IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2022-404-002225
[2026] NZHC 3651

BETWEEN	MAOIAUTELE LAMOSITELE NA'AMANU and TAULA PERRY YOUNG Plaintiffs
AND	VENI MORISA First Defendant
	TAFUNA'I MUAIAVA Second Defendant
	FA'AMANU PENIATA Third Defendant
	SAMOAN ASSEMBLIES OF GOD IN NEW ZEALAND (INC) Fourth Defendant
	SAMOAN ASSEMBLIES OF GOD IN AOTEAROA CHARITABLE TRUST BOARD Fifth Defendant
	WOODROFFE LAW PARTNERSHIP Sixth Defendant

.../continued over

Hearing:	4 – 8 August 2025 and 12 – 15 October 2026
Counsel:	RMN Marsich and RP Kaur for Plaintiffs SA Keall and JEG San Diego for First to Fifth Defendants GJ Thwaite for Sixth Defendant (discontinued)
Judgment:	26 November 2026

JUDGMENT OF DOWNS J

This judgment was delivered by me on Thursday, 26 November 2026 at 11 am pursuant to r 11.5 of the High Court Rules 2016.
Registrar/Deputy Registrar

CIV-2024-404-001424

UNDER	The Judicial Review Procedure act 2016
BETWEEN	MAOIAUTELE LAMOSITELE NA'AMANU and TAULA PERRY YOUNG Plaintiffs
AND	SAMOAN ASSEMBLIES OF GOD IN NEW ZEALAND (INC) First Defendant
	SAMOAN ASSEMBLIES OF GOD IN AOTEAROA CHARITABLE TRUST BOARD Second Defendant

Table of Contents

The case [1]
Issues [8]
Does Pastor Morisa's conviction make him ineligible to be a pastor or hold Church office? [11]
Analysis [26]
Was the special session on 12 August 2023 valid? [42]
Did the general council have power to remove Pastors Na'amanu and Young as trustees? [49]
Was abridgement of the regular notice period in relation to the special session unlawful? [54]
Was there a breach of natural justice in relation to the no-confidence votes? [63]
Were the payments to Ms Woodroffe's firm without authorisation (hence in breach of fiduciary duties)? [78]
Did Pastors Na'amanu and Young breach fiduciary duties in respect of the hall and bank accounts? [101]
Was the disciplinary process valid? [106]
A preliminary issue [110]
The absence of warnings [113]
Interim suspension [120]
Bad faith? [124]
Justiciability [132]
Summary of conclusions [137]
Result [142]
Costs and quantum of equitable damages [145]

The case

[1] This judgment determines litigation in relation to the Samoan Assemblies of God in New Zealand.[1] The case is important not only to the parties, but to the various congregations that comprise the Church, as evident by the full public gallery every day of the trial. The judgment is preceded by five others of the Court.[2] What it concerns is distilled below.

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1 The Samoan Assemblies of God in New Zealand is an incorporated society. For ease of reference, I call it the Church. Care is needed with this label because the Church is an umbrella organisation for a large network of self-governing, New Zealand-based congregations forming part of the global Assemblies of God movement, congregations that agree to be bound by the constitution of the Church.

2 *Na'amanu v Morisa* [2022] NZHC 3291 [Judgment of Harvey J]; *Samoan Assemblies of God in New Zealand (Inc) v Morisa* [2023] NZHC 3049, [2024] NZAR 160 [Judgment of Muir J]; *Na'amanu v Morisa* [2023] NZHC 3599 [First judgment of Venning J]; *Na'amanu v Morisa* [2024] NZHC 928 [Second judgment of Venning J]; and *Na'amanu v Samoan Assemblies of God in New Zealand (Inc)* [2024] NZHC 3640 [Judgment of Anderson J].

[2] In April 2022, Pastor Veni Morisa was elected to the executive council of the Church and appointed its general treasurer. Pastor Taula Young had held that role for many years. Pastor Young raised the fact Pastor Morisa has a historical conviction for fraud, and contacted the Church's lawyer, Olinda Woodroffe. Ms Woodroffe began litigation in the name of the Church in relation to the conviction, litigation the Church disavowed in late 2022 and discontinued in early 2023.

[3] On 12 August 2023, the Church held a special session of its general council in which votes of no confidence were passed in relation to Pastor Young and Pastor Maoiautele Na'amanu, the other plaintiff to the disavowed litigation. Both were removed as trustees of the Church's trust: the Samoan Assemblies of God in Aotearoa Charitable Trust.[3]

[4] In January 2024, the Church initiated a disciplinary process against Pastors Na'amanu and Young. Pastors Na'amanu and Young had allegedly, among other things, paid Church money (from the Trust) to Ms Woodroffe's firm without authorisation and compromised the Church's ability to access the Trust's bank accounts and Church hall (the Samani Pulepule Community Hall).

[5] Pastors Na'amanu and Young seek declarations under the Declaratory Judgments Act 1908 that Pastor Morisa's conviction precludes him from being a pastor of the Church, and from holding office in connection with the Church. Both also seek judicial review of their removal as trustees and the subsequent disciplinary process.

[6] The Church and Trust counterclaim. They contend the payments to Ms Woodroffe's firm were made without the Church's authorisation, and both pastors also breached their fiduciary duties by compromising access to the Trust's bank accounts and Church hall.

[7] Ms Woodroffe and her firm played no part in the trial, as the Church and Trust are now pursuing their counterclaim against the firm in the District Court. So, while

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3 The Trust.

it is necessary to refer to Ms Woodroffe and Woodroffe Law Partnership, nothing in this judgment should be taken as reflecting on them.

Issues

[8] Five issues arise:

(a) Does Pastor Morisa's conviction make him ineligible to be a pastor and hold Church office?

(b) Was the special session on 12 August 2023 valid?

(c) Were the payments to Ms Woodroffe's firm without authorisation, hence in breach of fiduciary duties?

(d) Did Pastors Na'amanu and Young breach fiduciary duties in relation to the Trust's bank accounts and Church hall?

(e) Was the disciplinary process valid?

[9] This judgment addresses the issues in the same, largely chronological order. I say largely chronological as the facts are interwoven, and some repetition is unavoidable.

[10] Justiciability is contested in relation to (a) and (e).

Does Pastor Morisa's conviction make him ineligible to be a pastor or hold Church office?

[11] Pastor Morisa worked for a bank before becoming a pastor. In 1987, he approved loans to applicants, knowing they did not qualify, intending to obtain a pecuniary advantage. The offending was detected following routine audit. Pastor Morisa pleaded guilty to a charge of using a document with intent to obtain a pecuniary advantage and was sentenced to a term of 15 months' imprisonment. He repaid the related monies on release from prison; approximately $128,000.

[12] Pastor Morisa and his wife served the Papatoetoe Samoan Assemblies of God Church from 1987. In September 2005, Reverend Samani Pulepule accepted Pastor Morisa's request to be ordained as a pastor of the Church. Pastor Morisa was ordained in April 2006. A little earlier, the Church adopted its constitution, which contains these provisions:

> **16 Pastors:**
>
> (1) Any person called to be Pastor of a Local Church of the Fellowship must hold credentials to be a Pastor; must be a person of good standing, must be a person with no criminal record, must know his legal, moral and ethical duties and responsibilities to members of the local church, and the Fellowship.
>
> …
>
> (8) Applicants to Ministry must consent in writing allowing the matters set forth in section 17 hereof including the character of the applicant to be substantiated.
>
> …
>
> **17 Recognition of Pastors:**
>
> Guiding principles in recognising those called to the ministry in terms of Eph.4: 10 – 13 are as follows:
>
> (1) **Character** – They must be blameless in character and of good reputation. They must have a clean Police record in all countries in which they have resided. Unless this provision is forbidden by law those called to ministry shall not live in a defacto relationship, shall not be homosexual or lesbian in sexual orientation whether practicing or not. An applicant for Ministry may be unmarried but should be married by the expiration of the probationary period unless otherwise allowed in any individual case by the Executive Council. A Pastor whose spouse dies shall be exempt from this requirement for a period of two years from the death of the spouse. This period may be extended by the Executive Council for good reason. In the event that the Pastor is unmarried, an elder of the Local Church shall be appointed to fill the role in church life usually fulfilled by the spouse of the Pastor. If married, their marriage should demonstrate faithfulness, harmony and permanence. 1 Tim. 3:1 – 5.
>
> (2) **Doctrine –** They must be sound in faith and loyal to those fundamentals that form the doctrinal basis of the Fellowship. In all their dealings, Pastors shall reflect God's work and teachings.

