IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-Ā-TARA ROHE

CIV 2018-485-7
[2018] NZHC 2713

BETWEEN	PAULINE REWITI Applicant
AND	THE MAORI WOMEN'S WELFARE LEAGUE INCORPORATED Respondent

Hearing:	2 July 2018, further material received 13 and 18 July and 1 August 2018
Counsel:	L Hansen and E O'Connor for Applicant V Casey QC and E Gattey for Respondent
Judgment:	19 October 2018

JUDGMENT OF ELLIS J

---

[1] The Maori Women's Welfare League Inc Te Ropu Wahine Maori Toko i te Ora[1] (the League) was founded over 65 years ago.[2] It is a unique and highly regarded organisation whose history and tikanga are held dear by all its members. The motto of the League is "Tatau", an all-inclusive expression meaning "all of us together".

[2] In more recent times, however, there has been serious disunity in the League. Aspects of that disunity have become a matter of public knowledge.

---

1 Out of respect for regional differences in dialect and spelling, macrons are not used in the name of the League.

2 It was founded in 1951 and is an incorporated society under the Incorporated Societies Act 1908. The League has charitable status under the Charities Act 2005.

[3] The first schism was the subject of a decision by Kós J in 2011.[3] While the particular disputes were largely resolved by that judgment, the wider issues raised highlighted a view that was already held by some amongst the League, namely that there were shortcomings in the League's Constitution requiring attention. And so, it was that in late 2011, a Constitutional Review Committee (CRC) was established. The resulting review took almost two years and culminated in the unanimous approval of a "new" Constitution at the League's National Conference in September 2013.[4]

[4] Regrettably, however, this review has now given rise to a different, but equally bitter, rift within the League. The principal focus of the new schism is on the omission from the new Constitution of a clause which had previously limited the National Presidency to a single term of three years. This change permitted the re-election of the incumbent, Ms Prudence Kapua, in 2017. And because Ms Kapua was, herself instrumental in the constitutional review process, her detractors formed the view that the amendment was somehow orchestrated surreptitiously for her own benefit. For reasons I shall later make clear, however, I consider there is no proper basis for that belief.

[5] For the time being, however, it suffices to note that the applicant in these proceedings, Ms Pauline Rewiti, and her supporters say that, contrary to the requirements of the Constitution, due notice of the clause's removal was not given prior to the vote in September 2013. She says that its removal (and Ms Kapua's subsequent re-election) is therefore unlawful. For the sake of later clarity, I note that Ms Rewiti's supporters include Ms Ripeka Evans and her partner Ms Materoa Dodd, who stood against Ms Kapua in the 2017 election, and Ms Awhimai (Sharon) Reynolds, a former General Manager of the League.[5]

---

3 *Tamaki v Maori Women's Welfare League Inc* [2011] NZAR 605 (HC).

4 The 2014 Constitution was not in fact entirely new but a very substantially amended version of the previous Constitution.

5 Ms Rewiti, herself is a voluntary social worker. She resides in Auckland and is a financial member of the Te Rongopai Branch of the Maori Women's Welfare League (the League). She has been a member of the League since 2013. Ms Rewiti's late mother, Tuhimareikura O Vaha'akolo was the founder of the Te Rongopai Branch and was a member until her death in 2017. Ms O Vaha'akolo also served on the National Executive and co-signed the first registered Constitution of the League in 1978 as a Justice of the Peace.

[6] Further, ancillary, issues are raised about amendments made in 2015 to the League's Handbook and their impact on the 2017 elections.

Preliminary comment

[7] There are a number of matters that can usefully be recorded at the outset.

[8] First, this was an application for judicial review which proceeded in the usual way, on the basis of affidavit evidence. To the extent there are contests around aspects of that evidence, therefore, I am unable to resolve them. The documentary record is patchy and, in places, unclear. So, on some issues it may be necessary to resort to the onus of proof, which of course is on the applicant.

[9] Secondly, to the extent that there are also disputes as to the tikanga of the League (which there appear to be) I am poorly placed to adjudicate upon them.[6] As well as the point that the evidence has not been tested, it does not seem to me to be appropriate for a court of general jurisdiction to resolve such issues.

[10] Thirdly, I record in advance that I have endeavoured in this judgment to avoid criticism of any of the parties or participants in these proceedings. Even where I ultimately disagree with a particular stance taken on a particular issue, I accept that all involved genuinely believe that they have the interests of the League and its tikanga at heart.

---

6 In particular, there is a dispute about whether the concept of a single Presidential term forms part of the League's tikanga.

[11] That said, however, it does seem unfortunate that certain obvious and alternative means of resolving the present disputes do not appear have been pursued. And as I have already noted, the allegations of stealth and dishonesty laid against the current President appear to me to be intemperate and without foundation. Equally, however, certain steps taken by the President and the League against the applicant and her supporters also seem to me to be ill advised and regrettable.[7] I respectfully suggest that more care and gentleness on both sides may be required.

[12] With those remarks in mind, I turn now to the facts and evidence.

The League's origins

[13] The League is an incorporated society registered under the Incorporated Societies Act 1908 (the 1908 Act). It is a non-party political and non-sectarian organisation. It was initially established under the auspices of the Department of Māori Affairs, largely in response to the huge demographic shifts occurring around the time of the Second World War and, in particular, the mass movement of Māori to the cities and all the socio-economic issues to which that gave rise. Māori welfare officers were appointed under the Māori Social and Economic Advancement Act 1945 to assist and identify the needs of Māori in adjusting to urban life. Te Rangiataahua Royal, who was a senior welfare officer at the time, saw the need to establish women's groups across the country, as a voice for Māori women on health, education and welfare issues. It was out of this that the League (essentially a conglomeration of these groups) soon emerged.

