IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CRI-2019-004-005968
[2022] NZDC 8985

COMMERCE COMMISSION
Prosecutor

v

GLOBAL FIBRE8 LIMITED
TANGI TUAKE
Defendants

Hearing:	13 May 2022
Appearances:	A McClintock for the Prosecutor J Donkin for the Defendants
Judgment:	13 May 2022

NOTES OF JUDGE K J PHILLIPS ON SENTENCING

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[1] Global Fibre8 Limited and Tangi Tuake were charged by the Commerce Commission with a number of charges laid representatively relating to breaches of relevant sections of the Fair Trading Act 1986. The allegations were in respect of a product, being a Chinese manufactured wall panel system called K3T. The company, Global Fibre8 Limited, was charged with being in trade and involved in the supply of this wall board made false and/or misleading representations that the wall board had approvals, uses, and benefits in various representations - on the company's website; on a television programme; to licensees and installers - that the product had a CodeMark Certificate of Conformity issued in respect to the wall board certifying its compliance with the New Zealand Building Code: and that the company, via the co-defendant, Tuake, knew that when those false and misleading representations were

made that any CodeMark certification that the wall board had related only to the Building Code of Australia and not to the New Zealand Building Code. On each of the four charges faced by the company, Global Fibre8 Limited, the maximum penalty is $600,000

[2] Mr Tangi Tuake is charged also with four charges alleging, in relation to each representative charge:

(a) That he was in trade, he was involved with the same wall board product, K3T, and he made a number of representations which were both false and misleading;

(b) That he made, in a letter, representations that the wall board had a CodeMark certification dated 21 July 2015 which certified its compliance with the New Zealand Building Code when he knew that it did not as the CodeMark certificate that he had only certified the compliance of the wall board with the Building Code of Australia;

(c) That he made false representations on a TV1 news broadcast saying that the wall board had the New Zealand CodeMark certification when he knew that the certification only related to Australia and only related to compliance with the Building Code of Australia and not the New Zealand Building Code; and

(d) That he made representations to licensees and installers in respect of the wall board saying that it complied with the New Zealand Building Code, not only orally but also in writing and at meetings with individuals and at licensee and installer training sessions.

At all relevant times any certification issued in respect of this wall board was only in relation to the Building Code of Australia and Mr Tuake knew that exactly was the position.

[3] I heard the Judge-Alone trial in relation to all these charges over a number of days in the Auckland District Court on 7, 8 and 9 December 2020, giving judgment against the defendants on 19 February 2021, finding that the prosecution had made out its case beyond any reasonable doubt in relation to each charging document in respect each named defendant. I convicted each of the defendants on each of the charges it or he faced.

[4] I noted in part of my findings that there was clear knowledge by Mr Tuake, (who was, of course, the 'alter ego 'of the defendant company); that he knew and had been told by persons who gave evidence before me, particularly a Mr King, that the Australian CodeMark could not be accepted in New Zealand; that Mr Tuake had been informed in writing (an email) which highlighted the need for separate certification for Australia and New Zealand. He 'armed' with the knowledge that the New Zealand application filed was still pending and having made the representations both by and through the company and by himself, he took no steps whatsoever to withdraw the representations on the Company website or to any persons who had received correspondence from the company, or the licensees and installers. He then had the temerity, as a major aggravating factor of his offending, to repeat the representations during an interview of himself, which was part of an inquiry being conducted by TVNZ News into the wall board and issues that arisen in respect of its use, by, in the TVNZ news broadcast, repeating the same totally false and misleading representations about the wallboard's certification.

[5] The company and Mr Tuake had to front a number of complaints about failures of the wall board but the company/Mr Tuaki blamed other things. It blamed a rule change at the Authorisation Board level; blamed the installers and the house builders by alleging that the product had not been installed by them in the required manner that complied with the wallboard's CodeMark certification requirements when, in fact, there was no such code certification. The defendants carried on, through Mr Tuake, in attempting to sell the wall board on the New Zealand building market.

[6] As a direct result of those findings adverse to both defendants I went on to find that there was an major impact upon the consumers who had placed reliance on the representations made to them and to others and through the process of information

dissemination. Particularly, I noted in my decision two particular victims, a Mr Naker and Ms Ullrich, but I noted financial losses by installers and other people who had made capital investments by purchasing quantities of the wall board in my detailed decision of 19 February 2021 having had time to consider the position of all these victims.