(3) **Ability** – They should possess ability for service beyond that expected in all Christians, especially in preaching and/or pastoral work. This marked ability ought to be evidenced by fruit from their Labour. They should exercise spiritual gifts.

(4) **Experience –** They must have received a personal baptism in the Holy Spirit accompanied by the scriptural evidence of speaking in tongues. They should have had experience of distinctive Pentecostal Fellowship. They shall have a personal conviction as to their divine calling. They shall have reached an age of reasonable maturity (usually 30 years), and they shall be required to undergo a minimum probationary period of four years as proof of their calling before being fully ordained into the Fellowship with full ministerial status.

…

[13] Pastor Morisa testified he had not concealed his offending from the Church, or others. That evidence went unchallenged:

46. It is something I mention to my congregation during sermons and used it many times as an example of the forgiving grace of God, when counselling and mentoring men and youth. I have made my peace with God, and with the church. My conviction was never a secret including when I became an ordained minister, as both Rev Pulepule and Rev Penani were aware of my past.

…

49. The election process was coordinated by Ps Na'amanu as General Secretary. The fact of my conviction was not a secret but also given that it was 35 years ago in 2022, and known to senior leadership Rev Pulepule and Rev Penani, there was no reason to mention it again.

50. This approach is part of my Christian faith. I see being nominated as being in accordance with God's will, and an opportunity to serve God in the Samoan Assemblies of God in New Zealand church. My goal is to serve and this is reflected in how I lead my Gateway Church to help in any area where we are needed and many times without being asked. All Pastors in SAOGNZ know about our commitment to serve including Na'amanu and Young.

[14] The contest in relation to Pastor Morisa's eligibility arises from his election to the Church's executive council, and appointment as general treasurer on 16 April 2022. Pastor Young had held that role for 37 years.

[15] Three days later, there was a meeting of incoming and outgoing Church officers. Pastor Young attended the 19 April meeting. The minutes record him as

being "very angry".[4] Pastor Young said he was offended he had not been asked to count the offering as outgoing treasurer, and Pastor Na'amanu had not conducted the election fairly. Pastor Young then raised Pastor Morisa's conviction and telephoned the Church's lawyer, Ms Woodroffe, about it.

[16] To avoid duplication, subsequent events are discussed in the context of the other issues. For now, it is sufficient to observe Pastor Morisa was appointed a trustee of the Trust, as were other pastors, on 12 August 2023.

[17] Pastors Na'amanu and Young contend Pastor Morisa's conviction precludes him from being a pastor of the Church, and from holding office in connection with the Church. They seek the following declarations under the Declaratory Judgments Act:

> (a) A declaration that the election of [Pastor Morisa] to the Executive Council and to the office of General Treasurer of [the Church] on 16 April 2022 and in elections subsequent were unconstitutional and therefore void.
>
> (b) A declaration that the election of [Pastor Morisa] to the Trust Board … on 12 August 2023 … was void.
>
> (c) A declaration that [Pastor Morisa] is ineligible to hold the position of pastor in [the Church] and therefore hold office in [the Church] or hold the position as Trustee of [the Trust].

[18] On behalf of Pastors Na'amanu and Young, Mr Marsich contends office holders, including the general treasurer, must be chosen from ordained pastors, a pastor "must be a person with no criminal record" or "a clean police record", and must consent to their character being "substantiated", which clearly envisages some form of vetting, including in relation to their police record.

[19] Mr Marsich says whether a person has a criminal record or "a clean police record" is a matter of fact readily amenable to determination by a court, and such a determination does not trespass into the religious affairs of the Church.

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[4] The minutes were not placed in evidence, as they are in Samoan. However, Pastor Fa'amanu Peniata gave extensive, detailed evidence based on the minutes, and other witnesses, whose evidence was read, said the minutes were accurate.

[20] Mr Marsich also places weight on the evidence of Professor Peter Lineham, a retired professor of religious history, who said the inclusion of the clean police record requirement to the constitution presents as a deliberate step by the Church to ensure its pastors fulfil particular criteria.

[21] Consequently, Mr Marsich contends Pastor Morisa should not have been accepted as a pastor of the Church, and his conviction also disqualifies him from holding any office in connection with the Church. Mr Marsich says declarations should follow.

[22] On behalf of the defendants, which include the Church and Pastor Morisa, Mr Keall contends the issue is not justiciable because the constitution recognises significant theological elements in the ordination of pastors to the Church. While clause 16 requires the candidate to have no criminal record, an admittedly simple, objective requirement, that is only one constitutional aspect concerning the applicant's character. Relatedly, clause 17 creates "guiding principles" — not rules — in the assessment of character and other attributes, and the guiding principles are explicitly linked to the Bible by Ephesians 4:10 – 13, which provides:

> 10 He that descended is the same also that ascended up far above all heavens, that he might fill all things.)
>
> 11 And he gave some, apostles; and some, prophets; and some, evangelists; and some, pastors and teachers;
>
> 12 For the perfecting of the saints, for the work of the ministry, for the edifying of the body of Christ
>
> 13 Till we all come in the unity of the faith, and of the knowledge of the Son of God, unto a perfect man, unto the measure of the stature of the fulness of Christ:

[23] Mr Keall says clause 17 emphasises the theological dimension to pastorship, including, for example, the requirement for "a personal baptism in the Holy Spirit accompanied by the scriptural evidence of speaking in tongues".

[24] Accordingly, Mr Keall contends the issue is not justiciable. Mr Keall adds even if it were, it was open to the Church to ordain Pastor Morisa given the discretion

under the constitution created by its guiding principles in conjunction with religious elements.

[25] As will be apparent then, the arguments about justiciability and the construction of the constitution are, essentially, the same.

Analysis

[26] Unsurprisingly, the Courts have declined to adjudicate religious or spiritual disputes, or disputes informed by a religious or spiritual dimension.[5] The rationale is sometimes expressed that such matters are beyond the jurisdiction of the Courts, or as reflecting a lack of institutional competence on the Courts' part.

[27] For example, in *R v Chief Rabbi ex parte Wachmann,* an Orthodox rabbi sought judicial review of a declaration by the Chief Rabbi that he was "no longer religiously and morally fit to occupy [the] position of rabbi".[6] The rabbi argued the inquiry that led to the declaration was legally flawed. The Queen's Bench Division of the Court of Appeal held the Courts lacked jurisdiction to decide the case. Simon Brown J said the Chief Rabbi's functions were religious in nature — and matters Parliament did not seek to control — making the Courts' intervention inappropriate. Or as the Judge put it, the case lacked "real public law character", and hence "doomed to inevitable failure upon the issue of jurisdiction".[7]

[28] In *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, a former member of the Highwood Congregation of Jehovah's Witnesses sought review of the Committee's decision removing him from the church.[8] The Canadian Supreme Court held the decision was not amenable to review because the decision did not involve the exercise of public authority.[9] But the Court also held

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5 *Marshall v National Spiritual Assembly of The Baha'is of New Zealand Inc* HC Auckland M759/02, 10 March 2003.

6 *R v Chief Rabbi of the United Hebrew Congregations of Great Britain and the Commonwealth, Ex parte Wachmann* [1992] 1 WLR 1036 (QB).

7 At 1043.

8 *Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall* 2018 SCC 26, [2018] 1 SCR 750 [*Wall*].