---

7 After the hearing, Ms Hansen filed a memorandum attaching documents which showed that, following an investigation, the National Executive had resolved on 27 May 2018 (before the hearing) to find Ms Dodd and Ms Evans guilty of misconduct and of bringing the League into disrepute and dismissing them from the League. Also attached were letters that had been sent by Ms Kapua to the applicant and those witnesses (other than Ms Dodd and Ms Evans) who had given evidence in support of her claim advising that the National Executive had also resolved on 27 May 2018 to initiate dismissal proceedings against the. Although the relevant decisions had been taken prior to the hearing they were not sent until afterwards. Ms Casey QC subsequently confirmed that she had previously been unaware of these letters and, following discussions with her client, that those sent to the applicant had her supporters (other than Ms Dodd and Ms Evans) had been withdrawn

The League's structure[8]

[14] The League presently has over 3000 members who are grouped (in the first instance) into Branches. As at 30 June 2017, there were 138 financial Branches, 16 nonfinancial Branches and 20 Branches in recess. Since then a number of new Branches have been established.

[15] The Branches themselves are grouped into Regions. There are eight domestic Regions and one overseas Region. The New Zealand Regions are Te Tai Tokerau (Northland), Tāmaki Makaurau (in the Auckland region), Tainui (Waikato), Waiariki (mainly Bay of Plenty), Te Tairāwhiti (East Coast), Aotea (New Plymouth region), Te Ikaroa (Wellington and Hawke's Bay region), and Te Wai Pounamu (South Island). The overseas Region incorporates all Branches formed outside New Zealand. In the past there have been up to six Branches, but presently there is only one, the Gnullar Mia Branch in Perth.[9] The Gnullar Mia Branch has some relevance to one of the applicant's present claims.

[16] The National Council is the League's governing body. It meets annually at the National Conference. The Council is made up of delegates elected by the Branches, with one delegate for every ten Branch members. At the National Conference, the Council considers and votes on remits that have been proposed by the financial Branches. The conference in September 2017 had approximately 210 delegates and 150 observers in attendance.

[17] The National Executive is responsible for carrying out the directions of the National Council. It comprises the Area Representatives elected by each of the eight domestic Regions, the National President and the National Vice President.

---

8 It should be noted that the structure of the League is now somewhat different from that which was described by Kós J in *Tamaki v Maori Women's Welfare League Inc*, above n 3.

9 In general terms, each New Zealand Region has a Regional Council, each of which has a Regional President, Vice President and Secretary. The exception is the Te Wai Pounamu Region, which has a Kaunihera that operates as a de facto Regional Council.

[18] The National President chairs both the National Council and the National Executive. The National President and National Vice President are elected by the membership through the Branches (each Branch having a single vote). Elections are conducted by postal ballot, and the election results are announced at the National Conference.

The pre-2013 Constitution

[19] Ms Kapua has deposed that the League's original Constitution was drafted by the Department of Māori Affairs and modelled on the Constitution of the Returned Servicemen's Association due to similarities in structure between the two organisations. The first Constitution was adopted at the 1951 inaugural Conference of the League and (Dame) Whina Cooper was elected as the first National President, a position she held for two terms, until 1957.

[20] Since then the Constitution has been amended and reviewed a number of times. Following such amendment, the Constitution is duly registered under the 1908 Act.

The presidential term

[21] In the League's 1951 Constitution there was no prohibition on the National President serving more than one term. Evidence was filed in these proceedings that the Constitution was changed in 1957 to limit a President to a single term to stop Dame Whina from becoming President for life. As I understand it, however, this evidence may be disputed, and so I do not record it here as established fact.[10]

[22] What is not contested, however, is that following a review, a new Constitution was approved and registered on 1 December 1978. That Constitution stated that the National President was required to stand down at the end of her three-year term but that she could stand for re-election once the term of the next President had ended. It also provided that the immediate past President was to continue as a member of the National Executive for a further year.

---

[10] For example, Ms Kapua says that Dame Mira Szasy was asked to stand for a second term in 1977, but declined (rather than was not permitted) to do so.

[23] But the clause which is presently in issue has its origins in an amendment that was passed at the National Conference in 2001 and registered on 30 August 2002. It found form in cl XI(6)(b) of the Constitution and simply stated that:

> The National President shall retire at the National Conference following the end of her three year term.[11]

[24] It may be noted in passing that the term of office for all other positions on the National Executive (including the National Vice President) is for only twelve months, but with an apparently unlimited right to reappointment.

[25] It appears that there was a further change to cl XI in 2012, which is relevant only insofar as it saw subcl (6)(b) renumbered as subcl (7)(b). But the legality of this change appears also to be a matter for debate. So, in the remainder of this judgment I shall refer to the relevant (original) provision as cl XI(6)(b).

The notice clause

[26] Prior to the 2013 rewrite, cl XVII of the Constitution provided:

> The Constitution of the League may be altered, added to and rescinded at any National Conference, provided that due notice has been given of the intention to move in that direction. Voting on any alteration to the Constitution must be carried out by a two-thirds majority of those present. No alterations may be made to the Constitution that will affect the charitable nature of the League.