[7] Because of COVID and other difficulties, (perhaps my getting back to Auckland was one), but also questions raised when the case was originally set down for sentencing relating to the position of the company and Mr Tuake in a financial sense with regards to the payment of fines but particularly reparation, I finally was able to direct, with assistance from the Court Registry, Ms McClintock as counsel for the Commission, and Mr Donkin, who had been appointed as standby counsel to, I suppose, represent the company and Mr Tuake, the obtaining of a report under s 33 of the Sentencing Act 2002 addressing the issue of the financial capacity of Global Fibre8 Limited and Tangi Tuake. That process was entirely hindered by the attitude I consider taken by Mr Tuake to it and, indeed, it would appear to me that Mr Tuake has still not provided the information or some of the information requested of him. Important information, because the working papers of the accounts and the way items have been coded in the various cash withdrawals and deposits into bank accounts, et cetera, were not explained. It appears that Mr Tuake provided a summary of funds transferred from the company to him personally which is attached as part of the report, but it would appear that his analysis, as against the analysis done during the preparation of the report, is different. It appears that overall in the period 2014-2021 $204,000 was transferred to his personal bank account. Of course, without the details of the account which has not been forthcoming from Mr Tuake, that sum was unable to be reconciled. It is a pity really because, in the end, Ms McClintock quite properly makes the submission that it is for him, the defendant Tuake, to establish, on behalf of himself and Global Fibre8, that they are impecunious in relation to this process of sentencing. The argument put by the Commission through Ms McClintock is that such evidence is not there and, therefore, I should find that impecuniosity has not been proven to the required standard, (as Mr Donkin expresses it), the balance of probabilities. I note all these matters.

[8] What I have from the Commission on the appropriate level of sentencing is that over a three year period, in the submission of the Commission, the product (the wallboard) was marketed with emphasis on it having this CodeMark certificate said to be a New Zealand Certificate of Compliance. It was marketed vigorously, says the Commission, on that basis and consumers, licensees and installers, the public at large, reacted positively to the product's certification as detailed in such misrepresentations to their significant detriment and major loss, not only financially but also in an emotional harm way.

[9] The Commission submits that the representations were deliberately made knowing that the representations were false and that Mr Tuake, thus the company, kept repeating them. By April 2016 it was known by Mr Tuake, and that knowledge can be imputed to the company, there was a need for separate certification but Mr Tuake, in his writings, arguments and discussions, blamed changes in rules for delays, issues with the product as a result of the installation, et cetera, as I have already detailed.

[10] It is the argument and position of the Commission that the starting point for sentence should be overall, taking into account that the charges are representative, $600,000 together with reparation of $200,000, noting the very limited co-operation that was shown; that there is no ability to give any credit for acceptance of responsibility by guilty pleas or acceptance of what had happened and an end fine of $570,000 should be imposed to be split equally between the two defendants.

[11] The CodeMark certification, says the Commission, was pushed through the website of the company, through television, in written and oral representations to support its particular use and to support an argument of the major benefit of the wall board because of its certification. The charges against the company are charging the company as a principal in all four charges, Mr Tuake as a party to the website matter but a joint principal in the other three charges. Mr Tuake is listed as a joint CEO of the defendant company. In July 2015 it appears that the CodeMark was argued as having been issued and that the wallboard would pass all technical tests in New Zealand; that it would supersede all councils' approvals and its use would provide a direct pathway towards building consent. That representation made in a letter from Mr Tuaki, was a letter that was found by me to be entirely false and misleading to

suppliers. On the website, June 2017/July 2018, the wall board was described as being fully certified through the CodeMark certification; there was mention of a guaranteed acceptance by councils and that the wallboard was entirely in alignment with mandated compliance requirements. Again, I found those descriptions to be entirely and clearly misleading and wrong in relation to the certification of the wall board.

[12] Mr Tuake, and thus the company, had knowledge of the misrepresentations. He did absolutely nothing to change the position contained in the representations made by the company and himself. Indeed, to further aggravate the matter overall, he appeared as the CEO of Global Fibre8 and director of the company on 23 May 2018 on television. TV1 news item. He said that the wallboard met the Building Code requirements which could not be disputed with its CodeMark certification. At the time he was saying that on camera he was holding up '..the CodeMark' which he indicated had been issued. He was acting in that manner with full knowledge that he was making a false representation as the CodeMark he was holding up was in respect of Australian Building Code only.

