IN THE COURT OF APPEAL OF NEW ZEALAND

CA682/2015
[2016] NZCA 548

BETWEEN	TE WHAKAKITENGA O WAIKATO INCORPORATED Appellant
AND	TANIA ERIS MARTIN Respondent

Hearing:	22 September 2016
Court:	Wild, French and Asher JJ
Counsel:	J E Hodder QC and R M A Jones for Appellant P V Cornegé and F E Geiringer for Respondent
Judgment:	22 November 2016 at 3.00 pm

JUDGMENT OF THE COURT

A The appeal is allowed, and the claim struck out.

B No order as to costs.

REASONS OF THE COURT

(Given by Asher J)

Introduction

[1] In November 2012 the respondent, Tania Martin, was the chairperson of Waikato-Tainui Te Kauhanganui Inc. At a meeting held on 25 November 2012 she was removed as chairperson and also as a member of Waikato-Tainui Te Kauhanganui Inc. Ms Martin brought a judicial review proceeding in the High

Court at Auckland challenging her removal. Waikato-Tainui Te Kauhanganui Inc has now changed its name to Te Whakakitenga o Waikato Inc.[1]

[2] Te Whakakitenga Inc applied for an order striking out the proceeding. This went to a hearing in the High Court before Duffy J. In a decision delivered on 2 November 2015 she dismissed the application to strike out while ordering Ms Martin to file an amended statement of claim within 15 working days.[2] Te Whakakitenga Inc now appeal that decision and submit that the proceeding should be struck out.

Background

[3] Te Whakakitenga Inc is a society incorporated under the Incorporated Societies Act 1908, following the settlement of land confiscation claims between the Crown and Tainui iwi. It manages the land and assets on behalf of more than 60,000 registered tribal members of Waikato-Tainui Iwi. It is governed by rules under the Incorporated Societies Act that were approved on 25 November 2011 (the Rules).[3]

[4] Under the Rules registered members of each of 66 Waikato-Tainui marae[4] vote to elect three representatives to Te Whakakitenga Inc. A parliamentary model has been adopted. There are approximately 200 members of Te Whakakitenga Inc who can be seen as akin to a parliamentary assembly. Each marae through its members is able to exercise a vote at meetings. It has an executive committee (Te Arataura), on which there are 10 members.

[5] Elections are held every three years. Under the Rules there is a triennial special meeting at the first sitting of the new tribal parliament. At that meeting the 10 members of Te Arataura are elected. A chairperson and other officers are also elected. All officers are required to be current members elected through their marae

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1 By notice under r 4.54 of the High Court Rules. We will refer to the appellant as Te Whakakitenga Inc.

2 *Martin v Waikato-Tainui Te Kauhanganui Inc* [2015] NZHC 2694.

3 Te Whakakitenga Inc approved a new set of rules on 29 November 2015 (the 2015 Rules). By consent, Wild J granted the application for leave to adduce further evidence of the 2015 Rules and of Ms Martin's amended statement of claim on 26 August 2016.

4 The exact number of marae is unsettled. The figure of 66 was recorded in *Waikato Tainui Te Kauhanganui Inc v Martin* [2012] NZHC 85 at [15].

to Te Whakakitenga Inc. The chairperson has been described as being like the speaker of the House, with procedural responsibilities for running meetings of Te Whakakitenga Inc.

[6] There was a general meeting of Te Whakakitenga Inc on 27 October 2012. At that meeting there was a resolution tabled, resolution 3.1, to remove each of the members of Te Arataura, including Ms Martin. The effect of the resolution if passed would be that she ceased to be chairperson. There was no specific provision in the Rules for the removal of a chairperson. There had been a notice circulated prior to the meeting dated 11 October setting out 12 reasons for the removal. The complaints were about the divisive actions and failings of Te Arataura. The meeting was adjourned, and the items that were deferred included the motion to remove. Ms Martin chaired this meeting. She summarised the proposed motion of Mr Hori Awa to the members of Te Whakakitenga Inc.