[27] The only material amendment made to this clause in 2013 was that the requirement for a two thirds majority became a requirement for a 75 per cent majority. Nothing turns on this, however, as it seems clear that the 2013 vote on the amendments to the Constitution was, as I have said, unanimous.

The Handbook

[28] As well as the Constitution itself, some of the operating processes and procedures of the League are contained in a Handbook, which is variously referred to as comprising the League's Rules and/or Standing Orders. The Rules contained in it pertain to Branch, Regional and National activities and deals with matters such as

---

[11] Clause XI(5)(a) stipulated that "the National President shall be elected every three years".

meetings, voting and the various officers. It is relevant to note that, prior to its amendment in 2014 (discussed later in this judgment) the Handbook:

(a) commenced with the following statement:[12]

> This Handbook is designed to give guidance on the use of the ***governing rules*** by the Maori Women's Welfare League Inc, and should be read in conjunction with the Constitution.

(b) contained "Standing Orders" which were defined in the "glossary" annexed to it as meaning "[t]he rules laid down for the management of business at meetings";

(c) drew a distinction between such "Standing Orders" (being the rules dealing with meetings, either at the Branch, Regional or National level) and the many other rules dealing with such matters as "Ballot Papers" and voting processes;

(d) provided that:

> Majority rules on all voting, other than the following:
>
> 2/3 Alteration to Constitution
> 2/3 To suspend Standing Orders
> 3/4 To terminate a membership

[29] I return to the significance of these things later.

The lead up to the amendments to the Constitution

[30] For some time prior to the establishment of the CRC there had been growing disquiet amongst the membership about a lack of transparency in the League's systems and processes and the significant power that had become reposed in the then General Manager. It seems remits were proposed to the National Council aimed at addressing these concerns but little headway was made.[13]

---

12 Emphasis in original.

13 For example, early in 2011 the Waiatarau Branch (for which Ms Kapua was a delegate) submitted a number of such remits including one that proposed a comprehensive Constitutional review.

[31] In 2011 an issue arose as to the eligibility of Mrs Tamaki to stand for election as National President, due to her strong connection with the Destiny Church, which was thought potentially to conflict with the League's non-sectarian ethos. As well, there were related concerns about what appeared to be a wider attempt by the Church to take over the League by (inter alia) establishing 10 new "Destiny Church Branches". These concerns led to decisions being taken by the National Executive and the then General Manager that Ms Tamaki's name should be removed from the ballot paper and that no voting papers should be provided either to the three existing "Destiny Church" Branches in Tāmaki Makaurau or the 10 new Branches.

[32] Mrs Tamaki sought judicial review of these decisions and Kós J made declarations that both the removal of Mrs Tamaki's name from the ballot and the refusal to send voting papers to the three Branches were unlawful. He declined to make a similar declaration in relation to the refusal to give voting papers to the 10 new Branches because he had doubts that they had been established in accordance with the Constitution. A shortened election process then took place in accordance with the Judge's decision.

[33] It seems that those events may have provided the final impetus to get a comprehensive Constitutional review off the ground. The CRC was established in late 2011 or early 2012.[14] The Committee included (inter alia) the National President, the National Vice-President and the General Manager but not, at this point, Ms Kapua. Although the records are sketchy it appears that the CRC (or some members of it) undertook a clause by clause analysis of the existing Constitution and a draft amended version was circulated sometime in April 2012. It was discussed by most, if not all, of the Regions.

[34] In August and September 2012, the National Vice President, and the General Manager both died, in quick succession. At the National Conference shortly afterwards, the President confirmed that the Constitutional Review would continue and advised that the National Council would be invited to submit names to National

---

[14] In January 2012, it appears that the General Manager purported to register certain changes to the Constitution, including the numbering change from cl XI(6)(b) to cl XI(7)(b). As I have said, the legality of these changes is disputed, but nothing presently turns on that.

Executive to fill the vacant positions. In November 2012 Ms Kapua and Angeline Pourau were appointed as the new members.[15] Ms Kapua was not a member of the National Executive at this time.

[35] The newly constituted CRC continued with the work that had already been begun. Feedback received from the first consultation round formed the basis for a revised draft Constitution that was produced in mid-December 2012. At that point, no change had been made to the clause relating to the National President's term of office (cl XI(6)(b)). There was then a face to face meeting between the CRC members and more changes were agreed. Ms Kapua's evidence was that it was a staff member at the National Office who was generally responsible for updating the drafts throughout the review process.[16]

[36] Following the December meeting it appears that a number of "versions" of a new draft were in circulation. Some have track changes where cl XI(6)(b) was shown as deleted. Included amongst these was a heavily amended draft that, usefully, shows the dates and makers of the changes recorded on it. It indicates that cl XI(6)(b) was deleted between 7 and 9 March 2013 by a person styled "Home User".

[37] Ms Kapua accepts that "Home User" may have been her, although she cannot be sure.[17] She does not specifically recall making a change to cl XI(6)(b) or what the reasons might have been for making it. But she is adamant that no changes of that kind would have been made by her that did not have CRC approval.

[38] On 21 March 2013, in advance of the National Executive meeting scheduled for 24 March, the CRC members were sent the latest iteration of the draft by National Office. This draft (as I understand it) showed that cl XI(6)(b) deleted.

