IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2023-404-653
[2026] NZHC 3349

BETWEEN	CHIEF EXECUTIVE OF LAND INFORMATION NEW ZEALAND Plaintiff
AND	ANDREW JAMES JARVIS First Defendant
	HEIDI MITCHELL SUSTAINABLE LIMITED Second Defendant
	WILLIAM DAVID MITCHELL Third Defendant
	AJN LAND LIMITED Fourth Defendant

Hearing:	14 October 2026
Appearances:	J Lowyim for the Plaintiff D Horton for the Defendants
Judgment:	28 October 2026

JUDGMENT OF ROBINSON J
[Further penalty]

This judgment was delivered by me on 28 October 2026 at 2:00 pm pursuant to Rule 11.5 of the High Court Rules

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Registrar/Deputy Registrar

Solicitors/Counsel:
MC, Auckland
A Seton Law, Auckland | D Horton, Auckland

Introduction

[1] In a Notice of Admissions dated 13 September 2025, the second defendant, Heidi Mitchell Sustainable Limited (HMSL) has admitted acquiring interests in sensitive land, namely eight forestry blocks in the Gisborne area (HMSL properties), in contravention of the Overseas Investment Act 2005 (Act). HMSL accepted one breach of s 42 of the Act for acquiring the HMSL properties without consent.

[2] HMSL was controlled by the third defendant, William Mitchell. Mr Mitchell is a British citizen and a resident of Singapore. Mr Mitchell accepted one breach of s 43 of the Act by giving effect to HMSL's acquisitions.

[3] The plaintiff, the Chief Executive of Land Information New Zealand, is the regulator of the Act (Regulator).

[4] When the Regulator commenced the proceedings in 2023, HMSL had sold two of the forestry blocks for profit. HMSL engaged with the Regulator as to the appropriate resolution. The plaintiff sought orders that the remaining HMSL properties be sold, and that civil penalties be imposed against HMSL and Mr Mitchell for their breaches of the Act.

[5] On 16 October 2024, Campbell J ordered that:[1]

(a) HMLS pay a civil penalty of $972,805.99 in respect of its purchase and on-sale of two of the properties (to disgorge the quantifiable gain made from that sale);

(b) HMSL dispose of the remaining HMSL properties and pay a civil penalty in respect of those properties;

(c) Mr Mitchell pay a civil penalty of $82,500; and

(d) HMSL and Mr Mitchell each pay costs of $10,000 to the plaintiff.

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1 *Chief Executive of Land Information New Zealand v Jarvis & Ors* [2024] NZHC 3010 (first penalty decision).

[6] In accordance with Campbell J's orders, HMSL has now sold the remaining six properties. As noted, Campbell J has already made orders that HMSL is liable to pay a civil penalty. What remains is for the Court to quantify the civil penalty HMSL is to pay in respect of its acquisition of those properties.

[7] The parties agree that HMSL has received no quantifiable gain from the sale of those remaining six properties. On that basis they agree that HMSL is to pay a penalty of up to $300,000.[2] Moreover, they agree the appropriate end penalty is $68,000 and jointly seek penalty orders accordingly.

[8] The sole remaining issue for the Court is to determine the quantum of the penalty to be imposed under s 48(2) of the Act in respect of HMSL's acquisition of those six properties. While the quantum of penalties is agreed, the Court must still be satisfied that it is within the proper range.[3]

[9] For the reasons set out below, I am satisfied that the agreed penalty is within range, and I make orders accordingly.

Factual background

[10] The relevant factual background is set out in the agreed statement of facts dated 13 September 2024 and in Campbell J's October 2024 decision.[4] It has been helpfully summarised in counsel's joint submissions as follows.

[11] The HMSL Properties comprise eight blocks of forestry land located in the Gisborne area, which were purchased for a total value of $626,350, namely:

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2 At the time of the admitted breaches, s 48(2)(a) of the Overseas Investment Act 2005 provided for a maximum penalty of $300,000 (or cost of remedying breach of condition/loss suffered in relation to the breach) where the breach resulted in no quantifiable gain. With effect from 16 June 2020, that provision was replaced by s 38(4) of the Overseas Investment (Urgent Measures) Amendment Act 2020, which increased the maximum penalty in such cases to "$500,000 in the case of an individual or $10 million in any other case".

3 *Chief Executive of Land Information New Zealand v Tang* [2018] NZHC 382, (2018) 19 NZCPR 460 at [2] and [19].