9 *Wall*, above n 8, at [22].

the matter was not justiciable because it concerned an ecclesiastical decision:[10]

> [38] In addition, sometimes even the procedural rules of a particular religious group may involve the interpretation of religious doctrine. For instance, the *Organized to Do Jehovah's Will* handbook (2005) outlines the procedure to be followed in cases of serious wrongdoing: "After taking the steps outlined at Matthew 18:15, 16, some individual brothers or sisters may report to the elders cases of unresolved serious wrongdoing" (p. 151). *The courts lack the legitimacy and institutional capacity to determine whether the steps outlined in Matthew have been followed. These types of procedural issues are also not justiciable. That being said, courts may still review procedural rules where they are based on a contract between two parties, even where the contract is meant to give effect to doctrinal religious principles.*

[29] Recently, in New Zealand, Andrew J dismissed an application for judicial review concerning the governance of a Pentecostal Church.[11] The Judge noted "the Court would be very reluctant to become involved … even if there was a tenable … basis" for intervention, an observation that reflected the religious element to the case.[12]

[30] However, it is also the position that Courts will adjudicate when a dispute with religious or spiritual elements ultimately involves a matter of law, or put another way, when the core issue is properly referrable to the law, rather than a matter of worship, belief, or theology. For example, in *Mabon v Conference of the Methodist Church of New Zealand,* the Court of Appeal said:[13]

> Clearly, and reflecting the separation of church and state, Courts must be reluctant to determine what are at heart ecclesiastical disputes where matters of faith or doctrine are at issue. But the Courts will intervene where civil or property rights are involved and can be expected to analyse carefully any argument that conventional incidents of a recognised relationship such as work do not give rise to contractual rights.

[31] Given all this, where does this case sit?

[32] Under clause 17 of the Constitution, pastoral eligibility involves judgement of "character", "doctrine", "ability" and "experience". On the face of the text, all four

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10 Emphasis added.
11 *Singh v Singh* [2026] NZHC 3219.
12 At [86].
13 *Mabon v Conference of the Methodist Church of New Zealand* [1998] 3 NZLR 513 (CA) at 523.

are informed by religious beliefs and practices. And by referencing Ephesians 4:10 – 3, clause 17 explicitly recognises theological elements in connection with the "guiding principles in recognising those called to the ministry".

[33] Some of the requirements of clause 16(1) — that a pastor "must be a person of good standing, must be a person with no criminal record, must know his legal, moral and ethical duties and responsibilities to members of the local church, and the Fellowship" — appear more secular, and the absence of a criminal record is unquestionably so. But even then, clause 16 cannot be divorced from clause 17, which as observed, creates "guiding principles" informed by religious beliefs and practices, with explicit theological elements.

[34] Consequently, *R v Chief Rabbi ex parte Wachmann* is apt:[14]

> … the court is hardly in a position to regulate what is essentially a religious function — the determination whether someone is morally and religiously fit to carry out the spiritual and pastoral duties of his office. The court must inevitably be wary of entering so self-evidently sensitive an area, straying across the well-recognised divide between church and state.

To question the Church's decision about Pastor Morisa's eligibility would "unjustifiably entangle the court in the affairs of religion".[15]

[35] Another matter is also important. This aspect of the plaintiffs' case does not engage any right of the plaintiffs.[16] To conclude the issue is not justiciable is, therefore, to preserve an otherwise orthodox balance.

[36] However, even if Mr Marsich's analysis were correct, I would not make the declarations the plaintiffs seek. Relief is discretionary under s 10 of the Declaratory Judgments Act, and relief in this context would be wrong — indeed, quite wrong — for the reasons below.[17]

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14 *R v Chief Rabbi of the United Hebrew Congregations of Great Britain and the Commonwealth, Ex parte Wachmann*, above n 6, at 1042–1043.

15 *Syndicat Northcrest v Amselem,* 2004 SCC 47, [2004] 2 SCR 551 at [50].

16 See [26] above.

17 *Re Chase* [1989] 1 NZLR 325 (CA) at 330 per Cooke P; *Birkenfeld v Kendall* [2008] NZCA 531, [2009] 1 NZLR 499; *Ambrose v Attorney-General* [2012] NZAR 23 (HC); and *Johnston v Johnston* [1991] 2 NZLR 608 (HC).

[37] First, declaratory relief would have an intrusive retrospective dimension.[18] Pastor Morisa was ordained in 2006. He was convicted in 1987. The declarations sought by Pastors Na'amanu and Young reach back in time at least two decades; on another view, almost four.

[38] Second, declaratory relief would be inequitable in the circumstances, as it would cast an unfair shadow over Pastor Morisa's clerical service.[19] As observed earlier, the unchallenged evidence is that Pastor Morisa has not concealed his conviction from the Church, or others. There is no evidence Pastor Morisa has committed any other offence, or has any conviction other than that in 1987, a conviction that was historical even when he was ordained.

[39] Third, declaratory relief would cut across the Church's ecclesiastical domain, as the selection and ordination of pastors has, under the constitution, obvious theological elements, elements the Court is not qualified to measure or weigh.

[40] Fourth, and as observed above, declaratory relief would not affect any right of the plaintiffs, as none is engaged.

[41] Fifth, Pastors Na'amanu and Young do not come to court with suitably clean hands. Pastor Na'amanu's ventilation of Pastor Morisa's conviction appears inseparable from his anger over loss of the role of general treasurer. Other conduct of Pastor Na'amanu is discussed later in this judgment, as is the conduct of Pastor Young. That conduct registers here.

Was the special session on 12 August 2023 valid?

[42] On 16 June 2023, the Church's executive council resolved to call a special session of the general council, the Church's "supreme governing body" under clause 4(1) of the constitution.

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18 *Coburn v Human Rights Commission* [1994] 3 NZLR 323 (HC).

19 *Association of Dispensing Opticians of New Zealand Inc v Opticians Board* [2000] 1 NZLR 158; *Puttick v Attorney-General* [1979] 3 WLR 542; *Clark & Son Ltd v Clark (as trustee of Terra Firma Trust)* [2023] NZHC 957; and *Kung v Country Section New Zealand Indian Association Inc* HC Hamilton M223, 5 February 1996.

[43] Notice of the 12 August 2023 special session was given 24 June 2023, and an agenda distributed 29 July 2023. The agenda identified proposed votes of no-confidence in Pastors Na'amanu and Young as members of the executive council, their removal as trustees of the Trust, and the appointment of replacement trustees.

[44] On 10 August 2023, Pastor Na'amanu said neither he nor Pastor Young would attend the special session on 12 August.

[45] The special session of the general council was held 12 August 2023, as advertised. It began at 9.23 am and concluded at 4.32 pm. Thirty-two of the 52 member churches attended, with 208 of 416 eligible voting members present. The no-confidence votes in Pastors Na'amanu and Young as members of the executive council passed 197 to 9 (two votes were discarded), as did the votes to remove both pastors as trustees. Eight replacement trustees were appointed unanimously, including Pastor Morisa.

[46] A rival meeting, organised by Pastor Na'amanu, occurred the same day as the special session.[20] Supporters of his, or of Pastor Young, or both, attempted to compromise the special session by locking the gates to the Church hall in the early hours of that morning, and by serving trespass notices on members of the executive council.

[47] Mr Marsich contends the special session was invalid because:

(a) The general council had no power to remove Pastors Na'amanu and Young as trustees.

(b) Abridgement of the regular notice period of the special session was unlawful.

(c) There was a breach of natural justice in relation to the no-confidence votes.

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[20] Pastor Young was in Australia at the time.

[48] Mr Keall acknowledges the issues are justiciable, but contends the special session was valid.[21]

Did the general council have power to remove Pastors Na'amanu and Young as trustees?

[49] Mr Marsich's submission is based on clause 4 of the Trust's deed, which provides:

> **MEMBERS OF THE BOARD**
>
> 4. The elected members of the Board shall consist of not less than three members of the Assembly elected by general meeting of the members of the Samoan Assemblies of God in New Zealand Trust Board. The first trustees shall be:
>
> SAMANI PULEPULE … (Chairman)
>
> PENANI SIULEPA … (Secretary)
>
> VA'A SAIPANI … (Treasurer)
>
> who shall take office upon the incorporation of the Board and who shall remain in office until resignation retirement or removal by resolution of a general meeting of the members of the Assembly. All vacancies shall be filled by resolution of a general meeting of the members of the Assembly. The Pastor for the time being of the Assembly shall be an ex officio member of the Board.

