

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

CIV-2011-485-001319

UNDER the Judicature Amendment Act 1972

IN THE MATTER OF the Constitution of the Māori Women's
Welfare League Incorporated

BETWEEN HANNAH RADCLAVINA HUIRANGI
TAMAKI
Plaintiff

AND THE MĀORI WOMEN'S WELFARE
LEAGUE INCORPORATED
Defendant

Hearing: 20 July 2011

Counsel: H J P Wilson with B E Ross for Plaintiff
A J Knowsley with A Greig for Defendant

Judgment: 21 July 2011

JUDGMENT OF THE HON JUSTICE KÓS

Introduction

[1] The Māori Women's Welfare League was founded in 1951. This year marks the 60th anniversary year of its establishment. But 2011 has not proved an occasion for celebration of the League's many achievements. Instead bitter faction fighting has broken out.

[2] At the heart of the furore is a bid by the plaintiff, Mrs Hannah Tamaki, to gain election as National President of the League. Mrs Tamaki is a pastor in the Destiny Church. She is also the wife of Mr Brian Tamaki, who is a bishop of that church.

[3] In June 2011 the National Executive Committee of the League resolved that Mrs Tamaki's nomination as National President "not be actioned" in the August 2011 elections. In addition, it determined that three existing, and ten new, branches of the League associated with Mrs Tamaki not be permitted to vote.

[4] The issues in this case focus on the eligibility of Mrs Tamaki as a candidate for the presidency, whether the National Executive was wrong to exclude her from the ballot papers, and whether it was wrong to exclude the thirteen branches from voting.

[5] The disposition of this proceeding is urgent. The national conference of the League is due to commence in six weeks' time. An election of officers, from which Mrs Tamaki has been excluded, is underway. Exigency necessitates the delivery of this judgment now, without further refinement. I apologise in advance if I do not traverse every submission made to me. I will focus on those issues and that evidence I consider essential for the due disposition of this regrettable dispute.

Facts

[6] The League is an incorporated society under the Incorporated Societies Act 1908. It is governed by a constitution. The constitution is a broadly cast document. Although last amended in 2008, it is stronger on conceptual values than on prescriptive, procedural detail. The constitution therefore needs to be construed in accordance with the core underlying values of the League. Respect, manaaki (embrace) and tautoko (support) are at the heart of the tikanga of the League.

[7] As Mrs Jacqui Te Kani, a former President of the League and now its General Manager, said in her affidavit:

The [League's] constitution has always been light on detail of how the League operates because the members have always operated on traditional values and concepts and there has been no need to put into law what has always been our lore.

[8] I accept that observation. An instrument such as the League's constitution will be imbued with values and customary practices that will not be written within

the four corners of the document itself. Those values and practices are part of the tikanga of the League and are to be respected as much as the constitution is. The constitution does not stand alone in governing the conduct of members and member entities of the League. If the constitution speaks to a topic, that is to be accorded great respect. But if there is a gap in the written words of the constitution, a state of silence does not necessarily follow.

[9] The constitution commences with an introduction and a preamble. The introduction endorses the commitment of the League to the Treaty of Waitangi. The preamble provides:

The Māori Women's Welfare League is an organisation principally concerned with promoting through study, discussion and action the wellbeing of Māori and the people of New Zealand generally. The League shall consist of all Members of Branches, which are affiliated to the League. It shall be non-sectarian, non-profitable and it should be non-party political, in that it shall not seek to influence the views of its members regarding any candidate for public office or any political party.

[10] Article 3 of the constitution expresses a series of aims and objects. These focus on the provision of an organisational basis to enable members to participate in the spiritual, social, environmental and economic wellbeing of whanau and the community, and on health, education, economic development, employment, cultural values, the rehabilitation of offenders and assistance with victims of crime, and the promotion of understanding between women of all races.

Organisation of the League

[11] The League is organised on three levels.

[12] At the grassroots level there are the branches. A branch is an association of women "formed in accordance with [the] constitution and the rules of the League". A minimum of five members is required to establish a branch. There are various classes of membership. Once a nominee is proposed and seconded by two financial members of the League, and her annual subscription is paid, she is a member of the League. New branches are established under the supervision of the Area

Representative. The Area Representative is elected by the Regional Council, which is the next level above the branches.

[13] Branch size affects the representation of the branch on the National Council, and the number of votes it can exercise, including in the election process. A branch with up to 10 financial members has one delegate at the National Council, and one vote. A branch of 41-50 financial members has five delegates, and five votes. A branch that has 91-100 financial members has 10 delegates, and 10 votes. There is no provision beyond that number. So 10 delegates, and 10 votes, is the maximum permitted.

[14] There are eight regions, each with its own Regional Council. Membership of the Regional Council is drawn from all branches within the regional boundary. Regional boundaries are fixed using the same geographical boundaries as the Māori Land Court districts.

[15] One of the regions is Tamaki Makaurau – i.e. Auckland. Its boundaries are from Wellsford in the north to the Bombay Hills in the south (including the islands of the Hauraki Gulf). It is implicit in the constitution that branches and regions are organised along geographical lines. It is conceivable that a branch of the Tamaki Makaurau region might have members from another region, but they would be very much in the minority of the branch membership. I accept Mrs Te Kani's evidence that it would be contrary to the tikanga of the League for a region (through its Area Representative) to establish branches for people who live in another region.

