Counsel submits that Ms Turner has failed to satisfy the statutory threshold for making a restraining order under section 16 of the

⁵ Exhibit “F” of Ms Turner’s updating affidavit sworn 18 July 2018.

⁶ Ms Turner’s first affidavit sworn 14 November 2017 at paragraph 16.

⁷ Exhibit “D2” of Ms Turner’s updating affidavit sworn 18 July 2018.

⁸ Exhibit “E” of Ms Turner’s updating affidavit sworn 18 July 2018 and at paragraph 9.

⁹ Exhibit “D1” of Ms Turner’s updating affidavit sworn 18 July 2018.

¹⁰ *C v L* [2019] NZHC 485 at [15].

JL-246279-2-199-V1

Harassment Act 1997 as she has failed to establish that the behaviour Mr Ikeda has engaged in would cause distress or threaten to cause distress to a reasonable person in the applicant's particular circumstances.

- 11 During the course of cross-examination, Ms Turner accepted that "*I have no idea what he has sent*" confirming that she did not read the emails Mr Ikeda addressed to her. A reasonable person in Ms Turner's particular circumstances could not have been distressed from Mr Ikeda's emails because she did not read its contents.
- 12 In any event, a reasonable person, holding the role of chairperson of the Body Corporate, would not be distressed by receiving emails from a disgruntled unit owner expressing his dissatisfaction with the management and operation of the Body Corporate.
- 13 The difficulty with Ms Turner's application is that Mr Ikeda's emails were addressed to her in her capacity as the Body Corporate Chairperson. Not only were the emails addressed to Ms Turner as Chairperson of the Body Corporate, but also the Body Corporate Committee Members and Body Corporate Administration Limited managing the complex (the **BCA**).
- 14 Mr Ikeda's emails were not directed to Ms Turner personally but to the Body Corporate with respect to its management, administration and management.
- 15 Ms Turner relies on only one email addressed to her only from Mr Ikeda.¹¹ Although Mr Ikeda's email was only addressed to Ms Turner, it was clearly sent to her in her capacity as the Body Corporate Chairperson. In any event, this one off occasion is not enough to establish harassment for the purposes of section 3 of the Act because two specified acts have not occurred.
- 16 The respondent therefore submits the applicant has failed to satisfy the requirements in sections 3, 4 and 16 of the Act so that the Court is unable to grant a restraining order pursuant to section 16(1) of the Act.

¹¹ Email dated 14 August 2019 Exhibit "F" of Ms Turner's Updating Affidavit sworn 18 July 2018. JL-246279-2-199-V1

Lawful Purpose – Section 17 of the Act

- 17 As a unit owner Mr Ikeda has a legal right and interest in the operation and administration of the Body Corporate. He has a legal right to attend Body Corporate Annual General Meetings and he has a legal right to voice his concerns about the management and administration of the Body Corporate.
- 18 Ms Turner as the Chairperson of the Body Corporate has a duty and obligation to respond to the concerns raised by unit owners. Ms Turner is aware of this duty and obligation as she stated in her own biography that “...the Chairperson has a duty of care to this building and its owners and occupants which means one is basically on call 24/7 in cases of emergency.”¹²
- 19 In *C v L*, Justice Cooke found that:¹³
- “If an act complained of involves a legal right to communicate – such a statutory or contractual entitlement – s 17 potentially applies. But in my view whether a person is pursuing a “lawful purpose” is not limited to acts that are expressly authorised as a matter of law (by a statute or otherwise). It may also encompass steps that can be regarded as legitimate to take. It is the purpose of the relevant act, and whether that purpose is lawful that is the focus. The reference to that purpose being “lawful” seems to me to encompass purposes that are legitimate. This involves a consideration of the nature of circumstances of the communications”*
- 20 During cross-examination Ms Turner’s deposed that she was not involved in the day to day management of the Body Corporate. However, Graeme McDonald (**Mr McDonald**), the building manager, deposed that Ms Turner was the “big boss” of the Body Corporate and that she knew everything about the Body Corporate and managed all of its affairs. Ms Turner’s counsel also confirmed at the Bar that Ms Turner’s role as Chairperson required her to devote 40 hours of her week to manage the Body Corporate.

¹² Exhibit “IKE-2” of Mr Ikeda’s Affidavit in Reply sworn 6 June 2019 at page 2.

¹³ *C v L* [2019] NZHC 485 at [52].