4 First penalty decision, above n 1, at [4]–[30].

(a) Pine Farm 39 Lot 31, a property comprised in the record of title GS6D/266 (Lot 31). Lot 31 has a land area of approximately 8.54 hectares, and had a purchase price of $39,000.

(b) Pine Farm 39 Lot 36, a property comprised in the record of title GS6D/271 (Lot 36). Lot 36 has a land area of approximately 6.167 hectares, and had a purchase price of $35,000.

(c) Pine Farm 39 Lot 5, a property comprised in the record of title GS6D/240 (Lot 5). Lot 5 has a land area of approximately 22.23 hectares, and had a purchase price of $95,000.

(d) Pine Farm 39 Lot 6, a property comprised in the record of title GS6D/241 (Lot 6). Lot 6 has a land area of approximately 13.26 hectares, and a purchase price of $61,950.

(e) Pine Farm 65 Lot 30, a property comprised in the record of title 47072 (Lot 30). Lot 30 has a land area of approximately 10.7104 hectares, and a purchase price of $27,000.

(f) Pine Farm 39 Lot 28, a property comprised in the record of title GS6D/263 (Lot 28). Lot 28 has a land area of approximately 7.5 hectares, and a purchase price of $35,400.

(g) Two lots in Pine Farm 25, having a combined purchase price of $333,000, being:

    (i) Pine Farm 25 Lot 7, a property comprised in the record of title GS6B/577 (Lot 7), and having a land area of approximately 18.32 hectares; and

    (ii) Pine Farm 25 Lot 16, a property comprised in the record of title GS6B/586 (Lot 16), and having a land area of approximately 24.25 hectares.

[12] For the purposes of agreed penalties, the parties grouped those properties by forestry partnership, as follows:

(a) Pine Farm 25: comprising Lots 7 and 16;

(b) Pine Farm 39: comprising Lots 5, 6, 28, 31 and 36; and

(c) Pine Farm 65: comprising Lot 30.

[13] The HMSL Properties were all sensitive land under s 12 and Part 1 of Schedule 1 of the Act because they each comprised non-urban land exceeding five hectares.

Mr Mitchell

[14] Mr Mitchell is a business person and British citizen who resides in Singapore. At all relevant times, he was an overseas person under s 7(2)(a) of the Act.

[15] In or around March 2011, Mr Mitchell became interested in investing in forestry in New Zealand. He also became aware that there were restrictions on overseas persons owning certain New Zealand land.

[16] In April 2011, Mr Mitchell discussed acquiring New Zealand forestry land with a New Zealand real estate agent. They discussed consent under the Act could probably be "gotten around to some degree", and that if Mr Mitchell bought land through a New Zealand company he would look to take ownership of that company at a later stage.

[17] Mr Mitchell then contacted and subsequently engaged New Zealand law firm Chambers Craig Jarvis (CCJ), of which Andrew Jarvis was a partner.

[18] Between 8 April 2011 and 26 May 2011, Mr Mitchell and Mr Jarvis discussed a structure whereby a company would be incorporated in New Zealand to invest in New Zealand forestry land blocks. Mr Mitchell would own a minority of the shares, with a New Zealand citizen(s) owning the majority. Mr Mitchell would lend cash to the company to buy the forestry blocks, with the option to buy back the remaining

shares at a nominal price at any time. Mr Mitchell would then "do a transfer of the whole lot" with a single application to the Regulator.

[19] Mr Mitchell procured the involvement of Kathryn Sanderson to act as the New Zealand shareholder. Ms Sanderson was a New Zealand citizen and was married to a friend of Mr Mitchell.

[20] Mr Jarvis determined that the share buy-back could be effected by way of a bare trust. He did not provide written advice in relation to the application of the Act to the forestry block purchases proposed by Mr Mitchell.

HMSL acquired equitable and legal interests in the HMSL Properties

May 2011 Properties

[21] On 27 May 2011, HMSL was incorporated. Mr Mitchell was its sole shareholder and director. On 30 May 2011, Mr Mitchell (on behalf of HMSL) entered into sale and purchase agreements for four blocks of forestry land in the Gisborne area, namely Lot 31, Lot 36, Lot 5 and Lot 6 (together the May 2011 Properties).

[22] The sale and purchase agreements were not conditional upon HMSL obtaining consent under the Act nor any conditions precedent. Accordingly, upon execution of the agreements, HMSL acquired an equitable interest in the May 2011 Properties.