[16] At the top of the League's organisation structure is the National Council. The National Council is the governing body of the League. Its members are the delegates from branches. I have explained already how the size of a branch determines the number of delegates it has on the National Council. The National Council will, therefore, have over 300 members. Plainly, it is a substantial body in terms of numbers. It meets annually, at the national conference.

[17] The day-to-day governance of the League is undertaken by its officers – the National President, the Vice-President and the eight Area Representatives. Together,

they comprise the National Executive Committee. That Committee is responsible for carrying out the directives of the League and “for the maintenance and implementation of the constitution, the League’s policies and its rules”. In particular it is responsible to the National Council for “protecting, maintaining and enhancing the mana and integrity of the Māori Women’s Welfare League movement”. It is required to meet at least four times a year.

[18] At the head of the League is the President. That is an office of considerable distinction. The first President was Dame Whina Cooper. Later Presidents of the League have included Dame Mira Szaszy, Dr Erihapeti Murchie-Rehu and Dame Georgina Kirby. As the late Dame Te Atairangikaahu, Patron of the League, said in 2002:¹

The past fifty years has provided the organisation with sixteen women leaders of uncommon talent, grit, vision and inspiration ...”

[19] I will refer in due course to the constitutional conditions for nomination of the President. The President is elected for a three year term; the Vice-President for an annual term.

The electoral process

[20] The unchallenged practice of the League in relation to the election of officers is this: a single voting paper is sent to the secretary of each branch in good financial standing, as at the end of the financial year (i.e. 30 June). The ballot paper states the name of the recipient branch, and the number of votes it has.² The branch must cast all its votes for a single candidate. Vote-splitting is not permitted.

¹ Isolde Byron, *Nga Perehitini* (Wellington, 2002) at 5.

² In accordance with [13] above.

Background – branches, people and votes

[21] As at the end of May 2011³ the League had about 2850 members. They belonged to 153 branches, spread across the eight regions.⁴ Not all the branches were currently financial. Those that were shared 347 votes in total.

[22] Three of the Tamaki Makaurau region's branches, the Taumata, Wahine Toa and Rangatahi Toa branches, are associated with the Te Runanga Iwi O Te Oranga Ake. That is a charitable trust and is itself associated with the Destiny Church. The League's witnesses describe Te Oranga Ake as the "provider arm of the Destiny Church". Mrs Tamaki on the other hand deposes:

As an organisation, TOA is completely separate to the Destiny Church and the League.

[23] On the evidence I have seen in this case, and which I will describe later in this judgment, I do not accept Mrs Tamaki's evidence as an accurate statement of the real relationship between Te Oranga Ake, Destiny Church and the three branches. By way of example, a newsletter published by Te Oranga Ake in May 2011 describes the branches as "branch[es] from the hahi".⁵ I accept that the three branches are closely associated with both Te Oranga Ake and the Destiny Church, via their leaders and members. I do, however, accept the evidence of Ms Bhana for the plaintiff that:

Each of the three existing branches under inquiry (Taumata, Rangatahi Toa and Wahine Toa branches) includes members who are not affiliated to the Destiny Church. Furthermore, I am also aware there are members of the 10 newly established branches who are not affiliated to the Destiny Church.

The way that passage is expressed suggests the non-affiliated members are unlikely to be a majority of the membership of each branch.

[24] The plaintiff, Mrs Tamaki, is president of the Wahine Toa branch. It was formed in February 2009. Mrs Tamaki became a member of the League at that point.

³ That is, before the formation of the 10 new branches.

⁴ There are also two overseas branches outside the regions, both in Australia, with a total of 47 members.

⁵ Church.

She has been a financial member of the League since then. She was elected President of the Wahine Toa branch in October 2010. I accept that she has been active in the League in attending two national conferences and five regional hui. In addition Wahine Toa has undertaken a number of its own initiatives. As a member, and more recently President, of Wahine Toa, Mrs Tamaki has been active in those initiatives.

[25] The other two branches referred to above, Taumata and Rangatahi Toa were formed in mid-2005 and June 2009 respectively.

[26] I accept for purposes of these proceedings that all three branches were financial and in good standing as at 30 June 2011. The affiliation or connection of those branches with Te Oranga Ake or Destiny Church does not alter that assessment. It is clear that the League dealt with all three branches as duly constituted until the end of June 2011.

[27] The Area Representative for Tamaki Makaurau is Ms Raewyn Bhana (or Bhana-Ngatai). She first joined the League in 2006 as a member of a different branch, the Tamaki Makaurau, Nga Wahine Atawhai O Matukutureia branch. She was secretary of that branch for two years. Later she became Vice-President of a different branch, Wahine Toa. As has been noted, Mrs Tamaki is the President of that branch. In November 2010 Ms Bhana was appointed Area Representative for Tamaki Makaurau at a regional hui.

Mrs Tamaki aspires to the League presidency

[28] On 2 May 2011 Mrs Tamaki was nominated for the position of National President. Her nominors were a member of the Wahine Toa branch and a member of the Rangatahi Toa branch. Mrs Tamaki consented to the nomination by signing the nomination form. The counter-signed nomination form was sent to the League's national office.