[7] On 3 November Te Whakakitenga Inc distributed notice for a special 25 November meeting to consider the deferred items. Ms Martin signed the agenda. The removal resolution was on the agenda, although reasons were not set out. It is common ground that under the Rules the resolution was not a special resolution.

[8] On 19 November the head of the Kaahui Ariki, the Māori King, wrote an open letter to all members in anticipation of the upcoming meeting proposing that Ms Martin and the other members of Te Arataura stand down. The letter does not contain allegations of specific acts of misconduct by Ms Martin, but comments at length on the divisive legal and other battles being fought by the leaders of Te Whakakitenga Inc. It contained a clear overriding message that Ms Martin should stand down, and that the Māori King gave approval to and supported Mr Tuku Morgan to contest the position of chairperson. Ms Martin received a copy of the letter three days prior to the 25 November meeting. Many others had copies of the letter, although the extent and dates of its distribution are not entirely clear on the affidavit evidence.

[9] The special meeting held on 25 November began at approximately 9.00 am. At the beginning of the meeting members considered the 19 November letter from

the Māori King. It was discussed until approximately 2.55 pm. After a break a member, Mr Awa, put the resolution to remove the officers including Ms Martin to the meeting. An interim chairperson was elected. A document headed "Disrepute Rationale" was distributed which set out 10 grounds upon which Ms Martin and the other officers were alleged to have brought Te Whakakitenga Inc into disrepute. Again the focus was on poor and divisive leadership.

[10] Ms Martin opposed the resolution. The interim chairperson invited Mr Awa to speak in support of the resolution, which he did. Ms Martin then spoke against the resolution. A vote was then taken and it was passed by a majority.

[11] Since Ms Martin's removal, there have been fresh elections held in 2015. Ms Martin has been reappointed by her marae, Hiiona marae, as an elected member of Te Whakakitenga Inc, and she has been acting and functioning as an elected member since then.

The issues

[12] In her decision, Duffy J concluded that the removal resolution was justiciable and declined to strike out the proceeding. She considered that whether the appellant followed the requirements of natural justice warranted more scrutiny.[5] She noted that Ms Martin had pleaded no notice, but had abandoned that position. The Judge gave Ms Martin the opportunity to re-plead her grounds for review. Ms Martin has since filed an amended statement of claim. Her previous assertion that she did not have notice of the resolution (as opposed to the supporting grounds) is not repeated, and she does not seek to be reinstated as chairperson. The statement of claim continues to plead improper purpose, but in submissions Ms Martin now accepts this is untenable.

[13] The essence of Ms Martin's argument as presented to us by Mr Cornegé is that the process that led to the decision to remove her was unfair. Mr Cornegé submitted that she did not have notice of the substance of the complaint against her. The members of Te Whakakitenga Inc were unable to consider the substance of the

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5 *Martin v Waikato-Tainui Te Kauhanganui Inc,* above n 2, at [85].

allegations prior to the meeting. Mr Cornegé also claimed that the appointment of the interim chairperson was unfair, and Ms Martin was not given an adequate opportunity to respond to the allegations during the meeting. The parties have filed an agreed list of issues.

[14] As we see it there are two broad issues to be determined. First, whether there are tenable causes of action and, second, whether the appeal should be allowed because the litigation serves no useful purpose and no practical relief is available.

Approach to strike out

[15] A court may strike out a claim if it discloses no reasonably arguable cause of action.[6] It is inappropriate to strike out a claim unless "the court can be certain that it cannot succeed".[7] The jurisdiction should be exercised sparingly.[8] However, as this Court said in *Attorney-General v McVeagh*:[9]

> … if the claim is doomed to failure, there can be no justification for allowing it to continue. The striking-out jurisdiction is founded on the realisation that resources are finite and are not to be wasted.

