IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2025-485-865
[2025] NZHC 3776

IN THE MATTER	of the common law of judicial review, the Judicial Review Procedure Act 2016, the inherent jurisdiction of the High Court, and Part 30 of the High Court Rules 2016
IN THE MATTER	of an application for judicial review
BETWEEN	MARIAMENO KAPA-KINGI First Applicant
	TE TAI TOKERAU ELECTORATE COUNCIL Second Applicant
AND	JOHN TAMIHERE, FALLYN FLAVELL, DEBBIE NGAREWA-PACKER, RAWIRI WAITITI, KIRI WAITITI-TAMIHERE AND LANCE NORMAN First Respondents
	NATIONAL COUNCIL OF TE PĀTI MĀORI Second Respondent
	JOHN HENRY TAMIHERE Third Respondent

Hearing:	4 December 2025
Counsel:	M G Colson KC, W I Gucake, E E Young and M M Piripi for Applicants D M Salmon KC and R J Warren for Respondents
Judgment:	5 December 2025

JUDGMENT OF RADICH J
(Interim orders)

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[1] This urgent application for interim orders comes as Te Pāti Māori[1] prepares for an annual hui (AGM) scheduled for this Sunday, 7 December 2025 – two days from now.

[2] On 9 November 2025, Mariameno Kapa-Kingi MP, the Member of Parliament for Te Tai Tokerau,[2] was expelled as a member of Te Pāti Māori by the party's National Council[3] and/or its National Executive.[4] She and the Te Tai Tokerau Electorate Council[5] were concerned, not only about the expulsion, but about its consequences. The doors of the AGM would be closed to her and there was a sense that Te Pāti Māori co-leaders Debbie Ngarewa-Packer MP and Rawiri Waititi MP would take steps under the 'waka-jumping' provisions of the Electoral Act 1993 to vacate her Te Tai Tokerau electorate seat and trigger a by-election.

[3] It appears that tensions between Ms Kapa-Kingi and Te Pāti Māori leadership were brewing for some months. The catalyst, however, was a forecast that Ms Kapa-Kingi would overspend her electorate MP budget. When that information was passed on to Pāti leadership, it acted sternly. Ms Kapa-Kingi spoke to the media about that. The National Council formed the view that Ms Kapa-Kingi had behaved improperly. It purported to expel her on the basis that she breached the Te Pāti Māori Constitution[6] (the Kawa) by misusing Pāti funds for personal gain and bringing disrepute to the Pāti.

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1 Te Pāti Māori is an unincorporated association and a registered political party recognised by the Electoral Commission | Te Kaitiaki Take Kōwhiri under Part 4 of the Electoral Act 1993 and by the Speaker of the New Zealand House of Representatives for parliamentary purposes under Standing Orders of the House of Representatives 2023, SO 35(1).

2 Te Tai Tokerau is one of seven Māori electorates. The other six are Hauraki-Waikato, Ikaroa-Rāwhiti, Tāmaki Makaurau, Te Tai Hauāuru, Te Tai Tonga and Waiariki. The Māori electorates are a means to ensure Māori representation in Parliament: see Electoral Act, s 45.

3 The National Council of Te Pāti Māori is the second respondent. It is the governing body of Te Pāti Māori outside of an AGM. The Council is made up of the Te Pāti Māori president, both co-vice presidents, both co-leaders, all Te Pāti Māori MPs and up to four council members selected by each Māori electorate.

4 The National Executive is the first respondent. It has delegated authority from the National Council to carry out an annual national plan (which has been established by the National Council) within an annual budget (which has been approved by the National Council). All decisions of the National Executive must be ratified by the National Council at its next hui. The Executive of Te Pāti Māori is made up of the Te Pāti Māori president, both co-vice presidents, both co-leaders and, optionally, a general manager, treasurer and secretary.

5 The Te Pāti Māori Electorate Council for Te Tai Tokerau Māori electorate is responsible for all Te Pāti Māori activities in Te Tai Tokerau electorate and is made up of elected representatives of Te Tai Tokerau.

6 Te Pāti Māori "Te Pāti Māori Constitution: Kia rangatira te tū a Te Pāti Māori hei rōpū whakatinana I ngā rau wawata o te iwi Māori, o te motu hoki" (4 February 2023) [Te Pāti Māori Kawa].

[4] Ms Kapa-Kingi and the Te Tai Tokerau Electorate Council have filed this judicial review proceeding seeking substantive orders (which will be considered when the claim is heard substantively next year)[7] reinstating Ms Kapa-Kingi as a member of Te Pāti Māori and a declaration of illegality. They do so on grounds that the National Council and the Executive made errors of fact and acted in breach of the Kawa and tikanga, by first suspending and then expelling her. The judicial review proceeding challenges also the validity of John Tamihere's continued role as president of Te Pāti Māori and the validity of the calling of Te Pāti Māori's AGM, alleging that both are in breach of the Kawa.

[5] Ms Kapa-Kingi and the Te Tai Tokerau Electorate Council have applied for the following interim orders until the substantive application for judicial review is determined or until further order of the Court:

(a) requiring the National Council and Executive to reinstate Ms Kapa-Kingi as a member of Te Pāti Māori;

(b) restraining Debbie Ngarewa-Packer and Rawiri Waititi from issuing a notice under ss 55A(3)(b) and 55C of the Electoral Act in relation to Ms Kapa-Kingi;

(c) restraining John Tamihere from acting in his role as president of Te Pāti Māori; and

(d) restraining the National Council and Executive, including Mr Tamihere, from passing resolutions at the AGM on 7 December 2025.

[6] The second and fourth orders are no longer in issue, after the applicants' received assurances from the respondents which I will explain below.

[7] Ms Kapa-Kingi has said that she sees these proceedings as a last resort. She stresses that she continues to support, and always has supported, the important kaupapa and tikanga of Te Pāti Māori.

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[7] A one-day hearing has been set down for 2 February 2026.

The journey to expulsion

[8] I will set the facts out in a little more detail than would often be the case for an application of this nature, because so much turns upon them.

[9] But in saying that, I do observe that the evidence before the Court is limited as a result of the urgency with which this application was heard. The respondents, in particular, emphasise that they were not able to provide a full evidential picture because of the limited time, the fact that it was only through this application that they became aware of some of the applicants' concerns, and the fact several key people are travelling outside of New Zealand. Accordingly, the analysis in the pages that follow should not be taken as final factual findings. That will come after the substantive hearing when the Court has a more complete evidential picture.