---

15 At this point the other members of the CRC were the President, Kataraina (Kaa) O'Brien and the Vice President, Jane du Feu, as co-chairs, Past President Kitty Bennett and Area Representative Susan Wallace.

16 Ms Kapua explained that Committee input between meetings was either provided by email or sending suggested changes to National Office. Sometimes proposed changes were electronically tracked on the relevant draft. She deposed that the relevant files indicate that there were at least 13 iterations of the draft between 23 March 2012 and 31 July 2013.

17 The document indicates that other changes to it were made by other users (identified as Taanga Lawrence and Materoa Dodd) later the same month.

[39] On the same day, at Ms Dodd's request, Ms Kapua also provided copies of the latest draft (also with cl XI(6)(b) deleted) to Ms Dodd and to Denise Ewe (the Area Representative for Tāmaki Makaurau). That Ms Dodd received and read this draft seems clear from the fact that the version of the tracked change document referred to at [36] above also records Ms Dodd herself as having made track changes to the draft during the evening of 21 March.

[40] The National President subsequently sent an email approving the draft, and saying that:

> …if there is no further feedback from the Review Committee, I suggest that our Legal expert Prue pending your availability, attend our National Executive hui on Sunday to clarify any patai from National Executive members prior to the document going out to the motu.[18]

[41] Ms Kapua confirmed that she would attend the 24 March meeting and in due course she did so. She remembers discussion about the draft Constitution and that further amendments were proposed by National Executive members. She says she has a clear recollection that the National Executive wanted a comparative document to be prepared so that the existing Constitution could easily be compared with the draft. Her understanding was that the comparative document would then be made available to all Branches assist with their consideration.

[42] It seems that this comparative document was manually prepared by Head Office staff by printing a copy of the existing Constitution and a copy of the draft and then combining them so that the old and the new clauses could (more or less) be read side by side. It has a cover page entitled "Draft Constitution 27 March 2013, A comparative document". Because of the way in which it is interleaved it is not the easiest document to follow, but it does show that the existing cl XI(6)(b) has been shaded (as are all of the existing clauses which are proposed to be amended) and then not repeated in the new draft.

---

[18] *Motu* in this context refers to the League's members.

[43] Members of the CRC received a hard copy of this comparative document as did members of the National Executive. Although there is now no direct evidence of this, it can reasonably be assumed that each of the eight Area Representatives (who, together, constituted the National Executive) then took it back to the Branches in their respective regions for discussion. That was the document's purpose. Ms Kapua's later review of the (admittedly limited) documentary material, together with the record of the feedback received, lends support to that having occurred and, on balance, I am satisfied that the comparative document was, in fact, so distributed.[19]

[44] There was a conference call involving CRC members on 26 March 2013. The minutes taken by the General Manager indicate that she gave an update on the draft and that there was agreement that a PowerPoint presentation about the most significant of the proposed changes should be prepared. The aim was to use this as a basis for discussions with the Regions, from whom feedback was sought by 9 May 2013. A programme of dates for attending regional meetings was discussed and members of the CRC later worked out which meetings they could attend.

[45] The PowerPoint presentation was created by Ms Kapua and circulated it to the CRC for input and approval. It highlighted a number of changes regarded as significant, including:

(a) the removal of the power to lend funds;

(b) shifting of the power to make investment decisions from the National Executive to the National Council;

(c) the granting of voting rights on regional matters to Area Representatives;

(d) changing aspects of membership eligibility and membership types;

---

[19] The applicant and her supporters all deny having seen this document.

(e) including a requirement that a candidate for National President had to have been a member for at least five years prior to the nomination and that all officers of the League had to be Māori;

(f) including a requirement that all officers-elect of a new Branch sign a declaration that the Branch would be non-sectarian and non-party political.[20]

[46] As well, the PowerPoint noted that a review of the Handbook (to clarify and streamline processes and Standing Orders) would follow the Constitutional review and would incorporate revised procedures for scrutineers, and would deal with the eligibility of Branches to vote (in National elections).

[47] The PowerPoint did not refer to the proposed deletion of cl XI(6)(b).

[48] Ms Kapua has detailed the process of regional presentations and discussion that followed. I do not intend to set out the detail here. Although the level of engagement by the various Branches appears to have varied, in my view the consultation process was comprehensive. The following points seem worthy of note:

(a) Ms Kapua gave a presentation in Māngere for the Tāmaki Makaurau Region on 6 April 2013. The records suggest that no one from Ms Rewiti's Branch (Te Rongopai) attended.

(b) Ms Kapua attended the presentation for the Waiariki Region on 13 April 2013 with the National President and the Tainui Regional President.

(c) On 8 May 2013 Ms Dodd, the Area Representative for Waiariki, emailed the National President with four comments on behalf of her region that essentially supported the proposed changes and recommendations that had been presented.

---

[20] This seems clearly to respond to the earlier events involving the Destiny Church.

(d) Ms Dodd also attended the presentation to the Ikaroa region on 11 May 2013. Her subsequent emails report on the meeting, and include notes which suggest that the meeting discussed clause XI (inter alia) in some detail.

(e) Formal written submissions were received from the Ruahine Branch of which Ms Evans was (and is) the President. A submission forwarded to the National President on behalf of that Branch dated 8 May 2013 states on the first page that: "We have taken a clause by clause approach to analysing and commenting on the Constitution". It includes comments on matters that were not included in the PowerPoint presentation.