- 21 Mr Ikeda as a unit owner has a legal right to communicate with Ms Turner. All of Mr Ikeda's communications with Ms Turner were in her capacity as Chairperson of the Body Corporate. This is evident from the fact that all email correspondence (with the exception of one) was sent not only to Ms Turner, but also the Body Corporate Committee Members and the BCA. All email correspondence related to the operation and management of the Body Corporate.
- 22 The nature and circumstances of Mr Ikeda's communications were based on Mr Ikeda's concerns with the operation and administration of the Body Corporate.
- 23 In June 2016, Mr Ikeda's solicitor at the time emailed the Body Corporate for the provision of information and documents pursuant to the Unit Titles Act 2010. Specifically, Mr Ikeda requested disclosure of information relating to levies charged against his unit. Mr Ikeda failed to receive a response from the Body Corporate and the BCA, and the information requested was not forthcoming.¹⁴
- 24 Due to the lack of information from the Body Corporate, Mr Ikeda was required to apply to the Tenancy Tribunal to obtain orders directing the Body Corporate to release these documents.¹⁵ Mr Ikeda was successful in obtaining orders from the Tenancy Tribunal, however despite the orders, the Body Corporate failed to provide Mr Ikeda with all the documents included in the orders which resulted in Mr Ikeda sending the email dated 17 July 2017.¹⁶
- 25 With the few documents released from the Body Corporate, Mr Ikeda was able to identify discrepancies with the Body Corporate accounts. Specifically, he was able to identify payments totalling \$16,000 being made to Ms Turner's company, Stone Warehouse, from the Body

¹⁴ See exhibit "F" of Mr Ikeda's first affidavit sworn 31 January 2018 – emails were sent on 3 June 2016, 21 June 2016 and 4 July 2016.

¹⁵ See exhibit "G" of Mr Ikeda's first affidavit sworn 31 January 2018 - orders obtained 1 November 2016.

¹⁶ See exhibit "B" of Ms Turner's first affidavit sworn 14 November 2017.

Corporate account.¹⁷ This resulted in Mr Ikeda sending the email dated 22 July 2017 and 14 August 2017.¹⁸

- 26 Mr Ikeda was also incorrectly charged for levies that should not have been struck against his unit and which were eventually refunded to him after Mr Ikeda discovered the discrepancies.¹⁹ Ms Turner also accepted that the Body Corporate incorrectly charged Mr Ikeda's unit for levies that were not claimable against his unit.
- 27 During this time, Mr Ikeda ran to become a member of the Body Corporate Committee. On 17 August 2017, Mr Ikeda tied with Ms Weiqun Huang as the 7th committee member.²⁰ Ms Huang submitted her resignation for the seat to allow Mr Ikeda to sit, however the Body Corporate refused to accept her resignation and Mr Ikeda was excluded from being a member of the Body Corporate Committee.²¹
- 28 On 25 October 2017, Mr Ikeda filed an application with the Tenancy Tribunal with respect to his exclusion as a member of the Body Corporate Committee in addition to some other issues.
- 29 The concerns Mr Ikeda communicated to Ms Turner as Body Corporate Chairperson were for a legitimate purpose because Mr Ikeda's concerns were confirmed when the Tenancy Tribunal found that Mr Ikeda was unjustifiably excluded as a member of the Body Corporate Committee and that "...some of the actions by BCA leading up to the AGM and in terms of the actual vote vaunting created an unfair and potentially undemocratic environment."²² Mr Ikeda's interpreter also noted that "*I have witnessed a complete lack of willingness by the Body Corporate administration team to listen and talk to Mr Ikeda about his situation and his concerns about the Body Corporate.*"²³

¹⁷ See exhibit "A" of Mr Ikeda's second affidavit sworn 1 March 2018 – invoices issued by Stone Warehouse and Amsham Investments and 2006 extract from Body Corporate accounts confirming payments totalling \$16,959.80 being made, see exhibit "B" of Mr Ikeda's second affidavit sworn 1 March 2018 – double payment of Maynard Marks invoice.

¹⁸ See exhibit "C" of Ms Turner's first affidavit sworn 14 November 2017 and exhibit "F" of Ms Turner's updating affidavit sworn 18 July 2018.

¹⁹ See also Mr Ikeda's first affidavit sworn 31 January 2018 at paragraph 15.

²⁰ See exhibit "E" of Mr Ikeda's first affidavit sworn 31 January 2018 – paragraph 7.

²¹ Ibid at paragraph 25 and see exhibit "IKE-3" of Mr Ikeda's affidavit in reply sworn 6 June 2019 – paragraph 13 to 20.

²² Exhibit "IKE-3" of Mr Ikeda's Affidavit in Reply sworn 6 June 2019 at paragraph [103].

²³ See affidavit of Rodney John Hellyer sworn 20 February 2018 at paragraph 8.

