IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

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

CIV-2025-485-865
[2026] NZHC 517

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: 2 February 2026

Counsel: M G Colson KC, M M Piripi, W I Gucake and E E Young for Applicants
D M Salmon KC and R J Warren for Respondents

Judgment: 10 March 2026

JUDGMENT OF RADICH J

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[1] Ms Kapa-Kingi was in 2017 asked by Dame Tariana Turia[1] to stand as the candidate for Te Pāti Māori[2] in the Te Tai Tokerau electorate.[3] She was elected as the member of Parliament for the electorate at the 2023 election.[4]

[2] In November 2025, Ms Kapa-Kingi was expelled as a member of Te Pāti Māori by some members of the Pāti's National Council.[5]

[3] In a decision on 5 December 2025,[6] I granted an interim order requiring the National Council and National Executive of Te Pāti Māori[7] to reinstate Ms Kapa-Kingi as a member of Te Pāti Māori pending the substantive hearing of the proceeding.[8]

[4] In this decision, which follows the grant of the interim orders, I determine the following issues:

(a) Does the Court have jurisdiction to consider this proceeding?

(b) Did the National Council or the National Executive have the power, under the Te Pāti Māori Constitution[9] (the Kawa) to suspend Ms Kapa-Kingi, as one or both of them did on 23 October 2025?

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1 Dame Tariana Turia founded Te Pāti Māori in 2004.

2 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).

3 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.

4 The Labour Party's Kelvin Davis took the seat in the 2020 election. Ms Kapa-Kingi took it in the 2023 election.

5 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.

6 *Kapa-Kingi v Tamihere* [2025] NZHC 3776.

7 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 comprises the Pāti president, both co-vice presidents, both co-leaders and, optionally, a general manager, treasurer, and secretary.

8 At the substantive hearing, the interim orders were extended until the release of this discussion.

9 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) [the Kawa].

(c) If so, did the National Council or the National Executive comply with the terms of the Kawa in suspending Ms Kapa-Kingi?

(d) In expelling Ms Kapa-Kingi from Te Pāti Māori on 9 November 2025, did the National Council:

(i) comply with the terms of the Kawa in a procedural sense?

(ii) have grounds to expel her under the terms of the Kawa?

(e) Was Mr Tamihere validly re-elected as president of Te Pāti Māori on 20 July 2024 and, if not, are presidential actions taken by him since then valid?

Factual background

[5] In this section of the decision, I will outline the relevant factual background in a descriptive, chronological way. I do not analyse it here, apart from some passing comments. The analysis comes later.

[6] And I do not describe all of the evidence that has been given. I mean no discourtesy to the deponents in not doing so. But the case turns on several fundamental points, so I focus upon them. There are a number of factual areas to which the Court should not travel. The aspirations of members of the Pāti and views on its leadership are one. These are not matters for a Court in a case like this. Value judgments over notions including whether particular facts bring disrepute are another. The legality of the decision-making process is a place for the Court but value judgments – where there can be more than one tenable value – is a matter for the Pāti. That is particularly so where, as here, the decisions in question have been made by an unincorporated political party, as I shall come on to explain.

Ms Kapa-Kingi's political journey

[7] In 2017 at Waitangi, Dame Tariana Turia approached Ms Kapa-Kingi and asked if she would stand as a candidate at the next election for Te Tai Tokerau for

Te Pāti Māori. Ms Kapa-Kingi admired Dame Tariana and, having sound experience in her kete, she took on the challenge. She was not successful in the 2020 general election, coming in second to Labour's Kelvin Davis. She stood again at the 2023 general election and was successful.

[8] The 2023 election results demonstrated the incoming tide of support, throughout the motu, for Te Pāti Māori. It did not win a seat in the 2017 election. It won six seats in the 2023 election.[10]

Mr Tamihere's election as president

[9] Te Pāti Māori first elected John Tamihere as its president on 8 June 2022.

[10] Under cl 6.2 of the Kawa: "The election of the president and co-vice presidents shall occur on a rotational, triennial basis".

[11] The minutes of an annual general meeting of the Pāti on 20 July 2024 record that there was at the meeting "Confirmation of Executive Positions by Affirmation" for a three-year period, effective to July 2027. The executive positions included Mr Tamihere as president, Fallyn Flavell as vice-president wahine, Eru Kapa-Kingi as vice-president tāne, and Lance Norman as secretary and treasurer.

[12] Ms Kapa-Kingi attended the July 2024 annual general meeting in person. Attendees at the Pāti's 7 December 2025 annual general meeting approved those July 2024 annual general meeting minutes. Ms Kapa-Kingi and representatives of the second applicant attended the December 2025 annual general meeting.

Budgetary issues

[13] During 2024, Ms Kemp, the member for Tāmaki Makaurau, had become unwell. The Pāti co-leaders agreed with Ms Kapa-Kingi that she and her staff would take on a portion of the workload for the Tāmaki Makaurau electorate while Ms Kemp

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[10] The five other Te Pāti Māori candidates who were successful in winning their seats in 2023 were co-leaders Rawiri Waititi (Waiariki) and Debbie Ngarewa-Packer (Te Tai Hauāuru), Takutai Tarsh Kemp (Tāmaki Makaurau), Tākuta Ferris (Te Tai Tonga) and Hana-Rāwhiti Maipi-Clarke (Hauraki-Waikato).

was unwell. Ms Kapa-Kingi described the work that she and her staff undertook for Ms Kemp and her electorate as including the making of speeches in the House, attending select committee meetings for Ms Kemp,[11] arranged and attended combined weekly administration meetings with the Tāmaki Makaurau and Te Tai Tokerau teams, provided regular updates to Ms Kemp, and supported the Tāmaki Makaurau staff with financial and office administration.

[14] Ms Kapa-Kingi has described in evidence the agreement between her and the co-leaders that, in recognition of the additional work taken on, the Te Tai Tokerau electorate Parliamentary Service budget would receive a transfer from the Tāmaki Makaurau Parliamentary Service budget.

[15] I pause here for a moment to explain the way in which funding for MPs works.

[16] The Speaker of the House allocates funding to MPs annually through Speaker's Directions.[12] MPs may use their allocated funding for matters such as travel, administrative and support services, and communications services. An MP can transfer all or part of their funding allocation to their party or to another member of their party if the MP's party leader or whip has approved the transfer in advance.[13]

[17] The Directions require each party and MP to prepare a budget with the assistance of the Parliamentary Service | Te Ratonga Whare Pāremata at the beginning of their parliamentary term to determine how they propose to spend their allocated funding.[14] Parties and MPs must update their budgets 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.[15] It is through the Service that MPs spend their funding allocations: the Service pays staff

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11 To take an example, Ms Kapa-Kingi attended 63 Social Services Select Committee meetings for Ms Kemp between June 2024 and June 2025, involving, as well, associated reading and preparation. She did this in addition to her own work and select committee assignments.

12 The current Speaker's Directions are the Speaker's Directions 2023. During the period relevant to this review, the Speaker had to make Directions in accordance with ss 23 and 24 of the Members of Parliament (Remuneration and Services) Act 2013. Parliament repealed this Act on 13 November 2025 by passing the Parliament (Repeals and Amendments) Act 2025. The Parliament Act 2025 has replaced it.

13 Speaker's Directions, pt 8, cl 63(1).

14 Part 8, cl 59.

15 Parliament Act 2025, s 123(1)(a).

and it is through 'P-cards' (a form of credit card) that MPs and their staff spend funding moneys. Ms Kapa-Kingi, for example, has no separate bank account through which she or her staff pay operational expenses — The Service pays everything directly.

[18] 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.[16] Each party leader and party whip must, under the Directions, monitor their MPs' expenditure on a monthly basis.[17] If an MP is incurring excessive costs, their party leader or whip may advise them to limit, or not incur, any further costs in that year.[18] Ultimately, MPs are personally responsible for their and their parties' use of their MP funding allocation.[19]

[19] The Directions provide for ways to balance the books in the event that an MP's actual costs exceed budget. If the MP's party leader or whip approves in advance, another MP in their party, or their party itself, may transfer unused funding to them, and they may transfer unused proportions of their own annual funding to a proximate parliamentary year.[20] 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.

[20] 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".[21]

[21] On 11 and 12 December 2024, the co-leaders of Te Pāti Māori approved a transfer of $33,000 from the Tāmaki Makaurau electorate to the Te Tai Tokerau electorate for the work that Ms Kapa-Kingi and her people undertook for Ms Kemp during the period from July to September 2024.

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16 Speaker's Directions, pt 8, cl 60(1)(a) and (2)(c).
17 Part 8, cl 61(1).
18 Part 8, cl 61(2).
19 Part 2, cl 6(1)(a).
20 Part 8, cls 63 and 66.
21 Schedule 2, pt 3, item 1. The total allocation comes from the total of sub-allocations for "staff", "non-staff" and "general".

[22] On 16 December 2024, a Te Tai Tokerau electorate representative asked the co-leaders to approve a further $30,000 transfer from the Tāmaki Makaurau budget to the Te Tai Tokerau budget to cover the period from October 2024 to December 2024. She requested also that the co-leaders approve a monthly transfer of $10,000 from the Tāmaki Makaurau budget to the Te Tai Tokerau budget, effective January 2025, until Ms Kemp's return. Ms Kapa-Kingi has referred to an expectation on her part that there would be ongoing payments in recognition of the work that she had undertaken. She refers to a conversation she had with Ms Ngarewa-Packer in March 2025 in which Ms Ngarewa-Packer verbally advised her that she had approved the requested transfer.

[23] While Ms Ngarewa-Packer acknowledges she and Mr Waititi had budgetary conversations with Ms Kapa-Kingi in March 2025, she denies verbally advising that she had approved Ms Kapa-Kingi's requested transfers. She makes the point that Ms Kemp returned to work from January 2025 and that, in March 2025, Ms Kemp was adamant that Tāmaki Makaurau should not make further transfers to Te Tai Tokerau, saying in a text to Ms Ngarewa-Packer on 12 March 2025: "I can't afford another transfer of $45k that's just ridiculous that would mean they take $79k for 5 months for doing what 🙀".

[24] Sadly, Ms Kemp passed away on 26 June 2025. Ms Kapa-Kingi and Ms Ngarewa-Packer appear to agree they had a conversation in early July 2025 about the requested transfer. Ms Kapa-Kingi says that Ms Ngarewa-Packer indicated she would sort out the payment. Ms Ngarewa-Packer cannot remember exactly what she said but can recall telling Ms Kapa-Kingi that she would help sort out her budget issues. She denies ever promising to Ms Kapa-Kingi that she would approve the requested transfer.

[25] A Pāti financial report for the period ending June 2025 projected that Ms Kapa-Kingi would overspend her Year 2 budget by $133,409. It projected that the Pāti's four other electorates would remain within their Year 2 budget. However, it also forecast that the co-leaders would overspend the Year 2 "Te Pāti Māori leaders" budget by $42,286.

[26] On 7 July 2025, a Parliamentary Service representative wrote to Ms Kapa-Kingi explaining that she was on track to overspend 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 annual budget and recommended measures that would enable her to remain within budget. They included recommendations to discontinue engagement with a contractor (Ms Kapa-Kingi's son, Eru Kapa-Kingi), reduce a casual staff member's hours to zero, stop all staff travel, and bring forward 10 per cent of her Year 3 budget to Year 2.