The forecasted overspend

[10] MPs are allocated funding on an annual basis by the Speaker of the House through the Speaker's Directions.[8] The funding is to be used for matters such as travel, administrative and support services and communications services. It can be transferred to their party or to another member of their party, if approved.

[11] The Directions require each party and MP to prepare a budget with the assistance of the Parliamentary Service | Te Ratonga Whare Paremata at the beginning of their parliamentary term in order to determine the way in which they propose to spend their allocated funding.[9] The budgets must be updated at the beginning of each parliamentary year, again with the assistance of the Parliamentary Service. The Parliamentary Service provides administrative and support services to all MPs. It is through the Service that MPs spend their funding allocations: the Service pays staff and it is through 'P-cards' (a form of credit card) that funding moneys are spent. Ms Kapa-Kingi, for example, has no separate bank account through which her operational expenses are paid – everything is paid by the Service directly.

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8 The current Speaker's Directions are Speaker's Directions 2023. Speaker's Directions are made in accordance with s 23 of the Members of Parliament (Remuneration and Services Act 2013).

9 Part 8, cl 59.

[12] As a result, the Parliamentary Service is responsible for providing monthly updates to each MP and to their party leader on MPs' actual and budgeted monthly, and year-to-date, expenditure as against their MP funding allocation.[10] Each party leader and party whip must, under the Directions, monitor their MPs' expenditure on a monthly basis. If excessive costs are being incurred, the MP or the party responsible may be advised to limit or stop incurring costs for the year.[11] Ultimately, MPs are personally responsible for their and their parties' use of their MP funding allocation.[12]

[13] The Directions provide for ways to balance the books in the event that actual costs exceed budget. Another MP in their party, or their party itself, may transfer unused funding to them, if approved, and an MP can transfer unused proportions of their own annual funding to a proximate parliamentary year.[13] In this way, an MP can "take" funds allocated to "Year 3" and use it for "Year 2". As another option, MPs can fund additional amounts personally.

[14] Under the Directions, Ms Kapa-Kingi is entitled to a total of $484,539 for "Year 1", $495,858 for "Year 2", and $507,532 for "Year 3".[14] On 7 July 2025, a representative of the Parliamentary Service wrote to Ms Kapa-Kingi explaining that she was tracking towards a forecasted overspend of her "Year 2" budget by $137,408. The main contributor to the forecasted overspend was Ms Kapa-Kingi's staff costs. The representative pointed out that Ms Kapa-Kingi had less than $42,000 remaining in her budget for the remainder of the annual term and made several recommendations for measures that would enable her to remain within budget. The recommendations included recommendations to discontinue engagement with a contractor (Ms Kapa-Kingi's son, Eru Kapa-Kingi) and a casual staff member, to stop all staff travel, and to bring forward 10 per cent of her Year 3 budget to Year 2.

[15] Ms Kapa-Kingi had a telephone call with the representative on 10 July and arranged a hui for the next day. The representative sent an email recording her understanding of what Ms Kapa-Kingi had said on the phone: that she would ask the

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10 Part 8, cl 60(1)(a) and (2)(c).
11 Part 8, cl 61.
12 Part 2, cl 6(1)(a).
13 Part 8, cls 63 and 66.
14 Sch 2, pt 3, Item 1. The total allocation comes from the total of sub-allocations for "staff", "non-staff" and "general".

Pāti co-leaders about whether some costs could be covered by the Pāti or from the funding allocation for the Tāmaki Makaurau electorate MP. On 16 July, a representative of the Parliamentary Service wrote to Melissa White of Te Pāti Māori, raising the forecasted overspend.

[16] It seems that it was not possible for a hui between Ms Kapa-Kingi and the Parliamentary Service to take place for a time. On 1 August 2025, a representative of the Service wrote to Ms Kapa-Kingi on explaining that she had less than $5,000 of her current budget remaining for Year 2 and that any overspend would need to be covered by her personally if alternative arrangements were not put in place. The email asked why Ms Kapa-Kingi had not reduced her use of staff where possible since she was first made aware of the issues.

[17] The 1 August 2025 email was forwarded to Ms White, who forwarded it in turn to Te Pāti Māori leadership. Lance Norman, the secretary and treasurer of Te Pāti Māori, has said the leadership had not been aware of the issues and that it was frustrated at the forecast overspending, given in particular Ms Kapa-Kingi's role as party whip (matarau). He said he and Mr Tamihere had asked for budget tracking information from Ms Kapa-Kingi but not been provided it.[15]

[18] It was at this stage that Te Pāti Māori leadership became actively involved. Mr Tamihere called Ms Kapa-Kingi to discuss the forecast. Ms Kapa-Kingi's evidence is that she raised with him the fact that she had acted on an expectation that she would receive a budget transfer from the Tāmaki Makaurau electorate budget, in recognition of work she and her staff had done for that electorate during the year, and from the party budget, in recognition of her work, and that of her staff, in her role as whip. Mr Tamihere refused to entertain the idea of a budget transfer. The call was followed by an email of 3 August from Mr Tamihere setting out options for Ms Kapa-Kingi to meet her "over expenditure" or "shortfall".

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[15] Mr Norman does not address why he was unable to retrieve this information from the Te Pāti Māori co-leaders, who would also have been provided monthly budget tracking updates for Ms Kapa-Kingi under the Speaker's Directions 2023, Part 8, cl 60(2)(c).

[19] Ultimately, the forecasted overspend was resolved through proper channels, and solely through adjustments to Ms Kapi-Kingi's own expenditure practices and MP funding allocation.[16] Ms Kapa-Kingi had a hui with the Parliamentary Service on 3 August which set the wheels in motion to resolve the issue. An email from a Parliamentary Service representative of 14 November 2025 confirmed that Ms Kapa-Kingi ultimately "came in $1 underspent in her [adjusted Year 2] budget".

[20] In resolving the issue, Ms Kapa-Kingi did not involve Te Pāti Māori directly. She said that she felt "safer" that way. However, she did receive approval from Ms Ngarewa-Packer for an 18 per cent budget transfer from her own Year 3 budget to her Year 2 budget.

[21] At this point, I mention Ms Kapa-Kingi's explanations for her forecasted overspend. Ms Kapa-Kingi says that her forecasted overspend was because of her additional work as whip and to support the Tāmaki Makaurau electorate, work undertaken on the basis of a good faith expectation that she would receive budget transfers as compensation.