[49] The CRC had another full day hui at the National Office on Sunday 16 June 2013. It seems that Ms Kapua updated the draft amended Constitution to reflect the changes agreed at that meeting. In a subsequent email exchange between Ms Kapua and the General Manager, Ms Reynolds confirmed that the changes Ms Kapua had made were consistent with her notes of the meeting. The National President also reviewed the text. In a subsequent email exchange involving Ms Reynolds, Ms Kapua and the Committee it was emphasised how important it was that the amended version that went out to members showed the changes made by the Committee since the last circulated draft.

[50] At the National Executive Meeting on 25 July 2013, Ms Kapua advised that there had been no further major changes made and that legal advice was not required.

[51] The final version of the revised Constitution was approved by the National Executive on 1 August 2013 and was presented to members that month. The final draft showed changes to the 2011 Constitution marked up in bold. But clauses that had been removed entirely were not highlighted in this way, they were simply omitted. This final draft was included in the papers sent out to every Branch and delegate prior to the National Conference in September 2013.

[52] A remit to endorse the amendments to the Constitution recommended by the CRC in the final draft Constitution (as circulated prior) was voted on by the National Council at the National Conference in Whakatane on 13 September 2013. There was no opposition and the remit passed unanimously. The new Constitution was registered with the Registrar of Incorporated Societies on 27 September 2013.

Handbook Review

[53] As noted earlier, the Constitutional review also contemplated that there would be also be a review of the Handbook. Ms Kapua's evidence was that it was a key feature of this review that the Handbook would be separated from the Constitution so that it became simply a guiding document governing operational matters relating to the League's rules. Although it is not clear to me that the previous Handbook did in fact form part of the Constitution, other deponents and certain records seem to support Ms Kapua's view of the matter.[21]

[54] In any event, Ms Kapua deposed, and I accept, that the review of the Handbook was a major undertaking, as changes over the years had rendered it unwieldy and incoherent. It also needed to reflect the new revised Constitution. She says that the National President asked her to take charge of that work, as it was thought that the redrafting task would better be done by one person with the oversight of the National Executive, rather than by a full committee.

[55] On 25 July 2014, the National Executive approved the final version of the new Handbook for submission to the upcoming National Conference. The National Conference subsequently voted in favour of its adoption.

[56] The new Handbook made its subservience to the Constitution clear in the (amended) opening statement that:

> This handbook is designed to clarify the operation and activities of the League and should be read in conjunction with the Constitution. In the event that there is a conflict between the provisions of the Constitution and the provisions in this Handbook, the provisions of the Constitution will prevail.

---

[21] For example, the notes taken at the Ikaroa Regional Council meeting to discuss the draft Constitution on 11 May 2013 record the Region's support for the separation of the Constitution from the Handbook.

[57] Also of some present note is that:

(a) all the rules in the new Handbook are called "Standing Orders" which are now much more broadly defined as "[p]rocedural rules that apply collectively or separately at a Branch, Regional Council, National executive and National Council level";

(b) cl 3 of the new Handbook stipulates that a motion[22] to set aside any Standing Order must be carried by 75 per cent of those persons entitled to vote at the meeting;

(c) the word "remit" is defined to mean "[a] proposal that includes a statement requesting a Constitutional change, an introduction or change of policy, or the introduction or alteration to a General, Branch, Regional or National Standing Order";[23]

(d) cl 7.4 is entitled "Remit, Amendment and Resolution Procedure" and provides (inter alia):

(i) A remit is to be sent to National Office preferably at least five months before the National Conference (cl 7.4.1).

(ii) The remit must be in the name of the Branch and contain the wording proposed and the rationale for the remit (cls 7.4.2. and 7.4.3).

(iii) The remits are to be circulated to Regional Councils and Branches as a preliminary Agenda preferably at least three months before the National Conference (cl 7.4.5).

(iv) The final Agenda will include all proposed remits and any proposed amendments (cl 7.4.7).

---

22 For reasons that are not clear to me, the word "motion" is separately defined but seems to be used interchangeably with the word "remit" in the Handbook.

23 The word "remit" was not used at all in the previous Handbook.

(v) Before any discussion occurs, the remit must be seconded, and if not seconded, it lapses (cl 7.4.8).

(vi) When a remit is seconded the proposer is allowed up to three minutes to speak to the remit and the seconder up to two minutes to speak. Two further speakers opposed to the remit may speak for up to two minutes each and the proposer of the remit has a right of reply of no more than three minutes (cl 7.4.9).

(vii) Once the remit passes with or without amendment, it becomes a resolution (cl 7.4.13).

(viii) Finally, cl 7.4.15 provides that "[a]ny remit proposing to alter the Constitution requires the agreement of 75% of Branches entitled to vote at National Conference. All other remits require 51 % to pass".[24]

[58] I shall return to the significance of these matters later in this judgment.

Subsequent amendments

[59] Since the approval of the "new" Handbook in 2014, Ms Kapua says that the National Executive has undertaken regular reviews of the guidelines contained in it. She says those reviews have generally taken place annually, following the National Conference. The updated Handbook is distributed to Branches, usually with the papers for the following year's Conference. Of specific relevance, here are the changes made to the Handbook by the National Executive at the meeting following the 2015 National Conference.

[24] I note in passing that the former rule that a 75 per cent vote is required to terminate a membership seems to have disappeared completely.