- 30 Mr Ikeda's communications with Ms Turner were to seek information and explanation about the operation and management of the Body Corporate as a concerned unit owner.
- 31 At the hearing, Ms Turner advised that she wishes to restrain Mr Ikeda from sending emails to her work address. However, it is clear that Ms Turner actively uses this email to attend to Body Corporate matters and affairs²⁴ so to restrain Mr Ikeda from emailing Ms Turner would impede upon Mr Ikeda's right as a unit owner to contact the Body Corporate Chairperson. In any event, Ms Turner conceded that none of Mr Ikeda's emails were threatening.
- 32 Ms Turner has voluntarily assumed and continued on in the role of Body Corporate Chairperson despite alleging she is distressed as a result of Mr Ikeda's actions. Ms Turner wishes to continue assuming the role of Body Corporate Chairperson but seeks to restrain communications from Mr Ikeda, which interferes with Mr Ikeda's rights as a unit owner.

Conclusion

- 33 Although the Tenancy Tribunal determination was released on 27 June 2018, it is important to note that Ms Turner's application for a restraining order was filed only three weeks after Mr Ikeda's application to the Tenancy Tribunal concerning the unfair election process.
- 34 Ms Turner attempts to rely on emails sent from Mr Ikeda between 17 July 2017 and 14 August 2017 to support her restraining order application however Ms Turner did not file her application for a restraining order until 18 December 2017.
- 35 It is difficult to comprehend that Ms Turner was distressed and feared for her safety for the purposes of sections 4 and 16 of the Act when she delayed filing an application for a restraining order against Mr Ikeda until after he filed an application in the Tenancy Tribunal and over four months after the allegedly harassing emails were sent.

²⁴ See email dated 4 February 2019 4.25am from Ms Turner to the Auckland Police relating to the glue in key incident, see Exhibit "I" in Mr Ikeda's first affidavit sworn 31 January 2018.
JL-246279-2-199-V1

- 36 Ms Turner's repeated requests for adjournment of the harassment hearing significantly conflicts with her allegations that she was distressed and feared for her safety.
- 37 Ms Turner's allegations are doubtful, especially considering she deposed that she never sees Mr Ikeda as she goes to work very early and finishes early whereas Mr Ikeda works at midnight. Ms Turner never sees Mr Ikeda except for at the Annual General Meetings for the Body Corporate which Ms Turner accepted Mr Ikeda has a legal right to attend.
- 38 Counsel submits that orders restraining Mr Ikeda from emailing and/or contacting Ms Turner cannot be granted as Ms Turner has failed to satisfy the requirements of section 16 of the Act allowing the Court to grant such orders.
- 39 Like all other owners, Mr Ikeda has a legal right and legitimate purpose in communicating with Ms Turner as the Chairperson of the Body Corporate and attending and taking part in Annual General Meetings.
- 40 Section 14 of the New Zealand Bill of Rights Act 1990 upholds freedom of expression and the Act cannot justifiably restrict and limit Mr Ikeda's right to freedom of expression when the requirements of section 16 of the Act have not been satisfied.

Costs

- 41 If Mr Ikeda is successful in his defence, he seeks costs against Ms Turner on an indemnity and/or increased basis subject to Rule 14.6 of the District Court Rules 2014.
- 42 Ms Turner's application was a misconceived and meritless claim from the outset. As Ms Turner herself deposed during the course of the hearing, she did not feel distressed as a result of Mr Ikeda's behaviour, except for the emails Mr Ikeda was sending. The difficulty with this allegation is that Ms Turner further deposed that she was unaware of the contents of the emails as she did not see them.
- 43 Although Ms Turner may have felt 'harassed' in a non-legal layperson sense, she failed to meet the statutory threshold of the carefully

formulated tests in sections 3, 4 and 16 of the Act which are formulated to take account of the respondent's rights to freedom of expression.

- 44 Since the filing her application on 18 December 2017, Ms Turner also made repeated last minute attempts to adjourn the hearing, failed to appear at scheduled hearings and attempted to adduce evidence last minute and even went further to call witnesses who were seemingly unavailable until after the hearing was determined to proceed. The steps Ms Turner took in these proceedings are clearly inconsistent with a person distressed, harassed and fearing for their safety.
- 45 Mr Ikeda, as a unit owner, has a legal right to communicate with Ms Turner, the Body Corporate Chairperson. He had a legitimate purpose to communicate with her and the concerns he raised were not 'baseless' and 'unfounded' as Ms Turner suggests as the Tenancy Tribunal found that there had indeed been significant breaches of the Unit Titles Act 2010 and intentional exclusion of Mr Ikeda.
- 46 Mr Ikeda not only had a legitimate purpose in communicating with Ms Turner, he was acting as reasonably as he could be expected to given the nature of circumstances of the treatment from the Body Corporate. Mr Ikeda was merely exercising his right to freedom of expression to voice legitimate concerns he had regarding the operation and management of the Body Corporate. Ms Turner was well aware of this right as she accepted Mr Ikeda had a right to contact the Body Corporate (including Ms Turner as Chairperson) as a disgruntled and concerned unit owner. Accordingly, counsel respectfully requests Mr Ikeda's full costs to be recoverable from Ms Turner.