[27] As Ms Kapa-Kingi was liaising with the Parliamentary Service representative, the Parliamentary Service wrote to Te Pāti Māori, raising the forecast overspend. On 1 August 2025, a representative of the Service wrote to Ms Kapa-Kingi explaining that she had less than $5,000 of her current budget remaining for Year 2 and that she would need to cover any overspend personally if she did not put alternative arrangements in place. The Parliamentary Service forwarded this email to Te Pāti Māori and, on 3 August 2025, Mr Tamihere wrote to Ms Kapa-Kingi, expressing his frustration, outlining options as he saw them and making the point that "it is not a Pati wide performance matter it is a sole MP management issue". Mr Tamihere said: "In the event we cannot resolve this matter over the next 72 hours with your support, the Pati must move to protect its interests." He went on to note that the Pāti would announce its candidate list for the next general election at the September 2025 AGM.

[28] The co-leaders did not approve the transfers that Ms Kapa-Kingi had expected from the Tāmaki Makaurau budget. However, she resolved the forecast overspend with the Parliamentary Service on 3 August. Measures to manage the issue included transferring 18 per cent of Year 3's budget to Year 2, dropping staff P-cards limits to $1, and ceasing casual staff hours, contractor engagement and non-staff costs such as staff travel. Ms Ngarewa-Packer confirmed the 18 per cent transfer in an email to the Speaker, Gerry Brownlee, on 19 August 2025.

[29] As a result, the Parliamentary Service transferred $91,000 from Ms Kapa-Kingi's Year 3 budget to cover the overspend in her Year 2 budget. The measures resulted in Ms Kapa-Kingi underspending her augmented Year 2 budget by $1.

[30] The measures included Ms Kapa-Kingi's electorate office ending its contract for services with Eru Kapa-Kingi's company.

[31] However, nothing turns on that contract for services. The Parliamentary Service approved the contract and it operated openly. As Ms Kapa-Kingi has said, employing whānau is common practice within Te Pāti Māori on the basis that the "support of whānau strengthens our ability to represent our people in Parliament".

Ms Kapa-Kingi's removal as party whip

[32] The budgetary issues seemed to cause relations between Ms Kapa-Kingi and Pāti executives to spiral downwards. During September 2025, Te Pāti Māori leadership removed Ms Kapa-Kingi from the party whip role. Mr Norman has said that the Pāti executive wanted Ms Kapa-Kingi to focus her time and energy on the 2026 general election and to campaign for her seat, rather than spending time on the duties of the whip.

[33] Hui on 29 and 30 September – which Te Pāti Māori leadership and Ms Kapa-Kingi attended – did not resolve matters.[22]

[34] Ms Kapa-Kingi has in her evidence described arriving at a 30 September 2025 caucus meeting that Mr Tamihere chaired.[23] She described Mr Tamihere as being visibly angry with her and telling her that the leadership had removed her as party whip. She was not given advance notice of the decision or an opportunity to respond. The leadership's exclusion of Ms Kapa-Kingi from the decision-making process frustrated her and she went to leave the meeting. As she did so, she has said that Mr Tamihere told her that if she walked out the door, he would not endorse her candidacy for the next election. Ms Kapa-Kingi did leave, saying to Mr Waititi on the way out that she had expected better from him.

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22 Mr Norman noted that a representative of the Te Tai Tokerau Electorate Council was present at the 29 September hui.

23 Mr Norman (the Pāti's secretary and treasurer) said that he and Mr Tamihere began attending the weekly caucus meetings of the Pāti "to provide support for the co-leaders and to try to bring the MPs together as a unified team".

Media interviews

[35] On 1 October 2025, Te Hiku Media released an interview with Ms Kapa-Kingi, primarily about her removal as whip. One of the questions was:

> You are definitely a team player. Up in here in Aupōuri, and that is your reputation throughout all of Aotearoa. Do you like the team [a reference to the Pāti]?

[36] Ms Kapa-Kingi's answer was as follows:

> The kaupapa is still, in my view, the most, I mean, quite honestly, I think it's still the closest in heart and mind to what our whānau Māori, what hapū Māori really, really desire and want. But my expectation is that we should do better and we can do better. And I think moving forward, because I hear it too, the rumours you hear, the direct, not even rumours, just the direct, Meno what on earth is going on? I speak to that, I present what I know works for Te Tai Tokerau and I bring as much of that kaha and that mindfulness in that, so I am part of the team, even sometimes despite the dysfunction.

[37] Essentially, then, Ms Kapa-Kingi used the word "dysfunction" in an aside, having confirmed her support for Te Pāti Māori. 1News reported on her "dysfunction" comment on 2 October 2025, the same day it published Eru Kapa-Kingi's claim that the Pāti's leadership "was effectively a dictatorship model".

[38] Ms Kapa-Kingi has said in evidence that: "While I was frustrated, I was very careful in the interview not to damage the reputation of the Pāti."

[39] Te Pāti Māori's leadership was deeply concerned about the comments and their timing. On 2 October 2025, Mr Norman sent to National Council members and the Pāti electorates an email setting out the leadership's rejection of Eru Kapa-Kingi's comments. This email inflamed tensions between Pāti leadership and Te Tai Tokerau representatives.

[40] On 7 October 2025, at a Te Pāti Māori caucus meeting, Mr Tamihere asked the attendees to focus on Oriini Kaipara's maiden speech in the House and on Hana-Rawhiti Maipi-Clarke's recognition in Time magazine's list of 100 emerging leaders. They were certainly significant moments for the Pāti.

[41] However, the Pāti executive was concerned with an interview Ms Kapa-Kingi gave later that day. In response to a question about Eru Kapa-Kingi's recent negative comments about the Pati, Ms Kapa-Kingi said: "It is time for change is what I see Maiki and change is good for us."

The Pāti leadership turns on Ms Kapa-Kingi

[42] On 3 October, Ms Kapa-Kingi sent a message to all the Te Pāti Māori MPs proposing that they spend a day and a night together to talk things through. She wanted a chance for the MPs to have space away from the National Executive so that "[we could] just be ourselves and connect with one another". There was to be no agenda. All MPs agreed to Ms Kapa-Kingi's proposal.

[43] However, on 9 November 2025, Kiri Waititi-Tamihere, the Pāti's General Manager, called a hui between the National Executive and the MPs (and two others) at a time that clashed with the MP-only hui that Ms Kapa-Kingi had proposed. Unfortunately, the meeting was heated. Ms Kapa-Kingi's evidence is that Ms Waititi-Tamihere suggested that there should be a "ceasefire", and that Mr Tamihere responded that she should not speak for him.

[44] Ms Kapa-Kingi said in her evidence that, at the end of the hui, Mr Tamihere said to her that he was "coming for [her] boys" and he was going to have utu. She said that the personal attack shocked her. It was, as a result, her last meeting with the National Executive. Executive members of the Te Tai Tokerau and Te Tai Tonga Electorate Councils sought a National Council hui to deal with the ongoing issues. Accordingly, Mr Norman arranged a National Council hui but the manner in which he did so is concerning. Kyla Campbell-Kamariera, co-chair of the Te Tai Tokerau Electorate Council, has explained in evidence that she received an email from Mr Norman at 1.20 pm on Sunday, 12 October 2025, saying that the hui would take place at 7 pm that same day. Mr Norman did not provide a meeting pack provided with the agenda. The situation made the Te Tai Tokerau Electoral Council apprehensive about how the Pāti leadership would run the meeting.

[45] Shortly after Mr Norman sent the 1.20 pm email advising of the 7 pm hui, he distributed for the meeting a "fact sheet". He sent it to all National Council members

and to the General Manager. Regrettably, the document did not record facts. Rather, it made quite serious allegations against Ms Kapa-Kingi and Eru Kapa-Kingi. It did not endeavour to provide balance.

[46] Subsequently, at 3.04 pm, the Te Tai Tokerau Electorate Council asked Mr Norman to add the following matters to the agenda:

1. Tikanga Māori capability training for the National Executive,
2. Best practice governance training for the National Executive, and,
3. Tai Tokerau lack of confidence in the National Executive.

[47] Mr Norman replied at 4.36 pm, saying the hui would deal with these three matters under the "General Business" agenda item. Nevertheless, when the Te Tai Tokerau Electoral Council considered the terms of the "fact sheet", the environment changed markedly. As Ms Campbell-Kamariera said:

> When I saw the 'Fact Sheet' I knew the meeting was not going to be a safe space to have a productive discussion about everything that had arisen between Mariameno and the National Executive.

[48] Accordingly, the Te Tai Tokerau Electorate Council members decided that they would not attend the meeting.

[49] On 15 October 2025, Mr Norman wrote to the Te Tai Tokerau Electorate Council expressing concern that its members did not attend the meeting or send any apologies. He said, among other things: "No one spoke against the Fact Sheet but were happy to have finally received the response and clarification." He asked whether the Te Tai Tokerau Electorate Council had abandoned Te Pāti Māori and he requested "your position urgently".

[50] In a response on 17 October 2025, Ms Campbell-Kamariera said: "Our Electorate Executive remain focused on prioritising our people."

[51] On 16 October, Mr Norman wrote to Ms Kapa-Kingi alleging breaches of the Kawa. He made particular reference to cl 9 and to two "Serious Dispute issues" which he described in the following way:

(1) Misuse of Pāti Funds for Personal Gain, and

(2) Bringing the Pāti into Disrepute.

[52] He sought a response by the end of the following day. During the following day, 17 October, Ms Kapa-Kingi sent a preliminary response, observing that a single day did not provide a proper opportunity to respond to the detailed allegations Mr Norman had made. However, she provided preliminary responses and said she intended to respond substantively early the following week. Ms Kapa-Kingi made the point that enough mamae had been caused for all concerned and that she wished to resolve matters in a way that was fair, transparent to Pāti members, tikanga-based and enduring, suggesting that there might be a mediated hui to that end.

[53] Mr Norman responded on 17 October. He did not respond to Ms Kapa-Kingi's suggestion that they arrange a mediated hui, but requested instead that she "take urgent legal advice", and said: "We can no longer tolerate the constant sabotaging of our Pāti." He told her that the deadline for her substantive response to the allegations was 21 October.

[54] The primary point made in Ms Kapa-Kingi's further letter on 21 October 2025 to Mr Norman was to ask how the Kawa was being applied in the circumstances. She observed that, under cl 9.5 of the Kawa, a serious complaint like this needed to be communicated in writing first to the relevant electorate council and, if not resolved at that level, to the Disciplinary and Disputes Committee which was then to seek resolution on the basis of the kaupapa of the Pati.

[55] Ms Kapa-Kingi concluded her letter of 22 October in the following way:

> As indicated already, my preference is that we come together in a safe and mediated space, kanohi ki te kanohi. In my view, such a hui would de-escalate matters, is consistent with our tikanga and has the potential to provide an enduring solution for the benefit of all. You have so far not responded to this as a way forward. Please advise if you are open to this.
>
> If you are not open to this, I would like confirmation that the disputes clauses in the constitution are being complied with properly, and for reasonable time frames to be afforded to me, so that I can respond appropriately and consider engaging legal counsel.

[56] Regrettably, the Pāti's leadership did not take up Ms Kapa-Kingi's suggestion for a mediated discussion. Moreover, the leadership were not following the Kawa's disputes clauses and, importantly, did not provide Ms Kapa-Kingi an opportunity to respond to the National Council. To the contrary, they excluded her from the processes that led to her expulsion from the Pāti.

Ms Kapa-Kingi's purported suspension

[57] On 21 October 2025, Mr Norman distributed a notice for a National Council hui on 23 October 2025. On 23 October, before the hui, he sent an email with many attached documents, including correspondence between the National Executive, Ms Kapa-Kingi and the Te Tai Tokerau Electorate Council and links to news articles. Mr Norman did not send either the notice or the information pack email to Ms Kapa-Kingi or to anyone within the Te Tai Tokerau Electorate Council. Neither email appears to have disclosed any proposed resolutions or motions. In his evidence to the Court, Mr Norman said:

> Given the media leak that had occurred prior to the 12 October 2025 National Council hui, we made the decision to limit invitees to essentially a quorum of the National Council.