[13] It appears that in relation to licensees and installers - August 2016/March 2018 - he supplied a material supply data sheet. Emails from Mr Tuake talk about the board being certified, through testing, both with the Australian Building Code and the New Zealand Building Code; the wallboard having completed and met all requirements. The emails were forwarded to licensees and suppliers. The information was untrue, basically incorrect and entirely misleading. He made oral representations to installers and licensees in the period August 2016/March 2018 that the wall board had certification and that certification was imposed as a result on building consent authorities and thus use of the wall board meant fast-tracked building consent. That was found to be false and misleading.

[14] Emphasis by the Commission is placed on the 'even playing field' mentioned in a large number of cases/authorities in respect of the Fair Trading Act 1986 and particularly in relation to s 13. The Commission says, quite rightly in my view, accountability, denunciation and deterrence, (the provisions of ss 7 and 9 of the Sentencing Act 2002) are important but that here there needs to be a deterrence both generally and specifically to the defendant Tuake particularly and to the company.

Submissions were made there was a major breach of trust by the defendants. That we have the undermining of the legal requirements by the defendants who exploited the trust that a person would have in the CodeMark certification process by making untruthful and false representation.

[15] In respect of the 21 July 2015 the Commission points to the evidence that the Australia CodeMark was used as the key selling point for K3T "..superseding all councils" was the way it was described in New Zealand when Mr Tuake and the company knew that it did no such thing. It is important, says the Commission, to note that this is wall board used in the principal asset of many New Zealanders, ie: the family home, where consumers were paying significant sums of money on the basis of the misrepresentations. The defendants knew that the Australian Building Code Certificate of Compliance was not accepted by the New Zealand councils. Mr Tuake had been told in April 2016 that the Australian Building Code could not be accepted by New Zealand councils but continued to make the misrepresentations. He was told in April 2016 by Mr King of the Auckland City Council that it could not be accepted. He continued to make the misrepresentations.

[16] It is submitted by the Commission, (and I accept the submission), that it was deliberate conduct. The case of *Commerce Commission v Mega Vitamin Laboratories* makes it clear that where falsity of representation is deliberate then, as it is put, '.. the teeth' of the Fair Trading Act should be brought into effect.[1] The dissemination of the representations, says the Commission, was widespread using various methods and pathways and all types of media.

[17] The Court heard clear evidence of losses and harm caused, particularly in relation to emotional harm, distress, physical illness, as well as major losses. Mention was made of the victims, Naker $300,000 to $400,000, Ullrich $419,000. Installers and licensees invested capital paying money for a licence, one buying 12 containers of wall board which had no market at the end when the problems with the certification in the wall board itself became known. The losses suggested by the Commission could be as high as $1.4 million to $1.5 million and that does not take into account the losses

[1] *Commerce Commission v Mega Vitamin Laboratories* (1994) 6 TCLR 95.

suffered by competitors in the wall board market who were selling correctly certified wall board as against the K3T product.

[18] The Commission submissions contain a detailed discussion of cases which I do not intend to go through. The cases, quite simply, note the issues that I need to take into account - the wide dissemination, the deliberate nature of the misrepresentations, that the misrepresentations were addressed to key consumers, the period of time over which the misrepresentations were made. The particular authorities mentioned of *Brilliance* and *Topline* and the discussion relating to those issues are noted by me.[2]

[19] The Commission accepts there are no personal aggravating factors. No prior Fair Trading Act convictions. Counsel submitted there was a limited amount of co-operation and little, if any, remorse, the Commission submitting remorse really to be non-existing here when one has regard to Mr Tuake; that the submitted starting point of $600,000; credit of 5 per cent for prior good character; an end point of $570,000, a 50/50 split, reparation of $212,950.

[20] The defence position is argued from the premise that the starting point is too high and should be between $400,000 to $500,000. I accept what counsel this morning have said. Ms McClintock and Mr Donkin are not far apart in relation to their respective starting points. The authorities I think are quite clear. Mr Donkin argues that K3T had been certified by the Building Code in Australia which includes certain requirements that also apply to New Zealand. I make note of the fact, however, that overall the building consent requirements in New Zealand in respect of new buildings is considerably different from that in Australia. New Zealand has different rules and different regulations, different building risks - climate and earthquakes are just two of them.