Dated: 25 June 2019



Z Chen / J Leenoh

Counsel for the Respondent

Appendix 1

Alleged Act	S 4 of the Act	S 16 of the Act	S 3 of the Act	S 17 of the Act	Respondent's Response
"Cancer" of the Body Corporate Note - August 2015 ¹	Satisfies the definition of specified act – section 4(1)(d) of the Act.	<p>Ms Turner accepted she was not distressed and did not fear for her safety.</p> <ul style="list-style-type: none"> Alleged behaviour did not cause Ms Turner any distress; A reasonable person in Ms Turner's particular circumstances would not be distressed; The degree of distress does not justify the making of an order. 	Cannot be considered harassment as not distressed.	Mr Ikeda as a unit owner has a legal right to freedom of expression with respect to Ms Turner's actions as Body Corporate Chairperson.	<p>Fails to meet the criteria for section 16(1)(b) of the Act.</p> <p>Mr Ikeda was not aware that Ms Turner's partner passed away from cancer.²</p> <p>Mr Ikeda would have lawful purpose pursuant to section 17 of the Act</p>

¹ Ms Turner's first affidavit sworn 14 November 2017 at paragraph 8.

² Mr Ikeda's first affidavit sworn 31 January 2018 at paragraph 31.

<p>Camera situated towards one of her apartments in 2016.³ Ms Turner deposed at hearing this was likely to have been around 2009.</p>	<p>Does not satisfy definition of specified act because unit referred to is not Ms Turner's place of residence subject to section 4(1)(a) of the Act.</p> <p>Mr Ikeda's unit is on level 13 of the complex. Ms Turner resides on level 14 so it is physically impossible for Mr Ikeda to direct any camera towards Ms Turner's apartment from his apartment.</p>	<p>Does not satisfy specified act so cannot be considered.</p>	<p>Cannot be harassment as no specified act.</p>	<p>Does not apply as no specified act.</p>	<p>Not harassment.</p> <p>Mr Ikeda denies this action.⁴</p> <p>Ms Turner has failed to provide any evidence to support this act.</p>
--	--	--	--	--	---

³ Ms Turner's first affidavit sworn 14 November 2017 at paragraph 10.

⁴ Please refer to Mr Ikeda's first affidavit sworn 31 January 2019 at paragraph 39.

	Ms Turner has one unit on level 13 which she rents out to tenants – as deposed at the hearing.				
Email dated 17 July 2017 ⁵	Satisfies the definition of specified act – section 4(1)(d) of the Act.	Ms Turner did not “see” the contents of Mr Ikeda’s email.. Ms Turner cannot be distressed or fear for her safety if she does not know the content of the email. Ms Turner accepted she was not distressed and that the emails were not threatening.	Cannot be considered harassment as not distressed.	Mr Ikeda as a unit owner has a legal right to communicate with Ms Turner as the Body Corporate Chairperson. Mr Ikeda sent this email to the entire Body Corporate to express his concerns with the management of the Body	Fails to meet the criteria for section 16(1)(b) of the Act. Mr Ikeda would have lawful purpose pursuant to section 17 of the Act

⁵ Exhibit “B” of Ms Turner’s first affidavit sworn 14 November 2017.

		<p>A reasonable person in Ms Turner's particular circumstances as Chairperson of the Body Corporate would not be distressed because:</p> <ul style="list-style-type: none"> • The facts referred to are true.⁶ • The email was sent to the entire Body Corporate including Body Corporate Committee Members and BCA 		<p>Corporate and the email was not targeted at Ms Turner specifically.</p> <p>The email was sent to Ms Turner in her capacity as Chairperson of the Body Corporate.</p>	
Email dated 22 July 2017 ⁷	Satisfies the definition of specified act – section 4(1)(d) of the Act.	<p>Ms Turner did not “see” the contents of Mr Ikeda's email..</p> <p>Ms Turner accepted she was not distressed and</p>	Cannot be considered harassment as not distressed.	Mr Ikeda as a unit owner has a legal right to communicate with Ms Turner as the	Fails to meet the criteria for section 16(1)(b) of the Act.

⁶ Exhibit “G” of Mr Ikeda's first affidavit sworn 31 January 2018 – order of Tenancy Tribunal.

⁷ Exhibit “C” of Ms Turner's first affidavit sworn 14 November 2017.