[50] Mr Marsich contends "the Assembly" — a reference to the general council — has power only to appoint the *initial* successors to the first named trustees. Thereafter, the trustees succeeding the first trustees determine their successors, not the general council. Or, as Mr Marsich put it in his closing address:

> It is common ground that the reference to the Assembly here is a reference to the General Council of the Fellowship. The plaintiffs' position is that this section of clause 4 provides for a mechanism as to determining the tenure of the "first trustees" of the Trust Board, as distinct from "elected members" of the Trust Board (which is addressed in the first part of clause 4). In essence, this section of clause 4 provides that the first trustees will remain in office until their resignation, retirement or removal by resolution of the General Council. Their successors shall then be appointed by the General Council. From that point, the trustees succeeding the "first trustees" shall determine their successors. In other words, clause 4 contemplates two forms of "power of appointment": for the successors to the first trustees, the power of

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[21] *Te Whakakitenga O Waikato Inc v Martin* [2016] NZCA 548, [2017] NZAR 173 [*Te Whakakitenga*].

> appointment lies with the General Council. For the successors to those successors, the power of appointment lies with the trustees.

[51] Clause 4 is a little awkward as its opening sentence does not neatly fit the balance of its text. However, this almost certainly reflects history, not purpose. The deed was created in 1992, when the Church was not yet an incorporated society. Clause 4's opening sentence would almost certainly have then been understood to refer to a general meeting of the members of the Samoan Assemblies of God in New Zealand, whom the trust board served, rather than a "general meeting" of a three-member trust board.

[52] In any event, no real doubt should arise about the power of the general council to remove trustees and appoint successors:

(a) Clause 4's requirement that "All vacancies shall be filled by resolution of a general meeting of the members of the Assembly" is unqualified, and unequivocal.

(b) Clause 3(a) of the deed, which was amended post-incorporation of the Church, identifies the board's objectives, the first of which is "To act as trustee for and on behalf of the Samoan Assemblies of God in New Zealand Incorporated in accordance with the constitution of the Samoan Assemblies of God in New Zealand Incorporated".

(c) The constitution requires property acquired by the executive council to be held on trust for the Church,[22] and makes the general council the Church's "supreme governing body".[23]

(d) Clause 9 of the deed subordinates the board's bylaws to the constitution, and clause 12 passes the assets to the Church on winding up.

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22 Clause 5(9)(i).
23 Clause 4(1).

(e) Nothing in clause 4, the deed more generally, or the constitution, provides any justification for two classes of successor trustees, with only the initial class being determined by the general council ("the Assembly").

(f) The contention on behalf Pastors Na'amanu and Young is very much a dual-edged sword; they were appointed trustees by the general council: Pastor Young on 11 November 2005, and Pastor Na'amanu on 21 March 2018.

[53] In short, the general council had power to remove both pastors as trustees and appoint successor trustees.[24]

Was abridgement of the regular notice period in relation to the special session unlawful?

[54] Clause 4(4)(iv) of the constitution requires at least four months' notice of a general council session. However, clause 4(4)(v) allows the executive council to call a special session of the general council "at its discretion", and in "a matter of extreme urgency", the executive council may abridge the notice period.

[55] The constitution does not define "a matter of extreme urgency", though the phrase plainly connotes an event calling for an exceptionally swift response on the part of the general council due to exigent circumstances. It is not sufficient the matter is urgent; it must be "of extreme urgency".

[56] It is common ground the executive council abridged the notice period for the special session, with reference to clause 4(4)(v). Mr Marsich contends that abridgment was unlawful as no matter of extreme urgency existed.

[57] Mr Keall contends it was open to the executive council to conclude a matter, or matters, of extreme urgency existed because:

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[24] After the trial, the parties filed detailed submissions on the application of provisions of the Trusts Act 2019. Given my conclusions on the interpretation on clause 4, it is not necessary to address the additional submissions.

(a) The dispute in relation to Pastor Morisa's eligibility had endured for 14 months, through more than a dozen meetings of the executive council, a meeting of all pastors, and two attempts at mediation.

(b) The Church was in the difficult and embarrassing position of being both plaintiff and defendant in, essentially, the same litigation.

(c) The executive council had reason to believe Pastors Na'amanu and Young had made baseless accusations in the litigation.

(d) Pastors Na'amanu and Young were the signatories to the Trust's bank accounts, had paid Church money to Ms Woodroffe's firm, and despite being trustees, declined or failed to act upon requests for the Church's financial records.

(e) Pastors Na'amanu and Young did not attend the Easter 2023 session of the general council or provide a financial report at that session.

(f) Pastors Na'amanu and Young had not attended executive council meetings since late 2022.

(g) The executive council had reason to believe Pastors Na'amanu and Young, their supporters, or both, were purporting to exercise authority on behalf of the Church, and in a manner intended to sow confusion.

[58] These concerns are grounded in the evidence and ultimately, Mr Marsich offered no critique of any of them, other than (d). He said no exigency arose in relation to the operation of the Trust's bank accounts, as the Church opened fresh bank accounts in response to being unable to access the Trust's, and those "were being operated by the trustees in accordance with the Trust Deed".

[59] This contention is awkward because even if the accounts were being operated as they should, it is not clear how the Church could have known that given

Pastors Na'amanu and Young were the signatories to the accounts, and the vacuum created by their failure to provide the Church financial information.

[60] I return to the concerns with these observations, using the same sequence as Mr Keall:

(a) The Hon Rodney Hansen KC held mediations in March and May 2023, each attended by more than 100 people. The first mediation was described in evidence as "heated", and as involving "strong language". Agreement was not reached at either.

(b) On 22 November 2022, Pastors Na'amanu and Young filed the claim addressed by this judgment seeking declaratory relief in relation to Pastor Morisa. The claim filed by both pastors to the same effect, but in the name of the Church, remained live. On 2 February 2023, the Church filed a notice of discontinuance in relation to that claim, but Pastors Na'amanu and Young contested that discontinuance, so a determination was required by this Court.[25] It follows Mr Keall is right to observe the Church was both plaintiff and defendant in, essentially, the same litigation. The Church also had to fund the contested discontinuance of a case it claimed it had not authorised, an issue discussed from [78].

(c) A single reference is sufficient. Pastors Na'amanu and Young filed a joint affidavit in this Court, dated 17 November 2022. In it, they accuse Pastors Morisa, Muaiava, and Peniata of "dishonesty"; of "improper" and "abusive" behaviour; and of perpetuating a "cover up". Pastors Na'amanu and Young also claim Pastor Morisa provided his own lawyer "totally false and wrong information". I pause to record no attempt was made to substantiate these allegations at trial.

(d) Minutes of an executive council meeting on 27 January 2023 reveal a concern a freezing order might be needed to protect Church funds.

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25 Judgment of Muir J, above n 2.

(e) Both pastors were members of the executive council and, of course, trustees.

(f) As for (e).

(g) Two examples are illustrative. In March 2023, Pastor Na'amanu allegedly sent an email purporting to cancel an Easter Church conference, and in May 2023, an email was sent using the Church's email address to promote a litigation strategy session offered by Ms Woodroffe.[26]

[61] Mr Keall also argued a matter of extreme urgency existed because in the fortnight before the special session, Pastors Na'amanu and Young filed annual returns with Charities Services, falsely asserting Pastor Muaiava had been removed from office and replaced by Pastor Na'amanu. There is an obvious difficulty with this incident animating the decision to abridge time; it occurred after the executive council resolved to do so.

[62] But nothing turns on this as the other concerns identified by Mr Keall, elaborated on above, could permit the executive council to conclude it was confronted by a matter or matters of extreme urgency, thus warranting a special session of the general council with abridged notice. I frame the conclusion this way because in this context, the Court does not substitute its own view.[27] That said, if the articulated concerns did not constitute a matter or matters of extreme urgency, it is difficult to know what would. On my view, the Church faced a crisis.

Was there a breach of natural justice in relation to the no-confidence votes?