[58] In subsequent correspondence between counsel for the parties, it was said that the "we" in that sentence was the National Executive.

[59] Mr Norman went on to say in his evidence:

> The second applicant [the Te Tai Tokerau Electorate Council] and the four MPs (including Ms Kapa-Kingi) were not invited to the National Council hui on 23 October 2025, where we discussed four resolutions.

[60] A meeting, held out to be a hui of the National Council, took place on 23 October 2025. However, it was not the National Council as required by the Kawa. Under the constitution, the National Council comprises:[24]

(a) The Pāti president and two co-vice presidents. The president was in attendance as was one vice president, Fallyn Flavell;

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[24] Schedule 2, cl 1.

(b) The two co-leaders. Ms Ngarewa-Packer and Mr Waititi were both present;

(c) All MPs. None of the Pāti's MPs were present; and

(d) Up to four council members selected by each electorate. No members of the Te Tai Tokerau electorate were present.

[61] The minutes record that the hui passed four resolutions:

> That the Te Tai Tokerau Electorate Executive be reset by way of a Special General Meeting, on the basis that the Electorate Executive is no longer functioning in accordance with party requirements and the Kawa.
>
> That the Te Tai Tokerau MP has seriously breached the Te Pāti Māori Kawa
>
> That the Te Tai Tokerau MP be suspended.
>
> That the National Executive develop and recommend the most appropriate process to implement the suspension of the Te Tai Tokerau MP and report back to the National Council.

[62] For each resolution, five electorates voted in favour and one abstained (Te Tai Tonga). Therefore, it would seem that each electorate had one vote. It is not apparent where that process came from. The Kawa does not provide for it. Rather, the Kawa requires the National Council to make all decisions:[25]

> … by consensus as a customary practice, having regard to constitutional obligations and the kaupapa of Te Pāti Māori. If the hui cannot reach consensus after full discussion of the issue, then the chairperson will ask the meeting to accept the view of the majority in the best interests of the Pāti.

[63] The National Executive sent the hui minutes to the Te Tai Tokerau Electorate Council on 26 October 2025. The Electorate Council responded on 27 October, raising a broad range of issues with the meeting and its resolutions. Just by way of example, the Electorate Council:

(a) rejected the claim that it had ceased to perform its duties;

(b) rejected the validity of the resolutions the hui passed;

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[25] Schedule 2, cl 10.

(c) asked whether a formal complaint existed and who the complainants were – a question Ms Kapa-Kingi had asked in her 22 October letter;

(d) highlighted that the Kawa requires complainants to follow a defined process and observed that this process had not been followed;

(e) pointed out factual inaccuracies within the terms of the minutes;

(f) observed that the Kawa does not empower the National Council or Executive to "reset" an electorate council.

Ms Kapa-Kingi's purported expulsion

[64] Mr Norman's evidence is that, after the 23 October hui, "Te Pāti Māori staff conducted a review of every instance they could find where an MP had been expelled or resigned from their party". The review sought to identify "circumstances with similarities to what we were facing with Ms Kapa-Kingi, where disciplinary action had followed public breaches of trust and undermining of party leadership". The resulting 10-page document is, for the most part, a series of quotations from former leaders of political parties explaining why they had suspended or expelled party members. From the examples – across the political spectrum – a summary is then given. It tends to show that the course of action Te Pāti Māori took was based upon a limited view of these historic examples rather than on the process the Kawa requires. For example, it is said in the document:

> Based on historical precedence, successful suspension & expulsion of MP's requires coordinated action between party leaders and the party president & national executive. Whereas party leaders are tasked with making the case for suspension and/or expulsion from caucus on caucus matters, the role of the president and national executive is to reinforce this course of action consistent with party process & constitution.

[65] The document then goes on to list five recommendations. One of them is: "That our course of action complies with the Electoral (Integrity) Amendment Act 2018".[26] But this is not a set of statutory provisions that was relevant at that point in

[26] I understand this is intended to be a reference to ss 55A–55E of the Electoral Act — the "waka jumping" provisions.

time. The recommendations included a comment that the course of action proposed "is consistent with historical precedent". The National Executive used the document as a basis to claim that expelling Ms Kapa-Kingi in this way would be valid.[27] It was not provided to Ms Kapa-Kingi or to the Te Tai Tokerau Electorate Council.

[66] On 5 November 2025, three Te Pāti Māori MPs – Tākuta Ferris (the member for Te Tai Tonga), Oriini Kaipara (the member for Tāmaki Makaurau) and Ms Kapa-Kingi – wrote to the National Council. They expressed a range of "urgent concerns" requiring immediate intervention. They were troubled that the Pāti had breached its tikanga in the way it had taken recent decisions, that the National Council had not been meeting as the Kawa required (particularly when its 23 October meeting excluded an electorate), and that the National Executive was improperly making decisions without the National Council's oversight. The MPs sought an immediate audience with the National Council. They said: "We make this request not out of division, but out of duty — to restore order, uphold mana, and ensure the movement continues to serve the aspirations of our people."

[67] It is unclear to whom the three MPs sent their letter and there is no evidence that those who attended the 9 November hui saw the letter in advance of or during the meeting. Tu Chapman, the chairperson of the Te Tai Tonga Electorate Committee has said in evidence that, on 7 November 2025 at 7 pm, she received an email from Mr Norman advising that a National Council meeting would be held on Sunday, 9 November 2025 at 7 pm by Zoom. She went on to say that the agenda was sent to meeting attendees at 4.10 pm on the day of the meeting. It did not include anything to suggest that the meeting would consider a resolution to expel Ms Kapa-Kingi, or Mr Ferris.[28]

[68] In several affidavits for the respondents – from people holding positions within other electorate councils – it was said that a resolution to expel had been received by them before the meeting and that, on that basis, they liaised with relevant people in

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27 Mr Norman said in his evidence that the 9 November hui (which I come on to describe) was "based on this research".

28 The 9 November hui found that Mr Ferris's conduct had brought the Pāti into "Serious Disrepute" under cl 9 of the Kawa and purported to expel him. The minutes do not specify the conduct through which Mr Ferris supposedly brought the Pāti into disrepute.

their electorates to garner their views on the topic. However, after the applicants pressed the respondents for details about the claimed pre-meeting supply of proposed resolutions, the respondents obtained an affidavit from Te Rina Lemon, the chairperson of the Ikaroa-Rāwhiti Electorate Council. She confirmed that she did not receive any motions or proposed resolutions prior to the 9 November hui and that, rather, it "was a follow up to the hui convened on 23 October 2025 to consider Ms Kapa-Kingi's conduct (among other things)".

[69] I gather from Ms Lemon's affidavit that, before the 9 November hui, Mr Norman had not circulated any papers since those he distributed on 23 October for the 23 October hui. These papers included correspondence between the National Executive, Ms Kapa-Kingi and the Te Tai Tokerau Electorate Executive and links to media statements.

[70] Tu Chapman went on to say in evidence that, while the notice and agenda Mr Norman sent framed the 9 November hui as a National Council meeting, they only invited the National Executive and electorate council chairs (but excluding the Te Tai Tokerau chair). Ms Chapman makes the additional point that these documents provided no information to enable consultation with electorate members.[29] Even if they had provided information on the planned expulsion resolutions, there would have been insufficient time for electorate chairs to consult members as Mr Norman sent the notice 48 hours before the meeting and the agenda less than three hours before.

[71] The agenda Mr Norman sent out for the 9 November meeting (that same afternoon) records only, as a relevant item of business: "Motions to present to the National Council".

[72] The minutes for the 9 November meeting are headed as minutes of "Te Pāti Māori National Council Hui". However, as was the case with the 23 October meeting, Mr Norman failed to invite members of the National Council. Those in attendance were the party vice-president, the co-leaders, Mr Norman as party secretary and treasurer, Ms Tamihere-Waititi (the general manager) a representative of the Tāmaki

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[29] The agenda records only, as a relevant item of business, "motions to present to the National Council".

Makaurau electorate, a representative of the Hauraki-Waikato electorate, two representatives of the Waiariki electorate, one representative of the Ikaroa-Rāwhiti electorate, one representative of the Te Tai Hauāuru electorate and one representative of the Te Tai Tonga electorate.

[73] The hui minutes record the relevant resolution as follows:

> 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:
>
> 1. Mariameno Kapa-Kingi (Te Tai Tokerau):
>
> (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.
>
> Vote:
> - Tāmaki Makaurau - Agreed
> - Hauraki-Waikato - Abstained
> - Waiariki - Agreed
> - Ikaroa-Rāwhiti - Agreed
> - Te Tai Hauāuru - Agreed
> - Te Tai Tonga - Abstained
>
> Carried: 4 in favour, 2 abstentions.

[74] Tu Chapman has in her evidence said that each electorate received an opportunity to talk at the meeting but that "it seemed to me that a decision had already been made and no one was interested in a view that was different to supporting the expulsion". She referred to there being no discussion of the Kawa's relevant provisions and said: "What essentially occurred was a decimation of the wairua of Ms Kapa-Kingi and Mr Ferris". It was, in her view, at odds with Pāti tikanga.

[75] Mr Norman has put it this way:

> The resolutions we put at the 9 November hui were not advanced lightly. We were in an incredibly difficult position, having tried over and over again to engage substantively with the applicants. The resolutions were put in circumstances where we had to act, given the ongoing damage being done to Te Pāti by Ms Kapa-Kingi and her son, and Ms Kapa-Kingi's overspend which had not been explained.

[76] In a subsequent affidavit, Mr Norman added that he had not invited Te Tai Tokerau representatives because they had not appropriately responded to "our concerns about breaches of tikanga and their failure to attend previous meetings". He went on to say that, even if Te Tai Tokerau had been present, the hui still would have passed the resolutions by majority.

[77] On 10 November 2025, Mr Norman wrote to Ms Kapa-Kingi. The full content of the letter is as follows:

> Tēnā koe e Mariameno,
>
> Following a duly convened meeting of the Te Pāti Māori National Council held on Sunday, 9 November 2025 at 7:00pm, the National Council has resolved that you are to be expelled from Te Pāti Māori with immediate effect.
>
> Please contact Parliamentary Services immediately regarding the necessary handover process.
>
> Ngā manaakitanga,
>
> For and on behalf of the Te Pāti Maori National Council, Signed by:
>
> Lance Norman
> Party Secretary
> Te Pāti Māori

[78] Mr Norman included no explanation for the expulsion. On 10 November 2025, the Pāti co-leaders made statements at a press conference. They claimed the National Council expelled Ms Kapa-Kingi from the Pāti for "serious breaches of our kawa", but did not specify what the breaches were, only saying they were "well known" and "well documented".

Jurisdiction to review

[79] Judicial review is:[30]

> … a supervisory jurisdiction which enables the courts to ensure that powers are exercised lawfully. In principle, all exercises of public power are reviewable, whether the relevant power is derived from statute, the prerogative or any other source. The courts acknowledge limits, however. These limits are reflected primarily in the notions that the case must involve the exercise of public power, that even if the court has jurisdiction, the exercise of power must

[30] *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62, [2016] 1 NZLR 1056 at [1].

be one that is appropriate for review and that relief is, in any event, discretionary.

[80] Judicial review is available:

(a) If the relevant entity is exercising a "statutory power" or "statutory power of decision" under the Judicial Review Procedure Act 2016. Te Pāti Māori was not, so the Act does not confer jurisdiction in this case.