		<p>that the emails were not threatening.</p> <p>A reasonable person in Ms Turner's particular circumstances as Chairperson of the Body Corporate would not be distressed because:</p> <ul style="list-style-type: none"> • The facts referred to are true.⁸ • The email was sent to the entire Body Corporate including Body Corporate Committee Members and BCA 		<p>Body Corporate Chairperson.</p> <p>Mr Ikeda sent this email to the entire Body Corporate to express his concerns with the management of the Body Corporate and the email was not targeted at Ms Turner specifically.</p> <p>The email was sent to Ms Turner in her capacity as Chairperson of the Body Corporate.</p>	<p>Mr Ikeda would have lawful purpose pursuant to section 17 of the Act</p>
--	--	---	--	--	---

⁸ Exhibit "G" of Mr Ikeda's first affidavit sworn 31 January 2018 – order of Tenancy Tribunal.

Email dated 14 August 2017 ⁹	Satisfies the definition of specified act – section 4(1)(d) of the Act.	Ms Turner accepted the emails were not threatening. A reasonable person in Ms Turner's particular circumstances as Chairperson of the Body Corporate would not be distressed and could be expected to ignore communications.	Cannot be considered harassment as cannot reasonably be distressed.	Mr Ikeda as a unit owner has a legal right to communicate with Ms Turner as the Body Corporate Chairperson. Mr Ikeda sent this email to the entire Body Corporate to express his concerns with the management of the Body Corporate and the email was not targeted at Ms Turner specifically. The email was sent to Ms Turner	Fails to meet the criteria for section 16(1)(b) of the Act. Mr Ikeda would have lawful purpose pursuant to section 17 of the Act
---	---	---	---	---	---

⁹ Exhibit "F" of Ms Turner's updating affidavit sworn 18 July 2018.

				in her capacity as Chairperson of the Body Corporate.	
“Watch out” at the AGM on 17 August 2017. ¹⁰ Ms Turner deposed at the hearing at this also occurred at the Body Corporate Committee Meeting.	Satisfies the definition of specified act – section 4(1)(d) of the Act.	Ms Turner accepted that the comment could have been directed at the entire Body Corporate. A reasonable person in Ms Turner's particular circumstances as Chairperson of the Body Corporate would not be distressed and could be expected to ignore communications.	Cannot be considered harassment as cannot reasonably be distressed.	Mr Ikeda as a unit owner has a legal right to communicate with Ms Turner as the Body Corporate Chairperson. The email was sent to Ms Turner in her capacity as Body Corporate Chairperson.	Mr Ikeda denies this action and has supplied two independent affidavits to support this. ¹¹ Mr Ikeda denies this action at the Body Corporate Committee Meeting. Ms Turner has failed to provide any evidence to support this act. Fails to meet the criteria for section 16(1)(b) of the Act.

¹⁰ Ms Turner's first affidavit sworn 14 November 2017 at paragraph 16.

¹¹ Please refer to affidavit of Thuy Thu Vu dated 22 February 2018 and affidavit of Anna Fisher dated 26 February 2018

					Mr Ikeda would have lawful purpose pursuant to section 17 of the Act
Email dated 8 March 2018 ¹²	Satisfies the definition of specified act – section 4(1)(d) of the Act.	Ms Turner accepted the emails were not threatening. A reasonable person in Ms Turner's particular circumstances as Chairperson of the Body Corporate would not be distressed as the facts referred to are true. ¹³	Cannot be considered harassment as cannot reasonably be distressed.	Mr Ikeda as a unit owner has a legal right to communicate with Ms Turner as the Body Corporate Chairperson. Mr Ikeda sent this email to the entire Body Corporate to express his concerns with the management of the Body Corporate and the email was not	Fails to meet the criteria for section 16(1)(b) of the Act. Mr Ikeda would have lawful purpose pursuant to section 17 of the Act

¹² Exhibit "D2" of Ms Turner's updating affidavit sworn 18 July 2018.

¹³ Please refer to exhibit "A" of Mr Ikeda's second affidavit sworn 1 March 2018.

				targeted at Ms Turner specifically.	
				The email was sent to Ms Turner in her capacity as Chairperson of the Body Corporate.	
Following and/or stalking and/or spying ¹⁴	Satisfies the definition of specified act – section 4(1)(a) of the Act.	Ms Turner accepted that this act was not distressing as only the emails were. Ms Turner's self written biography suggests she is not distressed by these actions. ¹⁵ Ms Turner went to level 13 which is where Mr Ikeda's unit is located.	Cannot be considered harassment as cannot reasonably be distressed.	Mr Ikeda as a unit owner has a legal right to communicate with Ms Turner as the Body Corporate Chairperson in email correspondence thereafter. Mr Ikeda sent email to the entire	Mr Ikeda denies this action. ¹⁶ Ms Turner has failed to provide any evidence to support this act. Fails to meet the criteria for section 16(1)(b) of the Act.

¹⁴ Exhibit "E" of Ms Turner's updating affidavit sworn 18 July 2018 and at paragraph 9.

¹⁵ Please refer to exhibit "IKE-2" of Mr Ikeda's affidavit in reply sworn 6 June 2019 – page 3 first paragraph.