[29] On 19 May 2011 Ms Bhana received a phone call from Mrs Te Kani, the General Manager of the League. She said there was a problem with the nomination.

It was that the members who had nominated Mrs Tamaki came from different branches. The constitution provides “nominations can be made by any financial branch”. Mrs Te Kani advised Ms Bhana that “the nomination form should be resubmitted with nomination from two people from the same branch”.

[30] The same day a second form was submitted. The original Wahine Toa nominor re-signed that form. She was joined by Ms Bhana (who by then was a member and Vice-President of Wahine Toa). It was faxed to the national office later that day.

[31] On 20 May Mrs Te Kani confirmed the nomination form had been received and was correct. On 24 May she sent an email to members of the National Executive confirming that there were eight National President nominations, one being Mrs Tamaki.

New branches are formed

[32] On 4 June 2011 Ms Bhana (as Area Representative for Tamaki Makaurau) convened inaugural meetings of 10 new branches. Attached to this judgment is a schedule listing the key features of the meetings (if indeed there was more than one, which may be doubted) and the branches. Certain common features may be noted:

- (a) The meetings occurred on the same day, at the same time, and at the same place. Evidence before me shows that the address at which the meeting(s) took place is the Auckland headquarters of the Destiny Church.
- (b) In each case five new members established each branch. That is the minimum number required for branch establishment under the constitution.
- (c) The nominors were in each and every case the same, Mrs Tamaki and a Ms Priscella Benoni.

- (d) The number of members claimed to have joined each branch ranges between 91 and 93. As I have noted, the constitution provides that each branch may have a maximum of 10 votes at national conference, including in the election of the President. A branch requires at least 91 members to secure all 10 votes.

[33] I will return to the topic of the new branches later in this judgment, in my discussion of Issue 2.

Dissension develops

[34] It is not necessary for the purposes of this judgment to traverse all the details of the dissension that emerged following the nomination of Mrs Tamaki and the notification of the formation of the 10 new branches. It was not unreasonable for members of the League and its constituent bodies to connect the two events. Plainly the new branches, if validly constituted, would represent up to 100 new votes which might be secured by Mrs Tamaki. Indeed, a reasonably informed person would infer that that was a likely outcome of those events.

[35] In an election which otherwise would be decided by a voting pool totalling 347 votes, a further 100 votes would clearly be significant. All the more so in an election with eight candidates.

[36] The sudden addition of over 900 new members in one fell swoop was a singular event for the League. Its membership has lain within the range 2500 to 3000 throughout the last 10 years.

[37] A National Executive Committee meeting took place on 22 June 2011. All eight regions participated. It determined, apparently unanimously, to conduct an inquiry into the basis of any “new member applications” exceeding 90 in number. Its focus, clearly, was the 10 new branches.

[38] A subsequent Committee meeting was held on 27 June 2011. Seven regions participated. Ms Bhana, the Tamaki Makaurau Area Representative, did not. So far

as is material, the meeting decided four things. First, the Committee determined that Ms Bhana, who had convened the meetings establishing the new branches, should stand aside as Area Representative for Tamaki Makaurau during the period of the investigation.⁶ Secondly, it resolved to widen the inquiry to include the three extant branches – Wahine Toa, Taumata and Rangatahi Toa. Thirdly, it determined that the branches being inquired into should not attend or vote at regional hui or at national level. And, fourthly, it resolved:

That the nomination of Hannah Tamaki for National President, being from one of those branches [being investigated] ... should not be actioned pending the outcome of the inquiry.

[39] On 30 June 2011 the League issued voting ballot papers for the elections (including that of the National President). Two things may be noted:

- (a) Mrs Tamaki's name was not included in the ballot papers as a candidate for President, and
- (b) the ballot papers were not sent to the three extant, or the 10 new, branches being investigated.

[40] On 7 July 2011 the present proceedings were commenced by Mrs Tamaki. In essence, her claim is in two parts:

- (a) First, that the exclusion of her name from the ballot papers was unlawful. She contends that her nomination by the Wahine Toa branch was valid, that the League is required to include her name in the list of candidates, and that the current national election process commenced by the League is in breach of the constitution and unlawful. She seeks orders that the current electoral process be terminated immediately and recommenced in a manner that includes all persons nominated as at 3 June 2011.

⁶ Although Ms Bhana has challenged that decision in the correspondence, that challenge is not a pleaded issue in this proceeding.

- (b) Secondly, that the failure of the League to issue voting papers to the three extant, and the 10 new, branches was unlawful. Ms Tamaki contends that all these branches were lawfully established in accordance with Article 6 of the constitution, and that there is no power to suspend voting rights of members or branches pending an investigation. By way of relief Mrs Tamaki seeks declarations that the purported exclusion of the branches is unlawful, that those branches are entitled to exercise their voting rights and to receive ballot papers, and that the current electoral process is unlawful.

Issues

[41] The proceedings give rise to three key issues.

- (a) Was the exclusion of Mrs Tamaki's name from the presidential ballot papers unlawful? (Issue 1).
- (b) Was the failure of the League to send ballot papers to the three extant, and 10 new, branches unlawful? (Issue 2).
- (b) If the answer to Issue 1 or 2 is "yes", what should now be done? (Issue 3).

