

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 241  
EMPC 335/2025**

IN THE MATTER OF            an application for judicial review  
AND IN THE MATTER OF    an application for a compliance order  
BETWEEN                      GLEN JENNER  
   Applicant  
AND                              CORRECTIONS ASSOCIATION OF NEW  
   ZEALAND INCORPORATED  
   Respondent

Hearing:                      30 September and 1 October 2025  
   (Heard at Auckland)

Appearances:                A Little and M O’Flaherty, counsel for applicant  
   JM Roberts and K Kleingeld, counsel for respondent

Judgment:                    7 November 2025

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**JUDGMENT (NO 2) OF JUDGE KATHRYN BECK**

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[1]     These proceedings involve two applications – an application for judicial review and an application for a compliance order.

[2]     The first is an application for judicial review of the proposed actions of the respondent, Corrections Association of New Zealand Inc (CANZ or the union), by the applicant, Mr Jenner, who holds the office of vice president of CANZ, having been elected on 27 June 2025.

[3] The review relates to the initiation of a process in CANZ's constitution which provides for the removal of a person from office. Notice of the potential removal was provided to Mr Jenner on 26 July 2025.

[4] On 31 July 2025, Mr Jenner filed an application seeking an interim injunction on an urgent basis preventing the process taking place pending determination of the substantive claim for judicial review. He applied on the grounds that if the process were to go ahead as proposed, it would be a breach of the constitution, a breach of his natural justice rights and a breach of the obligations of good faith owed to him by CANZ under s 4 of the Employment Relations Act 2000 (the Act).

[5] CANZ opposed the application for interim relief. It claimed its actions abided by the union's constitution, the principles of natural justice and the obligations of good faith.

[6] The process at issue was initially scheduled to take place on 4 August 2025 but was deferred until 6 or 7 August 2025, pending the Court's interim injunction judgment. The interim injunction was granted on 6 August 2025 as follows:

The application for an interim injunction preventing the respondent from conducting a process proposing to remove Mr Jenner under cl 24.2 of the constitution is granted until further order of the Court.

[7] Reasons were given in a judgment dated 11 August 2025.<sup>1</sup>

[8] The second application relates to a compliance order sought by Mr Jenner.

[9] On 7 August 2025, the executive committee of CANZ passed the following resolution:

The Vice President is not to conduct any work as Vice President, which includes but is not limited to, holding himself as acting in the capacity of the Vice President of CANZ or contacting any Corrections Head Office employees or any Corrections Manager as the Vice President of CANZ or contacting any member as the Vice President of CANZ without the direction and authorisation in writing by the President, or management Officers in Committee or Executive Committee confirmed vote.

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<sup>1</sup> *Jenner v Corrections Assoc of New Zealand Inc* [2025] NZEmpC 168.

[10] Mr Jenner claims that by passing the resolution, CANZ breached the order of the Court by effectively removing him from his position as vice president. He also claims that the resolution has the effect of undermining the interim order of the Court.

[11] A meeting of the executive committee is to take place this week in November 2025. This judgment resolves both applications and provides guidance to the executive committee should it pursue its proposal to remove Mr Jenner from office.

## **Background**

[12] Much of the background to this matter has been covered in the previous judgment of the Court.<sup>2</sup> However, it is helpful to record it again.

[13] Mr Jenner is a senior corrections officer employed by the Department of Corrections (Corrections) and the current vice president of CANZ.

[14] CANZ is a duly incorporated society under the Incorporated Societies Act 1908 and a duly registered union under the Act. It is a union for prison-based Corrections staff, and is run by Corrections staff. It represents the majority of corrections officers and staff in prisons. It is managed on a day-to-day basis by its four management officers – a president, vice president, secretary and treasurer. It also has four employees – an industrial officer, an education officer, and two administrators. The operation is governed by its constitution which deals with a range of matters including the purposes and principles of CANZ, disciplinary matters, structure and governance, elections, removal from office, collective matters, various other matters, and a dispute resolution process.

[15] CANZ is governed and managed by an executive committee of 24 people. This includes the four management officers, referred to as the management officers committee, and executive members (elected representatives from each prison site).<sup>3</sup>

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<sup>2</sup> *Jenner v Corrections Assoc of New Zealand Inc*, above n 1.

<sup>3</sup> Clause 13 of the constitution.

[16] Mr Jenner has been a member of the executive committee<sup>4</sup> as the elected representative for Rimutaka Prison since July 2022. He was elected vice president on 27 June 2025.

[17] During the period Mr Jenner was a member of the national executive, he and another national executive member, Mr Al-Bustanji, applied for judicial review of actions by CANZ proposing to take disciplinary action against them. In that proceeding (EMPC 144/2024), on 13 May 2024, the Court granted the application for an interim injunction preventing CANZ from conducting that disciplinary process pending the resolution of the judicial review proceedings.<sup>5</sup> Those proceedings were scheduled to be heard on 30 September and 1 October 2025 in Wellington.<sup>6</sup> However, they are currently adjourned pending an application by CANZ for leave to appeal an interlocutory judgment. The days were utilised to hear these proceedings.

[18] At the time of those proceedings, Mr Jenner had a tense relationship with Mr du Plessis, the president of CANZ, and took issue with various decisions (some historical) made by officers and the national executive (of which he and Mr Al-Bustanji were members at the time).

[19] Mr Jenner was re-elected as an executive member in 2024.

[20] On 5 June 2025, Mr Jenner submitted the forms to stand for the office of vice president, specifically a nomination form with the necessary number of signatories and a candidate biography. The biography, among other things, stated:

...

I hear and agree with many of you that change in our union is overdue and positive change will be my focus.

I'm concerned about our union's current direction, spending, bargaining approaches, and priorities.

...

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<sup>4</sup> Previously known as the national executive.

<sup>5</sup> *Al-Bustanji v Corrections Association of New Zealand Inc* [2024] NZEmpC 76.

<sup>6</sup> While the Court was able to hear the matter in June 2025, for various reasons related to the parties, the hearing was not able to take place before the current hearing dates.

[21] On 27 June 2025, Mr du Plessis notified Mr Jenner that he had been elected as vice president.

[22] Between 1 July and 18 July 2025, Mr Jenner and Mr du Plessis exchanged emails in relation to the arrangements relating to the role of vice president, such as whether there was to be a secondment (as with the previous vice president), the provision of a phone, laptop and credit card, the duties of the position and transport. Mr Jenner made inquiries about a car as he normally uses a bicycle but would need different arrangements for travel between prisons. Mr du Plessis informed Mr Jenner that no secondment was available at that point.

[23] On 7 July 2025, Mr Jenner responded to Mr du Plessis that this would be unacceptable and made it impossible for him to perform his role while working full time. He said he wished to de-escalate matters and work in good faith, and again requested Mr du Plessis to arrange a secondment for him, even if it meant replacing another secondee.

[24] On 8 July 2025, Mr Jenner requested a copy of the employment agreement of the former vice president. Mr du Plessis responded to the email, providing a copy of an agreement for the role of vice president which was essentially a position description. It noted that the role reported to the president, the national executive and the members. It set out the role's purpose, direct reports, and the duties and responsibilities – responsibility to the membership, encouraging membership participation, and working with other union representatives.

[25] On the same date, Mr du Plessis emailed Mr Jenner to inform him that due to his legal proceedings and other matters, all communications moving forward would have to be in writing (via email) through the CANZ system or in person with an appropriate witness present.

[26] On 10 July 2025, Mr Jenner emailed Mr Dennehy, the secretary of the union and asked that the topics of “secondments” and “restrictions placed on the Vice president due to court case” be placed on the agenda of the executive committee meeting scheduled for August 2025.

[27] During this period Mr Jenner made his own direct inquiries of Corrections about who was seconded to CANZ and details of the secondment of the previous vice president. This was raised by Corrections with Mr du Plessis on 8 July 2025 and confirmed in an email on 15 July 2025.

[28] In various emails on 15 July 2025, Mr du Plessis said that there was no current requirement for a vehicle. He noted that he had not said no to a secondment although the position itself did not encompass it and it would need to be discussed. He advised that all communications and actions of the management officers needed to be shared and discussed before proceeding.

[29] On 17 July 2025, Mr du Plessis emailed the management officers attaching an updated workload document for discussion. He proposed two areas for Mr Jenner and reminded them that all workstreams were set up with at least two members working alongside each other. Mr du Plessis sought comments and thoughts before sending the document to the others (the industrial officer, the two organisers and the member with regional responsibility).

[30] On 18 July 2025, Mr du Plessis wrote to Mr Jenner raising concerns about him contacting Corrections directly to inquire about secondment. He advised Mr Jenner that he did not have authority to contact Corrections about anything related to CANZ unless approved by the management officers, and instructed him to immediately cease his communications.<sup>7</sup> He alleged that Mr Jenner had done nothing but act in his own interests since becoming vice president, which was something he said he had observed over the previous 18 months. He made a number of allegations about Mr Jenner's conduct, including that he had taken a court case against CANZ at significant cost, been abusive in meetings and attempted to covertly record a meeting. He concluded by saying that he had no trust in him. He stated that Mr Jenner's advice that he wished to "work together in good faith" did not appear to be genuine.

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<sup>7</sup> Mr du Plessis' evidence was that such communications needed to be appropriately managed and that secondments, in particular, needed to be dealt with sensitively.

[31] On 22 July 2025, Mr Jenner sent two emails in response – the first directly to Mr du Plessis and the second to him and the members of the executive committee. Both emails attached Mr du Plessis’ email of 18 July 2025.

[32] In the email to Mr du Plessis, Mr Jenner stated that he was not employed by Mr du Plessis and was not obliged to take instruction from him. He noted his disappointment in the stated lack of trust. In relation to the legal action, he noted that it was up to everyone to navigate the case sensibly and carefully. He reminded Mr du Plessis that he had been democratically elected into the role by the membership. He said that he was committed to acting in the best interests of the union and its members and that he hoped they could work together.

[33] In the email to Mr du Plessis and the members of the executive committee, Mr Jenner rejected Mr du Plessis’ allegations and stated his intention to work with him as president, and with all members of the executive, in good faith and in the spirit of doing his best for the union’s members. He set out his objectives and acknowledged that there had been disagreements, but noted his concern regarding the lack of a secondment and communication restrictions. Mr Jenner asked that the court case be separated from his role as vice president. He acknowledged that while some might be unhappy with his election as vice president, the membership’s voice should be respected. He called for them to work together, acknowledging different views and putting aside personal grudges. He concluded with:

I hereby ask for help and support of all members of the national executive to resolve this issue so that I can fulfil my duties as vice president properly with no bias, personal opinions or any obstruction from anyone.