(b) At common law if there is an exercise, or contemplated exercise, of power which is in substance public or has public consequences.[31] 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.[32]

[81] The respondents submit that the decisions in issue lack the necessary "publicness" for the court to have jurisdiction to judicially review them for the following reasons:

(a) Unlike in *Payne v Adams* and *Takerei v Winiata* (which, respectively, were judicial review proceedings relating to candidate selection rules and candidate selection itself, both regulated by ss 71 and 71B of the Electoral Act), the decisions at issue do not come into contact with any Act.[33] Unlike candidate selection, where Parliament has imposed statutory duties, party discipline remains a private matter for parties. In that way this remains a *Peters v Collinge* case where, in the absence of a statutory framework, the lens is contractual.[34]

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

32 Although traditionally courts exercised this jurisdiction with some reluctance and saw it 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* [2007] NZAR 354 (CA) at [11].

33 *Payne v Adams* [2009] 3 NZLR 834 (HC) at [96]–[97]; and *Takerei v Winiata* HC Hamilton CIV-2010-419-1071, 2 March 2011 at [56].

34 This Court found that its "jurisdiction to review steps taken by [the National Party] is to be found in contract": *Peters v Collinge* [1993] 2 NZLR 554 at 566 (HC).

(b) The subject matter of the dispute is quintessentially private: whether Ms Kapa-Kingi may remain a member of a private organisation and who is validly president of that organisation.

(c) The fact Ms Kapa-Kingi is a sitting MP does not make a difference. The dispute does not remove her as a sitting MP. It only removes her pāti affiliation.

(d) Finding jurisdiction in this case:

(i) would significantly extend judicial review jurisdiction into disciplinary matters in entirely private organisations.

(ii) would cement the role of the judiciary in regulating New Zealand political parties in ways that depart from precedent.

(e) The existence of a private law (contractual) remedy tells against extending public jurisdiction.[35]

(f) Jurisdiction is fundamental and cannot be assumed. Here, the decisions lack the necessary public element for there to be jurisdiction in judicial review.

[82] I cannot accept those submissions for the following reasons:

(a) It is right to say that ss 71 and 71B provided statutory hooks for the Court's jurisdiction in *Payne* and *Takarei*. However, this Court's jurisdiction to review exercises of public power is rooted in common law. There is no need for a statutorily imposed public duty to constrain the exercise of power, as the respondents suggest.

(b) I disagree that a parliamentarian's continuing membership of a political party and the valid appointment of that party's president are

[35] *Macaskill v Ogden* [2009] NZAR 111 (HC) at [28].

"quintessentially private" subject matters. Political parties are the primary institution through which the public participate in Parliamentary politics.[36] In this respect political parties are distinct from other forms of unincorporated private associations and their exercises of power will accordingly be more likely to have public effects.

(c) I do not agree that the fact the exercises of power related to a sitting MP does not increase the public substance of the decisions. Te Pāti no doubt makes membership decisions which have little, if anything, in the nature of a public exercise of power about them. But a decision to expel a sitting MP, elected as a member of Te Pāti is not one of them.

(d) Reviewing an MP's expulsion from their party is more akin to reviewing a party's candidate's selection process than actions of party discipline short of expulsion.

[83] The public effects of the exercises of power to which this application relate mean that the potential availability of a private law remedy in contract should not remove the Court's jurisdiction. I say that for two primary reasons.

[84] First, the decisions to suspend and then expel Ms Kapa-Kingi from Te Pāti have a significant effect on the voters of Te Tai Tokerau who elected her. They elected her knowing she was a member of Te Pāti. They have an interest in her continuing to operate within a Parliamentary caucus where she may more effectively advance the causes they elected her on. Their interest in Ms Kapa-Kingi's continuing membership should only be overruled through a lawful process. It is this Court's duty to ensure such a process was adhered to. I note also that the distinction the respondents draw between candidate selection having a public nature and member expulsion being wholly private is unconvincing given that the latter will change whom the party eventually selects to contest the relevant electorate.

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[36] Andrew Geddis "The Unsettled Legal Status of Political Parties in New Zealand" (2005) 3 NZJPIL 105 at 105.

[85] Secondly, Mr Tamihere's continuing assumption of the Presidency has clear public effects. The president has considerable influence on candidate selection and therefore on the options voters have at the ballot box. It is appropriate for the Court to review the lawfulness of the process by which the president continues to assume his role.

[86] The respondents submit that, if the Court finds that there is jurisdiction, there is still the need for caution. They say that limits come from two directions: the intensity of review and fundamental judicial review principles. I look at each in turn.

Intensity of review

[87] The applicants submit that the distinction between contract and judicial review is insignificant.[37] Instead, they say, it guides the intensity of review. In other words, it guides the Court to a contractual model in its review of unincorporated bodies, like political parties, to enforce their constitutions.

[88] The respondents submit that intensity is relevant either in the traditional sense – in which the Court exercises restraint for institutional reasons and because of the private and political nature of the decision-making at issue – or in the sense of Cooke J's approach to a single intensity informed by those circumstances.[38] Either way, they say, the Court ought to proceed with caution, tailoring its inquiry and relief accordingly.

[89] For over 20 years judges have cast significant doubt on the variable intensity of review concept without the Court of Appeal or Supreme Court definitively abandoning the idea. Elias CJ characterised the idea as unhelpful in *Discount Brands Ltd v Westfield (New Zealand) Ltd*.[39] Elias CJ and Tipping J denounced variable

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37 Referring to the "contractual model" used in reviewing unincorporated bodies like political parties in *Payne*, above n 33, at [94]; and *Awatere Huata v Prebble* [2005] 1 NZLR 289 (SC) at [37]–[38].

38 *Patterson v District Court, Hutt Valley* [2020] NZHC 259 at [16].

39 *Discount Brands Ltd v Westfield (New Zealand) Ltd* [2005] NZSC 17, [2005] 2 NZLR 597 at [5].

intensity of review in an exchange between bar and bench during a *Ye v Minister of Immigration* hearing.[40] Cooke J in *Patterson v District Court, Hutt Valley* said:[41]

> While some commentators, and some decisions refer to the intensity of judicial review, or variable standard review, these can also be misleading concepts. In every judicial review case, the Court's role is to review whether a decision is made in accordance with law. In all cases, it does so in the same dispassionate way. The intensity with which it performs that task does not change. But the extent to which powers are substantively or procedurally controlled by legal limits varies considerably. It is the nature and extent of the legal controls that vary between cases, not the intensity with which the Court assesses compliance with them.

[90] Cooke J reiterated the unhelpfulness of the intensity of review concept in *New Zealand Council of Licensed Firearms Owners Inc v Minister of Police*:[42]

> The complications involved in variable standard review, and in identifying the standard or intensity to be applied in a particular case, can lead a Court into error. It distracts from the key questions which are directed to the nature and extent of the power given to the decision-maker, and whether the decision-maker has acted in accordance with that power together with any other requirements or limits imposed by law. Judicial review begins and ends with those questions notwithstanding the occasional case where it can be said the unreasonableness of the decision itself evidences material error.

[91] In *All Aboard Aotearoa Inc v Auckland Transport* Venning J agreed with Cooke J's dismissal of variable intensity of review.[43] So did Cooper P, Gilbert and Goddard JJ in obiter in *Lawyers for Climate Action NZ Inc v Climate Change Commission*, noting their view that:[44]

> … the level of attention the court brings to its task of determining whether the decision is consistent with the legislation under which it is made should not vary. However, the issue is controversial and not yet settled. The Supreme Court has specifically left the "standard of review" question open, and resolution of the issue should be left for a case where it matters.

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40 *Ye v Minister of Immigration* (NZSC, transcript, 21–23 April 2009, SC 53/2008) at 179–182 as cited in D Knight "Mapping the Rainbow of Review: Recognising Variable Intensity" [2010] NZ L Rev 393 at 399–401.

41 *Patterson v District Court, Hutt Valley* [2020] NZHC 259, [2020] NZAR 301 at [16] (footnote omitted).

42 *New Zealand Council of Licensed Firearm Owners Inc v Minister of Police* [2020] NZHC 1456 at [85]. See also relevant discussion at [82]–[84].

43 *All Aboard Aotearoa Inc v Auckland* Transport [2022] NZHC 1620 at [87]

44 *Lawyers for Climate Action NZ Inc v Climate Change Commission* [2025] NZCA 80, [2025] NZAR 115 at [168].

[92] As Cooper P, Gilbert and Goddard JJ noted,[45] the Supreme Court left the variable intensity of review question open in *Minister of Justice v Kim*:[46]

> … as the standard of review is not before us, we are not to be taken as endorsing the heightened scrutiny test. Whether, and if so when, heightened scrutiny of the reasonableness of a decision is appropriate will have to be considered in a case where the issue arises and has been fully argued.

[93] I agree with Cooke J's view that the intensity with which the court reviews whether a decision-maker has made their decision in accordance with law should not vary. Judicial review exists to ensure the lawfulness of exercises of power with a public substance or public effects.[47] Using different adjectives to describe how intensely the Court should review a given exercise of power can distract from this purpose. As Cooke J noted, the nature and extent of legal restraints on a decision-maker's powers will vary markedly between cases, but the intensity with which the Court reviews whether any given exercise of power remained within lawful limits ought not to vary.

[94] That said, judicial review is an inherently discretionary remedy and factors that a court would potentially consider in a variable intensity of review analysis – such as the private and political nature of the decision-making body at issue – can be taken into account in determining whether (where a cause of action is made out) to grant relief and, if so, what it should be.

Judicial review principles

[95] The respondents emphasise the point that a constraint that operates within the Court's judicial review jurisdiction is the principle that it will not substitute its own view on substantive merits; here, for example, on whether Ms Kapa-Kingi brought Te Pāti into disrepute. That remains a judgement call for Te Pāti, informed by political factors and the application of Te Pāti's tikanga. At most, it is said, the Court assesses whether the matters relied on by Te Pāti were *capable* as a matter of law of amounting to disrepute, even if reasonable minds might differ and the Court might have taken a different view.

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45 At [168].
46 *Minister of Justice v Kim* [2021] NZSC 57, [2021] 1 NZLR 338 at [51] (footnote omitted).
47 *Ririnui*, above n 30, at [1]; and *Royal Australasian College of Surgeons*, above n 31, at 11 and 12.

[96] These submissions for the respondents draw on long-established judicial review principles that will apply where an applicant alleges an error of law, or of fact. In this proceeding, the applicants allege that the decision to suspend Ms Kapa-Kingi was an error of law, that the decision to expel Ms Kapa-Kingi was an error of fact and of law, and that there is illegality in Mr Tamihere continuing on as president.

[97] The relevant legal principles for allegations of this type stem back to the speech of Lord Radcliffe in *Edwards (Inspector of Taxes) v Bairstow*, in which he isolated the two manifestations of error of law in the following terms:[48]

> If the case contains anything ex facie which is bad law and which bears upon the determination, it is, obviously, erroneous in point of law. But, without any such misconception appearing ex facie, it may be that the facts found are such that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. In those circumstances, too, the court must intervene. It has no option but to assume that there has been some misconception of the law and that this has been responsible for the determination. So there too, there has been error in point of law.

[98] The first manifestation described by Lord Radcliffe captures pure errors of law (an allegation made here in relation to each cause of action) while the second captures outcomes that are simply untenable (which forms part of the applicants' allegations about a mistake of fact).

[99] The *Edwards* manifestations were adopted by the Supreme Court in *Bryson v Three Foot Six Ltd*.[49] The Court described the second *Edwards* manifestation as a state of affairs in which the ultimate conclusion of a fact-finding body is "so insupportable – so clearly untenable – as to amount to an error of law".[50] That would be the position, the Court said, only in rare cases.[51]

[100] When considering whether a finding is entirely unsupportable, a distinction may be drawn between a factual evaluative process that miscarries to such an extent as to be captured by the second *Edwards* manifestation, and the identification of an error about a fact that is incontrovertible in the sense discussed by the England and

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48 *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14 (HL) at 36.
49 *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 [25]–[26].
50 At [25]–[26].
51 At [27].