Jurisdiction

[42] I should first say something about the jurisdiction of this Court to judicially review the League in accordance with the Judicature Amendment Act 1972. I can be relatively brief on this topic. Jurisdiction was not contested by the League, although it submitted that restraint should be exercised in the judicial review of an incorporated society. Restraint, however, is appropriate to judicial review of any body.

[43] Although the League is a private body, with a constitution that takes effect as a contract as between its members,⁷ it is also a society incorporated under the Incorporated Societies Act 1908. Where its actions involve a public or quasi-public function, judicial review under the Judicature Amendment Act 1972 may well be available.⁸ Typical qualifying circumstances will involve the denial of access to membership,⁹ the exercise of a disciplinary power, the deprivation of a licence or other economic concession, the alleged misapplication of a society's constitution in a manner that offends natural justice or an alleged error of law in the application of a society's constitution where the body concerned has a public or quasi-public function.¹⁰ I am perfectly satisfied that the League has such functions, as it is a body drawing upon broad participation from, and having wide influence in, Māoridom and beyond.¹¹

[44] For myself, I would no longer focus the issue of jurisdiction concerning review on whether an underlying “property right” is involved.¹² It is the character of the body, and the nature of the power exercised that is more relevant. Where they are of an inherently public character, the case is likely to be appropriate for fast track judicial review (without full discovery and viva voce evidence at trial). In other cases, which may also involve property rights, an ordinary civil action in contract will be required, with its attendant costs and potential for delay. However, as the issue of jurisdiction was not contested, I need not say more on the subject.

Issue 1: was the exclusion of Mrs Tamaki's name from the presidential ballot papers unlawful?

[45] There are two aspects to Issue 1:

⁷ *Finnigan v New Zealand Rugby Football Union Inc* [1985] 2 NZLR 159 (CA), 177.

⁸ *Hopper v North Shore Aero Club Inc* [2007] NZAR 354 (CA) at [11]-[12].

⁹ In such cases, of course, no contract has yet arisen with the applicant.

¹⁰ See, for example, *Porima v Te Kauhanganui o Waikato Inc* [2001] 1 NZLR 472 (Hammond J) at [82].

¹¹ Wild J reached similar view in the case of a society which was the “focal point for the Muslim Community in the Hawkes Bay”: *Khan v Ahmed* [2008] NZAR 686 at [55].

¹² Cf, for example, *Rigby v Connol* (1880) 14 Ch D 482.

- (a) Was Mrs Tamaki eligible to stand in terms of Article 11 of the constitution?
- (b) Is Mrs Tamaki otherwise ineligible to stand by reason of her employment by, or association with, the Destiny Church?

Article 11 eligibility

[46] Mrs Tamaki's nomination was accepted as compliant with the constitution by the General Manager of the League on 20 May 2011. On 24 May 2011 the League emailed its Area Representatives advising that Mrs Tamaki was a candidate for election.

[47] Article 11 imposes five conditions for eligibility for election as President of the League:

- (a) *The nomination is by a financial branch:* The League's pleading admits that Wahine Toa is a branch; admits that Wahine Toa branch nominated Mrs Tamaki for the presidency of the League; and admits the nomination was confirmed on 24 May 2011. No issue is raised as to Wahine Toa being financial. Though there might otherwise have been a question as to whether nomination by two *members* of a branch constitutes nomination by *the branch*, that question falls away in the face of the League's admission. Indeed it seems likely that nominations in this form have been accepted in other cases.
- (b) *The nomination is received by the National Office not less than three months before the national conference:* The League admits receipt of the nomination by 24 May 2011. The national conference starts on 31 August 2011. Plainly this requirement has been met.
- (c) *The nominee is a "financial member" of the League:* The League admits this requirement has been met.

- (d) *The nominee has given written consent to the nomination:* The League admits that Mrs Tamaki had given written consent to her nomination.
- (e) *The nominee is resident in New Zealand:* The League admits this requirement also.

[48] Mrs Tamaki met all five conditions. She was, and is, eligible in terms of Article 11.

[49] I turn to the second aspect of the issue, the question of whether Mrs Tamaki's status as a pastor of the Destiny Church nonetheless renders her ineligible as a candidate.

Sectarian ineligibility

[50] It is appropriate on this aspect to start with the submissions of the League.

[51] The League submits that although non-sectarianism is expressed only in the preamble to the constitution, it is integral to the constitution as a whole and to the tikanga of the League. Mr Alan Knowsley, appearing for the League, submitted that any deviation from the non-sectarian nature of the League is a deviation from the constitution. The National Executive Committee was, he said, constitutionally bound to ensure that the League remains non-sectarian. He relied on the provisions of the constitution to which I have referred in [17]. Mrs Tamaki's presidency, if it occurred, "could be a breach of the non-sectarian nature of the League and needs to be inquired into". In short, it was lawful to "withhold a nomination on the basis that such a nomination will breach the constitution".