[23] On 22 June 2011, Mr Jarvis sent a draft document titled "acknowledgement of bare trust" (Draft HMSL Deed) to Mr Mitchell. The document purported to establish a bare trust which provided, amongst other things, that Ms Sanderson would hold the shares in HMSL on trust for Mr Mitchell, transfer them to him at his request and would vote in accordance with his instructions.

[24] On 27 June 2011, Mr Mitchell transferred 80 per cent of the shares in HMSL to Ms Sanderson and made a payment of $212,966 to complete the purchase of the May 2011 Properties.

[25] On 4 July 2011, HMSL received legal title to Lots 5, 6 and 31. On 5 July 2011, it received legal title to Lot 36.

[26] On 23 July 2011, Ms Sanderson executed the Draft HMSL Deed.

Further 2011 Properties

[27] Between August and November 2011, Mr Mitchell (on behalf of HMSL) entered into three sale and purchase agreements for four blocks of forestry land in the Gisborne area, namely Lots 30, 28, 7 and 16 (together the Further 2011 Properties).

[28] The sale and purchase agreements were not conditional upon HMSL obtaining consent under the Act nor any conditions precedent. Accordingly, upon execution of the agreements, HMSL acquired an equitable interest in the Further 2011 Properties.

[29] Mr Mitchell transferred funds from a personal account to apply to the purchase price of each of the Further 2011 Properties.

[30] HMSL received legal title to the Further 2011 Properties on 13 September 2011 (Lot 30), 28 October 2011 (28) and 5 December 2011 (Lots 7 and 16).

[31] At no time prior to acquiring legal or equitable interests in any of the HMSL Properties did HMSL or Mr Mitchell obtain consent from the Regulator to make any overseas investment transaction in respect of any of the HMSL Properties.

Campbell J's decision

[32] On 16 October 2024, Campbell J determined the first penalty against HMSL in respect of Pine Farm 25 and the penalty against Mr Mitchell.

[33] As noted, in respect of the first penalty against HMSL, his Honour ordered that HMSL pay a civil penalty of $972,805.99, being the net quantifiable gain on Pine Farm 25 ($1,144,477.63) less a discount of 15 per cent for personal mitigating factors.

[34] In determining the appropriate penalty, Campbell J made the following findings regarding HMSL and Mr Mitchell.[5]

> [53] The parties suggest a 15 per cent reduction is appropriate for mitigating factors personal to HMSL. They say that HMSL was poorly served by its former legal advisor, though it is accepted that HMSL acted recklessly. I consider that these are not mitigating factors personal to HMSL. Rather, they are factors that go to the seriousness of the breach and therefore the starting point.
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> [54] The parties do, however, identify other mitigating factors. HMSL cooperated with the Regulator and has admitted liability and agreed to pay a penalty. These warrant the proposed 15 per cent reduction.
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> …
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> [60] The parties agree that the nature and extent of Mr Mitchell's breach of the Act was moderately serious. About 111 hectares of sensitive land were alienated. While the purchase prices of the HMSL Properties were comparatively modest (totalling $626,350), the properties were obtained for commercial purposes. Mr Mitchell's conduct enabled HMSL to gain both quantifiable and non-quantifiable benefit by acquiring an interest in the properties without obtaining consent, and without being subject to any conditions that might have been enforced under such consent.
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> [61] The Regulator accepts that Mr Mitchell was poorly served by his lawyer and was not advised of the need to obtain consent under the Act before giving effect to the overseas investment. On the other hand, Mr Mitchell accepts he acted recklessly by acquiring the properties through HMSL in circumstances where he knew he was not permitted to buy them in his personal capacity.

Approach to civil penalties

[35] The Act regulates investments in New Zealand by overseas persons and recognises it is a privilege for overseas persons to own or control sensitive assets in this country.[6] The Act requires each overseas person or associate making an overseas investment to obtain consent before giving effect to the investment.[7] Failure to do so is an offence under s 42.