[16] The same principles apply to striking out an application for judicial review.[10]

[17] For reasons that we set out later, we have reached the view that this appeal should be allowed as the application for judicial review does not serve any useful purpose. However we first address shortly the merits-based submissions of Ms Martin.

Justiciability

[18] The effect of s 10 of the Judicature Amendment Act 1977 was to extend the definition of "statutory power" in s 3 of the Judicature Amendment Act 1972 to powers or rights conferred by a constitution or other instrument of incorporation, rules or bylaws of any body corporate. The amendment rendered statutory decisions

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6 High Court Rules, r 15.1(1)(a).
7 *Couch v Attorney-General* [2008] NZSC 45, [2008] 3 NZLR 725 at [33].
8 *Attorney-General v Prince and Gardner* [1998] 1 NZLR 262 (CA) at 267.
9 *Attorney-General v McVeagh* [1995] 1 NZLR 558 (CA) at 564.
10 *Southern Ocean Trawlers Ltd v Director-General of Agriculture and Fisheries* [1993] 2 NZLR 53 (CA) at 63.

of incorporated bodies, whose powers were derived not from a statutory source but from formal constitutions, amenable to review. New Zealand Courts have been prepared to intervene in the internal affairs of an incorporated society or club. This Court decided in *Stratford Racing Club Inc v Adlam*,[11] following *Hopper v North Shore Aero Club Inc,*[12] that a committee's membership decision could be a prime candidate for review.

[19] Mr Hodder QC for Te Whakakitenga Inc did not argue that incorporated societies are immune from judicial review. He did, however, submit that this did not mean that the particular decisions in this case were reviewable. He submitted that it was not sufficient to classify the incorporated society as being "public" in character or to identify an alleged breach of natural justice. He submitted there must be positive reasons why judicial review is appropriate.

[20] An incorporated society is a private body and its constitution takes effect as a contract between its members.[13] It is not every action of an incorporated society that will be amenable to judicial review.[14] Where the actions involved are public or quasi-public functions, or where there has been a breach of natural justice, judicial review may be available, depending on the specific circumstances.[15] To this extent the consideration of justiciability melds into an examination of the specific decisions for which review is sought, and the circumstances of those decisions.

[21] We accept that where a decision is made by an incorporated society by a majority vote at a properly constituted meeting relating to the tenure of an elected officer, the wishes of a majority reflected in the vote should not be lightly thwarted. This consideration has added force when the decision is of a political nature concerning general performance rather than a hard-edged assessment of specific performance-related issues. Particular caution on the part of a Court is appropriate in such a case.

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11 *Stratford Racing Club Inc v Adlam* [2008] NZCA 92, [2008] NZAR 329 at [53]–[55].
12 *Hopper v North Shore Aero Club Inc* [2007] NZAR 354 (CA) at [11].
13 *Finnigan v New Zealand Rugby Football Union Inc* [1985] 2 NZLR 159 (CA) at 177.
14 *Phipps v Royal Australasian College of Surgeons* [1997] 2 NZLR 598 (HC) at 606–607.
15 *Hopper v North Shore Aero Club Inc*, above n 12, at [11]–[12].

[22] However, even in the case of the election or removal of officers, serious procedural unfairness such as a failure to give notice of the resolution or an opportunity to be heard, or a significant breach of the rules, or ultra vires action, will be amenable to review.[16] Such allegations are made by Ms Martin. In our view it is seriously arguable that this proceeding is justiciable.

Breaches of natural justice

[23] In her initial statement of claim Ms Martin pleaded that she had no knowledge of the resolution that removed her prior to it being presented at the meeting of 25 November. It became plain during the hearing before Duffy J that this assertion was wrong. There were recordings of the meetings of 27 October and 25 November. These demonstrated that Ms Martin had notice of the resolution and had summarised it for the members during the 27 October meeting. Indeed it was her responsibility to send out the notice referring to the resolution for the 25 November meeting. Ms Martin on appeal now focusses on the adequacy of that notice.