[22] Her evidence is that she and her staff carried out work to support the Tāmaki Makaurau electorate while the MP for Tāmaki Makaurau at the time, Takutai Tarsh Kemp MP, was unwell and after Ms Kemp's untimely death in June 2025. The electorate had no MP from that time until 7 September 2025, when Oriana Kaipara MP won the by-election. A $33,000 transfer from the Tāmaki Makaurau MP funding allocation to Ms Kapa-Kingi's funding allocation was approved by Pāti leadership in early 2025. However, later invoices to Tāmaki Makaurau and written requests to Ms Ngarewa-Packer for a budget transfer went without response – although Ms Kapa-Kingi's evidence is that she reached some level of oral agreement with Ms Ngarewa-Packer.

[23] The Te Pāti Māori leadership did not and do not agree that there was any expectation of repayment for Ms Kapa-Kingi's work as whip or for her later work in

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[16] The steps taken to manage or prevent the forecasted overspend were: the transfer 18 per cent of her Year 3 budget to her Year 2 budget; the stopping of staff travel and use of the 'PCards'; the ending of engagement with the contractor, Eru Kapa-Kingi; and the ending of arrangements with a casual staff member.

support of the Tāmaki Makaurau electorate. Mr Norman has described Ms Kapa-Kingi's actions as "mismanagement of her Year 2 budget". His view is that Ms Kapa-Kingi should not have had an expectation of repayment without prior approval. He raises concerns about a lack of transparency from Ms Kapa-Kingi as to the services she and her staff had carried out in support of Tāmaki Makaurau.[17] There appears, in addition, to be a concern that one of the staff who undertook that work, and the work relating to Ms Kapa-Kingi's whip role, was her son, Eru Kapa-Kingi. Mr Norman has explained that Te Pāti leadership is very sensitive to possible financial mismanagement on the part of its MPs because the Pāti takes great pains to rebut "ugly stereotypes about Māori being bad money managers and engaging in nepotism".

[24] Ms Kapa-Kingi took great offence at suggestions that the work done was not transparent, saying in her evidence that "the work being done was so obvious".

Communications break down further

[25] From this point, things began to escalate despite the forecast budgetary overspend having been resolved.

[26] Sometime in September, Te Pāti Māori leadership made the decision to remove Ms Kapa-Kingi as party whip. Ms Kapa-Kingi was upset by this; however, the explanation from Mr Norman on behalf of Pāti leadership is that they wanted Ms Kapa-Kingi to focus her time and energy on the 2026 election and campaign for her seat, rather than on duties as whip.

[27] A hui on 29 or 30 September – at which Pāti leadership, Ms Kapa-Kingi and representatives from the Te Tai Tokerau Electorate Council were present – did not resolve matters.

[28] In early October, Ms Kapa-Kingi gave several media interviews in relation to which Te Pāti Māori leadership has taken umbrage. In them, she referred to

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[17] Pointing to concerns apparently raised in texts by Ms Kemp to Ms Ngarewa-Packer in March 2025 in response to the prospect of payment of invoices sent to Ms Kemp by Ms Kapa-Kingi's staff. In submissions for the respondents, it is suggested that the use of "😿 [weary cat emoji]" by Ms Kemp in the text indicates that she was upset at the prospect of further payment to Ms Kapa-Kingi's office – whether directly or through a budget transfer.

"dysfunction" within Te Pāti Māori, said that it was "time for change", and – arguably at least – implied that Te Pāti Māori leadership had leaked her budgetary information to the press, saying, "I don't know where else that information could have come".

[29] Around the same time, Ms Kapa-Kingi's son, Eru Kapa-Kingi, gave a media interview too. He said that the way in which the Te Pāti Māori leadership had been running the Pāti was "problematic" and "effectively a dictatorship model".

[30] Te Pāti leadership were unhappy with the interviews. They saw them as a breach of the Pāti's tikanga, which they see as requiring internal resolution of issues. They saw them as a "coordinated attack on Te Pāti", in part at least because Ms Kapa-Kingi did not appear to distance herself from Mr Kapa-Kingi's comments. Te Pāti leadership were unhappy with the timing of the interviews as well. They saw them as leading to a "media circus" that overshadowed two significant achievements for Te Pāti Māori: the winning of the by-election for Tāmaki Makaurau by Te Pāti Māori candidate Ms Kaipara; and the honouring of Hana-Rawhiti Maipi Clarke MP by Time Magazine.

[31] On 1 October, Mr Norman sent to National Council members and to the Pāti electorates an email setting out the leadership's position on the interviews. Unfortunately, this inflamed things further; representatives for Te Tai Tokerau were unhappy with the response and sought a hui and AGM.

[32] On 9 October 2025, a hui was held at short notice which Ms Kapa-Kingi attended. Ms Kapa-Kingi's evidence is that the meeting was "heated" and did not meet her request for an MP-only hui.

[33] On 12 October, another hui was held on the issues. The applicants did not attend. Te Pāti leadership were displeased with their non-attendance and saw it as a refusal to resolve matters. The applicants said that they had their own scheduled meeting and, in any event, did not feel safe attending the hui. Mr Norman says this explanation was not given until well after the fact.

[34] On 16 October 2025, Mr Norman sent a letter to both Ms Kapa-Kingi and her son, Eru Kapa-Kingi, accusing both of breaching the Kawa. In particular, the letter accused Ms Kapa-Kingi of misusing Pāti funds and bringing the Pāti into disrepute through her and her son's media interviews. He demanded a next day response. Ms Kapa-Kingi gave a limited response the next day. She denied that she had misused Pāti funds for personal gain and she rejected that she had brought the Pāti into disrepute. She emphasised that her actions were distinct from those of her son. She said she had not had time to produce a more fulsome response but would do so shortly.

[35] Te Pāti leadership was content to wait until 21 October for a more substantive response. On 22 October, Ms Kapa-Kingi sent a follow up letter with further responses and asking for clarification about the process that had been followed. Te Pāti leadership was not happy with the response. Mr Norman says the response was vague and did not address the leadership's substantive concerns – the leadership was not prepared to hui as a result.

Ms Kapa-Kingi is suspended

[36] A National Council hui was held on 23 October 2025 at which it was agreed, by a majority vote, that Ms Kapa-Kingi had breached the Kawa and should be suspended as a Pāti member.[18] It was agreed also that Te Tai Tokerau Electorate Council's executive had breached the Kawa and should be "reset by way of a Special General Meeting".[19] Te Tai Tokerau Electorate representatives and Ms Kapa-Kingi were not invited to attend the hui. Mr Norman says that this was so "given the background". Ms Kapa-Kingi has said she only became aware that she was suspended as a member three days after the hui, on receipt of the minutes of the hui and through media reports.

