

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

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

**[2025] NZEmpC 168  
EMPC 335/2025**

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

Hearing:                      5–6 August 2025  
   (Heard at Auckland)

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

Judgment:                    6 August 2025

Reasons:                     11 August 2025

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**REASONS FOR JUDGMENT OF JUDGE KATHRYN BECK**

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[1]     These proceedings involve 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 recently been elected on 27 June 2025.

[2]     The proceedings relate 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.

[3] 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)

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

[5] A directions conference was held on 31 July 2025. The parties attempted to agree interim arrangements but were unable to do so. By minute dated 4 August 2025, the Court granted Mr Jenner urgency. It also directed the parties to attend mediation as soon as practicable. However, because a mediation could not take place before the proposed meeting, a hearing date was set for the application for an interim injunction.

[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 this judgment.

[7] On 5 August 2025, the matter was heard under urgency.

[8] I advised the parties of the outcome at 10 am on 6 August 2025. I made the following orders:

(a) 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.

(b) Reasons will follow.

[9] These are those reasons.

## Background

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

[11] 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.

[12] CANZ is governed and managed by an executive committee of 24 people. It consists of the management officers and executive members who are elected representatives from each prison site.<sup>1</sup>

[13] Mr Jenner has been a member of the executive committee<sup>2</sup> as the elected representative for Rimutaka Prison since July 2022. He was elected vice president on 27 June 2025.

[14] 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>3</sup> Those proceedings are scheduled to be heard on 30 September and 1 October 2025 in Wellington.<sup>4</sup>

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<sup>1</sup> The constitution, cl 13.

<sup>2</sup> Previously known as the national executive.

<sup>3</sup> *Al-Bustanji v Corrections Association of New Zealand Inc* [2024] NZEmpC 76.

<sup>4</sup> While the Court was able to hear the matter in June 2024, for various reasons related to the parties, the hearing was not able to take place before the current hearing dates.

[15] At the time of those proceedings, Mr Jenner had an increasingly 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 they were members at the time).

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

[17] 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.

...

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

[19] 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 this point.

[20] On 7 July 2025, Mr Jenner responded to Mr du Plessis that this would be unacceptable and 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.

[21] 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.

[22] 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.

[23] 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.

[24] 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 office needed to be shared and discussed before proceeding.

[25] 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>5</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,

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<sup>5</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.

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.

[26] 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 national executive. The emails attached Mr du Plessis' email of 18 July 2025.

[27] 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.

[28] In the email to Mr du Plessis and the national executive, 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, 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.

[29] On 26 July 2025, Mr Jenner received two emails. 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.

...

[30] 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.

[31] The attached emails of complaints about Mr Jenner were dated 19 and 23 June 2025.

[32] 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.

[33] 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.

[34] These proceedings were filed on 31 July 2025.

## **Law**

[35] 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>6</sup> Where judicial review proceedings are brought under that section, the provisions of the Judicial Review Procedure Act 2016 apply.

[36] Section 15 of the Judicial Review Procedure Act provides for interim measures prior to the hearing of the substantive review proceeding:

### **15 Interim orders**

- (1) At any time before the final determination of an application, the court may, on the application of a party, make an interim order of the kind specified in subsection (2) if, in its opinion, it is necessary to do so to preserve the position of the applicant.
- (2) The interim orders referred to in subsection (1) are interim orders—
  - (a) prohibiting a respondent from taking any further action that is, or would be, consequential on the exercise of the statutory power:
  - ...
- (4) An order under subsection (2) or (3) may—
  - (a) be made subject to such terms and conditions as the court thinks fit; and
  - (b) be expressed to continue in force until the application is finally determined or until such other date, or the happening of such other event, as the court may specify.

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<sup>6</sup> Employment Relations Act 2000, s 194.

[37] Before any interim orders may be made under s 15, the Court must first be satisfied that the orders sought are reasonably necessary to preserve the position of the applicant.<sup>7</sup> In assessing this threshold test, the Court must be satisfied that the applicant has a position to preserve and will consider the merits of the review application.<sup>8</sup> Ordinarily, in considering the merits, there must be a real contest between the parties, and the applicant must have a respectable chance of success.<sup>9</sup> The approach taken to merits is raised or lowered as appropriate depending on the nature of the interest at stake, such as where interim relief will effectively dispose of the proceedings.<sup>10</sup>

[38] If the threshold test is met, the Court can then go on to consider whether it should exercise its discretion to issue interim orders. In exercising that discretion, the Court can consider all the circumstances of the case, including (for the purposes of this case):<sup>11</sup>

- (a) the legal and factual context of the case;
- (b) the circumstances of the parties;
- (c) any delay in seeking interim relief;
- (d) the expected duration of the interim orders;
- (e) any improper purposes in seeking interim orders; and
- (f) any prejudice to others.