[60] Ms Kapua explained that the changes arose from a claim made by one of the Branches at the Conference that they had not received voting papers for the election of the National Vice President.[25] When the (newly introduced) Returning Officers Manual was checked, however, it showed that the Branch concerned had in fact returned its voting papers and had (accordingly) voted.

[61] Ms Kapua explained that these events highlighted what had become a recurring issue, whereby on occasion a Branch secretary would sometimes, herself, fill in a voting paper without first calling a Branch meeting. It was to avoid this happening again that on 22 November 2015 the National Executive agreed to amend the Handbook to require the Branch President and one Branch executive member to sign a voting paper prior to submitting it.[26]

[62] The agreed amendments were to cls 7.1.4 and 7.1.5, shown by the italicised words below:

> 7.1.4 The ballot papers shall show the candidates' names in alphabetical order and show clearly the number of persons to be elected. *The ballot papers will have the Branch name and region printed on them prior to distribution and are to be signed by the Branch President and one other Branch executive member.*
>
> 7.1.5 Receipt of ballot papers by a Branch is confirmation that the Branch is financial. All ballot papers returned are deemed to be from Branches that are financial. Ballot papers can only be invalidated by the Returning Officers at the time of counting if they are marked incorrectly *or are not signed by authorised Branch executive members.*

[63] The validity of these amendments is an issue in these proceedings.

Ms Kapua's first presidency

[64] At the beginning of 2014, Ms Denise Ewe was planning to stand for National President. Ms Dodd was also considering standing for National President but it seems that she and Ms Evans agreed that they would support Ms Ewe and that Ms Dodd would stand instead for National Vice President. Ms Kapua also supported Ms Ewe.

---

25 The election result was upheld because the Branch had not taken advantage of the opportunity to advise National Office that it had not received voting papers before the election.

26 The relevant minutes of the National Executive hui show that Ms Dodd, as a member of the National Executive, was present at that meeting and that there was no dispute over this change.

[65] During the year, however, Ms Ewe's father became seriously ill and she took time out to care for him and decided not to stand for the Presidency.

[66] Ms Kapua says that it was at around that time that she was asked to consider being nominated for the position, notwithstanding that she was not a member of the National Executive. She eventually put her name forward and her election to the position was announced at the Conference in 2014.

[67] After her election, it appears that the relationship between Ms Kapua (as President) and Ms Reynolds (as General Manager) deteriorated. Ms Reynolds took leave and Ms Dodd temporarily took over in an acting role. But Ms Dodd was later unsuccessful when she applied to be permanently appointed, following Ms Reynolds' resignation in March 2015. It is apparent that the relationship between Ms Dodd and Ms Kapua has also become very strained.

The 2016 remits about presidential term

[68] At the National Conference in 2016 there were three separate remits proposing that the Constitution be amended to provide that the incumbent National President could stand for one further consecutive three-year term. Under the 2015 Constitution, a 75 per cent majority was required to pass such remits. All three were defeated.

[69] Ms Rewiti and her supporters say that these remits demonstrate that the membership was not aware that the Constitution had already been amended to permit a serving President's re-election. Other, not especially convincing, explanations for the remits (and the vote) have been given by other deponents.

[70] The most persuasive articulation of the reasons behind the remits came from Ms Ewe. She makes the moderately obvious point that each of them *was* in fact proposing a genuine and arguably sensible constitutional amendment. That is because the 2013 Constitution does *not* limit a President's ability to seek re-election to just one consecutive term, as the remits would have had it. Indeed, as presently drafted, the Constitution appears to contemplate (or does not prohibit) a Presidency for life. One might, accordingly, have expected Ms Rewiti and her supporters to vote in favour of the remits.

The 2017 presidential election

[71] In 2017 Ms Kapua was asked by the Tairawhiti Region and certain other Branches and members to agree to stand for a second term as National President. She said that despite her concern that doing so might prove divisive and detrimental to the League she was eventually persuaded otherwise. The two other candidates were Ms Dodd and Jane du Feu.[27] Ms Dodd also stood for National Vice President, along with four other candidates.

[72] On 28 June 2017, before the candidates had been announced by the National Executive, Ms Kapua received an email from Ms Evans challenging her ability to stand for a second term and referring specifically to the removal of clause XI(6)(b) during the Constitutional review. Ms Kapua received a similar email from another member at around the same time.

[73] An "open letter" said to be written on behalf of Waiariki Regional Council expressed similar concerns to those expressed directly by Ms Evans to Ms Kapua. It is not clear to me exactly how this letter was promulgated but apparently it was also posted by Ms Evans on the Facebook pages of a number of people who were not members of the League. Ms Kapua responded to that open letter by way of pānui addressed to League members.

[74] At the National Conference 2017 Ms Kapua was announced as the successful candidate for National President. This was after a considerable number of the votes cast were found by the Returning Officer to be invalid, based on the (now contested) 2015 amendments to the Handbook. But the voting records show that, on any analysis (by which I mean regardless of whether the "invalid" votes are included or excluded) Ms Kapua would have prevailed.[28]

---

27 Ms du Feu swore an affidavit in support of Ms Kapua in these proceedings.

28 Indeed, if all the invalid votes for Ms Dodd and Ms du Feu are added to their respective tallies but the invalid votes for Ms Kapua are *not* included in hers, Ms Kapua would still have been elected.