¹⁶ Please refer to Mr Ikeda's affidavit in reply dated 6 June 2019 at paragraph 9.

		<p>A reasonable person in Ms Turner's particular circumstances would not be distressed as the facts referred to are true.</p> <p>Mr MacDonald deposed that Mr Ikeda would be able to see Ms Turner from his front door viewing lens.</p>		<p>Body Corporate to express his concerns with the management of the Body Corporate and the email.</p> <p>The email was sent to Ms Turner in her capacity as Chairperson of the Body Corporate.</p>	Mr Ikeda would have lawful purpose pursuant to section 17 of the Act.
Wilful damage of property in April 2019 ¹⁷	Does not satisfy definition of specified act subject to section 4(1)(c) of the Act because Mr Ikeda did not interfere with property in Ms	Does not satisfy specified act so cannot be considered.	Cannot be harassment as no specified act.	Does not apply as no specified act.	<p>Not harassment.</p> <p>Mr Ikeda was not convicted of the offence.¹⁹</p>

¹⁷ Exhibit "D1" of Ms Turner's updating affidavit sworn 18 July 2018.

¹⁹ Mr Ikeda's affidavit in reply dated 6 June 2019 at paragraph 8.

	<p>Turner's possession</p> <p>Mr MacDonald deposed that the damage was to common property and his property. Mr MacDonald accepted that the act was not directed at Ms Turner.</p> <p>Mr MacDonald lodged the complaint and Ms Turner further acknowledges damage done to common property which is not in Ms</p>				
--	---	--	--	--	--

	Turner's possession. ¹⁸				
--	---------------------------------------	--	--	--	--

¹⁸ Please refer to letter and emails produced by applicant on day of hearing – email from Ms Turner to Police states that damage was done to “common property”.

Schedule 1
Chronology of Facts

Date	Applicant	Respondent	Proceedings
2005		<p>KI is the owner of unit 13H at 135 Victoria Street West¹</p> <p>Body Corporate 346799 formed with KI as committee member²</p> <p>JT is a member of the Body Corporate and is an owner of unit 14E³</p> <p>JT also a director and sole shareholder of Stone Warehouse Limited, a company which provides services to the Body Corporate⁴</p>	
2006	JT Chairperson since 2006 ⁵		
	KI began accusing JT of paying money to Committee members ⁶		
2012 to 2016		\$40million litigation claim over 135 Victoria Street West ⁷	
14 March 2014		<p>KI discovered Sue Rubanand from BCA was hand delivering envelopes to JT⁸</p> <p>KI later discovered this was instructed by JT, so KI requested original copies of invoices from JT⁹</p>	

¹ First affidavit of KI, 31 January 2018, para 1 and Exhibit A (certificate of title) [tab 6, p 28]

² Ibid [tab 6, p 28]

³ First affidavit of KI, 31 January 2018, para 4 [tab 6, p 28]

⁴ First affidavit of KI, 31 January 2018, para 5 and Exhibit D (company search) [tab 6, p 28 and p85]

⁵ First affidavit of JT, 14 November 2017, para 3 [tab 4, p 12]

⁶ First affidavit of JT, 14 November 2017, para 6 [tab 4, p 12]

⁷ Second affidavit of JT, 18 July 2018, Exhibit D2 (email from KI at para 5)

⁸ First affidavit of KI, 31 January 2018, para 19, Exhibit I (email correspondence) [tab 6, p 31 and p133]

⁹ First affidavit of KI, 31 January 2018, para 22 [tab 6, p 31]

2015		KI returned to New Zealand (from Japan) and elected Body Corporate member ¹⁰	
17 August 2015		KI raised issues of money being paid to the Body Corporate at AGM ¹¹ KI noticed private investigator Daniel Toresen's unusual presence ¹² KI sworn and yelled at by Graeme McDonald ¹³	
19 August 2015	JT's husband passed away of cancer ¹⁴		
	JT received notes I post box that said she was "cancer" of the Body Corporate ¹⁵	KI acknowledges sending a letter to JT saying that she is the "cancer" of Victopia, but denies this refers to JT's partner's passing ¹⁶	
	JT hired a bodyguard for a month ¹⁷	KI has no knowledge of this ¹⁸	
2016 (2009)	KI had a camera situated on his windowsill directed towards one of her apartments ¹⁹	KI denies this ²⁰	
February to May 2016		KI made complaints regarding BCA and JT hiring private investigator Daniel Toresen from Investigators New Zealand Limited to investigate him ²¹	

¹⁰ First affidavit of KI, 31 January 2018, para 20 and Exhibit J (17 August 2017 AGM minutes) **[tab 6, p 31 and p138]**