[36] Consent was required under s 22 for HMSL's acquisition of the HMSL Properties because the transactions were overseas investments in sensitive land;[8] at

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5 First penalty decision, above n 1.
6 Overseas Investment Act, s 3.
7 Sections 11(1) and 22(1)(a).
8 Sections 10(1) and s 12.

the relevant times, Mr Mitchell was an overseas person under the Act;[9] and as such, HMSL was also an overseas person under the Act because HMSL was a body corporate in which Mr Mitchell, an overseas person, had the right to exercise or control the exercise of more than 25 per cent of the voting power.[10]

[37] At the time of the admitted breach, s 48 of the Act relevantly provided that:[11]

> **48 Court may order person in breach to pay civil penalty**
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> (1) On the application of the regulator, the court may order a person (A) to pay a civil penalty to the Crown or any other person specified by the court if A has—
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> (a) contravened this Act; or
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> (b) committed an offence under this Act; or
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> (c) failed to comply with a notice under section 38 or section 39 or section 40 or section 41; or
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> (d) failed to comply with a condition of a consent or of an exemption.
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> (2) The court may order A to pay a civil penalty not exceeding the higher of—
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> (a) $300,000; or
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> (b) any quantifiable gain (for example, the increase in the value since acquisition) by A in relation to the property to which the consent or exemption relates or for which a consent should have been obtained; or
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> (c) the cost of remedying the breach of condition; or
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> (d) the loss suffered by a person in relation to a breach of condition.
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> …

[38] In assessing penalties under the Act, the Court has primarily adopted a methodology consistent with applicable sentencing principles.[12] Sentencing usually

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9 Overseas Investment Act, s 7(2)(a).

10 Section 7(2)(d): by virtue of a deed which provided the majority shareholder, Ms Sanderson, held those shares on trust for Mr Mitchell.

11 Section 48(2)(b) was amended with effect from 22 October 2018 to increase the level of civil penalty that can be imposed to up to three times the value of any quantifiable gain. That amendment post-dates the dates of the admitted breaches of the Act in this case.

12 *Chief Executive of Land Information New Zealand v Trinity Green Estate Partnership* [2023] NZHC 2330 at [12].

involves two steps. First, with non-mechanical reference to analogous cases[13] and the aggravating and mitigating features of the offending, the Court determines a starting point for the breach; it then adjusts that starting point to reflect the individual circumstances and arrive at the appropriate civil penalty.[14]

[39] As a regulatory sentencing exercise, "[t]he primary consideration is deterrence and penalties must be set at a level that achieves both specific and general deterrence".[15] However, caution is required in drawing close analogies with criminal sentencing principles, given the Act's regulatory rather than penal nature and the need to assess the contravention in its particular context.[16] Relevant considerations include the gravity of the contravention, the contravener's culpability, the seriousness of the conduct within the spectrum of offending, and the desirability of consistency with outcomes in comparable cases.[17]

The assessment of the penalty in this case

Maximum penalty

[40] HMSL has now sold the remaining six HMSL Properties. Those properties are: the five lots comprising Pine Farm 39, and the one lot comprising Pine Farm 65. Although figures have not been finalised, the parties agree that disposal of the remaining HMSL Properties will not result in a quantifiable gain to HMSL.

[41] Pine Farm 39 made a loss of $121,028.53. The sale price for the five Pine Farm 39 lots (less sale costs) was $312,547. There were further Emissions Trading Scheme (ETS) credits accrued on the lots valued at $53,597.95. Actual reasonable

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13 *Telecom Corporation of New Zealand Ltd v Commerce Commission* [2012] NZCA 344 at [62], citing *Australian Competition and Consumer Commission v Telstra Corp Ltd* [2010] FCA 790 at [211].

14 *Chief Executive of Land Information New Zealand v Trinity Green Estate Partnership*, above n 12, citing *Moses v R* [2020] NZCA 296, [2020] 3 NZLR 583 at [46]; and *R v Taueki* [2005] 3 NZLR 372 (CA) at [8].

15 *Telecom Corporation of New Zealand Ltd v Commerce Commission*, above n 13, at [28] and [55], the latter citing *Carter Holt Harvey Building Products Group Ltd v Commerce Commission* (2001) 10 TCLR 247 (CA) at [94]; *Commerce Commission v Qantas Airways Ltd* HC Auckland CIV-2008-404-8366, 11 May 2011 at [28]; and *Commerce Commission v New Zealand Diagnostic Group Ltd* HC Auckland CIV-2008-404-4321, 19 July 2010 at [17].

16 *Commerce Commission v Telecom Corporation of New Zealand Ltd* (2011) 13 TCLR 270 (HC) at [6].

17 Sentencing Act 2002, s 8.

costs across all five lots totalled about $221,823. The purchase price for those five lots were:

Pine Farm 39 lot	Purchase price
Lot 5	$95,000
Lot 6	$61,950
Lot 28	$35,400
Lot 31	$39,000
Lot 36	$35,000
Total	**$266,350**

[42] Pine Farm 65 made a gain of about $22,935. The sale price (less sale costs) was $91,600.87. Tax and actual reasonable costs totalled $41,665.30. The initial purchase price was $27,000.