[34] On 23 July 2025, Mr Dennehy responded to Mr Jenner’s email of 10 July 2025. He advised that there were no restrictions placed on the vice president because of the court case and that currently all secondment positions were full. He noted that secondments were a topic that the management officers discussed first (which he understood Mr Jenner had not attempted to do) and were based on need, not position.

[35] Mr Jenner responded the same day, advising that he would communicate directly with Mr Plessis, referring to his 22 July 2025 (above) email as spelling out his

willingness to work together and saying that he wanted to meet with the national officers to discuss “where to from here.”

[36] On Thursday, 24 July 2025, Mr Jenner and Mr du Plessis exchanged emails. Mr Jenner requested a meeting to sit down in person and work through issues the following week. Mr du Plessis already had a full schedule but noted that they (the management officers) already had two meetings scheduled for the upcoming Monday (28 July 2025) via teams.

[37] On Saturday, 26 July 2025, Mr Jenner received two emails from Mr du Plessis. The first was to the whole national executive titled “Notice of referral to the CANZ Executive Committee for potential removal of Mr Glen Jenner as Vice President from the Vice President Position”. It stated:

Two concerns have been raised with me by Executive Members (please see the **attached**) regarding Mr Jenner’s behaviour and conduct during the election and his earlier actions. As you may be aware, I have also raised my own concerns with Mr Jenner about his behaviour over the last 18 months. I have **attached** the email thread containing Mr Jenner’s response for your information.

Pursuant to clause 24.2 of the Constitution (also **attached**), I would like the Executive Committee to consider whether it would be appropriate to remove Mr Jenner from his position as Vice President of CANZ in light of these concerns. This will require the Executive Committee to consider these concerns and make a decision by a special majority vote during the meeting on 4 August 2025. Please regard this email as formal notice under clause 24.2 of the Constitution.

...

[38] The second was to Mr Jenner individually. It stated:

There have been two concerns raised with me by Executive Members (please see **attached**). These concerns relate to your behaviour and conduct during the election and your earlier actions. In summary, there are concerns that it was inappropriate for you to stand for a Management Officer role while having active court proceedings against CANZ, that you have a conflict of interest and cannot act impartially or in line with CANZ values or goals for this reason, and that CANZ members were misled by you during the election including because they did not know about the active court proceedings. One of the concerns also raises that you had secretly recorded parts of a National Executive Meeting. These Executive Members are concerned that you are acting in your own self-interests and not for the betterment of CANZ.

Glen, these concerns are disappointing but unfortunately I share them too. As you know, I have myself been concerned about your behaviour over the last 18 months (including during both elections), and I **reattach** the email I sent to you on 18 July 2025 explaining these concerns. This email thread includes your response to me on 22 July 2025, And I note that you have also sent an email response of the same date to the Executive Committee.

The concerns that have been raised about your behaviour and conduct and your response will be discussed and addressed at the Executive Committee meeting on 4 August 2025. The Executive Committee will be considering whether it would be appropriate to remove you from your position as Vice President of CANZ in accordance with clause 24.2 of the Constitution. The Executive Committee will then make a decision by a special majority vote regarding your position with CANZ. Please regard this email as formal notice under clause 24.2 of the Constitution, which I **attach** for your reference.

[39] The attached emails of complaints about Mr Jenner pre-dated his election to vice president. They were dated 19 and 23 June 2025.

[40] The executive committee meeting was scheduled to take place over five days on 4 to 8 August 2025.

[41] On 28 July, Mr Jenner advised via email that he was unable to attend the scheduled management officers team meeting.

[42] On 29 July 2025, Mr Jenner's lawyers wrote to the union's lawyers alleging potential breaches of good faith and natural justice concerning the removal process. They requested mediation at the earliest opportunity.

[43] By letter dated 30 July 2025, the union's lawyers rejected those allegations, outlined the concerns raised by Mr du Plessis, and asked that Mr Jenner co-operate in the cl 24.2 process and address the concerns in the meeting. They confirmed that the process would proceed and rejected the suggestion of mediation.

[44] These injunction proceedings were filed by Mr Jenner on 31 July 2025.

[45] As noted above, the interim injunction was heard on 5 August 2025. On 6 August 2025, the Court made the order as set out at [6] above; reasons followed on 11 August 2025.

## Law

[46] Judicial review is a supervisory jurisdiction which enables the courts to ensure that public 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 a public power, that even if the courts have jurisdiction, the exercise of power must be one that is appropriate for review and that relief is, in any event, discretionary.<sup>8</sup>

[47] Judicial review proceedings may be brought under s 194 of the Act in respect of any exercise or proposed exercise of a statutory power by a union under its rules.<sup>9</sup> Where judicial review proceedings are brought under that section, the provisions of the Judicial Review Procedure Act 2016 apply.

[48] Statutory power under the Judicial Review Procedure Act is defined as follows:<sup>10</sup>

- (1) In this Act, statutory power means a power or right to do any thing that is specified in subsection (2) and that is conferred by or under—
  - (a) any Act; or
  - (b) the constitution or other instrument of incorporation, rules, or bylaws of any body corporate.
- (2) The things referred to in subsection (1) are—
  - (a) to make any secondary legislation; or
  - (b) to exercise a statutory power of decision; or
  - (c) to require any person to do or refrain from doing anything that, but for such requirement, the person would not be required by law to do or refrain from doing; or
  - (d) to do anything that would, but for such power or right, be a breach of the legal rights of any person; or
  - (e) to make any investigation or inquiry into the rights, powers, privileges, immunities, duties, or liabilities of any person.

[49] In relation to incorporated societies, this jurisdiction extends to decisions which are largely contractual in nature such that an action in contract could also be

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<sup>8</sup> *Ririnui v Landcorp Farming Ltd* [2016] NZSC 62 at [1].

<sup>9</sup> Employment Relations Act 2000, s 194.

<sup>10</sup> Judicial Review Procedure Act 2016, s 5.

brought.<sup>11</sup> But it is limited in an important way: there should be a public aspect to the powers exercised by the private entity and/or its activities. In *Hopper v North Shore Aero Club Inc*, the Court of Appeal summarised the limits of the jurisdiction in the following way:<sup>12</sup>

- (a) Where the activities of a private entity are private in nature, the Courts have demonstrated a reticence to interfere with matters of internal management or regulation.<sup>13</sup>
- (b) The internal workings of incorporated societies with respect to members are primarily reviewable under the law of contract.<sup>14</sup>
- (c) A club's rules will be reviewable where they, or the way in which they are applied, constitute(s) a breach of natural justice. The basis for intervention has been the Court's power of enforcing the contract constituted by the rules.<sup>15</sup>

[50] As stated in *Tamaki v Māori Women's Welfare League Inc*, judicial review will be available in a number of qualifying circumstances involving:<sup>16</sup>

... the denial of access to membership, the exercise of a disciplinary power, the deprivation of a licence or other economic concession, the alleged misapplication of a society's constitution in a manner that offends natural justice or an alleged error of law in the application of a society's constitution where the body concerned has a public or quasi-public function.

[51] However, registered unions occupy a position distinct from other incorporated societies. The Act confers onto unions specific legal recognition as representatives of employees' interests and provides for registration of unions that are accountable to their members.<sup>17</sup> As such, the registration of a union is conditional upon fulfilling specific obligations under the Act.

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<sup>11</sup> See *Royal Australasian College of Surgeons v Phipps* [1993] 3 NZLR 1.

<sup>12</sup> *Hopper v North Shore Aero Club Inc* [2007] NZAR 354.

<sup>13</sup> At [10].

<sup>14</sup> At [11].

<sup>15</sup> At [12].

<sup>16</sup> *Tamaki v Māori Women's Welfare League Inc* [2011] NZAR 605 at [43].

<sup>17</sup> Employment Relations Act 2000, s 12(b).

[52] Section 14 of the Act states that a society is entitled to be registered as a union if:

- ...
- (c) the society's rules are—
    - (i) not unreasonable; and
    - (ii) democratic; and
    - (iii) not unfairly discriminatory or unfairly prejudicial; and
    - (iv) not contrary to law; and
  - (ca) the society's rules contain a provision relating to the process for holding a secret ballot for the purposes of this Act; ...

[53] In this case the executive committee of CANZ is proposing to consider the removal of Mr Jenner as vice president under cl 24.2 of its constitution. This is set out in full in [68] below.

- 24.2 Any person elected to a position within CANZ, including as an Officer, may be removed from office for just cause in the following manner:

...

[54] A union's decision-making structures underpin the establishment of its authority to represent employees, the ratification of any settlement reached with an employer or employers, and the enforceability of any collective agreement. It follows that decisions made by a union in relation to members must be in accordance with the law; that includes in accordance with the union's constitution, the principles of natural justice and the obligations of good faith.<sup>18</sup>

[55] Nonetheless, not every action of a union will be amenable to judicial review. Given the statutory requirement for union rules to be democratic, where a majority vote at a properly constituted meeting has been held relating to the tenure of an elected officer, the wishes of the majority should not be lightly thwarted.<sup>19</sup> As the Court of Appeal observed in *Te Whakakitenga O Waikato Inc v Martin*, this consideration has added force "when the decision is of a political nature concerning general performance rather than a hard-edged assessment of specific performance-related issues".<sup>20</sup>

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<sup>18</sup> There is an employment relationship between a union and its members which confers mutual obligations of good faith. See Employment Relations Act 2000, s 4(2)(c).

<sup>19</sup> *Te Whakakitenga O Waikato Inc v Martin* [2016] NZCA 548, [2017] NZAR 173 at [21].

<sup>20</sup> At [21].

[56] However, even in the case of the election or removal of officers, serious procedural unfairness such as a failure to give notice of the resolution, an opportunity to be heard, or a significant breach of the rules, or ultra vires action, will be amenable to review.<sup>21</sup>

[57] It is sometimes difficult to frame the grounds of judicial review. This stems partly from the lack of an agreed classification or taxonomy. As explained in *Lab Tests Auckland Ltd v Auckland District Health Board*,<sup>22</sup> it can be usefully understood and considered through various grounds. First, there are procedural grounds of review. These are well settled and focus on the conduct of the decision-maker and include procedural fairness requirements, fair hearing rules, and rules against bias. Second, there may be concern over the decision-maker's reasoning processes. That includes misappreciation of the law, unauthorised delegation and the perennial problem of control of the exercise of a discretion. Third, there are substantive grounds of review relating to the decision itself.<sup>23</sup>

#### *The claim*

[58] Mr Jenner's statement of claim makes several claims about the removal process the CANZ executive committee intends to undertake. He claims that:

- (a) undertaking such a process would breach CANZ's duty of good faith to him by:
  - (i) acting in breach of its own rules through failing to establish just cause and failing to act in accordance with the principles of natural justice;

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<sup>21</sup> *Te Whakakitenga O Waikato Inc v Martin*, above n 19, at [22] citing *Stratford Racing Club Inc v Adlam* [2008] NZCA 92 at [55]; *Hopper v North Shore Aero Club Inc*, above n 12, at [12]; *Tamaki v Māori Women's Welfare League Inc*, above n 16, at [43]; and *Pritchard v Evans* [2014] NZHC 3150, [2014] NZAR 370.