[24] The notice of the meeting was in itself short and contained no reference to the reasons for Ms Martin's and the other officers' proposed removal. However, the notice of 11 October 2012 set out 12 reasons for the officers' removal. This was over a month before the 25 November meeting. The letter from the Māori King that Ms Martin received three days before the meeting also set out the general basis for the complaints. At the meeting itself the Disrepute Rationale was presented, which set out the alleged problems with the officers' leadership.

[25] The general thrust of the 11 October and 25 November summaries and the letter of 19 November were that Ms Martin and the other officers were not managing Te Whakakitenga Inc in a proper and effective manner, and that there was an unacceptable level of divisiveness within the body. It can be fairly said that the nature of the allegations against the officers were of a political type; the allegations

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[16] *Statford Racing Club Inc v Adlam,* above n 11, at [55]*; Hopper v North Shore Aero Club Inc,* above n 12, at [12]; *Tamaki v Māori Women's Welfare League Inc* [2011] NZAR 605 (HC) at [43]; and *Pritchard v Evans* [2014] NZHC 3150, [2014] NZAR 370.

concerned the effectiveness of the officers' leadership and did not raise any particular identifiable acts of misconduct.

[26] At the 25 November meeting itself Ms Martin was present when the resolution to remove her and others was read out and spoken to. She heard what was said. She was given approximately an hour to reply. Undoubtedly there were interruptions and there was noise throughout that period. She complains that she did not get a full opportunity to say all that she wished to say.

[27] Ms Martin therefore had notice of a resolution to remove her, and knowledge of the general nature of the criticisms of her. She had an opportunity to consult with her marae and answer the allegations against her, and an opportunity to persuade the members that they should vote against the resolution. Undoubtedly she would have liked longer.

[28] Despite difficulties, in relation to the two key issues of inadequate notice and inadequate steps to ensure procedural fairness at the meeting, we are unable to say that Ms Martin's case is certain to fail. The analysis of this issue will be fact-intensive. Did the written material fairly indicate the nature of the case against her? In the circumstances, should more have been done or said? Was the meeting conducted in a way that was fair to her? While, as we have said, a Court will be cautious before interfering in a political voting process in an incorporated society, it would be inappropriate to enter judgment on the merits in a case where there may still be evidential developments. So to this extent we agree with Duffy J that the causes of action are not so certain to fail that they should be struck out.

Futile proceeding

[29] Mr Hodder submitted that the passage of four years, Ms Martin's re-election as a member of Te Whakakitenga Inc, and the election of a new chairperson mean that the proceeding serves no useful purpose and should be struck out for that reason.

[30] In response Mr Cornegé for Ms Martin submitted that the litigation still serves a useful purpose. It will resolve the question of whether Ms Martin's

re-election was valid, it will help reinstate her mana and repair her reputation, and will provide useful guidance to Te Whakakitenga Inc for the future.

[31] In assessing these submissions it is first necessary to consider the precise factual context. As we have set out, the effect of the 25 November 2012 resolution was that Ms Martin ceased to be a member of Te Whakakitenga Inc and chairperson. On 7 December 2012 Ms Martin invoked the internal dispute resolution process provided for in the Rules. This process was on foot until 11 August 2013 when Te Whakakitenga Inc terminated the dispute process by a resolution in a general meeting. On 8 October 2013 Ms Martin suffered a partial stroke and in August 2014 she was still receiving treatment for anxiety and depression. On 6 August 2014 she filed this proceeding.

[32] On 3 January 2015 there was a further triennial marae election process. Ms Martin did not stand for the position of chairperson. She was however elected as the representative of Hiiona marae. On 21 February 2015 Te Whakakitenga Inc held its triennial special meeting and the new officers of Te Whakakitenga Inc and the members of Te Arataura, other than one member, were elected for the new and current triennial period. Maxine Moana-Tuwhangai was elected chairperson. Since then Ms Martin has been a member of Te Whakakitenga Inc and there has been no formal challenge to her position. She does not challenge Ms Moana-Tuwhangai's position as chairperson.