[21] Mr Donkin submits that not only the representations that were made led to the K3T wallboard being used but other factors were involved in the decision. Primarily, I must answer that submission by saying that the wall board would not have become known to the consumer without the advertising and the misrepresentations contained

[2] *Commerce Commission v Brilliance International Ltd* [2018] NZDC 7359; *Commerce Commission v Topline* [2017] NZDC 9221

within them. The point is made by Mr Donkin, fairly, that Local Authorities such as the Far North District Council determined that the wall board met the requirements of the building code. Again, with respect to that Council, I do not think on the evidence I heard that they properly investigated the situation or were aware of the fact of the misleading nature of the representations as to certification. It appears that that Council thought the wallboard had been certified.

[22] Mr Donkin puts all of this as '.. a misunderstanding' and a refusal to accept advice. I do not accept that submission as I have attempted to make clear so far. I do not accept that he, Mr Tuake, was at all confused about the situation. Mr Tuake is submitted to have thought that '.. they had done enough'. I note the evidence was clear that he was quite prepared to blame deficient building practice or installation as the reasons for the failure of the wall board. I do not accept the submission made by the defence that it was simply cutting corners. I consider that there was evidence of a large number of people viewing the representations, both at trade shows, websites, television. I hold that television and the representations made as part of that would have been likely to mislead people. I do not accept Mr Donkin's submission. We have Mr Tuake, the CEO of the company and the primary distributer of the wall board, making the statement about certification on national television. Overall, in relation to losses, Mr Donkin submits that 'a broad brush' approach should be taken, ie: that the lack of certification must be recognised as the basis of each charge faced but that consumers relied on other representation and invested in a product that failed and it is submitted that is a different loss altogether.

[23] Mr Donkin, in his careful manner, also discusses at some length the various authorities and submits that each of such cases can be distinguished from this case. One point that he makes is in the steel mesh cases such as *Brightlands* and the other similar types of authorities, the enormous consequences resulting from the misrepresentation as to the mesh and that here the representations were made to fewer people and product supplied to less end users. The submission made is that the case that I am dealing with is not in the very serious level of cases or in the category of the *Timber King* and *Brilliance* cases.[3] Global Fibre8 Limited is a small sized company

[3] *Commerce Commission v Timber King* [2018] NZDC 510.

and he submits a total fine of $400,000 to $500,000 as a starting point. The decision of the way that that penalty is to be imposed should not be on a 50/50 split basis as there are different maximum penalties in relation to each of the defendants, ie: the company and the defendant. Mr Tuake's maximum penalty in the terms of the legislation is at a different level to that of the company. Mr Tuake's charges each carry a maximum penalty for a person of $200,000 as against a company of $100,000. He submits that it should be separated out so the company is $300,000 to $400,000 and Tuake is $100,000 to $125,000.

[24] He submits that there should be a credit for remorse. Matters have moved since Mr Donkin's 'first go' at his submissions. I do not accept there is any remorse shown by Mr Tuake at all. Rather he exhibits blame transference. He defended the charges, and did not appear to me to be remorseful. He has been totally selective, his actions were deliberate. I accept he has no prior convictions, that he has a community assistance background, that he is in ill health. I appreciate these types of cases carry with it media issues and results of publicity but if you are making misrepresentations of this kind that are found proven against you then one could expect to have had the media outcome that it has had.

[25] I have tried to consider in what I have said all of the matters that have been put to me but there is a lot of paper and what I want to assure everyone is that I have read everything even if I have not mentioned it here.

[26] As I see the situation the Commerce Commission submissions set out the factual basis for my sentencing. In the end, I am satisfied that Global Fibre8 Limited and its alter ego, Mr Tuake, made very clear and very definite misrepresentation about the New Zealand Building Code compliance being 'hand in hand' with the Australia CodeMark certification, ie: that the certification from Australia covered New Zealand, when Mr Tuake (and the company therefore), knew very well that that was not the case.

[27] These' misrepresentations', one can call them that in the legal sense, other people might call them lies, were made on the company website, in correspondence, on television, directly to licensees and installers and, indeed, to a number of

consumers. The misrepresentations continued to be made in the knowledge that they were, in fact, false and all this was aggravated by the fact that Mr Tuake knew he had been told and told and told that his certification representations were false and that to say the product was able 'to march straight through the consent building process' was a deliberate falsehood, ie: misrepresentation.