<sup>22</sup> *Lab Tests Auckland Ltd v Auckland District Health Board* [2008] NZCA 385, [2009] NZLR 776.

<sup>23</sup> At [382]–[384].

- (ii) acting inconsistently with the implied mutual obligation of trust and confidence and failing to be active and constructive in maintaining a productive relationship;
- (b) undertaking such a process would be contrary to CANZ's statutory obligation to have rules which are, among other things, democratic.

[59] The central question in this proceeding can be summarised as follows: Can CANZ commence a process to remove Mr Jenner from his position as vice president on the basis it currently seeks to do so?

[60] I have found that it cannot do so for the reasons set out below. It is not prohibited from pursuing the process entirely but must ensure that it does so in a way that meets the requirements of natural justice, which I elaborate on later in this judgment.

### **Justiciability**

*Is the proposed exercise of power justiciable or amenable to judicial review?*

[61] As a preliminary matter, CANZ challenges whether Mr Jenner's claim is amenable to judicial review. It says that to intervene at this stage, before a decision has been made, would render the Court at risk of usurping the union's power under the guise of preventing an abuse of power.<sup>24</sup>

[62] CANZ refers to the Court of Appeal decision in *Singh v Chief Executive of the Ministry of Business, Innovation and Employment*<sup>25</sup> which provides guidance on when a proposed exercise of statutory power is amenable to judicial review. As noted in *Singh*, judicial review will not usually be exercised at a preliminary stage and where the powers exercised are unlikely to be influential in the final decision. This includes situations where there are adequate avenues for appeal and an absence of public interest.<sup>26</sup> In those circumstances, judicial review may only be justified in exceptional

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<sup>24</sup> Relying on *Chief Constable of North Wales Police v Evans* [1982] 1 WLR 1155 (PC).

<sup>25</sup> *Singh v Chief Executive of the Ministry of Business, Innovation and Employment* [2014] NZCA 220, [2014] 3 NZLR 23.

<sup>26</sup> At [39].

cases involving a demonstrated error of law or process which is likely to have a material influence on the final decision.

[63] In the present proceedings, CANZ says that the proposed exercise of power is not exceptional and there has been no decision reached. The application for judicial review is effectively premature, and Mr Jenner is open to pursue an appeal under the constitution as well as commence proceedings in the Authority. CANZ also argues that the interpretation of the union rules is a substantive issue and within the exclusive jurisdiction of the Authority.

[64] On its face, the proposal to remove Mr Jenner from his position as vice president cannot appropriately be described as a preliminary one. It is not a proposal to commence an investigatory or disciplinary process which may have multiple outcomes. As Mr Jenner highlights, the 26 July 2025 notice states that “All Executive Committee members will have the opportunity to attend this meeting and participate in the vote, including have an opportunity to express their views”. Based on the notice proposing to remove Mr Jenner, there is no indication that the role of the executive committee is to investigate, make findings of fact and assess proportionate remedies. The executive committee is on notice that it is simply required to consider the concerns and make a decision on whether to remove Mr Jenner from his position as vice president.<sup>27</sup>

[65] At an information gathering stage, before a final decision has been reached, a party is typically given adequate opportunity to address issues raised for his or her response and it is unlikely their rights will be adversely affected.<sup>28</sup> However, in this instance, the proposed decision by CANZ is determinative. It presents a binary choice (either Mr Jenner is removed from his position, or he is not) and it clearly may result in adverse consequences.

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<sup>27</sup> See above at [37]–[38].

<sup>28</sup> *Singh v Chief Executive of the Ministry of Business, Innovation and Employment*, above n 25, at [39].

[66] As noted above, proposed actions may be amenable to review where breaches of natural justice and improper process have been alleged.<sup>29</sup> Such allegations are made by Mr Jenner. I find that the proposed action by CANZ is amenable to judicial review.

## **Unlawfulness**

### *Submissions for Mr Jenner*

[67] The first ground on which Mr Jenner seeks judicial review is whether Mr du Plessis, for CANZ, acted unlawfully in initiating the process to remove him from his position as vice president. Specifically, Mr Jenner submits that on a proper interpretation of cl 24.2, the allegations made against him do not amount to just cause and therefore he cannot be removed pursuant to it.

[68] As noted above, cl 24 of the CANZ constitution provides for “Removal from Office”. It is cl 24.2 that is at play in these proceedings.

24.2 Any person elected to a position within CANZ, including as an Officer, may be removed from office for just cause in the following manner:

- (a) The Executive Committee may suspend and/or remove from office, by way of a Special Majority vote at an Executive Committee meeting, any person elected to office, provided that the person concerned and the Executive Committee has received not less than seven (7) days’ notice that such suspension/removal is to be considered. The rules of natural justice shall apply in all such cases.
- (b) Where the Executive Committee suspends and/or removes a person from office, that person may, within seven (7) days of the President notifying the person of such, notify the Secretary in writing that they require the membership for which the position relates to hold a ballot as to whether the suspension/removal should be upheld. On receipt of such notification, the Secretary shall arrange with the Returning Officer for such a ballot to be held as soon as practicable.
- (c) In any ballot under this clause the question on the ballot paper will be:

“I support the Executive Committee’s decision to [suspend] and/or [remove from office] (as applicable) (name of Member) from the position of (name of position) and [the Member be suspended for the

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<sup>29</sup> *Te Whakakitenga O Waikato Inc v Martin*, above n 19, at [22].

period of] (state period) [removed from office] (as applicable).”

- (d) Members shall be asked to vote in favour or against the suspension and/or removal and a Majority of those casting ballots will decide the issue. When the President declares the result, the effect of the vote shall take effect immediately.
- (e) In any ballot under this provision, both the Executive Committee and Member concerned are entitled to have a statement of up to five hundred (500) words accompany the ballot paper, at CANZ's expense. Any statement shall be germane to the issue of suspension and/or removal. No statement shall offend the laws of New Zealand. The Returning Officer shall be entitled to amend any statement should it not be germane or for other reasons on obtaining legal advice and their decision will be final.
- (f) Where at least thirty percent (30%) of the Financial Members of those eligible to vote for an elected position in CANZ sign a petition to remove a Member from their elected position and forward the petition to the President, the President shall as soon as practicable instruct the Returning Officer to organise such a ballot in accordance with the provisions of this clause (with any necessary modifications approved by the Returning Officer) to enable him or her to effectively carry out the ballot.
- (g) Where under this clause the President is the subject of any decision or petition, the Vice President shall assume all functions under this clause.

[69] Just cause is not defined under cl 24.2. The parties disagree on its interpretation.

[70] Mr Little argues that there is no just cause to remove Mr Jenner as there is no conduct that would justify the serious step of overturning a democratic election. He submits that just cause requires a high threshold to be satisfied before the executive committee may lawfully proceed to remove an elected official from office.

[71] Mr Little highlighted a number of statutory definitions of just cause, including the Crown Entities Act 2004, which states:<sup>30</sup>

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<sup>30</sup> Crown Entities Act 2004, s 40. Sections 38 and 39 refer to removal of elected members of Crown agents or autonomous Crown entities from office, and the removal of members of independent Crown entities.

#### **40 Just cause**

In sections 38 and 39, just cause includes misconduct, inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of the board or the individual duties of members (depending on the seriousness of the breach).

[72] In the Electoral Act 1993, members of the Electoral Commission who are not judges can be removed for just cause.<sup>31</sup> Just cause has the same meaning in the Electoral Act as in the Crown Entities Act.

[73] The Covid-19 Recovery (Fast Track Consenting) Act 2020 provides for the removal of a panel member for just cause, which states:<sup>32</sup>

#### **9 Removal and resignation of panel members**

- (1) The panel convener may remove any person appointed to a panel under this schedule for just cause.
- (2) The person may be removed with as little formality and technicality, and as much expedition, as is permitted by—
  - (a) the principles of natural justice; and
  - (b) a proper consideration of the matter.
- (3) In this section, *just cause includes misconduct, inability to perform the functions of office, neglect of duty, and breach of duty (depending on the seriousness of the breach)*.
- (4) A member of the panel may resign at any time as a member by notice in writing to the panel convener.

(emphasis added)

[74] Mr Little submits that these statutory references, as well as a number of cases he cites, suggests that a high threshold must be met to justify removal for just cause. The nature of the conduct justifying removal must amount to misconduct, inability to perform the role, neglect of duty or a serious breach of duty. It must be substantial and bear upon fitness for office.

[75] Further, Mr Little argues that the correct definition and threshold of just cause are shaped not only by statutory references but also by the legislative context. This context includes the objectives of the Act, which acknowledge and address the inherent inequality of power in employment relationships,<sup>33</sup> the accountability of

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<sup>31</sup> Electoral Act 1993, s 4G.

<sup>32</sup> Covid-19 Recovery (Fast Tracking Consenting) Act 2020, s 9.

<sup>33</sup> Employment Relations Act 2000, s 3(a)(ii).

unions to their members,<sup>34</sup> and the requirement that union rules must be democratic and not unreasonable.<sup>35</sup>

[76] What constitutes “democratic” for the purposes of s 14 is not defined under the Act. Absent a definition, Mr Little submits that this must be considered in the context and purpose of the legislation.<sup>36</sup> He submits that the express object that unions are accountable to their members, and the provisions covering ratification, support the notion that unions must have an appropriate level of membership control and accountability, a requirement which is consistent with the election of union governance by the membership.

[77] Mr Little contrasts this position with the wording of the Industrial Relations Act 1973 and Labour Relations Act 1987, where the requirement for unions to have democratic rules was qualified. He says it is reasonable to infer that Parliament intended unions under the current Act to be democratic organisations with governance decided on a democratic basis and with meaningful accountability processes to union members.

[78] Given the union’s decision-making structure and its authority to represent employees and reach binding, enforceable settlements and agreements, Mr Little argues that the union’s decision making must be stable, consistent and free of arbitrariness and caprice. In short, a democratic process should not readily be undone through a non-democratic process.

[79] While the union may take appropriate steps to disqualify candidates and implement safeguards, Mr Little argues that any disqualifying factors must be specified in the rules and applied in advance. They must apply at a high threshold and cannot operate as a routine process for appeal of a democratic decision.

[80] Taken together, he says the provision for removal of a democratically elected officer must be for a substantial and serious reason. Mere disagreement, dislike or

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<sup>34</sup> Section 12(b).

<sup>35</sup> Section 14(1)(c).