¹¹ First affidavit of KI, 31 January 2018, para 23 **[tab 6, p 31]**

¹² First affidavit of KI, 31 January 2018, para 24 **[tab 6, p 31]**

¹³ First affidavit of KI, 31 January 2018, paras 26 and 27 and Exhibit H (notes by interpreter Rodney Hellyer) **[tab 6, p 32 and p148]**

¹⁴ First affidavit of JT, 14 November 2017, para 7 **[tab 4, p 12]**

¹⁵ First affidavit of JT, 14 November 2017, para 8 **[tab 4, p 12]**

¹⁶ First affidavit of KI, 31 January 2018, para 31

¹⁷ First affidavit of JT, 14 November 2017, para 9 **[tab 4, p 12]**

¹⁸ First affidavit of KI, 31 January 2018, para 32 **[tab 6, p 32]**

¹⁹ First affidavit of JT, 14 November 2017, para 10 **[tab 4, p 12]**

²⁰ First affidavit of KI, 31 January 2018, para 39 **[tab 6, p 33]**

²¹ First affidavit of KI, 31 January 2018, paras 33 to 38 and Exhibit M (copy of complaint to Police) and Exhibit N (complaint to Private Security Personnel Licensing Authority) **[tab 6, p 33, p 152 and p N]**

3 June 2016		KI emails (via his solicitors) Body Corporate Manager (BCA) seeking release of financial documents entitled under the Unit Titles Act 2010 ²²	
21 June 2016		KI emails Body Corporate Manager (BCA) seeking release of financial documents entitled under the Unit Titles Act 2010 ²³	
4 July 2016		KI emails Body Corporate Manager (BCA) seeking release of financial documents entitled under the Unit Titles Act 2010 ²⁴	
July – October 2016		BCA releases some, but not all document sought, leading to KI's Tenancy Tribunal Application for release of information ²⁵	
1 November 2016			Tenancy Tribunal Order for provision of Owners' contact list by 22 November 2016 ²⁶
2 March 2017		KI excluded from Body Corporate Committee meeting Two different versions of committee meeting minutes issued ²⁷	
9 May 2017			Tenancy Order for provision of Owners' contact list ²⁸
17 July 2017	Email (Exhibit B) from KI accusing JT of		

²² First affidavit of KI, 31 January 2018, para 11, Exhibit F (emails from KI to BCA) [tab 6, p 29 and p 114]

²³ First affidavit of KI, 31 January 2018, para 11, Exhibit F (emails from KI to BCA) [tab 6, p 29 and p 114]

²⁴ First affidavit of KI, 31 January 2018, para 11, Exhibit F (emails from KI to BCA) [tab 6, p 29 and p 114]

²⁵ First affidavit of KI, 31 January 2018, paras 13 and 14 [tab 6, p 30]

²⁶ First affidavit of KI, 31 January 2018, para 14 and Exhibit G (Tenancy Tribunal Order), also First affidavit of JT, 14 November 2017, Exhibit A (email from K at para 6) [tab 6, p 30 and p 119 and tab 4 at p 16]

²⁷ Second affidavit of KI, 1 March 2018, paras 17, 18 and Exhibit E (two different minutes), also First affidavit of KI, 31 January 2018, paras 28 to 30 and Exhibit L (meeting minutes) [tab 10, p 235 and p 257]

²⁸ First affidavit of JT, 14 November 2017, Exhibit A (email from K at para 6) [tab 4, p 16]

	breaching District Court Orders ²⁹		
20 July 2017			BCA issued Notice of Intention to hold annual general meeting ³⁰
22 July 2017	Email (Exhibit C) from KI accusing JT of counterfeiting and forgery, ³¹	KI explains this means he has found discrepancies in the Body Corporate's accounts and Committee meeting minutes ³²	
31 July 2017			KI emailed nomination forms for himself ³³
14 August 2017	Email (Exhibit A) from KI accusing JT of being a thief and taking Body Corporate monies ³⁴		
	Email (Exhibit F) later annexed in updating affidavit ³⁵		
17 August 2017	2017 AGM: KI told JT to "watch out" on two occasions at the Body Corporate meeting ³⁶	KI denies he said this ³⁷ KI raised the issue of \$16,000 payments to JT's business account at AGM, no answer from JT. Discrepancies still not addressed ³⁸ Full details on suspicious payment issues appear in second affidavit of KI dated 1 March 2018 ³⁹	Tie between KI and Ms Weiqun Huang at 7 th committee member
25 August 2017			Doug Cowan handed formal resignation from Ms Huang, but KI informed that Body Corporate committee reduced to 6 members,

²⁹ First affidavit of JT, 14 November 2017, para 14 and Exhibit B (email from KI) [tab 4, p 19]

³⁰ Third affidavit of KI, Exhibit IKE-3 (Tenancy Tribunal Decision, 27 June 2018, at [7])

³¹ First affidavit of JT, 14 November 2017, para 15 and Exhibit C (email from KI) [tab 4, p 13 and p21]

³² First affidavit of KI, 31 January 2018, para 47 (a) to (e) [tab 6, pp 34 and 35]

³³ Third affidavit of KI, Exhibit IKE-3 (Tenancy Tribunal Decision, 27 June 2018, at [8])

³⁴ First affidavit of JT, 14 November 2017, para 12 and Exhibit A (email from KI) [tab 4, p 13 and p 15]

³⁵ Second affidavit of JT, 18 July 2018, para 10 and Exhibit F (email from KI)

³⁶ First affidavit of JT, 14 November 2017, para 16.