Wales Court of Appeal in *E v Secretary of State for the Home Department*.[52] The latter case can rightly stand as a separate ground of review; a belief that a certain state of affairs existed where, incontrovertibly, it did not.[53] Whether viewed as an error of law – in the sense of an untenable evaluation of a set of facts – or as a mistake about a fact that is incontrovertibly wrong, the Court will not interfere under these heads of review if there is a tenable basis for it to be said that reasonable minds could properly differ in the evaluation undertaken.

[101] Accordingly, in a case like this, the Court can consider whether a decision-maker has lawfully applied a foundational document. Sometimes, that will be a statute. Here it is the Kawa. That is squarely within the first manifestation of its error of law jurisdiction. But, in considering whether a finding is so untenable as to amount to an error of law – the second manifestation – the Court will tread warily. It will be most unlikely to interfere if an assessment made on the facts was *capable* of being made.

Tikanga and the Kawa

[102] Often in legal proceedings in which a court might receive assistance from tikanga, one would look to relevant legal principles, or instruments, and then think about the extent to which, and the way in which, it might be appropriate for the court to have regard to tikanga values. If that is the case, then it is important to recognise that tikanga remains rooted in its own world. The court must take care not to impair tikanga's independent operation.[54]

[103] As Winkelman CJ, Glazebrook J and Williams J said in separate judgments in *Ellis v R* (*Continuance*), the relationship between tikanga and the common law or, for example, statutory language will evolve contextually and as required on a case-by-case basis.[55] And, if tikanga is to play a part in the consideration of an issue by the

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52 *E v Secretary of State for the Home Department* [2004] EWCA Civ 49, [2004] QB 1044.

53 Carnwath LJ stated that the decision-maker must have been mistaken as to a fact that is "'established', in the sense that it was uncontentious and objectively verifiable": at [66].

54 *Ellis v R (Continuance)* [2022] NZSC 114, [2022] 1 NZLR 239 at [22] per the summary of reasons given by Glazebrook, O'Regan, Williams and Arnold JJ and [181] per Winkelman CJ.

55 At [116], [119] and [127] per Glazebrook J, [183] per Winkelman CJ and [261] per Williams J.

Court, then the appropriate method for engagement with tikanga must depend on the circumstances of the case.[56]

[104] Here, the drafters of the Kawa have told us that tikanga principles – principles they have themselves expressed – are part and parcel of the Kawa.[57] They are, within the Kawa, carefully entwined.

[105] Part 1 of the Kawa (headed "Kaupapa and Tikanga") spans seven pages and describes the tikanga upon which the Kawa is founded. These are not just purpose clauses or interpretational aids; they live within the Kawa. When one is looking at other clauses in the Kawa – such as rules and requirements – one must lay the tikanga set out in Part 1 atop them; as if through a transparency or a projector.

[106] I go on now to outline relevant tikanga principles, as they are expressed in the Kawa. I do not refer to all of them here but so many of them speak to the parties in this proceeding. In addition, as this part of the Kawa provides: "The following kaupapa and tikanga, while not exhaustive, are consistent with the Māori world view."[58]

[107] Part 1 of the Kawa begins with he kupu whakataki – a word of introduction. There it is said, among other things, that "Te Pāti Māori is for all citizens of Aotearoa New Zealand" and that: "Its vision is of a nation of cultural diversity and richness where its unity is unpinned by the expression of tangata whenuatanga by Māori, te kākano i ruia mai i Rangiātea."[59]

[108] Part 1 of the Kawa then turns to describe "Tikanga of Te Pāti Māori derived from Manaakitanga". The following principles are included:[60]

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56 At [121]–[125] per Glazebrook J, [181] per Winkelman CJ and [273] per Williams J.

57 The Kawa, pt 1.

58 At 4. See also Kós J's comments in *Tamaki v Māori Women's Welfare League Inc* [2011] NZAR 605 (HC) at [8] where he found that, in that case, tikanga's application extended beyond what a constitution expressly provided.

59 At 3. "Tangata whenuatanga" can mean indigeneity; tangata whenua refers to a rohe's indigenous people. "Te kākano i ruia mai i Rangiātea" means the seed sown from Rangiātea, a place strongly associated with Hawaiki. "Like Hawaiki, Rangiātea is seen as both a physical place and a spiritual realm – the fount of wisdom about the nature of existence.": Te Ahukaramū Charles Royal "Hawaiki – Location and associations" (1 April 2015) Te Ara – The Encyclopaedia of New Zealand <teara.govt.nz>.

60 At 4.

> To ensure that relationships between the Pāti and whānau, hapū, iwi, and other Māori organisations are elevating and enhancing.
>
> …
>
> To ensure that members agree to work together, treat each other with respect, and act with integrity in their Pāti work.

[109] The Kawa then provides for the "Tikanga of Te Pāti Māori derived from Rangatiratanga". The tikanga principles under this head explain how the layers of authority within the Pāti work. The first tikanga principle under this head is: "To recognise and acknowledge the authority of whānau, hapū and iwi in their respective electorates." That is where the authority begins in the Pāti's structures. The following principle is included, further down in this part of the document: "To ensure that the conduct and activities of the parliamentary team, leaders, and the organisation as a whole are reflective of the attributes of rangatira."

[110] The Kawa deals, next, with "Tikanga of Te Pāti Māori derived from Whanaungatanga".[61] One of the values under this head is: "To promote whanaungatanga as the model for good collective arrangements between different parties".

[111] The Kawa goes on to describe "Tikanga of Te Pāti Māori derived from Kotahitanga".[62] The primary value under this head is: "To consistently work for unity among Māori people."

[112] The Kawa then describes "Tikanga of Te Pāti Māori derived from Wairuatanga". A principle under this head is: "To develop within Te Pāti an environment that nourishes and nurtures wairua."[63]

[113] Then, the "Tikanga of Te Pāti Māori derived from Mana Whenua" head includes this as a principle: To develop a parliamentary team that will take advice and guidance from Māori in the first instance.

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61 "Whanaungatanga" can mean kinship.
62 "Kotahitanga" can mean unity.
63 "Wairua" can mean spirit or soul.

[114] Next, the "Tikanga of Te Pāti Māori derived from Kaitiakitanga" identifies as a principle the promotion of "the achievement of wellness and well-being for Māori".

[115] And, finally under this head, a principle within the "Tikanga of Te Pāti Māori derived from Whakapapa" is: "To encourage the view that all Māori are related, leading towards cooperation and unity."

The Kawa's rules

[116] Part 2 of the Kawa provides the Pāti's rules. I will describe them in a little detail, as the case turns upon them. They begin – after referring to Te Pāti as a political party – with its objectives:

> 2.1 To honour Te Tiriti o Waitangi.
>
> 2.2 To acknowledge and fulfil the kaupapa and tikanga set out in this constitution.
>
> 2.3 To develop and implement the Pāti policy manifesto consistent with the kaupapa.
>
> 2.4 To maintain registration under the Electoral Act 1993 in the name of the Māori Pāti, whose Constitution shall be this document.

[117] Clause 3 is entitled "Membership". Clause 3.1 is in the following terms:

> 3.1 Te Pāti Māori is an all-inclusive and broad-based political movement and accepts membership from any persons of 13 years of age and older who:
>
> a. work to support Te Pāti Māori kaupapa and tikanga;
>
> b. act within Te Pāti Māori constitution;
>
> c. abide by lawful decisions made in accordance with Te Pāti Māori constitution;
>
> d. complete the official membership form and pay the appropriate membership fee as fixed by the National Council;
>
> e. are not members of a competing political Pāti, or any other group or organisation which the National Council determines is incompatible with membership of the Pāti.

[118] Clause 3.6 has some prominence in this case. It is in the following terms:

> 3.6 The National Council may cancel any membership that the Council believes does not meet the criteria outlined in clause 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 Pāti, where the decision shall be final.

[119] Clause 4 is entitled "Pāti Structure" and, after explaining that the Pāti structure shall reflect the aspirations expressed through the Pāti's kaupapa, it provides, in cl 4.4 that: "The National Council shall have representation from each electorate and the Members of Parliament."

[120] Consistent with the principle of tikanga set out in [109] above,[64] the rules then describe the nature and composition of electorates, branches and affiliates before describing, in turn, the National Council and the National Executive.

[121] The National Council is described in the following way:

> 4.13 The National Council provides leadership according to the Pāti's kaupapa (refer to Part 1 of this constitution), and deals with the fundamental running of the Pāti.

[122] Schedule 2 of the Kawa provides a set of further provisions relating to the National Council. Provisions that are of importance in this proceeding are these:

> 1. The National Council comprises the following:
>
> a. the Pāti president and two co-vice presidents (one tāne and one wahine);
>
> b. two co-leaders (one tāne and one wahine);
>
> c. all Members of Parliament;
>
> d. up to four council members selected by each electorate (including rangatahi and both wahine and tāne), or their substitute as determined by each electorate.
>
> …
>
> 6. Each Māori electorate shall be represented on the National Council. …
> …

[64] Which emphasises the authority of whānau, hapū and iwi through their electorates.

8. The National [Council] shall ratify or otherwise any decision made by the National Executive since the previous meeting.[65]

…

10. All decisions of the National Council shall be made by consensus as a customary practice, having regard to constitutional obligations and the kaupapa of Te Pāti Māori. If the hui cannot reach consensus after full discussion of the issue, then the chairperson will ask the meeting to accept the view of the majority in the best interests of the Pāti.

[123] Clause 4 of the Kawa makes provision for the National Executive. The following clauses are relevant:

4.16 The management of Te Pāti Māori is determined by the National Council and delegated to the National Executive. The delegated authority shall be determined between the National Council and the National Executive. All decisions of the National Executive must be ratified by the National Council at their next hui.

4.17 The National Executive consists of the Pāti's president, the two co-vice presidents (one tāne and one wahine), and the two co-leaders (subject to having Members of Parliament).

[124] Clause 5 of the Kawa is headed "Decision-making". In a similar way to cl 10 of sch 2 – which deals with National Council decisions – the first rule under this head is as follows:[66]

5.1 All decisions of Te Pāti Māori shall be made by consensus, consistent with the customary practice of whakawhitiwhiti kōrero, and having regard to constitutional and kaupapa obligations of Te Pāti Māori. If the hui cannot reach consensus after full discussion of the issue, then the chairperson of the hui will ask the meeting to accept the view of the majority in the best interests of the Pāti.

5.2 Those who do not agree with the majority decision may have their objections included in any minutes recorded for the hui.

[125] Clause 6 of the Kawa provides for the annual general meeting (hui ā tau). Of relevance in this proceeding is cl 6.2 which is in the following terms:

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

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65 The clause reads: "The National Executive shall ratify or otherwise any decision made by the National Executive since the previous meeting." But the parties are agreed that the opening words read should refer to the "National Council".

66 "Whakawhitiwhiti kōrero" can refer to a facilitated conversation.

[126] Clause 9 of the Kawa is entitled "Resolution of Differences and Disputes". It is central to this proceeding. It is a poorly drafted, and often repetitive, set of rules but there is a clear of process to be followed in accordance with its provisions. It begins by saying: "There shall be three types of disputes:" "Serious Disputes", "Non-serious Disputes" and "Judicial Disputes". The subject-matter of this proceeding falls within the "Serious Disputes" category which is described in cl 9.1 in the following way:

> a. Serious Disputes shall be those disputes that deal with:
>
> i. misuse of Pāti funds for personal gain;
>
> ii. bringing the Pāti into disrepute, by any abuse, slagging, or misuse of any media or verbal statements that can or would be injurious to the general welfare and well-being of the Pāti or its members as a whole.