<sup>36</sup> Legislation Act 2019, s 10.

transgressions cannot justify overturning a democratic decision which would otherwise be unassailable.

[81] Mr Little submits that the concerns put forward by CANZ as amounting to just cause are insufficient and cannot compare with the nature of the conduct or circumstances required to establish just cause.<sup>37</sup> The frustration that this conduct would cause to Mr du Plessis and others is acknowledged, but it is characterised as an accumulation of annoyances and complaints, rather than just cause.

[82] In addition to the threshold question, Mr Little argues that there is a process aspect to just cause,<sup>38</sup> which is beyond the usual mandatory requirements for natural justice. He submits that CANZ has failed to follow an appropriate process and has regarded all complaints as proven, regardless of how substantial they are.

[83] Mr Little highlights cl 11 of the constitution which governs dispute resolution and disciplinary matters. It defines misconduct and states that any dispute or misconduct will be resolved in accordance with Schedule 1. It states:

## **11. Dispute Resolution and Disciplinary Matters**

11.1 Misconduct means where any Member (including an Officer):

- (a) Acts in a manner contrary to or inconsistent with the constitution or bylaws;
- (b) Ignores or does not follow a lawful resolution of the Executive Committee or instruction of a Management Officer or the Management Officers;
- (c) Misappropriates CANZ money or property;
- (d) Accesses, uses, modifies, discusses, discloses, deletes, removes, copies, transfers or distributes CANZ's Confidential Information or Intellectual Property except where the Member is required by law to do so or is authorised by CANZ;
- (e) Assaults or abuses any Member, Management Officer or employee of CANZ;

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<sup>37</sup> The concerns raised by CANZ include the applicant's proceedings against it, the attempted recording of an executive committee meeting, requests for secondment, and the accuracy of his election bio.

<sup>38</sup> Relying on *ASTE v Northland Polytechnic Council* [1992] 2 ERNZ 943; and *Board of Trustees of Marlborough Girls' College* [1999] 1 ERNZ 665.

- (f) Makes or prints any defamatory statements about any Member, Management Officer, Organiser, employee, professional advisor or advocate of CANZ;
- (g) Harasses, discriminates, bullies, ridicules or humiliates any Member, Management Officer, Organiser, employee, professional advisor or advocate of CANZ;
- (h) Does anything to discredit or undermine CANZ, anything it does for the collective interests of Members, any Management Officer, Organiser or employee;
- (i) Acts in a manner, or does anything, that has the potential to bring CANZ into disrepute; and/or
- (j) Joins any other association that is also a union and has membership that includes the eligibility criteria set out in clauses 7.1

11.2 Any Dispute and any Misconduct will be resolved in accordance with Schedule 1 – Resolving Disputes.

[84] Schedule 1 sets out comprehensive provisions for dealing with complaints arising from a dispute<sup>39</sup> or allegations of misconduct under cl 11.1, including providing for independent assessments and the involvement of an independent lawyer if the complaint cannot be resolved at the lowest level. I will return to the relevance and significance of the dispute resolution provisions later.<sup>40</sup>

[85] Mr Little concludes that an available application of cl 24.2, in a way that accords with the union’s obligations to act in good faith and have rules which are democratic and not unreasonable, entails the following steps:

- (a) establishing whether an appropriate threshold for just cause has been met (being a substantial claim of serious misconduct justifying overturning a democratic decision);
- (b) subjecting the claim to an investigation by an appropriate group with the assistance of legal advice; bias, predetermination and conflicts of

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<sup>39</sup> Defined in cl 3.1 as meaning a disagreement or a conflict which relates to an allegation that, among other things, a member or an officer has engaged in misconduct or has breached, or is likely to breach, a duty under the constitution, CANZ bylaws or the Incorporated Societies Act 2022.

<sup>40</sup> See below at [163].

interest should be screened out and the subject of the complaint should have an opportunity to be heard;

- (c) the group investigating the claim compiling a report setting out evidence underlying the proposal for removal and recommending (with reasons) whether removal is justified; and
- (d) the report being considered by the executive committee which ensures that the subject of the complaint is heard and bias, predetermination and conflict are screened out.

[86] He further submits that such a process is contemplated by the constitution itself.

#### *Submissions for CANZ*

[87] CANZ disputes the applicant's interpretation of just cause, particularly the manner in which it is defined in his statement of claim. Mr Roberts contends that defining just cause in the statement of claim as an egregious breach of the rules, fraud, gross dishonesty, or conduct akin to criminal offending, has set the threshold extremely high. He says the applicant is therefore required to prove just cause to this specifically pleaded standard, which he notes has changed in submissions.

[88] As a preliminary issue, Mr Roberts referred to *Hamilton Cosmopolitan Club Inc v Lewis*<sup>41</sup> to suggest that CANZ would be prejudiced by the difference between the statement of claim and submissions. However, *Hamilton Cosmopolitan Club* is helpful to Mr Jenner's case, not CANZ's, as it states:

It is well-established that a court cannot decide a case upon evidence or arguments falling outside of the pleadings. There is, of course, some leeway. The way a case is argued can change its complexion. It is not always necessary to require re-pleadings. And technicalities will not be permitted to interfere with the interests of justice.

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<sup>41</sup> *Hamilton Cosmopolitan Club Inc v Lewis* [2022] NZHC 2555.

[89] A claim is established when the essential elements of the claim(s) are proven, not necessarily when every specific pleading is proven. I consider that Mr Jenner's statement of claim and submissions are substantially consistent.

[90] In its submission, CANZ invites the Court to consider the background of the union and the nature of the executive committee and management officers committee<sup>42</sup> in its interpretation of cl 24.2. Mr Roberts argues that CANZ should not be held to an artificially high standard that disregards the nature of the organisation and the voluntary nature of the executive members and management officer roles.

[91] He refers to the well-settled principles of contractual interpretation to submit that just cause should be given its plain and ordinary meaning in the context of the constitution.<sup>43</sup> He argues that it requires no gloss; all that is necessary for just cause is that "there is a reason (or reasons) [for] the cause and that cause is just in circumstances."<sup>44</sup>

[92] What amounts to just cause can therefore be a range of acts or omissions and is to be determined by the executive committee, given its role in the structure and governance of CANZ.<sup>45</sup> Mr Roberts also argues that should any of the concerns raised be capable of amounting to just cause, the Court cannot intervene as it is the executive committee which is the arbiter of standards of its officers and is responsible for the governance and management of the union. He argues that it is insufficient if only some concerns do not satisfy just cause in the Court's view. Mr Jenner must prove none of the concerns amount to just cause in order to halt the process.

[93] Mr Roberts emphasises that CANZ is a private, voluntary society. Unlike other employment relationships, the position of office is also voluntary and removal from that office does not result in a loss of membership, and cannot be analogous to

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<sup>42</sup> See above at [14]–[15].

<sup>43</sup> Citing *Firm PI 1 Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 43.

<sup>44</sup> Respondent's submissions at para 47.

<sup>45</sup> Clause 13 of CANZ's constitution provides that CANZ is to be governed and managed by, or under the direction or supervision of, the executive committee. The executive committee is to have all the powers necessary for managing, and for directing and supervising the management of, the operation and affairs of CANZ.

dismissal from employment, or removal from a board along with the loss of directors' fees.

[94] Within this context, he says that just cause is a much broader consideration, focused on the position of the office holder. Mr Roberts clarifies that it may include misconduct, or a lack of ability to perform the tasks, or a view that the executive committee does not have trust and confidence that the office holder is able to perform their role. Crucially, what amounts to just cause is to be determined by the executive committee. Where an error is made, the affected person retains several rights, including an appeal to the membership, a right to challenge the decision in the Authority, and lastly, judicial review in the Court.

[95] While Mr Jenner characterised the process to remove him as a disciplinary one, Mr Roberts notes that cl 11 of the CANZ constitution sets out a separate process for disciplinary matters; therefore, the process to remove an elected officer is distinct and expressly provided for. The distinction between disciplinary processes and removal from office is also observed in the Incorporated Societies Act 2022.<sup>46</sup>

[96] In relation to the substance of the allegations made against Mr Jenner, Mr Roberts maintains that while CANZ's interpretation of just cause is wider, the stated issues CANZ has raised amount to just cause within the statutory definitions provided by the applicant. For example, the "inability to perform the functions of office" is akin to the executive committee losing trust and confidence in the ability to perform the functions of office.

[97] Mr Roberts submits that commencing a process to remove an elected officer is expressly provided for in the constitution and is not undemocratic. He asserts that the applicant has misstated the requirements of s 14 of the Act. He argues that it requires the constitution, at the time of registration, to be democratic. CANZ says this depends on whether the constitution enables members to influence its priorities and to participate in its decision-making processes. He also submits that the Act may require a democratic process for the election of officers and a facility for members to shape

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<sup>46</sup> Incorporated Societies Act 2022, ss 44–38 and 50(1)(b).

public policy; however, it does not dictate that the proposal to remove an officer be democratic.

[98] He argues that when the constitution is interpreted according to its true intent, meaning and spirit, it is the role of the executive to ascertain just cause and decide whether, by special majority vote, Mr Jenner should be removed from his position as vice president. While Mr Little says the nature and structure of unions attract a higher standard of scrutiny around decision making, Mr Roberts says it would be inappropriate to impose an unduly high degree of formality or technicality on a voluntary society.

[99] Mr Roberts submits that it is not undemocratic to have a process for the removal of officers that have been democratically elected, as long as there is just cause. He relies on s 26 of the Incorporated Societies Act, which provides incorporated societies with some flexibility in the structure and content of their constitutions. The relevant parts provide:<sup>47</sup>

**26 What constitution must contain**

(1) The constitution must contain the following matters:

...

- (f) the composition, roles, functions, powers, and procedures of the committee of the society, including—
  - (i) the number of members that must or may be on the committee (see section 45); and
  - (ii) the election or appointment of officers; and
  - (iii) the terms of office of the officers; and
  - (iv) the functions and powers of the committee (see section 46); and
  - (v) grounds for removal from office of officers (see section 50(1)(b)); and
  - (vi) how the chairperson (if any) will be elected or appointed and whether that person will have a casting vote if there is an equality of votes; and
  - (vii) the quorum and procedure for committee meetings, including voting procedures; and

....

- (j) procedures for resolving disputes, including providing for how a complaint may be made (see sections 38 to 44); ...

...

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<sup>47</sup> Incorporated Societies Act, s 26.

[100] Section (26)(f)(v) states that a constitution must contain grounds for removal from office, and when a person ceases to be holding office under s 50(1)(b) is when they are removed from office in accordance with the society's constitution.

[101] As noted, Mr Roberts distinguishes the proposed process for removal from a disciplinary process. He requests that the Court take notice of the many incorporated societies that have provisions for member misconduct and separate provisions for the removal of officers.