[33] These changes to Ms Martin's position are reflected in the pleadings. In the original statement of claim the relief sought was a declaration that Ms Martin's removal as chairperson was invalid, an order quashing or setting aside the removal resolution, and an order that she be reinstated as chairperson of Te Whakakitenga Inc for the Hiiona marae, or directions for management of a process to decide the appropriate chairperson.

[34] The amended statement of claim filed on 16 June 2016 no longer seeks an order reinstating Ms Martin as chairperson. The prayer does seek reinstatement of Ms Martin as an elected member of Te Whakakitenga Inc for the Hiiona marae, but it

was accepted in submissions by all parties that she is currently such an elected member.

[35] There was an issue raised at the February 2015 meeting as to her eligibility because of the earlier resolution, but that has not been pursued and there is no evidence that her existing status as a member is at issue. Given the new election and Ms Martin's now settled status as a member and Ms Moana-Tuwhangai's settled status as the chairperson, an order quashing or setting aside the removal resolution will have no practical effect.

[36] Thus, in essence, the remedies now sought are a declaration that Ms Martin's historical disqualification was invalid and an order quashing it or setting it aside. These orders will not bring about any change to the practical status quo.

The competing approaches

[37] Arguments of utility or lack of utility arise frequently in judicial review proceedings. Such arguments have been considered on numerous occasions by this Court and the High Court. Two principles must be balanced. On the one hand, a significant error in a decision-making process would be expected to lead to the decision being quashed, and a reconsideration. As was stated in *Phipps v Royal Australasian College of Surgeons*:[17]

> The overriding general principle is the need to achieve a fair result in the particular circumstances. But, in general, Courts should be slow to conclude that evidence such as that given by the reviewers in the present Court proceedings [that their recommendations would have been the same even in the absence of the impugned findings] is a sufficient reason for withholding relief. When a decision is flawed by serious procedural irregularity, the person prejudiced is normally entitled to have the matter considered afresh. Justice requires that the decision should be set aside and reconsidered unless, in the particular case, there is good reason why that should not be so.

[17] *Phipps v Royal Australasian College of Surgeons* [2000] 2 NZLR 513 (PC) at [27].

[38] This statement was predicated on the assumption that reconsideration of the previous decision was an available option. It reflects the usual principle that where there has been a wrong there should be a remedy.[18]

[39] On the other hand, there is the concept that the Court will not make orders that have no utility. The Court's time is precious, and it is not the function of Courts to provide abstract opinions. This has been described as an "ancient principle that the law requires no one to do that which is vain and ineffectual"[19] and that relief which has "no utility" will not be granted.[20] Relief may be inappropriate where the applicant has "achieved the substantial result sought",[21] where it would serve no useful purpose,[22] or where the passage of time means it could not have any practical effect.[23] Thus the traditional position in New Zealand has been that the Courts will not hear an appeal "where the substratum of the … litigation between the parties has gone and there is no matter remaining in actual controversy and requiring decision".[24]

[40] In *R v Gordon-Smith* it was noted that there can be exceptions to this policy and it was not a matter of jurisdiction.[25] There, in a case of significant public importance and which was not fact dependent, leave to appeal a technically moot issue was given. We must immediately observe that this case is fact dependent, and the issue is not of public importance.

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18 *Henderson v Director of Land Transport New Zealand* [2006] NZAR 629 (CA) at [44]; *van Soest v Residual Health Management Unit* [2000] 1 NZLR 179 (CA) at [94]; *Thompson v Grey Lynn School Board of Trustees* HC Auckland CP74/98, 27 April 1998 at 29; and *New Zealand Federation of Commercial Fishermen Inc v Minister of Fisheries* HC Wellington CP237/95, 24 April 1997 at 171.