[63] The requirements of natural justice are contextual but typically understood to necessitate (a) notice to the affected party of the cause or complaint; (b) provision of

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[26] Pastor Na'amanu denied sending the email in March. It is unnecessary to determine whether he did; the point here is that the executive council had reason to believe he sent it.

[27] See, for example, *Antunovich v Dalmatinsko Kulturno Drustvo Incorporated (Dalmation Cultural Society)* HC Auckland CP398-SW00, 15 November 2000; and *Middeldorp v Avondale Jockey Club Inc* [2020] NZCA 13.

a fair opportunity for that party's response; and (c) good faith on the part of the decision maker.[28] The issues here concern (a) and (b).

[64] As will be recalled, the agenda for the special session identified proposed votes of no-confidence in Pastors Na'amanu and Young as members of the executive council, their removal as trustees of the Trust, and the appointment of replacement trustees. The agenda said the proposed votes would be held due to the pastors' "non-attendance at [the] AGM in April 2023 and [their] failure to attend Executive Council meetings since".

[65] The minutes to the special session record the general council voted on nine heads of misconduct; the two identified in the agenda and seven others: (a) abandonment of duties and responsibilities; (b) misuse of Church funds ($23,000 plus $60,000); (c) failure to disclose accurate financial records; (d) unauthorised, fraudulent changes to the Charities Register; (e) a disregard for Church due process of executive council appointments; (f) breach of authority; and (g) inciting malicious division within the Church.

[66] Mr Marsich contends the seven other heads were without notice, as they were not in the agenda or any earlier documentation in connection with the special session, and of a "different character" to the two in the agenda. Consequently, Mr Marsich argues the pastors were not given notice of the bulk of the Church's concerns, or an opportunity to respond to those concerns. The no-confidence votes and associated removal of the pastors as trustees contravened, therefore, elementary precepts of natural justice.

[67] Mr Keall contends the seven heads were not appreciably different from the two in the agenda, and Pastors Na'amanu and Young knew their cited, alleged misconduct in the agenda was no more than a convenient proxy for what would be raised at the special session: their ongoing misconduct in connection with the Church. Mr Keall says that misconduct could be pleaded, characterised, or particularised in any number

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[28] *Daganayasi v Minister of Immigration* [1980] 2 NZLR 130 (CA); *Pritchard v Evans* [2013] NZHC 3150, [2014] NZAR 370; and *White v New Zealand Stock Exchange (No 2)* [2002] NZAR 342 (CA).

of ways, but materially, the pastors knew what the special session was about, as they remained "principal actors" in their ongoing disputes with the Church. Or, as Mr Keall put it in his closing address:[29]

> But the grounds recorded in the minutes, abandonment of duties, the misuse of $83,000 of the Fellowship's finances, failure to disclose accurate financials, unauthorised changes to the Charities Register, refusal to attend Executive Council meetings, disregard for the due process of Executive Council appointments, breach of delegated authority, and inciting division, were the subject matter of fourteen months of dispute in which the plaintiffs had been the principal actors.

[68] Mr Keall also contends the pastors did not suffer prejudice because they did not attend the special session and had no intention of doing so, irrespective of what the agenda contained.

[69] I do not doubt six of the seven omitted heads should have been included in the agenda for reasons that will be obvious: to comprise notice to Pastors Na'amanu and Young of the contentions, and to provide each an opportunity to respond, if they so wished, at the special session. I say six, not seven, as the head concerning the Charities Register appears to have unfolded after the agenda was released and could not, therefore, have been included. That said, I do not doubt Pastors Na'amanu and Young understood the gravamen of the Church's concerns despite the omissions, in circumstances in which neither intended to attend the special session in any event. I elaborate below.

[70] First, the substance of the various heads (other than, of course, the Charities Register) had been raised with the pastors in the months preceding the special session or comprised conduct which each must have then known would be seen as contesting the authority of the Church.

[71] The contention trust funds had been wrongly paid to Ms Woodroffe for the claim in the Church's name was ventilated 29 July 2022, at an executive council meeting attended by both pastors, and the related contention that claim had not been authorised by the Church was discussed at an emergency executive council meeting on 23 September 2022, again on 17 October 2022, and asserted in court in the

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[29] Footnotes omitted.

litigation. Both pastors attended the September meeting. Written demands of both for records were made 11 November 2022, 6 March 2023 and 29 April 2023.

[72] As to conduct which the pastors must have then known would be seen as challenging the Church's authority, I refer to their joint affidavit dated 17 November 2022, in which they made wide-ranging allegations of impropriety; their related, unsuccessful application for an injunction in connection with the offices held by Pastors Morisa, Muaiavia, and Peniata; Pastor Na'amanu's attempt to assume the role of general superintendent on 2 December 2022; the pastors' commencement of parallel claims in relation to Pastor Morisa's conviction; their contest of the Church's notice of discontinuance, a contest signalled from February 2023; and Pastor Na'amanu's purported calling of an executive council meeting on or about 16 February 2023. These are admittedly obvious examples only, not a definitive catalogue.

[73] Second, it follows both pastors knew, despite the agenda's omissions, why the Church was seeking to remove them from the executive council, and from their roles as trustees. Under cross-examination, Pastor Na'amanu almost accepted as much. Pastor Young made no concession and claimed he did not understand the Church's concerns. I am unable to accept that evidence.

[74] Third, neither pastor attended the special session, nor intended to. Pastor Young was in Australia "for the whole week". Pastor Young acknowledged his supporters did not attend the special session as an act of protest. Pastor Na'amanu acknowledged in cross-examination he and his supporters did likewise, holding a rival event on the same day as the special session. Pastor Na'amanu had, of course, said on 10 August 2023 neither he nor Pastor Young would attend.

[75] Both pastors' absence from the special session reflected a pattern of conduct in relation to Church meetings and sessions — one of the heads of complaint in the agenda. Neither pastor had attended an executive council meeting since November 2022 — of which there were four prior to their removal from the board — and neither attended the Easter 2023 general council session. Pastor Young denied boycotting these events but said "it's like we're two different organisations".

Pastor Na'amanu accepted he "boycotted" the Easter 2023 general council session and more: "right up till now I haven't re-entered the doors of that house in Mangere".

[76] The reasoning above is commensurate with the principle in the case law that someone who declines to attend a hearing cannot complain he or she was not heard.[30] That said, the reasoning reflects a finding of fact neither pastor intended to attend the special session because of their ongoing conflict with the Church. Consequently, the question of the agenda's contents has little forensic significance, as does whether the omitted heads were of a different character to those in the agenda.

[77] The special session of the general council on 12 August 2023 was valid.

Were the payments to Ms Woodroffe's firm without authorisation (hence in breach of fiduciary duties)?

[78] Payments totalling $93,000 were made from the Trust's bank account(s) to Ms Woodroffe's firm between May 2022 and August 2023:

(a) $60,000 on 25 May 2022.

(b) $23,000 on 3 November 2022.

(c) $10,000 on 28 August 2023.

I call these payments A, B, and C respectively.

[79] No great factual controversy arises in relation to the background to the payments, with an exception I shall come to.

[80] On 10 May 2022, Pastors Na'amanu and Young, and Pastor Muaiava, the Church's general superintendent, met Ms Woodroffe at her office. Payment A was made 15 days later. The pastors acknowledge making or arranging payment A, so too payments B and C.

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30 *Pritchard v Evans*, above n 28, and *v Te Runanga o Ngati Pu Inc* [2002] NZAR 296 (HC).

[81] Payment A was used to fund the claim in the name of the Church in relation to Pastor Morisa's eligibility to be a pastor. That claim was filed 9 August 2022.