[52] Mr Knowsley contended, in relation both to Mrs Tamaki and the branches, for power implicit in the constitution (and vested in the National Executive Committee) to suspend a member, nomination or branch pending inquiry into a possible breach of the constitution. Without that power – which he accepts is not

expressly stated – the Committee “would be toothless to protect the mana of the League”, as required by Article 10(2)(a) of the constitution.

[53] Mrs Tamaki on the other hand submits that the words of the preamble to the constitution¹³ do not assume such prominence as to be able to override the clear wording of the constitution. Mr Hayden Wilson, for Mrs Tamaki, submitted that the preamble is “an aid to interpretation, but only where the constitution contains an ambiguity” and is a “guiding principle” preventing the League *as an entity* from entering into affiliation with particular religious denominations or particular parties. He submitted, further, that any policy or practice of the League, where not stated in the constitution or sufficiently described in evidence, must be *ultra vires* where inconsistent with the constitution and “cannot trump the provisions of the constitution itself”.

[54] I accept neither submission.

[55] The submission by Mrs Tamaki fails in my view to give due weight to the context and purpose of the League, and the appropriate place that its values, policies and practices, its *tikanga*, should have in construing the constitution. As I have already said, the constitution requires to be given a liberal construction consistent with the *tikanga* of the League.

[56] Having said that, though, I do not find that the traditional values of the League, and its constitutional adherence to a non-sectarian stance, excludes a person of strong faith from standing for office, so long as that personal status and faith is duly disclosed. A number of past Presidents have been people of very strong faith. None has been an employee of their church, but Mrs Tamaki has said that, if elected, it is her intention to resign as an employee of the Destiny Church. In Mrs Tamaki’s case, her connection with that church could hardly be more fully disclosed to voters within the League.

¹³ Set out in [9] of this judgment.

[57] The submission by the League arrogates to its National Executive a role that properly belongs to the voting plurality of the League as a whole. It also assumes the outcome of the investigation will be adverse to Mrs Tamaki, whereas at the same time it acknowledges that her election merely “could” be a breach of the constitution and “needs to be inquired into”. Ultimately it is a matter for the voters within the League as to whether they are prepared to accept a person whose religious convictions are as strong as Mrs Tamaki’s. They are entitled to ask her for an explanation of how her candidacy can be reconciled with the non-sectarian nature of the League, just as they may seek more information from any candidate. They may seek more definite assurances as to her ceasing employment upon election, if they wish. If satisfied with the explanations and assurances given, they may vote for her. If not, they will not.

[58] Furthermore, I do not accept that a power to suspend a nomination (or a branch) pending completion of an investigation into constitutional compliance can properly be inferred in this case:

- (a) First, it is not expressly stated in the constitution. The power to “dismiss” an individual member for misconduct, or bringing the mana of the League into disrepute, exists in Article 19. But that is all. That power has not been used in this case. Perhaps it could have been, but that is beside the point.
- (b) Secondly, the law generally insists that a power to suspend, expel or otherwise discipline membership of a society be express, rather than merely implied.¹⁴ There is good sense in that requirement. An untrammelled, implied power to discipline members is a dangerous device. It is commonsense that its extent should be specified, so all members know what the consequences of their actions might be. And

¹⁴ *Dawkins v Antrobus* (1881) 17 Ch D 615 (CA, UK) 620-621 per Jessel MR; *Hunt v Border Fancy Canary Club of NZ (Inc)* (2000) 8 NZCLC 262,140 (HC) at [20]. See also *Solomon v Waikato Raupatu Trustee Co Ltd* HC Hamilton CIV-2004-419-542, 3 May 2004 at [21]–[22].

inasmuch as the presidential election is triennial only, the effect of the present “suspension” is more fairly characterised a disqualification.

- (c) Thirdly, the usual common law approach might yet bend out of respect for a distinct customary practice or tikanga of the League enlarging the express words of Article 19. As I have said, a gap does not necessarily mean the constitution is silent. But in this case it is. No clear practice in relation to such matters was identified. And that is hardly surprising. The events confronting the League in 2011 are entirely novel.

Conclusion on Issue 1

[59] Mrs Tamaki was, and is, eligible to be a candidate for election to the presidency of the League. The National Executive Committee was not lawfully entitled to withdraw her name from the ballot papers.

Issue 2: Was the failure of the League to send ballot papers to the three extant, and 10 new, branches, unlawful?

[60] It is convenient to divide this issue into two parts:

- (a) Was the failure to distribute the ballot papers to the three *extant* branches – Taumata, Wahine Toa and Rangatahi Toa – unlawful?
- (b) Was the failure to distribute them to the 10 *new* branches unlawful?

Extant branches

[61] The three extant branches are all validly constituted and established. No question as to that arises on the evidence before me. One has been in existence since 2005. The other two since 2009. The League has dealt with all three branches on the basis that they are duly constituted and entitled to the rights and privileges associated with that status. It has, for instance, dealt with representatives of Wahine

Toa in relation to Mrs Tamaki's candidacy and given advice to members of that branch in relation to how to go about nomination of a candidate. The branch members clearly relied on that advice. The nomination arising (as revised) was accepted as compliant with the constitution and Area Representatives were notified by the League accordingly.

[62] The League submits that the branches "may be in breach of the non-sectarian provision in the constitution". There is "strong evidence" that the branches are "Destiny Church branches". The National Executive Committee is "required" to hold an inquiry, and "to protect the League ... is empowered to suspend their voting rights until the inquiry is complete".