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[18] In attendance were the National Executive – Mr Tamihere, Ms Fallyn Flavell (vice-president), Ms Ngarewa-Packer, Mr Waititi, Mr Norman, Ms Tamihere-Waititi (general manager) – and between one and two representatives of each Māori electorate (being the chair or a co-chair of the relevant electorate's council) bar Te Tai Tokerau. Te Pāti Māori MPs, other than the co-leaders, were not present. Consensus could not be achieved on the resolution so there was a vote, with each electorate present receiving one vote. Five electorates agreed with the resolution: Hauraki-Waikato, Ikaroa-Rāwhiti, Tāmaki Makaurau, Te Tai Hauāuru, and Waiariki. Te Tai Tonga abstained.

[19] Again proceeding by majority vote and with the same voting results as set out in n 18.

[37] On 27 October, the Te Tai Tokerau Electorate Council wrote to the National Executive and contested the validity of a National Council hui without their attendance.

Ms Kapa-Kingi is expelled

[38] From this point, it seems that everyone involved wanted to have a hui to resolve matters. But there was no such hui. On 4 November, Te Tai Tokerau Electorate Council became aware that a National Council hui had been planned for 9 November to which it, and Ms Kapa-Kingi, had not been invited. It wrote to Mr Norman asking that it be invited. On 5 November, Mr Norman replied without offering an invitation, seeking instead the Electorate Council's position on a number of matters.

[39] On the same day, Ms Kapa-Kingi, Ms Kaipara and Tākuta Ferris MP sent a letter to the National Council raising concerns about the process that had been followed and asking for an "immediate audience" with the Council.

[40] The 9 November hui took place, again without Ms Kapa-Kingi or the Electorate Council.[20] A resolution was passed expelling Ms Kapa-Kingi as a member of Te Pāti Māori on the alleged basis that she had misused Pāti funds for personal gain and had brought the Pāti into disrepute.[21] The resolution reads:

> Having considered the written breach notices (16th October 2025 and 2nd November 2025) and the documented chronology and relying on Te Pāti Māori Constitution, Part 2 (Rules) and particular clauses 3.6, 5, 9, 10, the National Council resolves that:
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> 1. Mariameno Kapa-Kingi (Te Tai Tokerau):
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> a. The National Council finds that her conduct meets the definition of "Serious Dispute" under cl 9, including misuse of Pāti funds for personal gain and bringing the Pāti into disrepute.

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[20] In attendance were the National Executive, other than Mr Tamihere, and between one and two representatives of each Māori electorate (being the chair, a co-chair, or an acting chair of the relevant electorate's council) bar Te Tai Tokerau. Te Pāti Māori MPs, other than the co-leaders, were not present.

[21] Consensus could not be achieved on the resolution so there was a vote, with each electorate present receiving one vote. Four electorates agreed with the resolution: Ikaroa-Rāwhiti, Tāmaki Makaurau, Te Tai Hauāuru, and Waiariki. Two, Hauraki-Waikato and Te Tai Tonga, abstained.

b. Remedy: Pursuant to cl 10.2, her membership is immediately expelled; and pursuant to cl 3.6, any remaining Party rights and privileges are cancelled forthwith.

[41] Mr Norman says that Te Pāti Māori leadership does not accept Ms Kapa-Kingi's explanations for the electorate budget overspend, nor does it accept the inference that she has been exonerated by an "underspend". He says that she has not given an adequate response to questions about "significant payments she has made to her children". More fundamentally, Mr Norman says, Te Pāti Māori leadership is unhappy with Ms Kapa-Kingi's "failure to engage" with it about the overspend and other issues. He says that her lack of transparency and subsequent engagement with the media resulted in "significant destabilisation" for Te Pāti. He says the leadership see Ms Kapa-Kingi's media engagement as a breach of the Pāti's tikanga and of the Kawa, which provides:[22]

> Confidential non-disclosure: All members of Te Pāti Māori must undertake not to disclose to any person, or make use of any information, document or material of a personal nature that may embarrass the Pāti or has the potential to bring it into dispute. This includes the media or any other political Pāti.

[42] Mr Norman explains that neither Ms Kapa-Kingi nor the Te Tai Tokerau Electorate Council were invited to the hui because of their "failure to meaningfully respond" to questions he had asked in the 5 November 2025 to the Electorate Council.

[43] Ms Kapa-Kingi says that she was notified of her expulsion on 10 November.

Other background matters

[44] Mr Tamihere was first elected as president of the Pāti on or about 8 June 2022. Subsequently, at the 2024 AGM, he was "affirmed" as Pāti president for the period of 2024 to 2027. The affirmation does not appear to follow the formal election process set out in the Kawa. However, the minutes of the AGM do not record objections to that affirmation, or to the related affirmation for the rest of the Pāti executive. Ms Kapa-Kingi is recorded as having attended the AGM.

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22 Te Pāti Māori Kawa, pt 2, cl 9.16.

[45] The proposed AGM set down for 7 December 2025 was called six weeks in advance, on about 16 October 2025.

Amenability to review

[46] Because Te Pāti Māori is an unincorporated association, it is not exercising a "statutory power" as that term is defined in the Judicial Review Procedure Act 2016.[23] Judicial review remains available, however, at common law – so long as there is an exercise, or contemplated exercise, of power which is in substance public or has public consequences.[24] This can be the case regardless of the way in which the body exercising the power may be characterised and so it is that in some circumstances private sector bodies can be subject to judicial review.[25]

[47] Mr Salmon KC for the respondents has submitted, in an argument to be developed at the substantive hearing, that there may not be jurisdiction for judicial review here. He refers to *Peters v Collinge*, where Fisher J said that the "jurisdiction to review steps taken by [an unincorporated society] is to be found in contract".[26] In his submission, a contractual approach to review would exclude considerations such as natural justice except to the extent they are implied terms in the "contract", meaning the relevant constitutional document.

[48] It seems to me that this argument is perhaps more simply framed as a question relating to the approach the Court should take in a judicial review proceeding such as this.[27] After all, in *Peters* there was no question that the Court was able to undertake a review of the relevant decision. The point Fisher J was making was that, in that case, where the decision was that of the National Party's executive to decline to approve an MP as its party candidate in a forthcoming election (rather than a decision involving

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23 Judicial Review Procedure Act 2016, s 5.

24 *Royal Australasian College of Surgeons v Phipps* [1999] 3 NZLR 1 (CA) at 11 and 12; and *Wilson v White* [2005] 1 NZLR 189, (2004) 17 PRNZ 270 (CA) at [21].