³⁷ First affidavit of KI, 31 January 2018, para 40 [tab 6, p 33]

³⁸ First affidavit of KI, 31 January 2018, para 48 [tab 6, p 35]

³⁹ Second affidavit of KI, 1 March 2018, Exhibits A to D [tab 10, pp 233, 236, 251, 252 and 253]

			so KI would not be a part of the committee ⁴⁰
25 October 2017			KI filed application for Order under Tenancy Tribunal on a number of issues
14 November 2017			JT swears affidavit in support of application for restraining order
18 December 2017			JT files application for restraining order
7 and 8 March 2018	Graeme McDonald saw KI glue his keyhole and key hole of the inorganic rubbish room on CCTV footage ⁴¹	KI denies he glued key holes and says he was not convicted ⁴²	
8 March 2018	Email (Exhibit D2) from KI accusing JT of receiving payments of \$16,000 from the Body Corporate ⁴³	KI asking for explanation about payments ⁴⁴ Further refers to biography by JT ⁴⁵	
30 April 2018	KI arrested for gluing of keyhole incidents ⁴⁶	KI denies he glued key holes and says he was not convicted ⁴⁷	
7 June 2018	KI emailed Body Corporate members defaming JT that she illegally entered unit of a deceased proprietor using her master key ⁴⁸ Concerned that KI is spying on her ⁴⁹	KI had legitimate concern; JT admitted to entering unit in her biography ⁵⁰ Other concerns also legitimate, and refers to Tenancy Tribunal Order ⁵¹	
27 June 2018			Decision by Tenancy Tribunal holding generally: - Breach of process in

⁴⁰ Third affidavit of KI, Exhibit IKE-3 (Tenancy Tribunal Decision, 27 June 2018, at [19] and [20])

⁴¹ Second affidavit of JT, 18 July 2018, paras 4 and 5 and Exhibit D1 ("Police charges")

⁴² Third affidavit of KI, 6 June 2018, para 6

⁴³ Second affidavit of JT, 18 July 2018, paras 6 and Exhibit D2

⁴⁴ Third affidavit of KI, 6 June 2018, para 7

⁴⁵ Third affidavit of KI, 6 June 2018, Exhibit IKE-2 (JT's biography for purpose of Body Corporate Committee election for 5 September 2018)

⁴⁶ Second affidavit of JT, 18 July 2018, paras 4, 5 and 7 and Exhibit D1 ("Police charges")

⁴⁷ Third affidavit of KI, 6 June 2018, para 6

⁴⁸ Second affidavit of JT, 18 July 2018, para 8 and Exhibit E (Email from KI)

⁴⁹ Second affidavit of JT, 18 July 2018, para 9

⁵⁰ Third affidavit of KI, 6 June 2018, para 9

⁵¹ Third affidavit of KI, 6 June 2018, para 10 and Exhibit IKE-3 (Tenancy Tribunal Order dated 27 June 2018)

			<p>electing 2017 Body Corporate Committee members</p> <ul style="list-style-type: none"> - Many votes defective - KI is 7th member of Body Corporate committee - Numerous breaches of Unit Titles Act 2010
18 July 2018			<p>First Hearing –</p> <p>JT did not appear</p> <p>Vacated on basis of settlement reached between parties</p>
27 July 2018			Settlement offer withdrawn by JT ⁵²
6 September 2018			JT sought to defer setting down hearing on basis that 12 September 2018 AGM may resolve issues ⁵³
4 October 2018			JT agrees to set matter down for 1-day hearing but indicates wish to apply for joinder, in which case 2 days will be required ⁵⁴
27 February 2019			JT seeks to adjourn March 2019 hearing, on basis of still waiting for instructions on joinder, as well as JT's medical conditions preventing her from filing updating evidence ⁵⁵
6 June 2019			KI files third affidavit
10 June 2019			JT seeks further adjournment to file response evidence to KI

⁵² Memorandum of counsel for the respondent, 30 August 2018 at para 6

⁵³ Memorandum of counsel for the applicant, 6 September 2018, at paras 1 to 4

⁵⁴ Memorandum of counsel for the applicant, 4 October 2018, at para 3

⁵⁵ Memorandum of counsel for the applicant, 27 February 2019, at paras 4 and 5