[28] I find for the purposes of sentencing the actions of the defendant, Mr Tuake, were deliberate, both personally and for and on behalf of the company, and his knowledge of the reality of the situation must be imputed to the company. He used this non-existent Code Certification as a key selling point of wall board that was being put into the walls of persons' homes, homes that were being built and, as I understand what he is saying to me, homes at the lower end of the market. As I understand it, his aim was to provide this product for people so they could get into the market with a first home. People were investing in an uncertified product that was found to be a defective product as a direct result of these misrepresentations that I have attempted to detail. He was saying local Councils could not refuse consent because of the certified compliance with New Zealand Building Code which did not, in fact, exist. Mr Tuake and the company knew that the Australian CodeMark was not accepted by the New Zealand building authorities.

[29] I note the widespread dissemination through various media platforms and that the result equals prejudice to the business of competitors. I note that the various matters in relation to the Fair Trading Act detailed the submissions made to me by the Commerce Commission in their original submissions and that I adopt those submissions in respect of the Fair Trading Act and its impact.

[30] I have read all of the cases that have been referred to me in respect of this sentencing and the issues that those cases detail out. I have had regard to the objectives of the Act. The Fair Trading Act is to provide an even playing field and to protect people from unfair trade practices. I note the importance of having regard to whether the misrepresentations were made and were untrue and known to be untrue. I consider that to be a high aggravating factor. I consider there is a high degree of wilfulness in respect of the misrepresentations. I consider that the statements made were total departures from the truthful position. There has been overall, when one has regards

to New Zealand market, a medium dissemination; that there has been major prejudice to the people who were involved or who got into the market of the wall board; and there have been no steps taken whatsoever to address the issues and difficulties occasioned by the falsity of the misrepresentation.

[31] I consider, therefore, that the situation is one where the starting point overall of $500,000.00 is appropriate. I consider, further, that Mr Tuake was the company and I, as I have already said, consider that his knowledge must be imputed to the company. I accept what Mr Donkin is saying overall in respect of the differentiation in penalty for each defendant. I consider overall that the quantum of the fine that I have taken as the starting point takes into account the lower level of fine available as the penalty in each of Mr Tuake's charges. I look at the positions of the company and he and in respect of the $500,000 starting point I apportion to Mr Tuake the starting point of $200,000 and to the company $300,000.

[32] The company is to be allowed 5 per cent for its prior good character, no other credit, to bring the end starting point to $285,000. There are some four charges against the company.

[33] In respect of Mr Tuake, I allow for his prior good character and I also allow something for his ill health to arrive at credits totalling 10 per cent to bring his sentence end point to $180,000.

[34] I then have the difficulty as to the impecuniosity of these defendants. I accept the submissions made by Ms McClintock that I am caught in a vice here that despite all the best endeavours to be able to make a ruling as to whether or not Mr Tuake, whether or not the company, is totally impecunious, I am not able to do so because he, Mr Tuake, did not respond to the report writer in the terms of s 33 request for information. I must take note, however, that the company is no longer trading and I note what the accounts and the s 33 report say about the company. I still am in somewhat askance about the position of the company. It seems to remain in existence, which is surprising, because I am then told that it only dealt with the wall board and nothing else and yet it is maintained on the register. I do not know for what reason because Mr Tuake has not been forthcoming with that advice.

[35] In relation to the company I take due note of the various decisions put to me by the Commerce Commission relating to such companies and the restrictions on a sentencing judge not to impose a penalty that could cause a company to no longer be able to operate. The company is not operating. I find on the basis of that and the nature of the representations made that there is no need to make an allowance in respect of the company not trading or not having assets. I consider that the fine of $280,000 in total is appropriate. I apportion it amongst each of the four charges and on each charging document the company will be fined $70,000, Court costs $130, a total fine of $280,000 plus court costs. I order that that total is payable within the statutory period. If that causes the company to be put into liquidation or wound up then so be it. In my view, the matter is one where I do not consider that the question of the company being wound up should result in a lower fine being payable by the company.

[36] In relation to Mr Tuake, Mr Tuake, as I have said, has the end staring point of $180,000 spread over some four charges that he faces. After all matters have been taken into account, that would result in a fine that I consider would be impossible for him to pay. However, neither do I consider that he should not be fined. He was the driving force of the company, he is responsible for the losses suffered by the various persons and I intend to make an order of reparation which will have priority, of course, in relation to any fine payments in any event. I make due allowances, overall, and I assess that the fine of $180,000 should be brought back to a total fine of $80,000 because of his impecuniosity and I fine him on each of the four charging documents $20,000, Court costs $130, making a major allowance for impecuniosity.