[43] Counsel confirm that, although HMSL was selling the properties in accordance with the Court's orders, it otherwise acted entirely commercially and sought to realise the best price reasonably available. The Regulator was not directly involved in the sale process, but HMSL provided him with regular reports and updates throughout, including through counsel.

[44] As the parties agree that there will be no quantifiable gain to HMSL from its disposal of the remaining HMSL Properties, the maximum penalty that applies under s 48(2)(a) of the Act is a civil penalty not exceeding $300,000. The parties agree the other maxima under s 48(2)(a) do not apply.

Starting point

Nature and extent of the breach

[45] The Regulator submits that the nature and extent of HMSL's breach was moderately serious because:

(a) while the combined purchase price ($293,350) of Pine Farm 39 and Pine Farm 65 was modest when compared to similar cases under the

Act, those properties (together with Pine Farm 25) were acquired for an expressly commercial purpose – as a forestry investment; and

(b) the purchase of Pine Farm 39 and Pine Farm 65 resulted in the alienation of 68.4 hectares of sensitive land.

[46] In imposing a penalty against Mr Mitchell, Campbell J noted the parties agreed that Mr Mitchell's breach for acquiring all the HMSL Properties (including Pine Farm 25) was moderately serious.[18] The HMSL Properties had a combined purchase price of $626,350 and totalled 111 hectares.

[47] HMSL has technically contravened the Act twice in respect of each property, by acquiring both equitable and legal interests in the property. The Regulator accepts that, in this case, the acquisition of the equitable and legal interests arose as part of a single transaction. Rather than apply an uplift or totality discount, the parties have recognised this in the suggested starting point for penalty.

Whether the breach was intentional, negligent or inadvertent; circumstances of breach

[48] The Regulator accepts that Mr Mitchell, and by extension, HMSL, was poorly served by his former legal advisors, and was not advised of the need to obtain consent under the Act before giving effect to overseas investment transactions.

[49] However, Mr Mitchell acquired the HMSL Properties through HMSL. The acquisition was for a commercial purpose, and in circumstances where Mr Mitchell knew he was not permitted to buy the properties in his personal capacity. In imposing the first penalty against HMSL, Campbell J found that HMSL acted recklessly by acquiring the HMSL Properties.[19]

Nature and extent of loss or damage caused by breach or financial gain from breach

[50] The Regulator accepts that, across both Pine Farm 39 and Pine Farm 65, there has been no net quantifiable gain. While HMSL made a small gain of $27,000 on Pine

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18 First penalty decision, above n 1, at [60].
19 At [53].

Farm 65, HMSL made a loss of $121,028.53 on Pine Farm 39, resulting in a combined loss of $98,093.53.

[51] However, HMSL also received a non-quantifiable benefit by gaining interests in the HMSL Property without:

(a) applying for and satisfying the statutory criteria for an overseas investment in sensitive land; and

(b) being subject to any conditions that may have been imposed under any such consent.[20]

Penalties imposed in previous similar situations

[52] There are several relevant cases in which penalties for contraventions of s 42, where no quantifiable gain has been realised, have been ordered.

Carbon Conscious

[53] Carbon Conscious purchased a forestry property in August 2012 for $335,000 through a proxy company, in breach of s 42 of the Act, but had relied entirely on erroneous legal advice.[21] This Court imposed a starting point penalty of $80,000, finding that the reliance on legal advice meant the breach was inadvertent and culpability was "at the lower end of the range".[22] The size of the property was not stated in the decision, but confirmed in two later cases as being 115 hectares.[23]

HK Search

[54] The second defendant Dr Hur in *Chief Executive of Land Information New Zealand Limited v HK Search Ltd*[24] entered into a $3 million sale and purchase

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20 Under s 25(1)(c) of the Act as it stood at the time of the contravention, consent could be granted subject to any conditions that the relevant Minister or Ministers thought appropriate.

21 *Chief Executive of Land Information New Zealand v Carbon Conscious New Zealand Ltd & Another* [2016] NZHC 558 .

22 At [41].

23 *Chief Executive of Land Information New Zealand v Clevedon-Kawakawa Road Ltd* [2021] NZHC 1831 at [43]; and *The Chief Executive of Land Information New Zealand v Klaus* [2025] NZHC 3795 at [41].