The Gnullar Mia vote

[75] Following similar disqualifications of "invalid" votes in the Vice Presidential election, the Returning Officers advised the Conference that Ms Dodd and one of the other candidates for National Vice President had received the same number of votes.[29] This was, however, corrected subsequently when it was found that the vote of the Gnullar Mia Branch had not been counted because, due to an administrative error, the Returning Officer had been unable to determine whether the vote had been properly authorised in accordance with the (now disputed) amended Rules. After inquiries by the General Manager and National Office staff the missing details were provided and forwarded to the Returning Officer who then issued an amended declaration of votes. The extra vote went to Ms Dodd's opponent, who was duly elected.[30]

[76] No objection to the voting process (in accordance with cl 7.1.10 of the new Handbook) was raised in relation to any of the 2017 election results. Instead, shortly after the election, the legal process which eventually resulted in the present claim, began.

The application for judicial review

[77] I adopt Ms Hansen's summary of those issues raised by the application for review that remain live:[31]

(a) Was cl XI(6)(b) lawfully removed from the constitution in 2013 and, if not, what consequences should follow?

(b) Is a remit required in order validly to amend the Handbook and if so, what consequences should follow in relation to the amendments made to cls 7.1.4 and 7.1.5 of the Handbook in 2015?

(c) Can a vote that has been disqualified at the time of counting later be validated?

---

29 Had this genuinely been the case, the Constitution required a secret ballot to resolve the tie.

30 Had the disqualified votes all been counted then the successful candidate would have had a much clearer majority than this one vote.

31 The issues which remained live at the time of the hearing before me.

[78] I address each in turn.

The removal of cl XI(6)(b)

[79] I have set out the relevant notice requirement in the Constitution above. To reiterate for convenience, however, at the time in question the Constitution provided that it could be amended at any National Conference provided that:

(a) "due notice has been given of the intention to move in that direction"; and

(b) the amendment is carried by a two-thirds majority of those present at the National conference; and

(c) the amendment would not affect the charitable nature of the League.

[80] It is only the first requirement that is presently in play.

[81] Ms Rewiti contends that the words "due notice" mean that there was an obligation on the League explicitly to bring the proposed deletion of cl XI(6)(b) to members' attention before the vote in 2013. She says that because this did not happen, members were misled about the scope and extent of the 2013 amendments to the 2011 Constitution.

[82] There can be little doubt that the deletion was not specifically brought to members' attention and I accept that many (including the applicant and her supporters) were not aware of it prior to the vote. But that does not, of course, answer the legal issue about what "due notice" required here.

[83] In that regard Ms Hansen referred me to the following definition of "due notice" contained in Black's Law Dictionary:[32]

> Sufficient and proper notice that is intended to and likely to reach a particular person or the public; notice that is legally adequate given the particular circumstance. – Also termed *adequate notice; legal notice*.

---

[32] Bryan Garner (ed) *Black's Law Dictionary* (10th ed, Thomson Reuters, United States, 2014) at 1227.

[84] So, unsurprisingly, context is everything.

Discussion

[85] Here, the remit which led to the adoption of the 2013 Constitution was simply that the League "endorse the amendments to the Constitution recommended by the CRC in the final draft Constitution circulated with the preliminary agenda for the National Conference 2013".

[86] There is no dispute that the draft Constitution was included with the papers in advance of the National Conference. In that sense, there can be no doubt that the voters knew in advance and in general terms on what they were being asked to vote. The following additional points seem relevant.

[87] First, the draft was the product of a thorough review and involved some 180 amendments to the earlier Constitution. As a matter of practicality, it was not possible or desirable to ask for a vote on each of these.

[88] Secondly, the proposition that an amendment by amendment vote was not required is supported by the thorough consultative process that had preceded the finalising of the draft. Members, through the Regional consultation process, had ample opportunity to review the changes in as much detail as they wished. While the adequacy of that process may partly have rested in the hands of the different Area Representatives, I have recorded my view above that the Area Representatives did receive a copy of the "comparative document" which showed the deletion of cl XI(6)(b). Moreover, the evidence suggests that the Regions took the matter seriously. At least one undertook its own "clause by clause" analysis of the draft.

[89] Thirdly, the CRC process itself had been collaborative. I accept that the members of the Committee worked together in an iterative way. The opportunity for any one of them to make surreptitious changes that would not be picked up by someone else seem to me to have been next to zero. The proposition that Ms Kapua secretly made such changes for her own future benefit is simply not plausible. At the time, the changes were made she was not even a member of the National Executive, let alone a

Presidential hopeful.[33] Moreover, and as noted earlier, the evidence strongly suggests that the March 2013 draft in which the proposed deletion was first shown (quite clearly) appears to have been seen and read (inter alia) by Ms Dodd.

[90] Fourthly, the National Executive was involved in, and were regularly briefed on the draft revision process. Members of the National Executive received a copy of (inter alia) the comparative document and approved the final draft.

[91] So, in the end, I agree with Ms Casey QC when she says that "due notice" cannot mean that all (approximately) 3000 members of the League needed to be aware of and understand every aspect of the changes to the Constitution that they were asked to vote on. What was required was the provision of information that was sufficient to give them that awareness and understanding if they wished fully to engage. Viewed in light of the consultative process that preceded it, the provision to members of the draft Constitution prior to the vote at the National Conference satisfied the constitutional notice requirement.