25 Although traditionally this jurisdiction was exercised with some reluctance and was seen as a way of enforcing the contract constituted by the rules of a private body: see, by way of example, *Hopper v North Shore Aero Club Inc* [2006] NZCA 308, [2007] NZAR 354 at [11].

26 *Peters v Collinge* [1993] 2 NZLR 554 (HC) at 566.

27 Or, in other words, the intensity of review, a concept which recent appellate decisions have noted is in doubt: *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2025] NZCA 80, [2025] NZRMA 258 at [168]; and *Minister of Justice v Kim* [2021] NZSC 57, [2021] 1 NZLR 338 at [51].

expulsion or disciplinary action, as the Judge was at pains to point out),[28] the Court's review should be limited to considering whether the procedures followed were in line with the express or implied terms of the "contract" with the other members of the party. And here, the respondents do not challenge the Court's jurisdiction under contract at least to review the decisions in play.

[49] The approach the Court will take may well depend on questions that remain about the extent to which and in what circumstances a political party will be found to have a public, rather than private, nature.[29] However, it can be argued that an exercise of power by a political party will generally – and, quite possibly, particularly in the case of expulsion or disciplinary action – in substance be public or have public consequences and so be amenable to review, regardless of the public or private *nature* of the body itself.

[50] For now, it seems non-contentious to say that political parties are essentially private bodies that are entitled to govern their own activities according to the rules the organisation itself chooses to adopt,[30] subject to any statutory restrictions on their procedures and actions[31] as will be the case with any private body. Judicial review proceedings involving statutory restrictions or enforced procedures or powers – such as a review of the issuing of a notice under the waka-jumping provisions of the Electoral Act – will, necessarily, look beyond the rules of the political party to the relevant statute itself.[32]

Interim orders

[51] The Court may, under s 15 of the Judicial Review Procedure Act, make an interim order prohibiting the respondents from taking any further action that is consequential on the exercise of a statutory power it is "necessary to do so to preserve the position of the applicant".

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28 *Peters v Collinge*, above n 26, at 566, lines 23–27.

29 See *Payne v Adams* [2009] 3 NZLR 834 at [67] and [84]–[91], referring to Andrew Geddis "The Unsettled Legal Status of Political Parties in New Zealand" (2005) 3 NZJPIL 105 at 112.

30 *Awatere Huata v Prebble* [2005] 1 NZLR 289 (SC) at [36].

31 As, for example, is provided by s 71 of the Electoral Act as a condition of party registration.

32 *Awatere Huata v Prebble*, above n 30, at [25] and [36].

[52] As I have said, this application for interim orders falls to be determined under the Court's common law powers of review;[33] rather than under the Judicial Review Procedure Act. But the Court will apply the same test for interim orders either way.[34]

[53] The threshold of the necessity to preserve the position of the applicant is the primary consideration for the Court in considering whether or not to make interim orders. A wide discretion then applies under which the Court will consider all of the circumstances of the case, including the apparent strength or weakness of the claim for review and all of the repercussions, public or private, of granting interim relief.[35]

[54] The interim relief power has a dual purpose: it seeks to preserve the ability of the Court to grant effective relief if the challenge is successful, and it relieves an applicant from the adverse effects of a challenged decision until the challenge is heard and determined.[36]

[55] In considering necessity, it is important to understand in the context of the substantive claim whether there is in fact a position that should be preserved. The threshold will not be met where an applicant is seeking to improve their position, rather than preserve it. And it is important that there is a "reasonable" necessity,[37] as contrasted with a strong preference. However, for all of that, the Court has demonstrated that it is willing to take a liberal approach to the preservation threshold.[38] But that is much less likely to be the case where the merits of the substantive

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33 Non-exclusively governed by the High Court Rules 2016, r 30.4 of which provides that Court "may make an interim order on whatever terms and conditions the court thinks just".

34 *Parents of Courtney v Principal* [2021] NZHC 2075 at [26].

35 This general approach was established by the Court of Appeal in *Carlton & United Breweries Ltd v Minister of Customs* [1986] 1 NZLR 423, (1986) 2 TCLR 7 and has been applied repeatedly since including, as a recent example, in *New Zealand Greyhound Racing Association Inc v Attorney-General* [2025] NZHC 2665 at [16].

36 *Greer v Chief Executive of Department of Corrections* [2018] NZHC 1240, [2018] 3 NZLR 571 at [24].

37 *Carlton & United Breweries Ltd v Minister of Customs*, above n 35.

38 See, for example, *Christiansen v Director-General of Health* [2020] NZHC 887, [2020] 2 NZLR 556, where the applicant successfully obtained interim relief on a challenge of a refusal to cut short his mandatory 14-day isolation to see his dying father; and *Nga Kaitiai Tuku Iho Medical Action Society Inc v Minister of Health* [2021] NZHC 1107, where the applicant sought orders aimed at halting the initial roll out of a COVID-19 vaccine and the Court accepted it was "arguable" the applicant had a position to preserve because by the time the claim was heard the vaccine would have largely been rolled out and the relief it sought on an interim basis would be unavailable (at [55]).

application for review are weak, or where an application amounts to a challenge that a decision is wrong on a merits basis.[39]

[56] Having considered the threshold requirement, the Court's residual discretion is wide. Some of the relevant factors are these:

(a) In assessing the strength of the applicant's case, there is no bright line threshold requirement but the Court does need to be satisfied that there is at least a reasonable chance of the applicant succeeding.[40]

(b) In considering the public and private repercussions of granting relief, the Court will consider a range of public interest consequences,[41] together with balance of convenience and overall justice considerations.[42]

(c) Delay in seeking interim relief may count against the exercise of the Court's discretion, particularly where it contributes to the public interest consequences of the order sought.[43]

[57] While factors such as these are examples of the exercise of the Court's discretion, at its broadest it can be said that – as with applications for interim injunctions – so long as the threshold is met, the Judge needs to stand back at the end of the day and ask themselves where the overall justice lies.

[58] Given the interim orders sought in this application are distinct, I will address them separately before going on to consider where overall justice falls.

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39 *MKD v Minister of Health* [2022] NZHC 67, [2022] NZAR 1 at [55]–[57] and [63]. In that case, Ellis J found that the applicant's desire to protect their unvaccinated children's ability to have full access to school and community facilities did not give rise to a protectable position to preserve (at [54]).

40 *Esekielu v Attorney-General* (1993) 6 PRNZ 309 (HC).

41 *Wallace v Chief Executive of the Department of Corrections* [2022] NZHC 2464 at [88].