[63] I disagree. There is very strong evidence of affiliation between these branches and Destiny Church. But as I said at the hearing, the approach of the League is tantamount to conducting the hanging first, and the trial second. The branches are entitled to see the status which they have hitherto been accorded continue to be respected until the independent investigation is completed. If the investigation's outcome is adverse to the branches in some manner, there will then be time for questions about the legitimacy of the investigation on the one hand, and what may be done about its findings on the other. But that time is not now.

[64] I have also held already that the constitution does not permit the National Executive Committee to suspend a duly constituted branch while an investigation continues. Nor is it entitled to resolve that duly constituted financial branches may not participate in regional hui or at national level.

"New branches"

[65] The position is rather different in relation to the new branches.

[66] First, the League has never dealt with the new branches before on the basis that they have been legitimately constituted. There is no conduct comparable to the League's dealing with Wahine Toa, for instance.

[67] Secondly, the evidence regarding the formation of the new branches gives me considerable disquiet regarding their legitimacy. I summarise my concerns as follows:

- (a) All branches were formed on the same day, 4 June 2011.
- (b) The inaugural meetings were held at the same location, 18 Allright Place, Mt Wellington. That address is the Auckland headquarters of the Destiny Church.
- (c) That date and location coincided with the annual conference of The Destiny Church. In other words, the meetings were held within the aegis of The Destiny Church's annual meeting, rather than of the League.
- (d) The meetings, all 10 of them, were held at precisely the same time. And according to the minutes produced, they all ended at exactly 4.13pm. The inevitable inference is that there was not (as implied by Ms Bhana) a series of meetings, but a single meeting.
- (e) Who attended the meeting (or meetings) is entirely unclear on the evidence. The minutes (which are essentially identical across all 10 new branches) state that a list of attendees is attached. But none are.
- (f) In each case the minimum number of new members, five, were enrolled. It is unclear whether they were members new to the League entirely, or extant members of another branch.
- (g) Mrs Tamaki has exhibited (as an annexure to the affidavit of Ms Bhana) forms completed for each of the five new financial members. They make interesting reading. So far, that is, as there is anything to read at all. Details on the form for personal information (date and place of birth, age, address, phone number and contact details) are in almost all cases left completely blank. In most cases all

that is completed is the person's name. And that in the same handwriting. For reasons not immediately apparent, the form includes an entry for "church". Where that has been completed by a new member, it is without exception a Destiny Church that has been entered. And the form itself is printed on Te Oranga Ake stationery.

- (h) In the case of every new member, the same nominors, Mrs Tamaki and Ms Benoni are said to have nominated them.
- (i) Turning then to the election of officers of the new branches, the officers were in each case nominated by Mrs Tamaki and a Ms Turuwhenua. Yet neither woman was actually a member of any of the new branches.
- (j) The minutes provide for attendances by the Regional President, Vice-President, Secretary and Treasurer. They did not attend, but are listed as "to be elected". Two points can be made. First, such office holders already existed under Article 4(5) of the constitution. They did not need to be elected. Secondly, it is not evident that these officers had actually been invited to attend. There is a rather vague statement in Ms Bhana's evidence that she invited people at a strategic hui in her region to attend. It is not clear that she explained to them what she had in mind doing. It is doubtful that if she had, they would have been absent.
- (k) In the case of each of the 10 branches, identical form letters were then sent to the League enclosing a list of members. Eight of the 10 letters are dated 10 June 2011. Two are 13 June 2011.
- (l) There is no evidence before me that any of the other 80-odd listed members of each new branch - indeed *any* of the members including the five establishing members¹⁵ - have actually consented to

¹⁵ Other than the few who completed the Te Oranga Ake form.

membership of the League. A small minority of establishing members appear to have completed the forms referred to earlier. Most have not. Absent better evidence, I am not prepared to infer consent. All supposed members are the apparent recipients of a receipt for payment of the \$10 subscription. Subscriptions in respect of all of the 921 new members have been paid to the League. But the payments were all made by inter-bank transfer by Te Oranga Ake.

- (m) As I have already noted, the number of members subscribed in each case is between 91 and 93. It would be very surprising, if the purpose of branch formation was not simply to secure the maximum 10 votes per branch, that the numbers signing on would come down thus.

- (n) Many of the branches appear to have been drawn substantially from members outside the regional boundary of Tamaki Makaurau – although all new branches were presented for affiliation within that region. Unsurprisingly the branch Nga Wahine O Taranaki seems comprised principally of Taranaki-based members. A very significant number of members of the Aroha Ki Te Tangata branch come from Northland. By an unexplained statistical freak its members' surnames all fall within the letter range G-Z (except for five). Members of the Owairaka branch mostly come from Auckland, but all except four members are drawn from people whose surnames fall in the letter range L-W. The members of the Rangitoto branch appear to come mostly from Hamilton. Those from the Nga Whetu branch, mostly from Australia. Those from Kia Whakatu Nga Wahine, mostly from Nelson. Finally, those from Nga Wahine Whakapono do come from Auckland, but through another statistical aberration their surnames all fall within the letter range H-W.