[82] On 23 September 2022, the Church disavowed the claim in a letter which said Pastor Muaiava was ignorant of it; the claim had not been authorised by the Church; and Payment A was similarly unauthorised. The letter reads:

> To whom it may concern,
>
> We the Samoan Assemblies of God in NZ Incorporated are writing this letter as a formal request to have the lawsuit between The Samoan Assemblies of God in New Zealand (Incorporated) and Pastor Veni Morisa withdrawn in the hopes that this case does not proceed any further.
>
> The purpose for our request is based on the following:
>
> - This Lawsuit was not authorised and approved by The General Council of the Samoan Assemblies of God in New Zealand and the Executive Leadership Committee.
> - Our General Superintendent Pastor Tafuna'i To'oseu Muaiava was not made aware of any lawsuit or legal proceedings.
> - We have an Executive Leadership Committee made up of twelve members who oversee our National Body. They make bold decisions for the betterment of the Samoan Assemblies of God in NZ (SAOGNZ) National Body. However, in this instance, ten out of the twelve-committee members were not aware of this lawsuit nor were they made aware of a payment of $60,000 from the SAOGNZ Bank Accounts for this lawsuit to proceed.
> - Pastor Taula Young and Pastor Lamositele Na'amanu operated on their own without consulting the General Superintendent Pastor Tafuna'i To'oseu Muaiava and the Executive Leadership Committee of their plan for a lawsuit
> - The use of SAOGNZ funds $60,000 to start this lawsuit was not authorised.
> - The lawsuit has been titled Samoan Assemblies of God in NZ (Incorporated) verses Pastor Veni Morisa, however this was only initiated by two pastors of the Samoan Assemblies of God NZ Fellowship.
>
> Ten of the twelve-committee members along with the majority of the General Council Pastors of the Samoan Assemblies of God in NZ (Incorporated) stand united in the hopes that this lawsuit does not proceed any further and for it to be withdrawn. Please see attached a signed petition by the SAOGNZ Pastors

> and their wives to support our request to have this case dismissed. Any questions please feel free to contact us.
>
> | | |
> |---|---|
> | *General Superintendent of the Samoan Assemblies of God in New Zealand*
Pastor Tafuna'i To'oseu Muaiava | *General Secretary of the Samoan Assemblies of God in New Zealand*
Pastor Fa'amanu Lalotoa Peniata |

[83] It is not contested the Church had not seen the claim in its name, in draft or otherwise, before it was filed.

[84] Payments B and C were used to fund the claim brought by Pastors Na'amanu and Young in their personal capacity, which this judgment has addressed, advancing the same issue. Their claim was filed 22 November 2022.

[85] The Church contends the payments were made without its authorisation, hence in breach of fiduciary duties. Woodroffe Law Partnership has repaid $36,741.24. The Church sues for the balance: $56,258.76.

[86] The pastors contend payments A and B were authorised, but any contest in relation to payment C falls away because: (a) both pastors had been removed as trustees 16 days before payment C was made; (b) the determination that removal was lawful; and (c) payment C was to fund the pastors' own claim. I did not understand Mr Marsich to argue otherwise.

[87] The arguments in relation to payments A and B are these. Mr Keall contends only the executive council could authorise the payments and did not. Mr Marsich contends the payments were authorised by the Trust; alternatively, the executive council acquiesced to the making of payment A, approving it by doing so.

[88] Mr Marsich's closing address conveniently captures these contentions:[31]

> Examining the Olinda Woodroffe payments: the plaintiffs' position is it was agreed between the three trustees (Muaiava, Na'amanu, and Young) in a meeting on 10 May 2022 at Olinda Woodroffe's office, that a payment of $60,000 be made for what became the 1349 proceeding (note, this was the payment of a retainer, not payment of a bill for legal fees rendered). Such a decision was lawful under the Trust Deed. The meeting was properly constituted (all trustees were present, either in-person or by phone). The Trust

[31] Footnotes omitted.

> Board has the power under Clause 5(a) to "administer the real and personal property in its control or disposition in such manner as the Board thinks fit". The payment was made out of a bank account in the name of and controlled by the Trust Board. No authorisation from the Fellowship is required. Subsequent payments (the $23,000) were also lawful: only two trustees are required to operate the bank accounts of the Trust Board.
>
> To the extent the Fellowship's authorisation of this payment is relevant (denied) as it related to a proposed proceeding on behalf of the Fellowship, the plaintiffs' evidence is that Ps Muaiava authorised the Court proceeding and while the question of whether Ps Muaiava remained of the view that the proceeding should be filed is one that is disputed, it was admitted by Ps Peniata that by May/June 2022 the Executive Council knew Court proceedings were proposed, and by the Executive Council meeting on 29 July 2022 no final decision had been made by the Executive Council as to whether or not to withdraw the proposed Court proceeding. So, by the time the Court proceeding was filed on 9 August 2022, there was no decision by the Executive Council to "stop" the Court proceedings that were authorised on 10 May 2022.

[89] That the payments were authorised by the Trust conflates two distinct concepts: power and authority. It is beyond argument the board has and had power to make payments on behalf of the Church. These powers are set out in clause 5 of the trust deed, which is appropriately titled, "powers of board". So, for example, clause 5(a) of the trust deed provides the board has power "to administer the real and personal property in its control or disposition in such a manner as the [b]oard thinks fit". Similarly, clause 5(c) of the deed recognises the power of the board to open, and operate, bank accounts.

[90] That the board had these powers says nothing, however, about whether a particular payment was made with *authority*. Nor is it an answer to say payment A was allegedly made in consequence of a meeting of the trustees on 10 May 2022 at Ms Woodroffe's office. Clause 3(a) of the deed provides the board acts "as trustee for and on behalf of the Samoan Assemblies of God in New Zealand" — that is, the Church — "in accordance with the constitution of [the Church]". Any payment must ultimately have been for, or on behalf of, the Church.

[91] The constitution underscores the point. Clause 5(9)(iii) of it commits control of funds to the executive council, and clause 10(3)(ii) requires the general secretary and general treasurer to make payments "as the Executive Council shall direct".

The obvious also warrants mention: the payments were extraordinary rather than routine expenditure on matters such as maintenance or utilities.

[92] The only real issue then is whether the executive council acquiesced in relation to the making of payment A. I frame things this way as I did not understand Mr Marsich to contend the executive council explicitly approved payment A or payment B. That presumably reflects the absence of a resolution by the executive council authorising either payment, or anything in the minutes of its meetings that could amount to express authorisation.

[93] I did not understand Mr Marsich to contend, either, the executive council acquiesced to the making of payment B. Payment B was made after the executive council denied authorising payment A. Furthermore, payment B was to fund the pastors' own claim, not that in the name of the Church, and even that had been disavowed by the time of payment B.

[94] Again, the real issue is whether the executive council acquiesced in relation to the making of payment A, thereby authorising it. I did not understand Mr Keall to contest that authorisation could be retrospective, that is, after payment A was made.

[95] Pastor Peniata gave uncontested evidence, based on the minutes, of what was said during the relevant executive council meetings. This evidence reveals confusion on the part of the executive council about whether Church funds had been paid to Ms Woodroffe's firm, and if they had, what those funds were to be used for.

[96] Mr Marsich's closing address emphasised an aspect of Pastor Peniata's evidence: that he understood funds had been paid to Ms Woodroffe's firm for a proceeding. However, the full arc of this evidence reveals Pastor Peniata thought the funds were to be used in connection with a potential proceeding under the Criminal Records (Clean Slate) Act 2004, but a decision remained as to whether that would proceed. Pastor Peniata also said Pastor Muaiava, whom he thought had authorised a proceeding under that Act, ultimately said "not to go to the Court".

[97] This brings me to the factual controversy. Pastors Na'amanu and Young testified Pastor Muaiava told them to make payment A, as general superintendent. This proposition is contradicted by the executive council's letter of 23 September 2022, reproduced at [82], to which Pastor Muaiava appears as first signatory. The letter also contradicts the suggestion Pastor Muaiava authorised the claim in the name of the Church, or any other proceeding. Moreover, Pastor Muaiava appears to have promoted reconciliation throughout the executive council meetings, not litigation. However, Pastor Muaiava died before the trial and no affidavit, brief of evidence, or formal written statement from him was offered in evidence.