[92] Lastly (on this issue) I mention that even if I had found a notice failure here I would have been disinclined to grant the relief sought. That is because it has always been open to the applicant and her supporters to put the specific issue of a second Presidential term to a vote. All that is required is a remit to that effect from a Branch prior to the National Conference. The fact that this has not happened suggests that the principal object of this ground of review is personal; the removal of Ms Kapua from a position to which she was elected by a clear majority.

[93] It follows from the conclusion I have reached, however, that there is no need to consider such consequential matters.

Is a remit required to amend the Handbook?

[94] The background to this issue has been set out above. There is no dispute that the 2015 amendments to the Handbook were neither notified to the membership nor voted on.

---

[33] Despite Ms Hansen's submission to the contrary, the events to which I've referred to above in footnote 7 do not persuade me otherwise.

[95] Ms Rewiti's initial contention was that the 2014 Handbook forms a part of the Constitution. Therefore, she said that any amendment to it is governed by cl XVIII and requires a 75 per cent majority vote at the National Conference. Her position now is that regardless of the Handbook's constitutional status, amendments to it need to be approved by a remit and therefore by a 51 per cent vote of the National Council. Failure to follow that process renders the 2015 amendments invalid.

Discussion

[96] There is nothing in either the Constitution or the Handbook that squarely addresses the process by which amendments to the Handbook may be made. Ms Hansen's submission was, necessarily, based on a process of implication. In essence, she submitted that:

(a) the definition of "remit" contemplates that a remit is required to amend any Standing Order;

(b) because cls 7.1.4 and 7.1.5 are Standing Orders they can only be altered by remit; and

(c) the Handbook makes it clear that in order to become a resolution, a remit needs to be passed by a 51 per cent majority vote at the National Conference.[34]

[97] There can be no doubt that Handbook is not a model of clarity on this issue. But in the end I agree with Ms Hansen. As noted earlier, all rules contained in the Handbook are now "Standing Orders". And I agree that, it is implicit in the definition of "remit" that an amendment to a Standing Order is to be made through the remit process and that (accordingly) that a 51 per cent majority is required. This "ordinary" process of amendment can be contrasted with the specific provision in the Handbook relating to the "setting aside" of a Standing Order, which can only be done with a 75

[34] In my view, the amendments here did not involve "setting aside" a Standing Order, so there can be no question of a 75 per cent majority being required.

per cent majority. The review of the Handbook appears to have effected no real change from the previous position in this regard.[35]

[98] So, although I am inclined to agree with Ms Casey that it is not intuitively sensible that all amendments to the Handbook should be required to be put to the vote, that does not appear to me to be the position. The fact that the Handbook is not part of the Constitution is beside the point and, indeed, its lesser status is consistent with the fact that only a bare majority is required to make (ordinary) amendments. And while some of the matters dealt with in the Handbook may have little substantive effect and (arguably) should therefore be capable of administrative amendment, others (such as matters touching on voting and the invalidation of votes) are of fundamental importance.

[99] In my view, the changes to the Handbook purportedly made in 2015 should have been the subject of a remit, and would have required a 51 per cent majority to be passed. Those changes were invalidly made and I consider that they should be quashed.

[100] Having reached that conclusion the issue is what, if any, consequential relief should follow. It is here that I depart company from Ms Hansen. As I have made clear above, the amendments I have now found to be invalid had no practical effect on the outcome of the 2017 elections. The same two people would have been elected President and Vice President regardless of whether the votes deemed invalid were counted or not. Indeed, in both cases, their majorities would have increased. For that reason, and because a year has since passed (during which those persons have occupied the positions to which they were elected) I decline to make any further, substantive order that would interfere with those election results.

---

[35] On my reading of the earlier Handbook any of the rules contained in it (regardless of whether they were Standing Orders or not) would need to be put to a vote.

Retrospective validation of the vote of the Gnullar Mia Branch

[101] Lastly, Ms Rewiti contends that because there is no provision in the 2014 Handbook to retrospectively validate a vote, the Gnullar Mia Branch vote in 2017 should have remained invalid. Ms Hansen fairly noted that, in light of the applicant's stance on the previous issue, there was some irony in this position.

[102] Be that as it may, the short point is that I have found that the rules under which the Gnullar Mia vote was invalidated were, themselves, invalid. The vote should, therefore, have been counted from the outset. The outcome here was right, even if the process by which it was reached was wrong. The issue raised by this cause of action is moot.

Conclusions

[103] In summary, my findings are as follows:

(a) There was no breach of the constitutional "due notice" requirement prior to the vote and adoption in 2013 of the amendments to the Constitution. The notice given of the proposed changes (including the changes relating to the Presidential term) was, in the circumstances, appropriate.

(b) The amendments purportedly made in 2015 to the voting processes in cls 7.1.4 and 7.1.5 of the Handbook are invalid and are quashed accordingly. Amendments to the Handbook require a remit which is passed by a 51 per cent vote.

(c) The invalidity of the amendments to the Handbook demonstrably had no material effect on the 2017 National elections and no consequential orders are required or appropriate.

(d) The initial refusal to count the vote of the Gnullar Mia Branch was based on the invalid amendment to cls 7.1.4 and 7.1.5 and so was, itself, wrong. Given that the vote was later retrospectively counted, no remedy is required.

[104] It seems to me that both sides have had a modicum of success. My strong view is that costs should lie where they fall. But if counsel disagree, memoranda may be filed.

_____

Rebecca Ellis J