[68] I regard as remarkable the manner in which these branches have been established as part of the Tamaki Makaurau region with such evident disregard for genuine geographical connection with that region. Regions established according to the geographical boundaries of the Māori Land Court districts are at the heart of the

League's organisation. I have already said¹⁶ that I accept the evidence of Mrs Te Kani that it is contrary to the tikanga of the League for an Area Representative from one region to sign up, or establish branches for, members who live in another area. Of course members may move and stay with their existing branches. The constitution expressly permits that. But what has happened here goes well beyond a modest blurring of regional boundaries. It involves the wholesale importation of people into Tamaki Makaurau region branches who in fact live elsewhere.

[69] In essence the new branches have been established because just three members, the aspirant presidential candidate Mrs Tamaki, the Area Representative Mrs Bhana and the co-nominator Ms Benoni have decided they should exist. No sanction from the Regional Council seems to have been sought, and none was given. It is no answer to that point to say that the constitution does not provide for such sanction. That misses the point. The constitution is not to be treated as if it is a code constructed in concrete.

[70] I find the manner in which the new branches have been established completely contrary to the practices and tikanga of the League. The constitution requires that branches be formed in accordance with the constitution "and the rules of the League." That reinforces to my mind that one must look beyond the four corners of the constitution to the wider values and practices of the League in determining the validity of the establishment of a new branch.

[71] In these circumstances I am not prepared to find that Mrs Tamaki has established on the balance of probabilities that the new branches have been legitimately established as member bodies of the League. Establishment of branches in this fashion is not in my view consistent with the constitutional privilege of participation in the League. Nor is it consistent with the tikanga of the League for branches to be constituted in this way (1) in virtual disregard of geographical connection with the relevant region, (2) adding in one fell swoop a new group of members in size equal to a third the existing membership, and (3) so structured as to

¹⁶ At [15].

maximise the number of votes potentially available to the moving nominor, who also happens to be a candidate for the League presidency.

[72] Mr Wilson urged on me the proposition that I should treat the new branches as presumptively valid. In essence (although he did not put it this way) he invites me to invoke the principle *omnia praesumuntur rite esse acta*. All things are presumed to have been done rightly. But this is not a case in which that principle can apply. First, it does not involve an act undertaken in an official, public or judicial capacity. Secondly, the maxim always bows in the face of contrary evidence.¹⁷ In my view ample evidence has been presented in this case to suggest things have not been done rightly in the establishment of these 10 new branches.

[73] For the purposes of this review proceeding I do not find, on the balance of probabilities, that the 10 new branches are duly constituted as branches of the League with an entitlement to delegates and votes.

[74] Thirdly, Mr Knowsley urged on me the submission that even if the new branches were duly constituted, they were not “financial” for the purposes of the present electoral process. This was, he said, a “fallback position” in case I found the new branches to be duly constituted. I was initially inclined to dismiss this submission. But on further reflection I have decided that I was wrong to do so. The contention has merit.

[75] The financial year of the League, according to the constitution, ends on 30 June. That is also the date that ballot papers were sent out. Branches that are not “financial” do not get ballot papers.¹⁸ Ballot papers could only be sent to those branches which were financial at the date the ballot papers were sent out, i.e. 30 June 2011.¹⁹ But the 10 new branches were careful to say in submitting their subscriptions that they were for the year 1 July 2011 to 30 June 2012. So none of the

¹⁷ *Harris v Knight* (1890) 15 PD 170 (CA, UK).

¹⁸ That is, if none of their members have paid subscriptions to the League. If some have, then the branch is “financial” to that extent and will receive votes to the extent of the branch’s financial, rather than notional, membership.

¹⁹ That is also the date the ballot papers were required by the constitution to be sent out, given that the national conference begins on 31 August 2011.

new branches were financial on 30 June. As at that date 26 other branches, in addition to the 10 new branches, were not financial. They did not receive ballot papers either. As the new branches were not financial as at that date, they too would not be entitled to vote.

[76] Mr Wilson made the fair point from the bar that there may have been other branches, not convened by Ms Bhana, formed in June, that were not financial as at 30 June and yet are being allowed to vote. Their status is not before me, but the League will need to act scrupulously, consistently, and in accordance with its own submissions to the Court.

Conclusion on Issue 2

[77] The failure by the National Executive Committee to send ballot papers to the Taumata, Wahine Toa and Rangatahi Toa branches was unlawful. However the like omission in respect of the new branches was not unlawful.

Issue 3: What should be done now?

[78] The defendant has established that in two respects (relating to the exclusion of Mrs Tamaki's candidacy and of three extant branches from voting), the League has acted unlawfully. In the final section of this judgment I will grant declarations accordingly.

[79] The question becomes what further orders should be granted. In particular, as to the conduct of the elections and the national conference. As to the former, there are eight duly notified candidates for election to office of President. That election should proceed if at all possible. The current President's term is about to expire and the League needs its new leadership installed. As to the latter, I am aware that there would be severe economic and practical consequences for the League in postponing the conference (in particular the hosting region and individual members who have made arrangements to attend the conference). This is the triennial conference at which a new President is elected. A particularly large attendance, exceeding half the membership, is customary at such conferences to pay tribute to the outgoing

President and to welcome the new one. Members will have made irreversible arrangements to attend.