42 *Aitken v Judicial Conduct Commissioner* [2025] NZHC 190 at [18].

43 See, for example, *Guinness Wines & Spirits Ltd v Licensing Control Commission* HC Wellington A250/84, 24 July 1984.

Assurances provided by the respondents

[59] On 3 December, the respondents made the following statements and provided the following without prejudice assurances:

> a. The AGM must continue on 7 December 2025 to allow Te Pāti to progress its usual business. The AGM will be chaired by Te Pāti's Vice President, Fallyn Flavell, and Mr Tamihere will present the President's report.
>
> b. The applicants, including Ms Kapa-Kingi, are welcome to attend the protocol prior to the formal AGM, where attendees can raise and address any concerns in accordance with Waiatarua's tikanga. The second applicants (as members of Te Pāti) are able and welcome to attend the formal AGM and participate in accordance with the AGM.
>
> c. The respondents will table only those resolutions set out in its letter dated 3 December 2025.
>
> d. The respondents will not issue any notices under ss 55A(3)(b) and 55C of the Electoral Act 1993, pending determination of the substantive matter.

[60] The assurances are such that it is only necessary to deal with the first and fourth of the interim orders sought – the reinstatement of Ms Kapa-Kingi and the restraint of Mr Tamihere.

Reinstatement of Ms Kapa-Kingi as a member of Te Pāti Māori

Is it necessary to preserve the applicant's position?

[61] The respondents say that there is little that is in need of preservation. Mr Salmon makes the point that there is only a handful of sitting days in the sitting programme before the substantive claim will be determined. He says that Ms Kapa-Kingi has made it clear that she will continue to vote as though she was a member of Te Pāti and that there are no real operational restraints to her remaining an effective independent MP in the meantime.

[62] It is said for the respondents that an interim order for reinstatement will not "correct" any impression by voters about Ms Kapa-Kingi's role in Te Pāti, nor would it restore any mandate that she seeks as a Te Pāti candidate. And nor, it is said, will it have any meaningful effect upon Ms Kapa-Kingi's mana in circumstances in which

interim orders such as these are temporary and are not formed on the basis of concluded views on the substantive causes of action.

[63] Moreover, attention is drawn to the confirmation given on the part of the respondents that they will not issue notices under ss 55A(3)(b) and 55C of the Electoral Act pending determination of the substantive proceeding.

[64] For all of that, I am clearly of the view that there is a position to be preserve. Ms Kapa-King's position in Parliament no longer reflects her election as an MP for Te Pāti Māori. While there is only a relatively short period until the substantive hearing, there are certainly tenable arguments (as I come on to discuss) that her expulsion was founded upon mistaken facts and procedural irregularities such that the most appropriate position pending the substantive hearing would favour Ms Kapa-Kingi's return to the party.

[65] There are, moreover, practical considerations that weigh in favour of preserving Ms Kapa-Kingi's position. First, while excluded, she and her staff can no longer access Te Pāti Māori database. While it is said for the respondents that Ms Kapa-Kingi could in the meantime simply use email addresses for her constituents, that does not in my view address the practical issues that arise. Equally, the second applicant's email address has been cancelled by the Pāti. That causes all sorts of issues for representation of the electorate.

[66] In addition, Ms Kapa-Kingi is not able to attend the AGM or other hui if she is not a member of the party. While the respondents have, in the assurances they have given, said that Ms Kapa-Kingi is welcome to attend the "protocol" session prior to the formal AGM – and that this is where the real discussion and pātai take place – that is a poor substitute for the full participation that would be open to her were she a member.

Strength of the case

[67] The respondents emphasise the point that in the limited time available (and where key personnel are travelling outside New Zealand) it has not been possible to present a full evidential picture and that further evidence will be needed for the

substantive hearing. In these circumstances, the respondents emphasise the need for caution before the Court makes any orders based upon a preliminary view of the merits, without all matters being before the Court and argued fully. They are concerned that the evidential picture presented by the applicants is incomplete.

[68] Accordingly, the respondents do not engage in detail with the strengths or weaknesses of the applicants' claims on the merits of their case but, fairly, they proceed on the basis that there is no concession on the issues but that the application can be considered on the assumption that there are serious questions that need to be determined in due course.

[69] While the respondents' position is fairly expressed, it is appropriate for me to say something about the strength of the case because of the interconnected nature of relevant considerations at an interim order stage. While the Court's assessment of strength can only be preliminary and cannot be taken to indicate the direction of substantive orders, it does influence the Court's assessment of the position the applicants have to preserve and the other discretionary factors the Court is to consider.

A potential mistake of fact

[70] There is sufficient authority for it to be said that an error of fact may properly constitute a ground of review, whether as a separate ground in its own right[44] or as a part of the second manifestation of an error of law – outcomes that are untenable on the facts – in *Edwards v Bairstow*.[45]

[71] However categorised, the mistake needs to be essentially incontrovertible.[46] At the interim orders level, the issue is whether there is a serious case for saying that there has been a mistake of that nature.

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44 As the Court of Appeal accepted that it can be in the recent decision of *New Health New Zealand Inc v Minister for COVID-19 Response* [2025] NZCA 592 at [102]; and see, for example, *Air New Zealand Ltd v Commerce Commission* [2025] NZHC 3230 at [143]. I note that a question may arise at the substantive hearing for this matter about whether a separate mistake of fact ground is available in judicial review of private organisations or if instead a prerequisite is the presence of an implied term in the "contract" at play.

45 *Edwards v Bairstow* [1956] AC 14, [1955] 3 All ER 48 (HL) at 57, as adopted in *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2025] 3 NZLR 721 at [25]–[26].

46 Albeit with a slightly different lens depending on the approach taken: see *New Health New Zealand Inc v Minister for COVID-19 Response*, above n 44, at [100].

[72] There is, as I see it, a serious question to be tried on the issue of whether the respondents were wrong to conclude that Ms Kapa-Kingi had misused party funds for personal gain. As I have explained in a little detail earlier, the issue was not, in the first place, with funds provided directly by Te Pāti Māori.[47] And it seems unlikely that it was a matter of "misuse", on the plain meaning of that word. Rather, it was a case of Ms Kapa-Kingi finding herself to be out of alignment with funding allocations for the year by the Parliamentary Service. When that became apparent, the process in the Speaker's Directions were, it would seem, followed appropriately and Ms Kapa-Kingi, working alongside Parliamentary Service representatives, reached a position where there was in fact no misalignment and Ms Kapa-Kingi's expenditure ultimately came in one dollar under her Parliamentary Service budget.