[102] Although Mr Roberts says the process to remove an officer is not required to be democratic, in the context of the structure of CANZ he submits it is in fact democratic, and Mr Jenner is not immune to removal simply because of his election. The executive committee comprises of 24 corrections officers who were democratically elected by their individual branches which put faith in them to carry out their functions. These 24 democratically elected officers are the ones who will vote on the proposal to remove Mr Jenner, and if an appeal is required, the matter will return to the entirety of the membership.

[103] For those reasons, CANZ argues that the process specified in cl 24.2 should be implemented without restriction or variation. It says the Court cannot usurp the function of the union by rewriting the rules or finding that the constitution is undemocratic.

### *Analysis*

[104] Determining whether there has been a breach of the constitution requires the interpretation of that constitution. The rules of an incorporated society are a contract and must be interpreted accordingly.<sup>48</sup> The principles applicable to contractual interpretation are well settled.<sup>49</sup>

[105] The starting point is the meaning of the language of the contract itself. In this context, incorporated societies exhibit characteristics that may affect the interpretation

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<sup>48</sup> *Reay v Attorney-General* [2019] NZCA 475, [2019] NZAR 1914 at [35].

<sup>49</sup> *Vector Gas Ltd v Bay of Plenty Energy Ltd* [2010] NZSC 5, [2010] 2 NZLR 444; and *Firm PI I Ltd v Zurich Australian Insurance Ltd* [2014] NZSC 147, [2015] 1 NZLR 432.

of the rules. This includes the fact that the rules differ from other contracts in that they typically incorporate an express objective, which permits the Court to adopt a purposive interpretation to give effect to the objective.<sup>50</sup>

[106] In the case of incorporated societies registered as unions, the Act imposes additional requirements that govern the limits and influence the interpretation of the union's rules. One of the central and underlying objectives is that the union must have rules that are democratic and accountable to its members.

[107] The submission that the executive committee can unilaterally vary the outcome of a fair and free election would fundamentally undermine the democratic structure of the union. If the union's democratic character is to be meaningful and effective, then the decision of its voting members must be final. This is because the choice made by voters is the democratic mandate which confers onto the union the authority to carry out its functions.

[108] Consistent with this context is the idea that a high threshold is required to unwind the fair and free decision made by voters.

[109] This high threshold is helpfully recorded in s 40 of the Crown Entities Act (which is repeated in the Electoral Act) and the Covid-19 Recovery (Fast Track Consenting) Act. That threshold is appropriate here, having regard to the purpose of both the constitution and the objects of the Act in relation to unions.<sup>51</sup> I find that just cause in cl 24.2 has the following meaning:

Misconduct, inability to perform the functions of office, neglect of duty, and breach of duty (depending on the seriousness of the breach).

[110] Mr Jenner seeks that I halt the process under cl 24.2 because the concerns raised cannot possibly amount to just cause, taking into account the meaning of just cause that he argues should apply and, I have accepted, applies. He says that CANZ does not have a legitimate basis on which to commence the process and it is therefore unlawful. Mr Roberts says that I would first have to find that all the concerns raised

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<sup>50</sup> *Reay v Attorney-General*, above n 48, at [38].

<sup>51</sup> Employment Relations Act 2000, s 12.

did not meet the threshold to justify halting the process. However, in any case, it is not for the Court to usurp the role of the decision-maker and the executive committee in determining whether the concerns raised amount to just cause.

[111] I agree that it is not the role of the Court to substitute its judgment for that of the decision-maker, but it cannot be the case that the Court is prohibited from inquiring into threshold issues as a matter of contractual interpretation. Whether the concerns can amount to just cause, as a matter of law, is open to the Court.

[112] To that end, as previously noted in my interim decision, litigation asserting Mr Jenner's individual rights cannot amount to just cause. It is a circumstance that will require appropriate management. However, the suggestion that being a claimant in litigation would in itself amount to just cause is unsustainable and inconsistent with public policy. Mr Jenner has a right to apply for review of the earlier decision to commence a process to remove him as a member of the union.<sup>52</sup> That right to justice is protected by s 27(2) and 27(3) of the New Zealand Bill of Rights Act 1990 (NZBORA).

[113] Consistency with the rights and freedoms contained in NZBORA must also inform the correct interpretation of just cause under cl 24.2 and operate as a substantive constraint on a decisionmaker.<sup>53</sup> If CANZ is proposing to reach a decision inconsistent with NZBORA, and that decision is challenged by way of judicial review, the Court must also be satisfied that the decision was a reasonable limit on the right.<sup>54</sup> However, CANZ does not appear to have turned its mind to Mr Jenner's rights under s 27 or engage with whether it was reasonable in terms of s 5<sup>55</sup> to consider that pending litigation amounted to just cause for his removal. Mr Roberts's suggestion that the significant costs of litigation can amount to just cause is therefore unsustainable. Both parties will have incurred costs. Those costs are a consequence of exercising the rights contained in s 27 of NZBORA. Where those costs ultimately lie will be a matter for the Court if they cannot be agreed, but they do not amount to just cause.

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<sup>52</sup> *Al-Bustanji v Corrections Association of New Zealand Inc*, above n 5.

<sup>53</sup> *Moncrief-Spittle v Regional Facilities Auckland Ltd* [2022] NZSC 138, [2022] 1 NZLR 459 at [81]–[84].

<sup>54</sup> At [84].

<sup>55</sup> New Zealand Bill of Rights Act, s 5.

[114] Applying the principles of contractual interpretation and taking into account public policy, when viewed objectively, the term “just cause” cannot include the litigation brought by Mr Jenner, nor its ancillary consequences such as increased cost or allegations of self-interest over the collective interests of CANZ.

[115] While other allegations raised by CANZ are not prima facie prohibited by law, CANZ is reminded that given the serious consequences of the outcome of its process – that is the removal of a duly elected officer – the analysis of whether the concerns are established and amount to just cause set out at [109] above must be conducted with rigor and the executive committee must do so in accordance with the principles of natural justice.

### **Procedural impropriety**

[116] Mr Jenner also seeks judicial review of the proposed removal on the grounds of procedural impropriety – namely, that there was a breach of natural justice, and a breach of notice requirements under cl 24.2.

#### *Natural justice*

[117] Clause 24.2(a) specifically provides that a proposal to remove an elected person from office requires both seven days’ notice and the application of the rules of natural justice.

#### *Submissions for Mr Jenner*

[118] Mr Little says that natural justice requires notification of the allegations relied on to justify adverse action, disclosure of relevant information and a process free from bias and determination.

[119] In relation to the notice requirement under cl 24.2, Mr Little claims that it is subject to the statutory obligations of good faith and the requirement for the union’s rules to be not unreasonable.<sup>56</sup> The requirement of good faith includes that parties in

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<sup>56</sup> Employment Relations Act 2000, ss 4 and 14.

an employment relationship not do anything likely to mislead or deceive each other and be responsive and communicative.<sup>57</sup>

[120] The notice of the proposal to remove Mr Jenner from his position was given on a Saturday, eight days before the meeting; however, Mr Little highlights that the allegations and issues raised by CANZ were well known before the notice was given. These do not appear to have been considered serious issues at the time and if they were, they could and should have been the subject of appropriate action. Mr Little suggests that it can be inferred that the failure to raise these issues formally as they arose was for the purpose of rolling them out at a later date of the union's choosing, and that doing so was misleading. Further, the failure to notify any formal action closer to the time of the alleged transgressions constitutes a failure to be communicative and responsive.

[121] Mr Little argues that it is reasonable to infer that the length of notice, and the fact that it was given on a Saturday, was calculated to ensure that Mr Jenner had little time to obtain advice and consider the issues raised.

[122] In essence, he submits that although notice was given within the mandatory timeframe under cl 24.2, it was a breach of CANZ's duty of good faith to Mr Jenner and the application was unreasonable.

[123] In relation to the broader natural justice requirements, Mr Little argues that there was a breach of natural justice as the 26 July 2025 notice failed to properly notify Mr Jenner of the allegations justifying the proposal. The allegations or concerns do not identify any breaches of union rules and to the extent these can be discerned, they are effectively opinions about Mr Jenner, rather than complaints concerning disqualifying conduct.

[124] The relevant allegations include one from an executive member which suggests that it is inappropriate for a national officer to take legal action against the union. The complaint by the other executive member refers to matters of opinion that Mr Jenner wrongly took legal action against the union. Mr Little submits that the only legitimate

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<sup>57</sup> Sections 4(1)(b) and 4(1A)(b).

aspect of the complaint was that Mr Jenner recorded part of each executive meeting; however, this was dealt with at the time. He also notes that Mr du Plessis' complaints of Mr Jenner are a list of grievances which are in fact opinions, rather than misconduct, some of which had been dealt with in the previous months.

[125] In short, Mr Little argues that there is no tangible allegation of an act or an event which is supported by objective evidence and for which a defence might be prepared.

#### *Submissions for CANZ*

[126] Mr Roberts emphasises that there is no "one size fits all" process to fulfil natural justice. Accordingly, CANZ fulfilled its obligations under cl 24.2, including the notification requirements and Mr Jenner's right to be heard.

[127] The requirements in cl 24.2 do not prescribe a form or specific content. In relation to the requirement for notice, CANZ says that it met this obligation and provided notice in excess of the timeframe required under the constitution. Further, the notice period was not in bad faith but in the interests of natural justice and ensuring minimal cost and burden to the executive committee.

[128] CANZ submits that there is no constitutional requirement for a detailed itemisation of concerns expressed generally. Mr Jenner was sufficiently on notice of the nature of the concerns and would have had an opportunity to respond to them. That was evident in the notice proposing to remove him which advised him of his alleged conduct, and the letter from CANZ's counsel clarifying the complaints from the two executive members and Mr du Plessis. Mr Jenner was advised that he would be given an opportunity to respond to concerns raised and informed of his right to seek legal advice. Any adverse findings or conclusions would not be made against him without an opportunity to present his version of events to the executive committee.

[129] Mr Roberts argues that Mr Jenner had sufficient information to be able to respond to the allegations at the executive committee meeting, and at this stage, having been successful in preventing the process, he has substantial information to which he has in fact responded.

[130] In any event, CANZ claims that Mr Jenner is aware of his actions and motives over the past 18 months, essentially arguing that “he knows what he has done”. It says the allegations are not new; they are predominantly actions which Mr Jenner carried out following the letter he received from Mr du Plessis on 2 April 2024.

[131] In considering whether natural justice has been fulfilled, Mr Roberts submits that the Court should consider the knowledge Mr Jenner would have had by virtue of his position on the executive committee, the notification provided on 26 July 2025, and the 30 July 2025 letter. At this juncture, he notes that Mr Jenner has fully explained himself to the Court, which was also an opportunity available to him at the executive committee meeting.