[127] Under cl 9.5, a serious complaint against a member for any of those reasons "shall first be communicated in writing to the relevant Electorate Council".

[128] Under cl 9.11, where an Electorate Council receives a serious complaint, "it shall immediately attempt to bring the complaint to a resolution."

[129] If the complaint cannot be resolved at the Electorate Council level, the Electorate Council has three choices:

(a) Under clause 9.7 it is to be referred to the National Executive;

(b) Under clause 9.11 it is to be forwarded to the National President with a request for the intervention of the National Executive.

(c) Under rules 9.5 and 9.12, it is to be referred to the Disciplinary and Disputes Committee.

[130] If, in terms of options (a) and (b) above, the National Executive receives a serious complaint, cl 9.14 makes clear that the National Executive it is to send it back to the Electorate Council or to the Disciplinary and Disputes Committee.

[131] When a matter is referred to the Disciplinary and Disputes Committee, that committee is, under cl 9.6 "to see that the dispute is resolved on the basis of the kaupapa of the Pāti".[67]

[132] The Disciplinary and Disputes Committee is the subject of sch 3 of the Kawa. It is to comprise five members selected by the National Council,[68] it is to be "self-determining"[69] and it is to be "selected strictly from Council Members only".[70]

[133] Clause 12 of sch 3 is in the following terms: "The committee shall be charged to reach a resolution of the complaint and, unless there is some legal impediment, the resolution shall be final and binding."

[134] Under cl 15 of sch 3, when the Committee has resolved a dispute, the National Council is to endorse the Committee's findings and notify the parties to the dispute of such a resolution.

[135] Moving away from the schedule again and back to the Kawa's body, cl 10 is entitled "Remedy". It is in the following terms:

> 10.1 Any member who is found to have been in breach of section 3, 3.1, bullet points a-e, or is found guilty of a serious complaint other than the misuse of Pāti funds for personal gain, shall have their membership revoked under section [3.6][71]
>
> 10.2 Any member who is found guilty of misusing Pāti funds shall be immediately expelled from the Pāti.

[136] Clause 10 is drafted awkwardly. The respondents say that, if under cl 3.6 the National Council believes that a member does not met the criteria for membership in cl 3.1, then cl 3.6, together with cl 10.1, provide that the National Council may simply "cancel" (to use the language of cl 3.6) or "revoke" (to use the language of cl 10.1) the person's membership, observing that under cl 3.6, there is an appeal right in those circumstances. The respondents say that "expulsion" under cl 10.2 and "cancellation"

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67 Clause 9's drafter appears to have accidentally separated cl 9.6 from cl 9.5. Clause 9.5 ends with an incomplete sentence that appears to continue at the beginning of cl 9.6.

68 Schedule 3, cl 1.

69 Schedule 3, cl 2.

70 Schedule 3, cl 3.

71 The clause refers here to "section 3.7", but the parties are agreed that it should refer to cl 3.6.

under cl 3.6 are two separate processes. They say that expulsion carries with it the procedural steps in cl 9 while cancellation does not. They say that the National Council expelled, or removed, Ms Kapa-Kingi from the Pāti for a variety of reasons, some of which come under cl 3.6 alone.

[137] As I see it, there are three parts to cl 10. Two are in cl 10.1 – separated by the word "or" – and the third is in cl 10.2. They apply in the following ways:

(a) First, under cl 10.1, any member who is found to have been in breach of cl 3.1 is to have their membership cancelled under cl 3.6. While cl 3.6 uses the word "cancelled" and cl 10.1 uses the word "revoked", nothing turns on this. Under this part of the clause, the question is whether a member no longer meets the cl 3 criteria — as set out in [117] above. The cl 9 procedure does not need to be followed in those circumstances and there is an appeal right to "the next national hui of the Pāti".[72] There are no clues in the Kawa as to how that appeal right might work or how a national hui might deal with an appeal.

(b) Secondly, also under cl 10.1, if a member "is found guilty of a serious complaint other than the misuse of Pāti funds for personal gain", then their membership is to be revoked under clause 3.6. Clause 10.1's words can only sensibly be read as requiring the application of cl 9 as that clause is concerned with "Serious Disputes".[73]

(c) Thirdly, under cl 10.2: "Any member who is found guilty of misusing Pāti funds shall be immediately expelled from the Pāti." While this clause does not refer to the misuse of Pāti funds "for personal gain", that must have been intended as it addresses conduct excluded by the terms "other than the misuse of Pāti funds for personal gain" in cl 10.1. Misuse of Pāti funds is a serious dispute. That is what cl 9.1(a)(i) provides. Accordingly, the cl 9 process must be applied before it could

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72 Clause 3.6.

73 As well as with "Non-serious Disputes" and "Judicial Disputes", neither of which is relevant here. The parties agreed that the term "Serious Disputes" in cl 9.1 and the term "serious complaint" in cl 9.5 were intended to mean the same thing.

be said that a member is "found guilty" of misusing funds for personal gain, exposing them to immediate expulsion under cl 10.2.

[138] Having outlined the facts, having been satisfied of the Court's jurisdiction and having identified the relevant provisions of the Kawa (to be applied with the tikanga principles overlaid) I turn now to consider the causes of action in the proceeding.

First cause of action — alleged unlawful decision to suspend Ms Kapa-Kingi

[139] Ms Kapa-Kingi and the Te Tai Tokerau Electorate Council say that the Kawa does not provide any power to suspend a member and that, in any event, the respondents failed to comply with the dispute resolution and complaint processes for membership issues under cls 3 and 9 of the Kawa.

[140] The respondents say that the suspension decision is no longer an operative decision. They say that it was an interim position, overtaken by the expulsion decision. However, if required to be argued, the respondents say that a power of suspension is an inherent or implied term within the power to expel and/or to cancel. However, as a practical measure, the respondents say that if the Court quashes Ms Kapa-Kingi's expulsion then they would not seek to argue that she nevertheless remains suspended.

[141] I do not discount the cause of action in the same way that the respondents do. The 23 October 2025 hui, at which Ms Kapa-Kingi was suspended, was part and parcel of the process that led to the 9 November 2025 hui, at which she was expelled. As Ms Lemon said in her second affidavit – when explaining why it was that no information was provided to attendees in advance of the 9 November hui – the 9 November 2025 hui was a follow-up to the hui convened on 23 October 2025 to consider Ms Kapa-Kingi's conduct. Ms Lemon refers in her evidence to the information pack Mr Norman provided by email to attendees of the 23 October hui which, as mentioned in [57] and [68] above, included a number of documents.

[142] The short point is that there is no power to suspend a member under the Kawa. And, given the detailed document that the Kawa is, I cannot see a tenable basis to imply a power.

[143] But, even if a power existed, the respondents ignored relevant provisions in the Kawa to such an extent that the suspension decision cannot stand.

[144] First, no notice was given Ms Kapa-Kingi or to the Te Tai Tokerau Electorate Council notice of the 25 October 2025 hui. No notice was given to anyone, including the hui attendees, of the resolutions to be put to the hui.

[145] Secondly, the minutes of the 23 October hui describe it as a "Te Pāti Māori National Council Hui". But the attendees only include some of the National Council members. They include one vice-president when the Kawa requires two.[74] No MPs received invitations or attended, but the Kawa requires all MPs.[75] And representatives from all electorate councils need to be included,[76] but the respondents excluded members of the Te Tai Tokerau Electorate Council altogether. As I have discussed, the Kawa recognises the autonomy and authority of each electorate council,[77] reflecting the affirmed tikanga principle:[78] "To recognise and acknowledge the authority of whānau, hapū and iwi in their respective electorates." The importance of the Pāti recognising an electorate council's authority must be particularly important when it is discussing matters related to that electorate council and its MP.

[146] Thirdly, as discussed previously, the Kawa required the hui to make decisions by consensus; not by vote.[79] As Te Tai Tonga electorate representatives abstained, the hui did not achieve consensus.

[147] Fourthly, none of the necessary cl 9 processes were followed. While at this stage (or, frankly, at any stage) it is not clear whether any aspect of the concerns of those who arranged the meeting were centred upon cl 3.6, certainly material parts of the concerns took the form of a "serious dispute" under cl 9, requiring that process to be followed.

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74 Schedule 2, cl 1(a).
75 Schedule 2, cl 1(c).
76 Schedule 2, cl 1(d).
77 Clause 4.7.
78 At 4.
79 Clause 5.1 and sch 2, cl 10.

[148] Fifthly, and perhaps most fundamentally, the relevant tikanga principles – which must inform the way in which a decision-maker considers the Kawa's rules – were not applied in any way. To convene a meeting which would play a fundamental part in determining Ms Kapa-Kingi's future with the Pāti without involving her, without giving any indication that a resolution to suspend her was on the table, without allowing her an opportunity for a substantive response, and in the absence of the members of her electorate council, could not on any view be seen, for example, as elevating and enhancing relationships, as working together with respect, as promoting whanaungatanga, as working for unity, as developing an environment that nourishes wairua or that reflects the attributes of rangatira. These are all tikanga principles that the Kawa's drafters have infused into the document. They were not mentioned or applied.

[149] For all these reasons, the suspension was unlawful, in the pure sense of that word.

Second cause of action – alleged unlawful decision to expel Ms Kapa-Kingi

[150] The applicants say that the decision to expel Ms Kapa-Kingi from Te Pāti Māori on 9 November 2025 was the product of errors of law and of fact.

[151] First, they say that the respondents did not comply with the Kawa – through not applying the expulsion provisions correctly (or at all); by not following the disputes resolution processes; because the National Council hui was improperly constituted; and because the process used by the respondents breached the tikanga principles – the kaupapa – at the core of Te Pāti Māori.

[152] Secondly, they say that there was no factual basis for Ms Kapa-Kingi's expulsion. They say that:

(a) the funds to which the misuse allegation relates were not Pāti funds;

(b) there was no misuse of funds, and certainly not for personal gain; and

(c) Ms Kapa-Kingi's media statements could not reasonably be said to have brought the Pāti into disrepute.

The terms of the decision to expel Ms Kapa-Kingi

[153] The respondents say that Ms Kapa-Kingi's membership was cancelled validly at the 9 November 2025 hui under cl 3.6 of the Kawa. They submit that, quite apart from cl 9, cl 3.6 provides an independent disciplinary response, coupled with the remedy provided in cl 10.1. The power to cancel under cl 3.6 is available, the respondents say, whenever the Council believes that a member does not meet the criteria outlined in cl 3.1.

[154] The respondents say that cl 3.1 "includes qualitative loyalty criteria" – including working to support Te Pāti Māori kaupapa and tikanga and acting within Te Pāti Māori constitution. They say that the basis for the hui's decision under cl 3.6 includes Ms Kapa-Kingi's media interviews. These are matters, it is said, for the judgement of the National Council. The respondents say that the significance of Ms Kapa-Kingi's actions entitled the National Council to move swiftly to a cancellation decision and concerns about natural justice for that type of decision should not apply. Accordingly, they say that, even if the hui did not validly *expel* Ms Kapa-Kingi, it can be said that the hui validly *cancelled* her membership under cl 3.6 — subject to the exercise of an appeal right which is still to run.