19 *Waikato Regional Airport Ltd v Attorney-General* [2002] 3 NZLR 433 (CA) at [136].

20 *Motor Vehicle Dealers Institute Inc v Auckland Motor Vehicle Disputes Tribunal* (2000) 6 NZBLC 103,159 (CA) at [24]; and *Just One Life Ltd v Queenstown Lakes District Council* [2004] 3 NZLR 226 (CA) at [4].

21 *Unison Networks Ltd v Commerce Commission* CA284/05, 19 December 2006 at [83].

22 At [83].

23 *Reihana v Crown Island Administering Body* CA193/04, 4 November 2005 at [38].

24 *Finnigan v New Zealand Rugby Football Union Inc (No 3)* [1985] 2 NZLR 190 (CA) at 199. This statement was quoted by the Supreme Court in *R v Gordon-Smith* [2008] NZSC 56, [2009] 1 NZLR 721 at [14].

25 *R v Gordon-Smith,* above n 24, at [16]. That case was in a criminal context, but it was followed in a recent judicial review decision of this Court, *New Health New Zealand Inc v South Taranaki District Council* [2016] NZCA 462 at [209]–[213].

[41] Considering the utility argument, we are sensitive to the fact that there can be more utility to a Court proceeding than just the obtaining of a directive order that changes the practical status quo. In particular, the repairing of unfair damage to a reputation may in certain circumstances be a proper basis for the granting of relief. Mr Cornegé submits *O'Regan v Lousich*,[26] is such a case. The plaintiff had been chairman of a Māori incorporation and that incorporation had been a party to a Māori Land Court proceeding. In the decision of the Māori Land Court the plaintiff was said to have an overbearing manner when dealing with dissenting shareholders, and the Judge in that Court said that his evidence, demeanour, and observed attitude had not lessened the disquiet. The plaintiff was not a party to the proceeding and had not been present at the hearing. The plaintiff said the Judge's comments were "an absolute bombshell".[27] If the plaintiff had known the allegations were to be raised he would have arranged for representation and to call evidence to answer the allegations.

[42] It was held that the plaintiff had an interest in not having his reputation wrongly impeached.[28] Because there had been a "substantial" failure to observe natural justice Tipping J concluded that the plaintiff should be granted a remedy.[29] There was a practical result in *O'Regan v Lousich* in that it was ordered that the passage that made the finding of overbearing conduct in the judgment be brought up to the High Court and the extract quashed. It was declared that the passage was unlawful because of the circumstance of procedural unfairness.[30]

[43] Duffy J summed up the practical position in this way in her judgment:[31]

> [77] In the present case Mrs Martin has been re-elected for a new triennial term. However, there is a question as to whether the effect of her removal for the last triennial term affects her eligibility to be further elected as a member of Te Kauhanganui Inc. A decision on whether she was properly removed as a member of Te Kauhanganui Inc will go some way to resolve this issue. Thus even if she has properly been re-elected, I consider that a declaration stating that her disqualification as an elected member of Te Kauhanganui Inc was invalid would still be useful.

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26 *O'Regan v Lousich* [1995] 2 NZLR 620 (HC).
27 At 624.
28 At 629.
29 At 632.
30 At 632.
31 *Martin v Waikato-Tainui Te Kauhanganui Inc,* above n 2.

[44] She also noted that a declaration of invalidity would clarify future attempts to remove members.[32] Further, relying on *O'Regan v Lousich*, she thought that success would go some way to remedying damage done to Ms Martin's mana and reputation.[33] She accepted that it would be futile to reinstate Ms Martin as a member and noted she no longer sought to be reinstated as chairperson.[34] She considered Ms Martin had given a satisfactory reason for the delay in issuing her proceeding.[35]

[45] This latter finding was not ultimately contested, and we agree with Duffy J. The proceeding was filed on 6 August 2014, almost two years after the 25 November 2012 meeting. That delay can be ascribed to the internal dispute resolution process and Ms Martin's illness. We do not consider that any delay by Ms Martin should be a factor to be taken into account in assessing whether to grant relief. However, the fact and consequences of the expiry of time cannot be avoided. The events in question took place four years ago.