### *Analysis*

[132] There are two elements to the complaints raised by Mr Jenner in relation to notice. They are whether the information provided puts him sufficiently on notice of what it is he is to answer, and one of timing.

[133] In relation to the first issue, that of sufficiency, it is fair to say that the initial correspondence relied on that amounted to notice did not clearly itemise or particularise the allegations against him. While I agree with CANZ that the requirement on it is not to a judicial level, and should be tempered with realism,<sup>58</sup> Mr Jenner is entitled to know what it is alleged he has done to justify removal.

[134] To that end, an appendix to this judgment contains a summary of the allegations which I find Mr Jenner has been put on notice of, excluding those related to his litigation against CANZ. In preparing the summary, I have drawn from the two complaint emails, Mr du Plessis’ email of 26 July 2025 and the letter from CANZ’s lawyers of 30 July 2025. I consider it is these documents that set out the concerns.

[135] In relation to whether, having set out the concerns, there was sufficient information for Mr Jenner to fully understand the allegations, I consider that the Court is not constrained by the initial correspondence. Since that correspondence, a

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<sup>58</sup> *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172 (CA) at 194.

significant amount of information has been exchanged between the parties, including affidavits in this proceeding.

[136] I do not consider that such material is able to raise new allegations but it is able to be relied on to explain the allegations and the basis for them.<sup>59</sup>

[137] Accordingly, even if insufficient information was provided in the first instance, I consider that has now been corrected.

[138] In relation to the timing of any notice, the constitution requires seven days and Mr Jenner was given seven days. While it was unfortunate that the timing was tight, and perhaps unnecessarily so given the length of time over which the grievances had arisen, it was not unlawful. Further, given the time that has now elapsed, any procedural issues with timing have been resolved in any case.

#### *Bias and predetermination*

[139] As a matter of natural justice, Mr Jenner alleges that the proposal to remove him as vice president lacks impartiality; it is affected by the presence of bias and predetermination among CANZ executive committee members.

#### *Submissions for Mr Jenner*

[140] Mr Little submits that there is no evidence to demonstrate that any effort has gone into ensuring the consideration of the proposal to remove Mr Jenner would be free from bias and determination (even if there were grounds to do so).

[141] He argues that in the 26 July 2025 notice, there is no indication that the two executive member complainants and Mr du Plessis would be excluded from the executive committee meeting to determine whether to remove Mr Jenner, or that they would not form part of the decision-making group. This is despite their expressed views concerning Mr Jenner's unsuitability for office and Mr du Plessis' stated lack of trust in him. There is also no indication that another member (who sent an email endorsing another candidate for vice president), the other candidate for vice president,

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<sup>59</sup> See *Zhao v New Zealand Law Society* [2012] NZHC 2169 at [104].

or Mr Dennehy (a complainant in the earlier litigation) would be excluded from the process.

[142] One of the executive member complainants provided an affidavit, outlining his concerns with Mr Jenner, which states that he has no confidence and trust in him and cannot understand why Mr Jenner cannot be held accountable. While that member claims he is committed to impartiality, Mr Little says this claim must be regarded with suspicion, given the contents of his affidavit.

[143] Mr Little's concern is that individuals who have expressed firm and well-formed views about why Mr Jenner should not continue in his office, are still entitled to participate in the decision to remove him from his position. He notes that not only were these views expressed prior to the election and prior to the notice to remove, but they have now also been expressed in affidavits.

[144] Mr Little argues that compounding this issue is the fact that the proposal to remove was made only a month into Mr Jenner's two-year term. This demonstrates that the matter is motivated by deeply held personal views, and the chances of a truly dispassionate consideration of the facts and the matter as a whole, in accordance with the principles of natural justice, are slim.

#### *Submissions for CANZ*

[145] However, Mr Roberts argues that the requirements of natural justice, particularly the issue of bias and predetermination, are not at the level claimed by Mr Jenner. He says the allegations in respect of bias and predetermination are unfounded.

[146] He refers to *Muir v Commissioner of Inland Revenue*<sup>60</sup> which sets a two-stage inquiry for determining apparent bias:<sup>61</sup>

First, it is necessary to establish the actual circumstances which have a direct bearing on a suggestion that the Judge was or may be seen to be biased. This factual inquiry should be rigorous, in the sense that complainants cannot lightly throw the "bias" ball in the air. The second inquiry is to then ask whether those circumstances as established might lead a fair-minded lay

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<sup>60</sup> *Muir v Commissioner of Inland Revenue* [2007] NZCA 334, [2007] 3 NZLR 495.

<sup>61</sup> At [62].

observer to reasonably apprehend that the Judge might not bring an impartial mind to the resolution of the instant case.

[147] Mr Roberts submits that establishing bias and predetermination is a high bar. The mere fact that an executive member has raised concerns or expressed disquiet about Mr Jenner's conduct does not disqualify them from deliberating and voting on the proposal to remove him as vice president.

[148] Further, he argues that matters of bias and predetermination, as well as natural justice, are contextual and to be considered with the specific circumstances. Mr Roberts refers to *CREEDNZ Inc v Governor-General* which states that "the application of the rules against bias must be tempered with realism".<sup>62</sup>

[149] Given the nature of New Zealand unions, which employ comparatively few individuals, Mr Roberts submits it would be unrealistic to expect a tribunal to be composed of union members and officials with no strong feelings on an issue, particularly where the matter is volatile, and goes to the essence of policy making.<sup>63</sup>

[150] He argues that in the context of the present proceedings, the standard for bias cannot be that a person voted in favour of another candidate in the recent elections. The process cannot be one where Mr Jenner conflicts every person who he considers may vote against him. Mr Roberts's contention is that an opinion cannot be misconstrued as bias and predetermination, and even holding preliminary views on decisions does not meet this threshold, provided the decision-maker retains an open mind and is amenable to persuasion when making the final decision.<sup>64</sup>

[151] Mr Robert says Mr Jenner expects the level of impartiality required of a judge but this cannot be the standard expected of the executive committee or required by the constitution. Accordingly, natural justice and the requirement to be free from bias and predetermination are not absolute. They exist on a spectrum between what may be expected of a judge on the one hand, and those decisions made by large bodies who are required to act fairly, keep an open mind and be amenable to persuasion on the

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<sup>62</sup> *CREEDNZ Inc v Governor-General*, above n 58.

<sup>63</sup> Relying on *White v Kuzych* [1951] AC 585 (PC).

<sup>64</sup> Citing *Save Chamberlain Park Inc v Auckland Council* [2018] NZHC 1462 at [177].

other. CANZ argues that all members of the executive committee must vote given their individual knowledge of the grounds and form their own view, As long as they are prepared to be persuaded, then the process cannot be challenged.

[152] In this context, Mr Roberts says that removing members for perceived bias could lead to no executive members left to make a decision which would render cl 24 pointless and ineffectual.

[153] The case of *Stuart-Menteath v Registrar of Private Investigators and Security Guards* is also referred to by Mr Roberts, in particular the finding that “It is well established that the fact a litigant has made a complaint against the decision-maker does not of itself require the decision-maker to step aside”.<sup>65</sup> I note that Mr Jenner, as the litigant, is not the one who is making the complaints against the decision-maker/s; rather, it is the decision-makers (members of the executive committee) who are making complaints against the litigant.

[154] In any event, Mr Roberts says that any concerns regarding bias are moderated by the opportunity given to Mr Jenner to influence the executive committee in its decision.

#### *Analysis*

[155] The requirements of natural justice are contextual and variable. Within cl 24.2, the mandatory application of natural justice must be considered in light of the impact on Mr Jenner’s individual rights and the union’s democratic structure as a private and voluntary organisation.

[156] Accordingly, I do not agree with Mr Little that bias can be attributed to all of the members of the executive committee who have expressed a view about Mr Jenner, such that the inclusion of these members in the process would render a decision unlawful.

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<sup>65</sup> *Stuart-Menteath v Registrar of Private Investigators and Security Guards* HC Dunedin CIV-2010-412-306, 5 November 2010 at [33].

[157] Mr Roberts is correct that the standard for natural justice in this context is not one of judicial impartiality. Executive committee members cannot be excluded from voting in the removal process under cl 24.2 on the basis that they have formed a view, even negatively held, of an office-holder. The nature of the executive committee requires a high degree of interaction. Dissent and friction will not be uncommon, but they cannot be disqualifying factors under cl 24.2.

[158] However, there is a level of animosity that will significantly diminish the real possibility that the decision-maker brings an open mind to the process and is able to act fairly and be amenable to persuasion.

[159] It is stated in the affidavits of Mr du Plessis and one of the executive member complainants that trust and confidence in Mr Jenner has been eroded. This member did not simply complain; he asked for a vote of no confidence. Mr du Plessis was clear in early correspondence that he did not trust Mr Jenner. It is therefore difficult to imagine how Mr Jenner may be given a fair opportunity to present his case to those individuals. Further, the other executive member was a complainant who also sought a vote of no confidence and cannot be expected to bring impartiality and an open mind to the process. As complainants, all three cannot be regarded as disinterested participants in the process. The evidence in the affidavits only reinforces the point.

[160] The executive committee cannot be compared to polycentric decision-makers. Large-scale decisions affecting more than one individual will mitigate stricter requirements of natural justice.<sup>66</sup> However, here, the decision directly affects Mr Jenner's individual rights and is not at the preliminary stage. Something more is required to fulfil his rights of natural justice.

[161] The risk of bias and predetermination in these circumstances is amplified by the discretionary and insular process CANZ is proposing to establish just cause. This presents a significant risk to Mr Jenner's right to natural justice, and the requirements against bias and predetermination. It seems that the intention is for the executive committee to govern both the threshold and parameters of just cause, as well as to operate as a check to ensure that natural justice is complied with.

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<sup>66</sup> See for example *CREEDNZ Inc v Governor-General*, above n 58.

[162] Neither party tempered the submissions on this point with reality.

[163] Mr Little sought to cast the net too widely, capturing those who appeared to express a different opinion. Mr Roberts's submission that no-one would meet such a criterion for bias and predetermination, and that if they did, it would be mitigated by the number of decision-makers, was also unsustainable. Further, it failed to recognise the union's own acknowledgement that conflicts of interest may arise and should be dealt with.

[164] At this point, it is appropriate to revisit the potential applicability and significance of CANZ's existing process for dispute resolution. CANZ's own rules do not allow someone who may not be impartial, or able to consider the matter without a predetermined view, to act as a decision-maker on either a disputes subcommittee or its appeals body.<sup>67</sup> While I do not consider that this rule applies directly, as it relates to a separate process, it is a helpful and accurate test for what may constitute bias on the part of a potential decision-maker such that they should not be part of making that decision.