[155] Can the decision that was made at the 9 November 2025 hui be considered in that way? The resolution is set out in [73] above. It begins with the following words:

> 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 in particular clauses 3.6, 5, 9, 10, the National Councill resolves that:

[156] I look first at the 16 October "breach notice". This is a reference to a 16 October 2025 letter from Mr Norman to Ms Kapa-Kingi and Eru Kapa-Kingi. It intertwines allegations against Eru Kapa-Kingi with allegations against Ms Kapa-Kingi. It was not appropriate to do so if it was to be used as a basis for expelling Ms Kapa-Kingi. Moreover, the letter cited cl 9, not cl 3.6. It raised (to use the words in the letter) "two Serious Dispute issues" under cl 9:

(1) Misuse of Pāti Funds for Personal Gain, and

(2) Bringing the Pāti into Disrepute.

[157] Alongside allegations against Eru Kapa-Kingi (which are not relevant here), the 16 October 2025 letter raised Ms Kapa-Kingi's interview with Te Hiku News on 1 October 2025,[80] 1News's coverage of it on 2 October 2025,[81] and her comment that "[i]t is time for change" in a 7 October 2025 interview with 1News.[82] The letter also referred to Ms Kapa-Kingi not having attended the 12 October 2025 hui.

[158] The introductory words to the 9 November resolution then referred to a "breach notice" of 2 November 2025 and to a "documented chronology". Neither of those documents appear to exist. Accordingly, the allegations under consideration are those in the 16 October letter, all of which it frames under cl 9.

[159] The resolution that follows those introductory words is in the following terms:

> (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.

[160] There are several parts to the resolution's two sub-paragraphs. Sub-paragraph (a) clearly centres upon cl 9; a clause that was not followed here.

[161] To the extent that sub-para (a) relates to "misuse of Pāti funds for personal gain", then that part of the remedy described in sub-para (b) of the resolution as "pursuant to cl 10.2, her membership is immediately expelled" applies.

[162] To the extent that sub-para (a) relates to bringing the Pāti into disrepute, then the second part of the resolution in sub-para (b) – "and pursuant to cl 3.6, any

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80 As outlined above at [35]–[37].

81 As outlined above at [37]. The letter claims Ms Kapa-Kingi "weighed in on [1News]" on 2 October 2025, but the story was covering her interview with Te Hiku Media. The story did not include any new comments from Ms Kapa-Kingi.

82 As outlined above at [41].

remaining party rights and privileges are cancelled forthwith" – applies. In both cases, the cl 9 process needed to be followed first.

[163] There is nothing left in the words in relation to which it could be said that the decision was made under cls 3.1 and 3.6, independently from conduct that the Pāti saw as being a "Serious Dispute" under cl 9. The conduct with which the Pāti was concerned, as set out in the 16 October letter, was covered entirely by cl 9, leading, in part, to a remedy under cl 10.1 (which refers in turn to revocation of membership under cl 3.6) and, in part, to a remedy under cl 10.2 (which enables expulsion). There was nothing left to be dealt with under cl 3.6 alone.

[164] In these circumstances, the resolution cannot stand. The procedure in the Kawa that needed to be followed before a resolution of that type could be passed was simply not followed.

[165] The respondents have said in their submissions:

> Second, if the Court decides to remit the matter more broadly [to find that a cl 9 process should have been followed] it should do so in the knowledge that the respondents may opt to give fresh consideration to using the comparatively simpler cancellation power instead of invoking the cl 9 procedures again – especially given the friction within the Te Tai Tokerau Electorate Council.

[166] In circumstances in which the respondents treated the behaviour as falling within cl 9, and in which – as I have found – cl 9 is the appropriate clause, I do not see that as being a tenable course of action.

Was the procedure prescribed by the Kawa followed?

[167] In his evidence, Mr Norman has, essentially, said that consideration was given to following the cl 9 process but it was decided, deliberately, that they would not do so. He put it in the following way:

> Clause 9 of the Constitution provides that where issues cannot be resolved at Electorate Council level, they are escalated either to the National Executive or to the disciplinary and disputes committee. It made no sense for us to technically refer the matter to the Electorate Council to attempt resolution, as provided for in cl 9 of the constitution. This is because the second applicant was already aware of the issues and in fact acting in concert with Ms Kapa-

> Kingi's dissent from Te Pāti. They had shown that they were not capable of resolving the dispute.

[168] These comments are a little disturbing. As I have discussed, the Kawa requires issues of the type in question here to be referred to the Electorate Council in the first instance. The Kawa is founded upon tikanga principles including the recognition of the authority of the respective electorates to deal with issues in the first instance. Clause 9.11 requires electorates, if they receive a serious complaint, to "immediately attempt to bring the complaint to a resolution". That might well have been possible. We cannot know. In addition, it is not in my view tenable to say that "the second applicant was already aware of the issues" when the respondents gave no notice of the two hui – on 23 October and 9 November – that led to Ms Kapa-Kingi's expulsion and to a resolution that the Te Tai Tokerau Electorate Executive be "reset".

[169] Mr Norman went on to say in his evidence that the Disciplinary and Disputes Committee referred to in the Kawa has never in fact been established. He said that, given the urgency and seriousness of matters it was determined that it was "appropriate to deal with it at the highest level of authority within Te Pāti, being the National Council". But the National Council was not the body that convened. In the case of the hui on 23 October and on 9 November, the hui excluded the members of Parliament and representatives from each electorate required for a valid National Council meeting.

[170] The respondents submit that "their actions amount to substantive and fair compliance with the spirit of the dispute provisions, and with natural justice". They say that "any instance in which the facts of this case meant that the procedural aspects of the constitution were not followed did not amount to material prejudice to Ms Kapa-Kingi". That simply cannot follow in light of the breaches I have found, which can be summarised as follows:

(a) The group of Pāti members who made the relevant decisions were not the National Council – or any other relevant grouping within the constitution.

(b) The cl 9 process – which applies here for the reasons I have given and upon which the relevant resolution was based – was not followed at all. Not even in a passing way. The issues with which the respondents were concerned needed to go through the Te Tai Tokerau Electorate Council – which has a mandate under the Kawa to find a resolution – then to the Disciplinary and Disputes Committee (which the respondents had not established) which was to achieve resolution on the basis of the kaupapa of Te Pāti Māori. None of that occurred.

(c) Decision-making under the Kawa – by any grouping – is to be made "by consensus, consistent with the customary practice of whakawhitiwhiti kōrero, and having regard to constitutional and kaupapa obligations of Te Pāti Māori". A decision that is made without even providing notice of it and in the circumstances I have outlined would appear to be entirely at odds with the approach to decision-making that the Kawa prescribes.

[171] In a related way, the respondents appear to have bypassed altogether the Kawa's tikanga principles which, as I have described, a decision-maker must overlay across the rules when considering their application. I have described the principles earlier. They include acknowledging the authority of the electorates, the promotion of whanaungatanga, the need to work consistently for unity and the development of an environment that nourishes and nurtures wairua.

[172] On this basis there have been fundamental errors of law and breaches of natural justice. The second cause of action succeeds on this basis alone.

Was there an evidential basis to support findings of misuse of Pāti funds for personal gain or other behaviour that could bring the Pāti into disrepute?

[173] The applicants say that there was no factual basis for Ms Kapa-Kingi's expulsion.

[174] They say that Ms Kapa-Kingi's parliamentary budget had a projected overspend due to her having taken on additional work to support Ms Kemp and the

Tāmaki Makaurau electorate while Ms Kemp was unwell. They say that she did so on the understanding that a budgetary transfer from the Tamaki Makaurau electorate to the Te Tai Tokerau electorate would cover the cost of the work. And they say that, as the co-leaders only approved a transfer that partially reimbursed the work's cost, Ms Kapa-Kingi had to reallocate funds from her Year 3 budget to Year 2.

[175] The applicants refer to Ms Kapa-Kingi remedying the forecast budget overspends through discussions with the Parliamentary Service that resulted in adjustments; adjustments Ms Ngarewa-Packer, a Pāti co-leader, agreed to on 19 August 2025. All of this resulted in a recorded underspend of $1 for Year 2.

[176] The applicants say that potentially exceeding a budget is not "misuse".

[177] In any event, the applicants say, the funds from Parliamentary Service in issue were not owned or held by the Pāti; they were not "Pāti funds". They are funds that the Parliamentary Service allocated to Ms Kapa-Kingi as the MP for Te Tai Tokerau, covering operational costs. She continued, for example, to receive the funds after the purported expulsion took place, when she formally became an "independent" MP. In this sense, the funds are not dependent on her being a Pāti member.

[178] Moreover, the applicants reject an argument that there was any aspect of "personal gain" through the contracting and payment of Eru Kapa-Kingi. It is said that Eru Kapa-Kingi was being paid, through his company, for work delivered and that paying for that work from parliamentary funds is not a personal gain to Ms Kapa-Kingi. Ms Kapa-Kingi explained in evidence that the practice of contracting whānau members to support MPs is common practice within Te Pāti Māori. She gave several examples.

[179] For all these reasons it is said that cls 10.1 and 10.2 – relating to the misuse of Pāti funds for personal gain – cannot apply.

[180] Equally, the applicants say, that there was no factual basis for the respondents to conclude that Ms Kapa-Kingi's actions brought the Pāti into disrepute and that they could expel her on that basis either. They say that the basis upon which it would appear

that the respondents determined that Ms Kapa-Kingi brought the Pāti into disrepute in terms of cl 9.1 of the Kawa are:

(a) The actions of Eru Kapa-Kingi and his public criticism of Te Pāti.

(b) Ms Kapa-Kingi using the word "dysfunction" in a media interview.

[181] The applicants say that the Pāti leadership appears to have conflated comments made by Ms Kapa-Kingi with those made by Eru Kapa-Kingi. The point is made that Ms Kapa-Kingi used the word "dysfunction" in the wider context of a direct response to a question and that, as Ms Kapa-Kingi had said in her evidence, "while [she] was frustrated, [she] was very careful in the interview not to damage the reputation of the Pāti". The applicants' submissions highlight that, in her response to the question, she first said that the kaupapa of the Pāti was "the closest in heart and mind" to what whānau Māori want.

[182] Equally, it is said that when she said in the second interview in question "[i]t is time for change is what I see Maiki and change is good for us", that the comment, appraised in the full context of the interview, could not be seen as being "injurious to the general welfare and well-being of the Pāti or its members as a whole".[83]

[183] The respondents, on the other hand, say that there was an evidential basis that permitted them to conclude that Ms Kapa-Kingi had misused Pāti funds. They say that there was no agreement that Ms Kapa-Kingi was entitled to, or would receive, additional funding beyond the scope of her budget. They say that – despite the co-leaders approving in December 2024 a $33,000 transfer payment from the Tāmaki Makaurau budget to Te Tai Tokerau – Ms Kapa-Kingi had not provided a sufficient breakdown of her expenditure on behalf of the Tāmaki-Makaurau electorate and, as mentioned in [23] above, Ms Kemp was against further payments.

[184] The respondents see Ms Kapa-Kingi's spending as having been unauthorised. Ms Kapa-Kingi, in her evidence in reply, has spoken of the extent of her work for

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83 The Kawa, cl 9.1(a)(ii).

Ms Kemp including her attendance, for example, at 63 Social Services Select Committee meetings on her behalf, as I have discussed earlier.

[185] The respondents say that Ms Kapa-Kingi's explanation about wanting to claim further funds from the Tāmaki Makaurau electorate allocation explains only a portion of the overspend in her budget. They refer to Ms Kapa-Kingi needing to transfer $91,000 from her Year 3 budget, an amount they suggest is greater than Ms Kapa-Kingi covering for Ms Kemp can explain.

[186] The respondents say that, in addition, there was an evidential basis that permitted them to conclude that the misuse was for personal gain. They agree that other members of Te Pāti Māori regularly employ whānau but they say that information was available on Ms Kapa-Kingi paying her children and other staff bonuses, together with what they see as being unsatisfactory explanations. All of this, the respondents say, enabled a finding of misuse.