[73] Whether, in addition to that realignment, the Te Tai Tokerau electorate was entitled to the transfer of further funds from the Tāmaki Makaurau electorate for support given is another matter and a level of debate remains. There is enough for it to be said at this preliminary level that the issue did not involve funds provided directly by Te Pāti Māori. Rather, it involved Parliamentary Service's allocations.

[74] That, in turn, calls into question the conclusion reached by the respondents that Ms Kapa-Kingi's actions, in terms of the funding issue, brought the party into disrepute. That is not something on which any form of conclusion can be reached at this stage, particularly using the high bar of a mistake of fact / error of law through error of fact lens, but there will be argument to be had on the point.

[75] To the extent that it is said that Ms Kapa-Kingi's actions, through statements to the media, brought the party into disrepute is a slightly different issue. I have summarised the statements in issue in [28] above. Whether those statements reach the thresholds for action against Ms Kapa-Kingi under the constitution will need to be assessed in more detail at the substantive hearing.

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[47] Acknowledging that there is room for an interpretation of the Te Pāti Māori Kawa whereby "Pāti funds" could be seen as encompassing funds provided to Ms Kapa-Kingi by the Parliamentary Service as part of her electorate MP budget, given she was elected as a member of Te Pāti Māori.

[76] The respondents say that there is more to be said on the issue. They do not draw a distinction between Parliamentary Service funds and Pāti funds. And they say that the resolution of the Parliamentary Service funding issue is not as simple as has been suggested by the applicants. Issues do remain for resolution but the applicants' case on these issues does raise serious questions.

Procedural irregularities

[77] In the 9 November resolution (set out in [40] above) it was said that Ms Kapa-Kingi's "membership is immediately expelled" because of a finding that her conduct "meets the definition of 'Serious Dispute' under cl 9 [of the Kawa], including misuse of Pāti funds for personal gain and bringing the Pāti into disrepute".

[78] Clause 9 of the Kawa relates to the "resolution of disputes and differences". Clause 9.1 provides that there are three types of dispute. The first is "serious disputes", which are described as disputes that deal with misuse of party funds for personal gain and bringing the party into disrepute. The second is "non-serious disputes", which can be settled at a local electorate level. And the third is "judicial disputes", which deal with matters such as the candidate election process.

[79] Given the terms of the 9 November resolution, the dispute here would seem to fall within the definition of "serious dispute" in cl 9.1. Accordingly, under cl 9.5 it was first to be "communicated in writing to the relevant Electorate Council".[48]

[80] When an Electorate Council receives notice of a serious dispute, it must, under cl 9.11, in the first instance try to resolve it. If it cannot resolve it, then the Electorate Council has, essentially, two options. The first, under cls 9.5 and 9.12, sees it being referred to the Disciplinary and Disputes Committee. The second sees it being referred (through the Pāti president in some cases) to the National Executive in accordance with cls 9.7 and 9.11.

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[48] Clause 9.5 refers to a "serious complaint" rather than to a "serious dispute" but it is accepted by the parties, at this stage at least, that they both mean the same thing.

[81] Under the second of the two options, the National Executive is then either to refer the complaint back to the Electorate Council or is to send it to the Disciplinary and Disputes Committee in terms of cl 9.14.

[82] When the Disputes and Disciplinary Committee receives a complaint for consideration, it is required to "see that the dispute is resolved on the basis of the kaupapa of the party", in accordance with cls 9.5 and 9.6.

[83] In all of this, it appears that the National Council has only a limited role. Under cl 9.13, it is to be notified of the existence of a complaint.

[84] None of the cl 9 processes were used in this case. Instead, the perceived issues became the subject of a National Council meeting, without the presence of four of the MPs that form part of that Council under the Kawa and without notice to the applicants and which resulted in Ms Kawa-Kingi's immediate expulsion.

[85] Returning to the prescribed process, once the steps under cl 9 have been taken, remedies are available under cl 10. Clause 10.2 provides that any member who is found guilty of misusing party funds shall be expelled from the party immediately. Clause 10.1 provides that any member who is found to have been in breach of cl 3[49] is found guilty of a serious complaint, other than the misuse of party funds for personal gain, is to have their membership revoked under cl 3.7.

[86] That takes us to cl 3, which deals with membership of the party. Clause 3.1 provides eligibility criteria for membership. One of them, set out in cl 3.1(b), provides that a member is someone who "act[s] within Te Pāti Māori constitution".

[87] That, in turn, aligns with cl 10.1. As such, at least one interpretation of the Kawa is that cls 10.1 and 3.1 work together, with the cl 9 process as the pathway to be used to get there.

[88] The respondents say that the cl 9 process may be bypassed through the operation of cl 3.6. That clause provides:

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[49] Reference is made here in particular to cl 3.1.

> The National Council may cancel any membership that the Council believes does not meet the criteria outlined in cl 3.1. The member shall be advised in writing of the decision. The member may appeal that decision at the next National Hui of the party, where the decision shall be final.

[89] Substantive arguments are yet to be heard but there is a case to say that, given the carefully prescribed machinery in cl 9, cl 3.6 could not properly operate independently in that way. It might be said in addition that a conclusion of that sort would be heightened when regard is had to the overarching tikanga principles set out in pt 1 of the Kawa. I would add that the 9 November resolution refers explicitly to cl 9, and the order of words used may suggest that the "remedy" of cancellation under cl 3.6 was being used *because* Ms Kapa-Kingi's conduct met the definition of "serious dispute" under cl 9:

> (a) The National Council finds that her conduct meets the definition of "Serious Dispute" under cl 9, including misuse of Pāti funds for personal gain and bringing the Pāti into disrepute.
>
> (b) Remedy: Pursuant to cl 10.2, her membership is immediately expelled; and pursuant to cl 3.6, any remaining Party rights and privileges are cancelled forthwith.

[90] Moreover, the applicants say that, even if the National Council did have power to expel Ms Kapa-Kingi, it was inquorate when it did so because:

(a) it excluded one electorate – Te Tai Tokerau – in its entirety;

(b) not all delegated representatives of four of the electorates were in attendance;

(c) it was not properly notified – as only the chairpersons of each electorate were invited to attend, rather than all four delegates from each of the electorates; and

(d) it excluded four of six MPs who under the Kawa form part of the national council.

[91] To dwell for a moment on subpara (c) above, the applicants say that, counting the four delegates from each of the electorates, the quorum for a National Council hui is 39 whereas there were only nine people in attendance at the 9 November hui.

[92] The respondents have a different view about the membership of the National Council. For example, they say that four council members from each electorate are not required and that any quorum requirements were, on 9 November 2025, met.