[165] I consider that all three complainants fall into this category, and to have them sit as part of the decision-making body would be unfair and a breach of Mr Jenner's right to natural justice. There may be other individuals who also fall into this category. CANZ should exercise due diligence prior to commencing the cl 24.2 process on this issue.

[166] The requirement to comply with the rules of natural justice is not met solely through the provision of proper notice and the removal of bias. It also requires a process whereby Mr Jenner is given a full opportunity to be heard by those unbiased decision-makers. The proposal to remove must then be considered by those decision-makers against relevant factors, including any disputes of fact, the definition of just cause provided in this judgment, the constitution (including the purposes of CANZ), the role of unions under s 12 of the Act and the requirements on a union under s 14 of the Act, including having rules which are democratic and not unreasonable.

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<sup>67</sup> Clause 6.1, sch 1 of the constitution.

[167] CANZ's existing process for dispute resolution appears to be comprehensive and well drafted. Clause 11.2 of the constitution provides that any dispute and any misconduct will be resolved in accordance with Schedule 1. It is unclear why cl 11 was not invoked as a precursor to cl 24.2 to establish just cause. If that had been the procedure followed, on the face of it, it would have likely fulfilled any obligations to conduct the process in a manner that is fair, reasonable, lawful and conducted in good faith.

[168] I have also considered Mr Little's submissions as to whether cl 24.2 can be read as requiring a Schedule 1 process in the first instance. However, there is no reference to cl 11 or Schedule 1 in cl 24.2 and I accept Mr Roberts's submission that the omission was deliberate and cannot be implied in the absence of clear wording.

[169] However, that does not minimise the specific requirement in cl 24.2(a) that the rules of natural justice will apply. The executive committee's actions are not unfettered. I have set out above what that entails. The executive committee should familiarise itself with its obligations.

### **Good faith**

[170] Mr Jenner has argued that CANZ's actions have breached its obligations of good faith under s 4 of the Act.

#### *Submissions*

[171] The alleged breaches of good faith are raised in relation to several actions taken by CANZ. These are noted throughout Mr Little's submissions, but collectively they amount to the argument that the proposed process to remove Mr Jenner is motivated by personal opinion and historic grudges that cannot possibly amount to just cause. Mr Little says these grudges and opinions are likely to relate to Mr Jenner's actions in disagreeing with or challenging some union decisions, and at the core of the expressed concerns is that Mr Jenner has taken legal action against the union.

[172] Mr Little accepts that good faith is a mutual obligation but argues that Mr Jenner is entitled to challenge the decisions of the union and assert his rights and that such actions cannot amount to a breach of good faith on his part.

[173] Mr Jenner's statement of claim states that the proposed process to remove him as vice president "amounts to capricious and arbitrary action motivated by bad faith." Mr Roberts argues that establishing this fact requires an extremely high bar and that Mr Jenner must meet it in its entirety (hyperbole included) to succeed.

[174] CANZ maintains that it has acted in good faith, including by being communicative and responsive. It says its responsiveness and communicativeness are evident in its interactions with Mr Jenner over the 18-month period and the period since he was elected.

[175] CANZ adamantly denies that the proposed process is being pursued for personal or political reasons, as opposed to a breach of the rules. It refers to the concerns about Mr Jenner that have been raised by not only Mr du Plessis, but two other executive members.

[176] Mr Roberts notes that *New Health New Zealand Inc v Attorney-General*<sup>68</sup> confirmed that a decision will be tainted by an improper purpose among proper purposes if, but for the improper purpose, it would not have been made.<sup>69</sup> However, he says that Mr du Plessis has not engaged in the proposal to remove Mr Jenner for political reasons and that he is not the sole decision-maker; any alleged bias which may be present would be diluted by the views and opinions of the remaining 23 members of the executive committee.

[177] Despite Mr Jenner's stated commitments to work in good faith, Mr Roberts argues that he has not worked collaboratively or attempted to engage with the management officers. He says it is Mr Jenner who has failed to be active and constructive in dealing with CANZ.

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<sup>68</sup> *New Health New Zealand Inc v Attorney-General* [2015] NZHC 2138, [2015] NZAR 1513.

<sup>69</sup> At [47].

[178] CANZ points to several instances which it says demonstrate Mr Jenner's breach of good faith, including the 22 July 2025 email<sup>70</sup> and the issue of secondments.<sup>71</sup>

*Analysis*

[179] I do not consider that CANZ's actions have been misleading and deceptive; Mr du Plessis' concerns appear genuine. The extent to which they are reasonably held will be a matter for the executive committee. I consider that many of the actions relied on by Mr Roberts as evidence of Mr Jenner's failure to meet his own obligations, such as by not attending a management officers committee meeting two days after he had received notice of the proposal to remove him, are a product of what has become an increasingly tense and difficult relationship. Both parties have an obligation to work constructively together. The exchange of emails between Mr Jenner and Mr du Plessis has not helped matters. Both parties are responsible for correspondence that was worded in a less than constructive manner. An early in-person meeting with an impartial person facilitating likely would have assisted.

[180] That said, proposing removal of Mr Jenner from office less than a month after his election, without taking steps to address the concerns at a lower level in a way that was consistent with the constitution, and working to maintain the relationship as opposed to proposing to remove him in the first instance, is inconsistent with CANZ's obligations of good faith under s 4(1A) of the Act.

[181] CANZ's own constitution has a process for resolving disputes or allegations of misconduct "at the earliest possible opportunity and at the lowest possible level".<sup>72</sup> While I have found that such a process cannot be implied as being required by cl 24.2, the constitution sets the rules by which the members have agreed to be bound. It guides the expectations of conduct and assists in interpreting what is required from these parties when considering the good faith obligation to be active and constructive in establishing and maintaining a productive employment relationship.

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<sup>70</sup> See above at [31].

<sup>71</sup> See above at [27]–[28].

<sup>72</sup> Clause 2.1 of the constitution.

[182] The proposal to remove, if successful, would not end the employment relationship between Mr Jenner and CANZ, but at this early stage it is not consistent with being constructive in maintaining that relationship. Depending on how it is conducted, it could do harm to it.

[183] When considering the relief sought in an application for judicial relief, the Court has a discretion as to what steps it takes to address any breach. The parties have already been directed to and have attended mediation (unsuccessfully). In that way, I consider that they have now attempted the low-level resolution contemplated by the constitution and required by good faith. To that extent the breach has been corrected.

[184] Accordingly, I do not consider the good faith failure provides grounds for the Court to prohibit the process. However, the obligations of good faith are ongoing and should guide the way in which the process is conducted. Combined with the obligation to comply with the principles of natural justice, a robust and fair and reasonable process is required.

[185] It is not clear how the process was proposed to be conducted, as the email correspondence did not set this out and there was no evidence of what guidance, if any, was to be provided to the executive committee. However, Mr Jenner's concerns around its fairness and failure to observe the principles of natural justice have, to a large extent, been upheld.

[186] It is therefore necessary for the Court to make orders that set out the requirements of natural justice in these circumstances, and direct that they be followed. Those requirements are set out at [221].

### **Breach of interim injunction**

[187] Mr Jenner seeks an order for compliance by CANZ with the interim injunction issued on 6 August 2025.<sup>73</sup> He says the union is currently breaching the order through the passing and operation of the resolution that:

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<sup>73</sup> See above at [5]–[6].

... the Vice President is not to conduct any work as Vice President, which includes but is not limited to, holding himself as acting in the capacity of the Vice President of CANZ or contacting any Corrections Head Office employees or any Corrections Manager as the Vice President of CANZ or contacting any member as the Vice President of CANZ without the direction and authorisation in writing by the President, or management Officers in Committee or Executive Committee confirmed vote.

[188] CANZ denies that it has breached the injunction and says there are good reasons for passing the resolution.

### *Background*

[189] On 30 July 2025, Mr Jenner wrote to the general manager of Hawkes' Bay Regional Prison (HBRP),<sup>74</sup> advising that he had had a number of calls from members on site requesting to meet the new vice president. He asked if it was possible to visit the site during the lockdown period on 15 August 2025 and meet members and the management team. The general manager replied, indicating there was no issue and advised that somebody would show him around.

[190] It is accepted that Mr Jenner copied the CANZ executive member for HBRP into the initial email to the general manager (along with the members who had contacted him). However, Mr du Plessis advised the Court that the executive member<sup>75</sup> missed the email and only became aware of the proposed visit when someone advised him about it on 5 August 2025, at which time he advised Mr du Plessis.

[191] In his affidavit Mr du Plessis also set out what the executive member told him had been communicated regarding the purpose of the meeting. This material was effectively third hand and, accordingly, I am unable to give it any weight. Mr Jenner says he wanted to hear from members as to how he could represent them.

[192] As noted above, the interim injunction application was heard on 5 August 2025. At 10 am on 6 August 2025, the Court made the order set out at [6] above with reasons to follow.

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<sup>74</sup> Mr Jenner copied in the people referred to at [159] above.

<sup>75</sup> The executive member did not provide an affidavit in these proceedings.

[193] Mr du Plessis had a number of concerns about the proposed meeting at HBRP and was of the view that Mr Jenner had no authority to organise it. He says the HBRP executive member was also concerned and planned to raise the issue at the executive committee meeting the next day. Mr du Plessis says that is why he decided to put together a motion for discussion.

[194] At the executive committee meeting on 7 August 2025, the executive member for HBRP raised concerns about the proposed meeting. Mr du Plessis then put forward the motion he had prepared for discussion as follows:

I move that the Executive Committee by resolution direct that the Vice President is not to conduct any work as Vice President, which includes but is not limited to, holding himself as acting in the capacity of the Vice President of CANZ or contacting any Corrections Head Office employees or any Corrections Manager as the Vice President of CANZ or contacting any member as the Vice President of CANZ without the direction and authorisation in writing by the President, or management Officers in Committee or Executive Committee confirmed vote.

[195] Mr du Plessis says he then explained the roles of the management officers, that the vice president's position was there to primarily assist the president, and that there were no tasks that the vice president could do independently and without the knowledge of the management committee and the president. He says the motion was designed to ensure that the executive committee directed Mr Jenner, as vice president, to work in collaboration with Mr du Plessis and the management officers. He then opened the matter up to the floor for discussion.

[196] Mr Jenner felt this was in breach of the injunction and raised concerns. He says that he felt attacked by the discussion that followed and so left the room. He was asked to return by Mr du Plessis and another member of the management committee. He did not return but asked them not to proceed with the motion given the Court matter.

[197] The motion was voted on and passed.

[198] In an email sent that same day, Mr du Plessis advised Mr Jenner that the motion had passed.

[199] On 8 August 2025, Mr Jenner filed a memorandum informing the Court that the motion had passed and seeking that an urgent directions conference be held. Mr Little submitted that the motion was a breach of the interim injunction, as the impact would be that Mr Jenner's role would be subject to the direction of the president, management officers (of which the president is a member) or the entire executive committee. The memorandum noted that, in theory, the president could order Mr Jenner to undertake no actual tasks as vice president; this would effectively impose the same restrictions as a successful proposal to remove him.