[187] There is, in the affidavit evidence for the parties, a series of allegations and responses on these matters. To take just one of them for illustrative purposes, the respondents refer to a direction Ms Kapa-Kingi gave to the Parliamentary Service to remove Eru Kapa-Kingi's name from an email that would go to Te Pāti leadership explaining how she would bring her budget under control. The respondents expressed concerns about that. Ms Kapa-Kingi said that she asked the Parliamentary Service to remove Eru Kapa-Kingi's name from the email because it was unnecessary.

[188] While I understand Ms Kapa-Kingi's position on the issue of whether there was a factual basis for expulsion, there is, as I said in outlining the relevant legal principles in [97] and [98], an important distinction between an evaluation of the facts that is entirely untenable and an evaluation in relation to which there would be a basis for reasonable minds to differ. Error of law will exist in the former case, but not in the latter.

[189] Ms Kapa-Kingi's position under this head falls within the latter case. She may well be right. But reasonable minds can differ. Questions of misuse, personal gain

and disrepute involve, necessarily, value judgements. That is particularly so in the political context.

[190] Similarly, as I have discussed, for there to be an actionable mistake of fact in a judicial review context, there would need to be a factual mistake that is incontrovertible in the sense that, on any view of matters, there is only one possible view that could be taken on the facts. That could not be the case in the context of a value judgement of the type that is required to consider issues such as misuse and disrepute.

[191] Accordingly, these aspects of the second cause of action cannot be made out but the cause of action itself succeeds given the fundamental breaches of the Kawa that I have outlined.

[192] I would add that, had there not been those breaches, Ms Kapa-Kingi and the Te Tai Tokerau Electorate Council would have had opportunities to explain their positions on the issues – ultimately to the Disciplinary and Disputes Committee. A wholly different outcome was possible.

Third cause of action – Mr Tamihere's presidency

[193] Under cl 6.2 of the Kawa: "The election of the president and co-vice presidents shall occur on a rotational, triennial basis."

[194] Te Pāti first elected John Tamihere as its president on 8 June 2022.

[195] I have described in [11] above the manner in Te Pāti's annual general meeting on 20 July 2024 "affirmed" Mr Tamihere's position as president – along with the other executive positions in Te Pāti.

[196] The hui carried the affirmation without discussion or opposition from those present, including Ms Kapa-Kingi.

[197] Judge Harvey (as he was at the time) made helpful comments in *Bigham v Budd*, in which he considered a marae charter that required beneficiaries to elect trustees on a triennial and rotational basis.[84] He said:[85]

> It requires the election of up to nine trustees on a triennial *and* a rotational basis. This means that, unlike elections for local authorities for example, instead of all of the positions falling vacant at once every three years, the charter envisages a gradual process of election similar to a Māori incorporation. This would mean that, if there were nine trustees, three positions should fall vacant on an annual basis.

[198] Accordingly, the applicants say, and the respondents agree, that:

(a) The use of the word "triennial" conveys that the president is appointed for a three-year term; and

(b) The use of the word "rotational" requires a system whereby the president, and vice-presidents, do not come up for election at the same time.

[199] The second of these two points does not appear to have been acknowledged in the process that saw the president and two vice-presidents affirmed in July 2024. But that is not an issue in this proceeding.

[200] The applicants are concerned about what they see essentially as a short cut having been taken through the electoral process for the president under the Kawa. They refer to the Kawa setting out a clear process for the call for nominations,[86] for the terms of president and co-vice presidents, and for the election of those officers at an annual general meeting or a special general meeting.

[201] They see the safeguards as being essential as part of the democratic process established through the Kawa. They say that an affirmation through a simple motion

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84 *Bigham v Budd* MLC Aotea 331 Aotea MB 151, 24 December 2014 at [3] and [18].

85 At [18].

86 The Kawa, sch 2, cl 2, which requires nominations for president and vice-president to be lodged with the National Secretary six weeks before an AGM and distributed at least one calendar month before the AGM.

does not meet those requirements. They see it as depriving members of their right to vote.[87]

[202] However, no evidence is available to establish what the procedure was at the 20 July 2024 annual general meeting, whether nominations for the president and vice-president roles had been lodged as required, or in relation to the process that was followed at the meeting itself. The uncontested evidence is that there was no opposition to the resolution that was put at the meeting. In the absence of anything else, I must accept the respondents' submission that the minutes evidence a sufficient democratic process.

[203] That finding, particularly in a public law setting, is supported by the fact that the AGM was held a year and a half ago now for the purpose, as Mr Norman has said, of ensuring consistency up to and beyond the 2026 election period, and numerous opportunities have passed to challenge it before now.

[204] For these reasons, there is no invalidity in the process leading to Mr Tamihere's re-election as president of Te Pāti Māori and the third cause of action in the proceeding does not succeed.

Relief

[205] If an applicant succeeds in establishing a ground for review, the Court retains a discretion on whether to grant relief.

[206] In most cases, a remedy will accompany a right and the withholding of relief in the Court's discretion will not be the normal outcome if there is a reviewable flaw in the decision or in the decision-making process.[88]

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87 Referring, for example, to the comments of Megarry J in *Woodford v Smith* [1970] 1 WLR 806 (Ch) at 817 to the effect that the right to vote at a meeting of even a private association is "no trivial matter". The High Court cited this case approvingly in *Antunovich v Dalmatinsko Kulturno Drustvo Inc* [2001] NZAR 229 (HC) at [24].

88 See, for example, *Winton Property Investments Ltd v Minister of Finance* [2023] NZCA 368 at [142].

[207] The more fundamental the error, the more likely it is that relief will be granted. Put another way, there must be good reason to decline to grant relief where an applicant has suffered substantial prejudice.[89] That is particularly the case where an error of law is involved.[90]

[208] There are any number of considerations to which the Court might have regard in considering whether those fundamental principles should be applied in the circumstances of a particular case. They include the gravity of the error,[91] the degree of prejudice for the applicant,[92] the inevitability of the same outcome,[93] delay,[94] the availability of other remedies, in particular a right of appeal,[95] prejudice to third parties,[96] or, potentially, the political context in which a decision is made.[97]

[209] Here, the respondents emphasise the political overlay as being a reason for exercising restraint and relief. They say that: "Requiring Te Pāti to take Ms Kapa-Kingi back would be to compel them to associate with her, and to bear the consequent political disadvantage, when it is clear the relationship has completely broken down." They said that, if relief is considered necessary, the Court should exercise restraint in shaping the relief to avoid undue interference in what remains a private organisation.

[210] The extent of the breaches of the Kawa in this case is such that in my view, it would be fundamentally unjust if I did not award relief . The respondents have not just breached the Kawa's rules but the very essence of the tikanga principles that, expressly, underpin the rules.

[211] Had there been an active appeal right at play, that is something that would need to have been factored in. But, for the reasons I have given, the decisions made on the

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89 See, for example, *Air Nelson Ltd v Minister of Transport* [2008] NZCA 26, [2008] NZAR 139 at [60]–[61].
90 *GXL Royalties Ltd v Minister of Energy* [2010] NZCA 185, [2010] NZAR 518 at [67].
91 *Hill v Wellington Transport District Licensing Authority* [1984] 2 NZLR 314 (CA) at 324.
92 *Winton Property Investments Ltd*, above n 88, at [143].
93 *Wislang v Medical Practitioners Disciplinary Committee* [1974] 1 NZLR 29 (SC) at 42.
94 *Auckland Casino Ltd v Casino Control Authority* [1995] 1 NZLR 142 (CA) at 152.
95 See, for example, *Tannadyce Investments Ltd v Commissioner of Inland Revenue* [2011] NZSC 158, [2012] 2 NZLR 153 at [6].
96 See, for example, *Winton Property Investments Ltd*, above n 88, at [142].
97 See, for example, *New Zealand Public Service Association Inc v Hamilton City Council* [1997] 1 NZLR 30 (HC) at 36 where Hammond J saw the outcome as best being the subject of the democratic process in the context of local body elections.

particular subject-matter of this dispute are such that the cl 9 process needed to be followed in the first instance before a decision under cl 3.6, which contains the appeal right, could be made.

[212] For these reasons, the first and second causes of action are made out and I make the following orders as a result:

(a) I make a declaration that the first and/or second respondents' resolution to suspend Ms Kapa-Kingi as a member of Te Pāti Māori on 23 October 2025 was in breach of the Kawa and, therefore, was unlawful.

(b) I make a declaration that the first and/or second respondents' resolution to expel Ms Kapa-Kingi from Te Pāti Māori or to cancel her membership in Te Pāti Māori on 9 November 2025 was in breach of the Kawa and, therefore, was unlawful.

(c) I make an order setting aside the decisions on 23 October and 9 November respectively.

[213] I will not make an order requiring the respondents to reconsider the decision. It will be for them to consider whether, in light of the turbulent waters that all have navigated, they would wish to go through a serious dispute process under the Kawa in accordance with the discussion in this decision on the operation of its relevant provisions.

[214] I place here – at this juncture – words from Haare Williams' poem, Kua Rongo ake Au 2:[98]

Kua rongo ake au …
Na, tirotiro kau ana mō te aroha me te rangimārie
Mehe e tirotiro ana kei whea e rangimārie ka kitea e
Te aroha e

I have learned that …
If you look for love, you'll find peace,
And if you look for peace, you will find love

[98] From Kua Rongo ake Au 2, Words of a Kaumatua, Haare Williams, Auckland University Press, 2019, at 190.

Nature and effect of the orders

[215] I need to say something further about the nature and effect of the orders that I have made. I do so because, after I made the interim order in this proceeding requiring the first and second respondents to reinstate Ms Kapa-Kingi as a member of Te Pāti Māori, the view was taken by the Parliamentary Service that the interim order related only to Ms Kapa-Kingi's reinstatement as a member of Te Pāti Māori as a political party and did not affect her status within the "parliamentary party" of Te Pāti Māori.[99]

[216] Accordingly, since the interim order was made, Ms Kapa-Kingi has been able to participate in Pāti hui (including its AGM on 7 December 2025) and has not been vulnerable to the issue of notices under ss 55A(3)(b) and 55C of the Electoral Act 1993 (the waka jumping provisions) but, given the distinction drawn, she has not, for example, been able to attend caucus meetings.

[217] I do not see there to be any distinction between Te Pāti as a political party and as a parliamentary party. The Standing Orders define "party" as "the parliamentary membership of a political party that is recognised as a party for parliamentary purposes under the Standing Orders".[100]

[218] Standing Order 35(1) is in the following terms:

> Every political party registered under Part 4 of the Electoral Act 1993, and in whose interest a member was elected at the preceding general election or at any subsequent by-election, is entitled to be recognised as a party for parliamentary purposes, subject to paragraph (3).

[219] Te Pāti Māori is a registered political party. Its "parliamentary membership" comprises those MPs who were elected under the umbrella of the party and whose membership status has not changed since the preceding general election.

[220] Accordingly, to the extent that the respondents have informed the Speaker that Ms Kapa-Kingi is not part of its parliamentary membership under Standing Order 36(1)(c), they must now inform the Speaker that Ms Kapa-Kingi is reinstated to Te Pāti's parliamentary membership under that Standing Order.

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99 That was not a matter that was addressed at the interim orders hearing.

100 Standing Orders of the House of Representatives 2023, SO 3.

Costs

[221] The applicants are entitled to costs on a 2B basis under the High Court Rules 2016. It is hoped that, consistently with the principles that are outlined in Part 1 of the Kawa, the parties will be able to agree upon a costs solution between them. However, if they cannot, then the applicants may file memorandum within 20 working days of the date of this decision and the respondents may file a memorandum in reply within a further 15 working-day period. Memoranda should not be longer than seven pages in length (including any schedules).

Radich J

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