24 *Chief Executive of Land Information New Zealand Limited v HK Search Ltd* [2022] NZHC 444.

agreement for a Helensville property, later nominating HK Search Limited as the purchaser. He obtained and relied on incorrect legal advice, but only after receiving and disregarding contrary advice from a lawyer who was a specialist in matters under the Act. The property was non-urban land with a total area of 18.5531 hectares.

[55] The High Court imposed a starting point of $140,000, noting that while Dr Hur was on notice of the earlier contrary advice, he nonetheless did rely on the incorrect legal advice he later obtained.[25]

Penalty imposed for Mr Mitchell

[56] Mr Mitchell admitted liability for giving effect to HMSL's acquisition of all the HMSL Properties. Although liability was admitted under s 43(1), rather than s 42(1), the maximum penalty was likewise $300,000, and the approach and penalty adopted by Campbell J are highly relevant to the penalty to be imposed against HMSL.

[57] Campbell J agreed that Mr Mitchell's breach was moderately serious and that Mr Mitchell's breach was reckless (as was HMSL's). His Honour adopted the parties' proposed starting point range of $100,000 to $120,000. However, this reflected HMSL's acquisition of not only Pine Farm 39 and Pine Farm 65, but also Pine Farm 25.

Analysis of starting point for HMSL

[58] The Regulator submits that the starting point for HMSL must be at least that in *Carbon Conscious*. That case shares many similarities with the present case; it also involved a company acquiring forestry properties in breach of the Act for a similar purchase price ($335,000 in *Carbon Conscious* compared to $293,500 for Pine Farm 39 and Pine Farm 65).

[59] However, the Regulator also notes that Carbon Conscious Limited relied entirely on erroneous legal advice, had been compliant in previous applications for consent and once the flaws in their advice were realised, changed its legal representation. By contrast, HMSL acted recklessly, acquiring Pine Farm 39 and Pine

[25] At [90]–[92].

Farm 65 in circumstances where Mr Mitchell knew he was not permitted to acquire the properties himself. Mr Mitchell had also discussed consent under the Act being "gotten around to some degree". The breach in *Carbon Conscious* was essentially inadvertent, and their reliance on erroneous legal advice explicitly placed their culpability at the lower end of the range.

[60] The Regulator acknowledges that the starting point for HMSL should be lower than that imposed for Mr Mitchell. Although the culpability factors relating to HMSL and Mr Mitchell are largely identical, the starting-point range adopted for Mr Mitchell reflected the acquisition of all of the Pine Farm properties. As the remaining penalty to be imposed against HMSL is only in respect of Pine Farm 39 and Pine Farm 65, excluding Pine Farm 25, its penalty must be lower.

[61] For its part, HMSL considers that *Carbon Conscious* is the most comparable case to the present facts. However, HMSL does not agree with the Regulator that the starting point must be at least as high as adopted in that case ($80,000). The Regulator's position is based on what it says is the difference in culpability between the two cases (HMSL's conduct being reckless, whereas Carbon Conscious had "complete reliance on legal advice"). However, culpability is just one factor the Court considers when setting a starting point.

[62] HMSL accepts that while culpability is higher in this case, the nature and extent of the breach here is less serious than that in *Carbon Conscious*. Both companies purchased forestry land for commercial gain within a year of each other. HMSL has incurred a loss of approximately $100,000, while any gain in *Carbon Conscious* was unquantified. In addition, the Pine Farm 39 and Pine Farm 65 lots were both smaller in size and in value comprising 68 hectares and purchased for $293,500, compared with the 115 hectares purchased for $335,000 in *Carbon Conscious*.

[63] The parties agree that the appropriate starting point for HMSL in this case is in the range of $70,000 to $90,000.

Adjustment of starting point to reflect factors personal to HMSL

[64] Campbell J adopted an agreed discount of 15 per cent as being appropriate for all mitigating factors personal to HMSL. The parties agree this discount remains appropriate.

[65] Following the application of a 15 per cent discount to the midpoint ($80,000) of the parties' proposed range, the appropriate end penalty is $68,000.

No costs order required

[66] HMSL previously agreed to pay $10,000 to the Regulator as a contribution to its costs and disbursements. Costs were otherwise to lie where they fell. No further order is needed.

Result

[67] For the reasons set out above, I order, pursuant to s 48(2)(a) of the Act, that HMSL is to pay a civil pecuniary penalty of $68,000 in respect of Pine Farm 39 and Pine Farm 65.

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Robinson J