Analysis

[46] It is our analysis that contrary to the position reached by Duffy J, this proceeding has no utility, and should not be allowed to proceed. We reach different conclusions to those of Duffy J on the three points she relied on.

[47] First, it seems to us that the practical position is now different to that presented to her. Duffy J recorded that a decision on whether Ms Martin was improperly removed as a member would go some way to resolving a question as to whether Ms Martin's eligibility to be a current member was affected by her removal.[36] However, before us Mr Hodder presented a persuasive analysis of the Rules, which limit any effects of the 2012 resolution to that triennial period. In the course of his submissions Mr Cornegé accepted that it was highly unlikely that the earlier resolution would have any effect on Ms Martin's current membership. We are now satisfied that it will not be so affected. We do not consider that a declaration of

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32 At [78].
33 At [79].
34 At [84].
35 At [83].
36 At [77].

invalidity will make any difference to the present practical situation. Thus a significant foundation for Duffy J's utility decision no longer holds.

[48] Second, we do not see the precedent value of a decision on the validity of the now historical resolution to be a reason to grant judicial review. This would be the equivalent of providing an advisory opinion in relation to a very fact-specific scenario that no longer applies. It would be giving an opinion on a matter of administrative law in the abstract. This is not the proper function of judicial review.

[49] Third, we respectfully disagree with Duffy J's reliance on *O'Regan v Lousich*, and see the present case as being significantly different.[37] In the former case there was a practical remedy of redaction available, and indeed a redaction order was imposed. The effect was to change the words of a judgment of the Māori Land Court. There is no practical remedy available here.

[50] It is also the case that the reputational damage resulting from the loss of a contested elected office by a majority vote is different from a judicial finding, made without notice, of overbearing and inappropriate conduct. The latter can be seen to relate directly to probity and competence, the former to losing a political power struggle. In this case events have moved on with Ms Martin's re-election as an elected member, in a way that they had not in *O'Regan v Lousich*. Ms Martin is a member of Te Whakakitenga Inc again. She is no longer contesting the position that was at issue.

[51] We are also mindful of the difficulties that would face Ms Martin if the case proceeded. Any failings of process would be no more than failings of degree; a failure to give enough notice, a failure to give enough time to speak.

[52] In our assessment, the events in question are history and have been overtaken by more recent events. Ms Martin's loss of the chair and loss of membership is now in part corrected by more recent elections. The loss has been part of an ongoing political struggle, which indeed may well be continuing. A judicial determination of

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[37] *O'Regan v Lousich,* above n 26.

the correctness of one of the earlier events in that history will have no practical utility.

[53] It would undoubtedly have given Ms Martin some satisfaction to have such an order, and the ability to say, "what you did in 2012 has been shown to have been legally wrong". But judicial review was not designed for the provision of only personal rewards that contain no significant practical benefit, particularly where there is no ongoing character stigma to be erased, of the type that was identified in *O'Regan v Lousich*.[38] There is no issue of public importance raised.

[54] Therefore we conclude that if this case went to hearing, it is inevitable that a Court which properly directed itself on the law would decline relief, because relief would serve no useful purpose. For that reason this proceeding should be struck out.

Result

[55] The appeal is allowed, and the claim struck out.

[56] The appellant has been successful, but Ms Martin is legally aided. Mr Hodder did not press for a costs order. There is no order as to costs.

Solicitors:
Chapman Tripp, Wellington for Appellant
Sullivan Law, Hamilton for Respondent

[38] *O'Regan v Lousich*, above n 26, at 631 and 632.