[98] If one assumes, consistently with the position of Pastors Na'amanu and Young and supported somewhat by the evidence of Pastor Peniata, that Pastor Muaiava: (a) told the pastors to make payment A and (b) ask Ms Woodroffe to explore a possible proceeding under the Criminal Records (Clean Slate) Act, such a constellation does not advance the case for authorisation.[32] The general superintendent has no power under the constitution over Church funds; while the general superintendent is the Church's "chief executive … in all legal matters and [may] sign on its behalf", as observed, it is the executive council that is responsible for the control of funds.[33] Resolution of the factual controversy is, therefore, unnecessary.

[99] I return to whether the executive council acquiesced in relation to the making of payment A. The difficulty with the contention it did is that the only unifying theme from its meetings is confusion; again, as to whether Church funds had been paid to Ms Woodroffe's firm, and if they had, what they were to be used for. Put simply, the meetings cannot be understood to amount to acquiescence on the part of the executive council in relation to payment A as no clear position by it *as a body* existed in relation to that payment until 23 September 2023. And on that date, of course, payment A was repudiated in the clearest of terms, as was the claim it had funded.

[100] I find on the balance of probabilities, payments A, B and C were made without authority, and Pastors Na'amanu and Young breached their fiduciary duties

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32 The assumption is consistent with a letter of Ms Woodroffe of 20 October 2022, which was in the agreed bundle.

33 The constitution, clause 10(1)(iv).

accordingly. Again, these findings say nothing about Ms Woodroffe or her firm as neither played any part in the trial.

Did Pastors Na'amanu and Young breach fiduciary duties in respect of the hall and bank accounts?

[101] By 2023, Pastors Na'amanu and Young were the only signatories to the Trust's bank accounts.[34] In December 2023, the Church obtained an interim injunction against both to preserve access to those accounts, and to its hall.[35]

[102] Mr Keall contends the evidence demonstrates the pastors continued to assert authority over the Trust's accounts after being removed as trustees, thereby breaching fiduciary duties to the Trust and Church. Mr Keall says relief should be permanent.

[103] Mr Marsich accepted a finding of a breach would follow a determination the pastors' removal as trustees was valid.[36] However, Mr Marsich questioned the need for permanent relief, observing the Church established its own bank accounts during the litigation.

[104] I am satisfied permanent relief is warranted because:

(a) The Church established its own bank accounts in response to the pastors' control of the Trust's; as Pastor Morisa observed in cross-examination, "we opened new accounts 'cos we had no choice".

(b) Payment C was made from the Trust's account(s) after the pastors were removed as trustees.

(c) The pastors continued to assert control over the accounts despite their removal as trustees.

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34 The defendants allege, on a date unknown before 12 August 2023, the plaintiffs wrongly removed Pastors Muaiavia and Peniata as authorised signatories to two Trust bank accounts. The evidence does not support this contention, and I put it aside.

35 First judgment of Venning J, above n 2.

36 Given their control, Pastors Na'amanu and Young held the bank accounts and hall on constructive trust. Accordingly, a fiduciary relationship still existed between Pastors Na'amanu and Young and the beneficiaries despite their removal as trustees.

(d) Control of funds is the responsibility of the executive council under clause 5(9)(iii) of the constitution.

[105] I reach the same conclusion in relation to the hall. I am satisfied Pastors Na'amanu and Young changed the locks to the hall, or arranged them to be changed, after being removed as trustees. While some of the associated evidence is a little messy, Pastor Peniata gave unchallenged evidence the pastors arranged for the locks to be changed in the days following the special session on 12 August 2023. Doing so meant the Church could not access its hall.

Was the disciplinary process valid?

[106] On 2 January 2024, the executive council resolved to commence a disciplinary process against Pastors Na'amanu and Young. A letter was sent to each the next day, informing them their credentials as a pastor of the Church had been suspended. Each letter identified grounds for discipline, and each invited the respondent to an online meeting "as part of this disciplinary process". The letter said the meeting afforded "the opportunity to respond to these allegations and present any information or evidence that you believe is relevant to the investigation".

[107] The meeting was fixed for 26 January 2024, and the pastors were asked to confirm their attendance in advance. Neither pastor attended.

[108] Mr Marsich contends the disciplinary process was invalid because:

(a) No warnings were given, contrary to the constitution.

(b) Interim suspension of a pastor's credentials is not available under the constitution, and the pastors were not given an opportunity to be heard before suspension.

(c) Of bad faith on the Church's part.

[109] Mr Keall contends none of the issues is justiciable because the removal of a pastor's credentials is a religious matter, but the process was valid in any event. For reasons that will become apparent, I address validity first.

A preliminary issue

[110] The Church commenced disciplinary processes against 16 other pastors in January 2024. None of the other pastors is a plaintiff, and none testified. The defendants applied to join some of the other pastors, but Pastors Na'amanu and Young opposed the application. Anderson J declined joinder, largely because trial then appeared imminent.[37]

[111] Mr Marsich invited me to consider the other pastors' treatment, saying it was relevant as it was analogous to that of Pastors Na'amanu and Young. Indeed, proposed relief encompasses declarations in relation to the other pastors.

[112] I decline to approach matters this way given the usual principle a plaintiff may complain about their own treatment only;[38] and given the risk of factual misadventure in the absence of evidence from the other pastors. To do as the plaintiffs' wish would also approach joinder when they opposed it.

The absence of warnings

[113] Clause 20(4) of the constitution provides for the discipline of pastors, and reads:

> **Pastors Under Discipline**
>
> The Executive Council shall initiate the process of investigating and disciplining any credentialled person, where there is good reason to believe that person's behaviour is likely to damage the biblical standing or reputation of the person, a local church and/or the Fellowship as a whole. The process of discipline can include suspension of the ministerial credential of the person concerned.
>
> Grounds for discipline shall include abuse of authority extending over a period of time, sexual immorality, any crime punishable by imprisonment, serious

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37 Judgment of Anderson J, above n 2, at [83].

38 See, for example, *Wall*, above n 8; and *Auimatagi v Mangere Congregations Church of Jesus Trust Board* [2025] NZCA 429 at [78].

> financial mismanagement, inappropriate behaviour, departure from the tenets of the faith and any or good and sufficient reasons including the accumulation of such behaviours. Unless the offence is of such a nature that immediate action is necessary, a Pastor should receive at least one oral warning and at least one written warning prior to any disciplinary action being commenced.
>
> The Executive Council may decide to remove the credential after all aspects of the case have been thoroughly investigated and tested according to the Scriptures and the understanding of them in the Statement of Faith. In such a case, the person disciplined has the right to appeal the Executive Council's decisions to the Tribunal within fourteen (14) days, if they consider they have been treated unjustly. The Credentials of the Pastor may be removed for a period determined by the Executive Council. By way of examples such periods may be periods of six months, two years, or life depending on the seriousness of the offence.
>
> The process of discipline is aimed at restoration if this is necessary and possible.
>
> Pastors whose credentials are revoked shall cease forthwith to exercise all or any functions of their office within the Fellowship.

[114] Mr Marsich contends the process was invalid because clause 20(4) anticipates warnings — "at least one oral warning and at least one written warning prior to any disciplinary action being commenced" — and it is common ground no warnings were given to either pastor.

[115] Mr Marsich emphasises the resolution to initiate the disciplinary process included this passage:

> Due Process: The disciplinary process shall adhere to the due process outlined in the Constitution, including providing pastors with one oral warning and one written warning before any disciplinary action is taken.

[116] Mr Keall contends clause 20(4) was not breached because it contemplates warnings being given before a pastor's credential is removed, rather than suspended. In other words, the warnings are contemplated as part of the penalty phase, and may avoid the need for any penalty, rather than forming of the initial phase commenced by letters of 3 January 2024.

[117] It is unnecessary to resolve this issue for the reasons below.

[118] Clause 20(4) expressly recognises warnings are not required when "the offence is of such a nature that immediate action is necessary". As will be recalled, in

December 2023 the Church obtained an interim injunction against Pastors Na'amanu and Young to preserve access to its hall and the Trust's bank accounts.[39] I accept Mr Keall's submission it was open to the Church to consider the pastors' behaviour in relation to both comprised such an offence, most obviously, "abuse of authority" in terms of clause 20(4).