[37] I consider, when I look at the question of reparation, that the reparation should become Mr Tuake's sole responsibility. I do not see any need to make an order in respect of the company which has no assets and no liabilities, that information clearly being available through the company accounting, the s 33 report and the income tax position. However, in relation to Mr Tuake, I am not at all convinced as regards to his income or his assets. I am not at all convinced in relation to his ongoing financial position. I consider that the reparation should be his responsibility. He has caused the harm to the various victims, in my view, both by his own action, ie: he as the defendant and through his position as the CEO of the company.

[38] The reparation is detailed in a schedule helpfully prepared by the Commission, which is Schedule 1, (or Tab 1), which I have considered and in the third column there is a heading "Sum of Direct Substantiated Losses". That relates to each of the various victims and does not at all reflect the total losses suffered by these people. Indeed, it is and could be described as no more than a 'drop in the bucket' of the overall position. It makes no allowance at all, in reality, for all of the emotional harm matters that are detailed in the various victim impact statements that I have received and considered. The matter of those victim impact statements is an important consideration for me when I consider the ordering of reparation.

[39] Karen Ullrich tells me that she is not adding to what she told me in her evidence but notes that they have had a court argument in the High Court in relation to the Far North District Council, the builder and engineer. She noted that at the meeting where the matter was resolved Mr Tuake and Global Fibre8 did not turn up to the meeting. (I note that seems to be Mr Tuake's position when the matter is at the coal face. He just does not turn up and that is clearly evidenced by his non-appearance here today.) The report, however, notes that there was an award made of some monies, including payment to be made by Global Fibre8, together with interest and costs, and they had received nothing. She says that the home that they were building was condemned by the council at the final stages, that that was devastating, that she was trying to get Tuake to represent Global Fibre8 in relation to the ongoing problems but he did not. She suffered severe pneumonia by being rundown, had lung surgery as a result and she was living in the office of the workshop as any building on their home was stopped by the council until issues could be resolved. They received no response from Mr Tuake over all of the period that this was going on. It took her six months to find another builder that was prepared to demolish the house and re-build it. Her husband suffered a major heart attack in relation to the matter. Retirement plans have been changed. She believes Mr Tuake used the document, the Australian Global CodeMark certification, fraudulently and that it was a fraudulent act that they were involved with by him.

[40] The victim impact statement relating to Mr Getto, another one of the victims, mentions the company but also Mr Tuake. He would like to have the financial costs to his business and himself, stress and trauma and emotional harm covered. He

considers he lost over $700,000 by purchasing products, paying for warehouses, bad stress and burden and he does not sleep well, he has high blood pressure due to his health not being as good as before.

[41] I have reference to the victim impact statement of Mr Naker. He considers the whole matter had been a nightmare and that Mr Tuake should take full responsibility. The stress it has caused him personally and financially has taken its toll. He has had no recourse from the Far North District Council, paying interest on loans, using profits to subsidise from his six days a week work the payment of loans and legal fees. He continues to struggle even though Mr Tuake has been found guilty. He has seen nothing as a result of it. He notes that his home has been described as the worst build in Northland's history and he puts his loss at some $700,000. That puts all of these matters, in my view, into clear perspective.

[42] In looking at that schedule and the relevance of it though, I think the appropriate attitude has been taken in respect of the direct and substantiated loss. I am only dealing with those losses and if the victims wish to take other action against Mr Tuake or the company then they can do so. The total detailed in that list amounts to $213,479.92 and I note that that is a total of such reparation. I consider the impecuniosity issue relating to Mr Tuake and that is not a sum I can award in full. I give, however, consideration to the position overall and I consider that a total award of $120,000 in reparation, payable over a five year period in monthly instalments, is an appropriate way of dealing with the issue..

[43] I have adjusted the $213,479.92 to $120,000 on the basis of impecuniosity and I consider $120,000 over the five year period is a position where Mr Tuake can meet. I have attached the Schedule to my decision on reparation. I have noted each victim - Naker, Ullrich, Brean, Archer, Jones, Joseph, Heavyango - and the amounts claimed and the order that I make of $120,000 is to be apportioned between them accordingly.

ADDENDUM

[44] As an addendum to my decision, quite rightly, Ms McClintock says how is any payment to be made? I require the Collections area of the court to consider payments made by way of proportionate amongst each of the victims looking at their assessed figures as I have detailed in the Schedule. It will be, therefore, considered proportionately between each of the victims in respect of each payment that is made.

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Judge K J Phillips
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 27/05/2022