[80] In those circumstances I was not prepared to make orders deferring the date of the national conference. Although that was the relief Mrs Tamaki sought originally, Mr Wilson disavowed that position in oral submissions. So all parties are agreed that regardless of the outcome, the national conference in Napier, starting on 31 August, should proceed.

[81] They also agreed that, if I found the current electoral process invalid, I should reset the timeframes for the issue of new ballot papers and the final date for their receipt, so the results can be advised at the national conference in Napier. The parties agree that there is still adequate time to do this. I concur, given that voting is undertaken by branches *en bloc*, rather than by individual members.

[82] The consensus achieved by the parties as to relief was a constructive and welcome development.

Disposition

[83] Declarations are made that:

- (a) the nomination of the plaintiff by the Wahine Toa branch of the defendant, for the position of National President, is valid;
- (b) the exclusion of the plaintiff's name from the ballot papers as a candidate for the position of National President is unlawful; and
- (c) the exclusion of the Taumata, Wahine Toa and Rangatahi Toa branches from the defendant's voting process for the national elections is unlawful.

[84] Further orders are made as follows:

- (a) the defendant is to cancel, forthwith, the ballot papers issued already for its national elections;
- (b) the defendant is to issue, forthwith, new ballot papers which, in the case of the National President, include the plaintiff's name as a candidate. For the avoidance of doubt, such papers: (1) are to be distinctive in appearance (e.g. colour) so as not to be confused with the cancelled ballot papers; and (2) shall be posted or couriered to the required recipients not later than 5pm on Tuesday, 26 July 2011;
- (c) the required recipients of the new ballot papers shall include the Taumata, Wahine Toa and Rangatahi Toa branches of the Tamaki Makaurau region of the defendant;
- (d) the ballot papers are to be returned to the national office of the defendant not later than 5pm on Friday, 26 August 2011; and
- (e) other than as expressly amended by the terms of these orders, the national elections process is to continue as required by Article 11 of the constitution, with such other amendments only as may be necessary to give effect to these orders.

[85] Costs are reserved. The plaintiff may submit a memorandum within 10 working days, and the defendant a reply within a further 10 working days, if agreement is not reached. In this respect I note that the plaintiff is not without responsibility for the situation that has befallen the League, given her direct participation in the establishment of the 10 new branches. It was that action that precipitated the present crisis and the unfortunate, unlawful response by the League.

Stephen Kós J

Solicitors:
Kensington Swan, Wellington for Plaintiff
Rainey Collins, Wellington for Defendant

TAMAKI MAKAUROU REGION - NEW BRANCHES

	Branch Name	Inaugural Meeting	Place	Time	No. of establishing members	Nominors	Members list sent to League	No. of members	Membership
1	Te Roopu O Matakana	4 June 2011	18 Allright Place, Ak	1-4 pm (ends 4.13 pm)	5	Hannah Tamaki & Priscella Benoni	10 June 2011	92	All Auckland?
2	Kotahi Nga Whakaaro	4 June 2011	18 Allright Place, Ak	1-4 pm (ends 4.13 pm)	5	Hannah Tamaki & Priscella Benoni	10 June 2011	92	Christchurch and Auckland members.
3	Nga Wahine O Taranaki	4 June 2011	18 Allright Place, Ak	1-4 pm (ends 4.13 pm)	5	Hannah Tamaki & Priscella Benoni	10 June 2011	93	Taranaki, Rotorua and Auckland.
4	Aroha Ki Te Tangata	4 June 2011	18 Allright Place, Ak	1-4 pm (ends 4.13 pm)	5	Hannah Tamaki & Priscella Benoni	10 June 2011	93	Auckland, Whangarei and Northland. Members names all G-Z (except 5).
5	Owairaka	4 June 2011	18 Allright Place, Ak	1-4 pm (ends 4.13 pm)	5	Hannah Tamaki & Priscella Benoni	10 June 2011	92	Mostly Auckland. Members names all L-W (except 4).
6	Rangitoto	4 June 2011	18 Allright Place, Ak	1-4 pm (ends 4.13 pm)	5	Hannah Tamaki & Priscella Benoni	13 June 2011	93	Hamilton?
7	Nga Whetu	4 June 2011	18 Allright Place, Ak	1-4 pm (ends 4.13 pm)	5	Hannah Tamaki & Priscella Benoni	13 June 2011	91	Mostly in Australia (NB: no "overseas members").
8	Kia Whakatu Nga Wahine	4 June 2011	18 Allright Place, Ak	1-4 pm (ends 4.13 pm)	5	Hannah Tamaki & Priscella Benoni	10 June 2011	92	Mostly Nelson area.
9	Te Puku O Pare-Mata	4 June 2011	18 Allright Place, Ak	1-4 pm (ends 4.13 pm)	5	Hannah Tamaki & Priscella Benoni	10 June 2011	92	Mostly Auckland?
10	Nga Wahine Whakapono	4 June 2011	18 Allright Place, Ak	1-4 pm (ends 4.13 pm)	5	Hannah Tamaki & Priscella Benoni	10 June 2011	91	Mostly Auckland? Members names all H-W.