[93] The applicants add that natural justice requirements are embedded within the procedural protections provided in the Kawa which were not followed. And they refer to tikanga being foundational to Te Pāti Māori and needed to inform the decisions it makes. Those procedural protections were not, it is said, provided.

[94] The applicants refer also to the foundational kaupapa and tikanga principles set in pt 1 of the Kawa which provides, among other things, that the tikanga of Te Pāti Māori, as derived from Kotahitanga, requires the Pāti to "promote harmonious and cooperative relationships amongst all people". It provides also that the tikanga, as derived from rangatiratanga, requires the Pāti to "recognise and acknowledge the authority of whānau, hapū and iwi in their respective electorates". These principles, it is said, are at odds with the summary way in which Ms Kapa-Kingi was treated.

[95] The respondents, at this preliminary stage, refute the applicants' interpretation of the Kawa. They see the National Council as having, under cl 3.6, a power to cancel membership without notice and without acting in accordance with the principles of natural justice despite these provisions.

[96] Suffice it to say that there is considerable argument to be made on the application of these provisions at the substantive hearing. But at this stage it can clearly be said that a serious question arises for trial.

Other discretionary factors

[97] Mr Norman has said in his affidavit for the respondents that an order reinstating Ms Kapa-Kingi is likely to "create extreme tension within Te Pāti Māori's MPs and leadership". He sees the impact on the applicants, comparatively, as being less

significant in the event that the order is not granted given the limited time between now and the hearing of the substantive proceeding. However, overall, I do see it as being relevant for Ms Kapa-Kingi to retain her ability to participate in Te Pāti Māori and to continue her role in Parliament as a member of the party until these issues are determined finally by the Court.

Restraint of Mr Tamihere from acting as Te Pāti Māori president

Necessary to preserve the applicants' position

[98] The applicants say that Mr Tamihere was not validly re-elected as president of the party and that, as a result, he ceased to hold office as president of Te Pāti Māori on 8 June 2025. They say that in those circumstances, it is necessary to preserve Ms Kapa-Kingi's position by restraining Mr Tamihere from acting as president. It is said that his unlawful occupation of the role taints all of the decisions of the party and that, more particularly, if not restrained he will use Te Pāti's resources to prejudice the applicants given what is said to be a pattern of behaviour exhibited by Mr Tamihere towards Ms Kapa-Kingi that reflects targeted aggression on his part.

[99] Ultimately, while the re-election issue does require further consideration, I do not see it as being necessary to preserve Ms Kapa-Kingi's position under this head. The immediate concern over Mr Tamihere chairing the AGM is addressed through the assurance that has been given that Te Pāti's vice president, Fallyn Flavell, will chair, rather than Mr Tamihere.

[100] Beyond that, I cannot see that any orders, even with adjusted wording, could have a bearing on Ms Kapa-Kingi's substantive rights or her standing within Te Pāti. On the other side of the equation, interim orders restraining Mr Tamihere would cause unnecessary instability and unnecessary harm, rather than achieving a preservation of Ms Kapa-Kingi's position at this preliminary stage in the process.

Strength of the case

[101] The applicants say that Mr Tamihere's presidency has expired and is invalid. They say that the Kawa limits the president of the Pāti to a three-year term and that no one person may be president for two consecutive terms.

[102] A plain reading of cl 6.2 of pt 2 of the Kawa does support an interpretation that the Kawa requires a change of president every three years:

> 6.2 The election of the president and co-vice presidents shall occur on a rotational, triennial basis.

[103] Mr Norman has said in his affidavit that:

> In my experience the reference to rotation has always been applied to mean the Presidency is confirmed on a term that is intended to make sense in relation to the cycle of election periods.

[104] The respondents make the fair point that what was referred to at the time as "an affirmation" at the 2024 AGM saw Mr Tamihere returned to office as party president for a further three-year period and that there was no opposition to the affirmation, including from Ms Kapa-Kingi who attended the AGM. There is a serious question to be tried here but the position remains uncertain at this stage.

Other discretionary factors

[105] In circumstances in which Mr Tamihere's affirmation in 2024 proceeded without opposition, and in which there would be little to be gained for anyone in restraining Mr Tamihere at this interim stage, I cannot see a basis for an interim order under this head. The issue does need to be considered substantively, but interim holding measures do not need to be put in place.

Overall justice

[106] It is at this point in the assessment that the Court must stand back and consider where the overall justice lies. There are, for the reasons I have given, serious questions to be tried on the manner in which Ms Kapa-Kingi was expelled from the party. I have found, on that issue, Ms Kapa-Kingi has a position that is necessary to preserve. And

I have found that the need to protect her position pending a substantive decision on the issues outweighs the difficulties the respondents perceive as arising if an order is made requiring her return.

[107] Those difficulties, the respondents say, would be considerable. They say that reinstatement would cause extreme tension within Te Pāti Māori's MPs and leadership. They say that the damage would be considerable for the party itself at a critical time leading into the 2026 election. And they say that reinstatement would be confusing for the members of the public. They refer to the comments of Fisher J in *Peters v Collinge* in which it is said that those who enter politics must surely do so in the knowledge that there must be room for changes in allegiances and loyalties, and that no one can expect to have a mortgage over a party's support.[50]

[108] However, this case engages different considerations to those in issue in *Peters*. It related to a decision of a political party to have a particular person run as its representative in an election. Here, we are dealing with the expulsion of a person as a member of a political party. The overall justice of the case lies as I see it in enabling Ms Kapa-Kingi to have the ability to continue in the interim to serve her electorate on the basis upon which she was elected – as a member of Te Pāti Māori. Should the substantive decision come out in the applicants' favour, there would be irretrievable prejudice to them both in the event interim orders were not made. While there would be prejudice to the respondents in the event that the substantive decision comes out the other way, it would in my view be less.

Outcome

[109] For these reasons, I make an interim order, pending the substantive hearing of this proceeding, requiring the first and second respondents to reinstate the first applicant as a member of Te Pāti Māori.

[110] I do not make the other interim orders that are sought.

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50 *Peters v Collinge*, above n 26, at [574].

[111] As the substantive hearing is to take place in February, costs on this application are reserved.

[112] As directed during the hearing, counsel are to liaise and file a joint memorandum on timetabling for the 2 February hearing by 5 pm on Tuesday, 9 December 2025.

Radich J

Solicitors:
Whāia Legal, Wellington for Applicants
Grove Darlow & Partners, Auckland for First Respondents and Third Respondent