[119] But even if I am wrong, Mr Marsich's complaint about the absence of warnings rings hollow. Pastors Na'amanu and Young had, in substance, repeated warnings from the Church about their behaviour given the executive council's letters of 23 September 2022 and 17 October 2022 (see [64]); the agenda in connection with the special session of 12 August 2023 (see [43]); and what occurred at the special session (see [45]). Both pastors must have known they were continuing to challenge, directly, the Church's authority.

Interim suspension

[120] Mr Marsich contends interim suspension of a pastor's credentials is not available under the constitution because clause 20(4), which is the only relevant provision, does not expressly provide for interim suspension.

[121] Mr Keall contends interim suspension is available, as the power of suspension created by clause 20(4) implicitly includes the power to suspend on an interim basis. Mr Keall says in this context, the greater necessarily includes the lesser.

[122] I am inclined to accept Mr Keall's contention, but I discern no answer to Mr Marsich's complaint the pastors were not given an opportunity to respond before being suspended. That follows from the letters themselves, both pastors were told they were suspended, "effective immediately", and the absence of an opportunity to be heard before the letters were sent.

[123] That said, the breach of natural justice is notional only. The evidence (strongly) implies Pastors Na'amanu and Young would not have availed themselves of an opportunity to be heard. Neither attended the special session on 12 August 2023, and

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39 First judgment of Venning J, above n 2.

neither attended the disciplinary meeting on 26 January 2024. As discussed earlier, neither had attended any Church meeting or session since November 2022. Consequently, even if the matter were justiciable, which is discussed shortly, I would not regard the breach as invalidating the process. It did not affect the chain of causation, or put another way, cause prejudice.

Bad faith?

[124] The Church held elections for its officers at an annual general meeting of the general council in April 2024. Mr Marsich contends the disciplinary process against Pastors Na'amanu and Young was commenced to prevent them and their supporters from holding Church offices. Mr Marsich argues this purpose is revealed by circumstantial evidence. Nominations for the elections closed 30 December 2023, and a nomination was made that day for three pastors who were subsequently subject to the disciplinary process. Pastors subject to that process did not make the ballot because their credentials as pastors had been suspended.

[125] Mr Marsich invites attention to timing. As observed, nominations closed 30 December 2023 and the resolution to commence disciplinary processes was made 2 January 2024.

[126] This analysis is superficially plausible, but not more. Disciplinary letters were sent by the Church to pastors other than those nominated for office, so no evident correspondence or correlation between nomination and discipline appears. The Church had proximate cause to commence disciplinary processes against Pastors Na'amanu and Young. As observed at [101], it had, in December 2023, been required to obtain an interim injunction to maintain control of its hall and the Trust's bank accounts. Both were integral to the operation of the Church.

[127] The analysis also gives inadequate weight to context. By January 2024, Pastors Na'amanu and Young had been overtly challenging the Church's authority for more than a year. Events of December 2023 implied that was to continue.

[128] What then of the circumstances identified by Mr Marsich? I consider these genuine coincidences, not anything sinister. I reject the contention of bad faith accordingly.

[129] This leaves a vaguely related issue. Pastor Morisa was one of the members of the executive council who resolved to commence disciplinary processes. Mr Marsich contends this invalidates the process as Pastor Morisa was the very target of the pastors' complaint: that he should not be a pastor because of his conviction.

[130] In response, Mr Keall contends:

> The constitution confers the power on the [Executive] Council as a body and contains no provision excluding a member with an interest; the plaintiffs' proceeding was against the [Church]'s elected treasurer in that capacity, and every member of the Council had an interest in its outcome; and the resolution bears eight signatures so that without Ps Morisa's it had the support of seven of the eight members then serving.

[131] I agree.

Justiciability

[132] Mr Keall contends the executive council's disciplinary process is not justiciable because it is informed by religion, hence beyond the Courts' purview. He observes clause 20(4) anticipates a suspension decision to be "tested according to the Scriptures and understanding of them in the Statement of Faith". He says whether "conduct is unbecoming of a minister" and incompatible with "biblical standing" comprises matters the Court lacks competence to determine.

[133] Applicable principle is that discussed earlier at [26]–[30]. With it in mind, I make two points.

[134] First, the grounds the executive council relied on to initiate the disciplinary process are (a) clearly stated and (b) secular in nature. A "disregard for Church due process of executive council appointments" is a procedural ground; and "misuse of fellowship finances", "breach of authority", "failure to disclose accurate fellowship financials" and "unauthorised and fraudulent changes to the charities register" address the pastors' secular management of Church finances. Moreover, on that topic, I have

concluded the pastors' breached their fiduciary duties — a subject within the Court's purview.

[135] Second, while the constitution requires the executive council to make decisions tied to "biblical standing", no such decision has been made in relation to either pastor. The executive council's decision was interim only and, as observed, confined to secular grounds.

[136] Consequently, a conclusion of justiciability on these facts involves no religious, spiritual, or theological judgement, nor any interference with any of these subject matters.[40] But as will be apparent, the issue is moot because the disciplinary process was valid.

Summary of conclusions

[137] The proposed declarations in relation to Pastor Morisa's eligibility to be a pastor and hold Church office are not justiciable on theological grounds. In any event, declaratory relief would be inappropriate in the circumstances, including because it would have an intrusive retrospective dimension and cast an unfair shadow over Pastor Morisa's clerical service.

[138] The special session on 12 August 2023 was valid. The executive council had the power to remove Pastors Na'amanu and Young as trustees and appoint successors. The executive council was entitled to conclude the matter involved extreme urgency. Natural justice was not breached in respect of the session.

[139] The payments to Woodroffe Law Partnership were made without the Trust's authorisation, and therefore in breach of Pastors Na'amanu and Young's fiduciary duties. The executive council did not authorise the payments or acquiesce to them.

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40 *Te Whakakitenga,* above n 21, at [22] citing *Stratford Racing Club Inc v Adlam* [2008] NZCA 92, [2008] NZAR 329 at [55]; *Hopper v North Shore Aero Club Inc* [2007] NZAR 354 (CA) at [12]; *Tamaki v Māori Women's Welfare League Inc* [2011] NZAR 605 (HC) at [43]; and *Pritchard v Evans*, above n 28.

[140] Pastors Na'amanu and Young also breached their fiduciary duties by (a) continuing to assert authority over the Trust's bank accounts and (b) the Church hall.

[141] The disciplinary process in relation to Pastors Na'amanu and Young was valid, without bad faith, and justiciable. A breach of natural justice occurred in relation to the pastors' right to be heard vis-à-vis interim suspension, but that breach was notional only as both pastors had been given repeated warnings about their conduct and chosen to boycott Church meetings and other events. They would not, therefore, have exercised their right to be heard had they been given an opportunity to be heard.

Result

[142] The claims of Pastors Na'amanu and Young are dismissed.

[143] The counterclaims are upheld, with the relief sought. I make these declarations:

(a) Pastors Na'amanu and Young have no right to be the signatories of the accounts, that right being held with the trustees of the Trust, as persons nominated by them.

(b) The trustees have the exclusive right to possession and control of the Samani Pulepule Community Hall.

[144] I order:

(a) ASB and Heartland Bank make the Trust's nominees the authorised signatories of the respective Church bank accounts in accordance with the Court's interim orders of 8 December 2023.

(b) Pastors Na'amanu and Young to pay the Trust the outstanding balance of funds advanced to Woodroffe Law Partnership (being $56,258.76) with interest under the Interest on Money Claims Act 2016.

Costs and quantum of equitable damages

[145] Any submission on behalf of Ms Woodroffe's firm in relation to costs is to be filed and served on or before **5 pm, 4 February 2027**.

[146] Submissions in relation to the quantum of equitable damages and costs are to be addressed in this manner:

(a) The submission on behalf of the Church (and others) is to be filed and served on or before **5 pm, 18 February 2027**. That submission should address any by Woodroffe Law Partnership on costs.

(b) The submission on behalf of Pastors Na'amanu and Young is to be filed and served on or before **5 pm, 4 March 2027**.

[147] No submission may exceed 10 pages.

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Downs J

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