[200] The application for a compliance order was made on 14 August 2025. It was agreed that it would be heard at the same time as the judicial review proceedings.

### *Submissions*

[201] Mr Little submits that the resolution contravenes the terms of the interim injunction as it effectively removes Mr Jenner from the role of vice president in all but name.

[202] He says the power to restrain an elected officer in this manner is not provided for in the union's constitution. Mr Little highlights that cl 13.1 states the following:

CANZ shall be governed and managed by, or under the direction or supervision of the Executive Committee. The Executive Committee shall have all the powers necessary for managing, and for directing and supervising the management of the operation and affairs of CANZ.

[203] Mr Little submits that cl 13.1 is consistent with the usual governance role of the committee of a society which is to set policy for the union and its officers and make strategic decisions. The rule cannot be applied in a way that denies Mr Jenner the result of his membership-wide election to the position of vice president. The resolution unreasonably restrains Mr Jenner from discharging his role as vice president in a union bound by democratic obligations.

[204] Mr Little says that the Court, in its equity and good conscience jurisdiction, is free to declare the resolution not only a breach of the terms of the interim injunction, but a breach of the union's obligations to have rules which are democratic and not unreasonable; it is open to the Court to declare the resolution void and of no effect.

[205] Mr Roberts says the resolution does not remove Mr Jenner from his position as vice president and therefore does not breach the injunction. It requires him to take action as directed by the president, which is what his role requires. There is nothing in the resolution which would prevent Mr Jenner from engaging with the president and/or other management officers regarding how he could assist them.

*Analysis*

[206] I do not agree that the resolution merely restates the requirements of the role of vice president. While Mr Roberts relies on the constitution's description of vice president as assisting the president and assuming their role in their absence,<sup>76</sup> it is apparent from the job description provided to Mr Jenner by Mr du Plessis<sup>77</sup> that it is more expansive than that in practice. The management officers are a subcommittee of the executive committee, responsible for the operational management and transacting the day-to-day business of CANZ to further its purpose.<sup>78</sup> The vice president is an active member of the management officers committee in his own right. That is not to say that Mr Jenner has *carte blanche*. He is required to work with the other management officers, even in these difficult circumstances.

[207] Mr Jenner says the meeting at HBRP was for the purposes of meeting and listening to the members. CANZ should not be afraid of such a meeting and it would be a concern if it was. Given the way in which the management officers work, which seems to be very integrated, he should have advised them of the meeting. However, he did advise the relevant executive committee member. The evidence does not support the suggestion that there was any underhanded intention.

[208] There is no evidence that a vote of the executive committee was previously required before a management officer could undertake the duties of their position.

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<sup>76</sup> Clause 14.6 of the constitution.

<sup>77</sup> See above at [24].

<sup>78</sup> Clause 14.1 of the constitution.

[209] Mr Jenner was elected on a platform of change.<sup>79</sup> Whether CANZ agrees with the basis for that or not, he was successful. His biographical statement appealed to sufficient of the membership to elect him.

[210] I agree that the effect of the resolution is to prevent Mr Jenner from undertaking the duties of vice president. The interim order made by the Court on 6 August 2025 directed that he not be removed pending further order of the Court. That required that he be able to continue to undertake the duties of his position as usual. The resolution preventing him from undertaking duties constitutes a breach of the interim order and, as such, is unlawful.

[211] Accordingly, to continue to operate the resolution from the date of this judgment would also be unlawful subject to my findings below.

## **Relief**

[212] I have found that this matter is amenable to judicial review.<sup>80</sup>

[213] The Court has a remedial discretion to refuse relief in applications for judicial review.<sup>81</sup> However, the Court of Appeal has explained that it would be rare to refuse relief where an error of law has been established.<sup>82</sup>

[214] Given the findings above, this is not a case where it is appropriate to refuse relief. However, in circumstances where relief is sought in regard to a proposed process, the terms of that relief is not straightforward.

[215] Mr Jenner seeks a declaration that the proposed actions of CANZ are inconsistent with the union's rules, the principles of natural justice, the requirements of good faith, and the democratic process. He also seeks an order that the actions of CANZ, in passing a resolution on 7 August 2025, were in breach of the Court's order of 6 August 2025.

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<sup>79</sup> See above at [20].

<sup>80</sup> See above at [66].

<sup>81</sup> Judicial Review Procedure Act 2018, s 18(1).

<sup>82</sup> *GXL Royalties Ltd v Minister of Energy* [2002] NCA 185, [2010] NZAR 518 at [67].

[216] CANZ considers that no remedy should be given in the present circumstances. It requests that the Court exercise its remedial discretion to refuse relief as there is no foundation for the applicant's claim. It emphasises that no decision has been made by the executive committee, and once a decision has been made, cl 24.2 provides a right of appeal to the entirety of the membership. It reiterates that, typically, the Court should not intervene where there is an opportunity for a rehearing or an appeal which renders judicial review superfluous.<sup>83</sup> It says allowing the process to proceed is appropriate to hold Mr Jenner accountable, and the executive committee is the appropriate body to determine this.

[217] While Mr Jenner can appeal the decision by the executive committee to the entirety of the membership, this is not an appeal mechanism reconsidering the merits of the decision. I have found that CANZ erred in law by proposing to remove Mr Jenner on grounds that included his litigation with it. I have also found that it erred in law in proposing to remove Mr Jenner on the basis that it had unilateral discretion to determine just cause. The appeal to the membership is not a substantive review of a decision made by the executive committee that could correct or cure those errors of law.

[218] Such findings cannot prohibit CANZ undertaking a process under cl 24.2 altogether. The Court can, however, declare that any proposal for removal from office under cl 24.2. must be lawful and conducted in a lawful manner.

[219] Any such process must be compliant with the Court's findings on the correct interpretation of the union's constitution in relation to the meaning of just cause<sup>84</sup> and adherence to the principles of natural justice.<sup>85</sup>

[220] In the event CANZ wishes to pursue its proposal under cl 24.2, ensuring compliance will require guidance to be given to the executive committee as to the process to be followed, and restricting their discussion and consideration to the concerns set out in the appendix attached to this judgment.

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<sup>83</sup> Referring to *Auckland Acclimatisation Society Inc v Commissioner of Crown Lands* [1985] 2 NZLR 94 (CA); and *Rajan v Minister of Immigration* [1996] 3 NZLR 543 (CA).

<sup>84</sup> See above at [109].

<sup>85</sup> See above at [166].

[221] In relation to the matters before the Court, such process will include:

- (a) the provision to the executive committee members of the definition of “just cause”;
- (b) advice to them that the concerns that are at issue are limited to those set out in the appendix attached to this judgment, including advice that they must not take into account Mr Jenner’s litigation against CANZ or matters relating to that litigation such as costs incurred;
- (c) the provision by them to Mr Jenner of a full and fair opportunity to be heard on those concerns;
- (d) openminded consideration of each concern, having regard to any dispute of fact, applying the standard of just cause as defined in this judgment and considering the requirement on the union to be democratic; and
- (e) when it comes to decision making, the exclusion of the two complainants, Mr du Plessis and any other individual, where there are reasonable grounds to believe that the individual may not be impartial or able to consider the proposal without a predetermined view.

[222] Such process must be undertaken having regard to the mutual obligations of good faith.

### **Outcome**

[223] The following declarations are made:

- (a) CANZ was wrong in law to propose to remove Mr Jenner on the grounds of just cause where just cause included reference to his proceedings against CANZ.

- (b) CANZ was wrong in law when it asserted that just cause amounted to “a reason (or reasons) [for] the cause and that cause is just in circumstances”.
- (c) In breach of the principles of natural justice, CANZ failed to provide sufficient notice of the nature of the concerns allegedly amounting to just cause but such breach has been corrected.
- (d) In breach of the principles of natural justice, CANZ proposed to include decision-makers who were not impartial and were unable to consider the concerns without a predetermined view, and so such persons are ordered not to be decision-makers.
- (e) CANZ is required to follow the principles of natural justice as set out in [166] above in making any decision under c 24.2 of the constitution.

[224] I also make an order that the actions of CANZ, in passing the resolution on 7 August 2025, which prohibited Mr Jenner from undertaking his duties as vice president, was in breach of the Court’s order. To continue to enforce such resolution is unlawful and must cease.

### **Costs**

[225] Costs are reserved. In the event the parties are unable to agree on costs, the applicant will have 14 days from the date of this judgment within which to file and serve any memorandum and supporting material, with the respondent having a further 14 days within which to respond. Any reply should be filed within a further seven days.

Kathryn Beck  
Judge

Judgment signed at 10.30 am on 7 November 2025

## Appendix

1. The following are the concerns referred to at [134] of the judgment. They are the allegations/complaints that I have found Mr Jenner is properly on notice of. They are derived from Mr Du Plessis' email dated 26 July 2025, which refers to his email of 18 July 2025 and attaches two complaints from members. Clarification of the concerns was provided in the letter from CANZ's counsel dated 30 July 2025 and in documentation filed in this litigation.
2. The allegations and complaints are as follows:
  - (a) In the 18 months prior to his election, Mr Jenner:
    - (i) undermined CANZ, the management officers and the Executive.
    - (ii) did not constructively participate in aims to make prisons safer – challenging costs in regard to international travel and safety initiatives.
    - (iii) was disruptive in executive committee meetings in June and November 2024; and
    - (iv) challenged previous elections – raising issues with the use of Survey Monkey
  - (b) He has acted in his own interests since being elected on 27 June 2025 – seeking a mobile phone, laptop, credit card, vehicle and secondment.
  - (c) Without approval from management officers, he contacted Corrections directly and sought information about secondments – undermining and jeopardising such secondments and targeting the former vice president.
  - (d) He attempted to record part of an executive committee meeting on 27 February 2025.

- (e) During the election campaign, he sent emails to Corrections staff from his work email, promoting his candidacy in breach of cl 21.1 of the constitution.
- (f) His biography for the election campaign did not paint a true picture of him as a candidate.
- (g) He wrongly alleged that CANZ breached his privacy, then requested CANZ's assistance on a personal grievance regarding the same subject matter.
- (h) He failed to adequately represent three union members at Rimutaka Prison, notifying CANZ of the issues late in the process.
- (i) In general, the statements and actions made by Mr Jenner are at odds with the collective nature of CANZ's decision making and there is a failure to be actively constructive in achieving CANZ's aims.
  - (i) Mr Jenner refers to being "deputised to run the union" but CANZ is run by collective decision making.
  - (ii) The role of vice president is to assist the president; however, Mr Jenner has told the president he has no authority to instruct him.