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<sup>7</sup> *Carlton & United Breweries Ltd v Minister of Customs* [1986] 1 NZLR 423 (CA) at 430; and *Minister of Fisheries v Antons Trawling Company Ltd* [2007] NZSC 101, (2007) 18 PRNZ 754 at [3].

<sup>8</sup> *Whale Watch Kaikoura Ltd v Transport Accident Investigation Commission* [1997] 3 NZLR 55 (HC) at 63; and *Parmanadan v Minister of Immigration* [2010] NZCA 136, [2010] NZAR 424 at [3].

<sup>9</sup> *Esekielu v Attorney-General* (1993) 6 PRNZ 309 (HC) at 313.

<sup>10</sup> Philip A Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at 1319–1321.

<sup>11</sup> See generally Jessica Gorman and others *McGechan on Procedure* (online ed, Thomson Reuters) at [JR15.01]–[JR15.05]

[39] The Court can then stand back to assess where the balance of convenience lies and where the overall justice lies.

## **Analysis**

*Is there a position to preserve?*

[40] Mr Jenner has been elected to the role of vice president. It is that position he is seeking to preserve. The action CANZ intends to take proposes to remove him from that position.

[41] CANZ says he has failed to undertake the duties of the position to date. However, to the extent that it may be true, I consider that is a product of the dispute between the parties.

[42] There is clearly a position to preserve. It is therefore appropriate to consider the merits of the application.

*Is there a real contest between the parties?*

[43] 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;
  - (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.

[44] It is helpful to break those claims down further when considering whether there is a real contest between the parties and whether Mr Jenner has a respectable chance of success.

*Just cause*

[45] The parties disagree on the interpretation of “just cause” within cl 24.2.

[46] Mr Little, counsel for Mr Jenner, submits that the grounds relied on by CANZ to justify his removal from office do not amount to just cause (to the extent that those causes can be discerned). As such, he says that to remove him would be in breach of good faith and the terms of the constitution.

[47] Just cause is not defined in the constitution. Counsel argues it cannot simply mean any cause. In the context of the removal of a duly elected national officer, he says it connotes a higher standard or threshold of reason.

[48] While not defined in the constitution, definition of just cause appears more widely in statute compared to case law. In the Electoral Act 1993, members of the Electoral Commission who are not judges can be removed for just cause.<sup>12</sup> Just cause has the same meaning in the Electoral Act as in the Crown Entities Act 2004,<sup>13</sup> which states:<sup>14</sup>

**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).

[49] Mr Little submits that this definition is reasonably applicable to the present circumstances.

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<sup>12</sup> Electoral Act 1993, s 4G.

<sup>13</sup> Section 4G(4); and Crown Entities Act 2004, s 40.

<sup>14</sup> Crown Entities Act, 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.

[50] On that basis and even if the allegations are accepted, Mr Little submits that they do not amount to just cause but, rather, an accumulation of complaints and annoyances. He acknowledges the considerable frustration, if not exasperation, that this would cause to Mr du Plessis and others. However, these do not amount to just cause in the sense of misconduct, a failure to discharge the duties of office or a failure to discharge collective obligations. Further, he says it is notable that there has been no allegation of a breach of union rules.

[51] Mr Little argues that removing an elected person from office is a significant step and in light of the executive committee's statutory requirements to be democratic, removal cannot be a process that is carried out lightly or casually.

[52] Mr Roberts, counsel for CANZ, rejects Mr Jenner's characterisation of just cause, particularly the manner in which it is defined in his statement of claim. He says that defining just cause as serious misconduct, an egregious breach of the rules, fraud, gross dishonesty, incapacity, or conduct akin to criminal offending, is an overstatement. CANZ says that Mr Jenner has failed to prove the particulars in his pleadings and has presented claims without any substantive evidence.

[53] The union argues that just cause should be given its plain and ordinary meaning within the context of the constitution. It requires "a reason or reasons, the cause and that cause is just in the circumstances". However, it does not connote the level of seriousness associated with the examples given by the applicant, which is appropriately dealt with in both the constitution and the Incorporated Societies Act 2022.

[54] CANZ submits that the type of conduct which falls into the category of just cause is broad and dependent on the circumstances. All that is required is a cause that is just, which should relate to why there is a view that the officer be removed from their position, and that cause be considered by the 24 members who vote for removal in a democratic process. It says that just cause could constitute a range of reasons, including historical conduct or conduct which the executive committee perceives to impact the fitness or the ability of the officer to carry out their role.

[55] In these circumstances, the union says the complaints and allegations against Mr Jenner over the 18-month period amount to just cause.

[56] Lastly, the union emphasises that just cause cannot amount to misconduct, given that this is already defined in the constitution. Disciplinary processes are contained in cl 11.1 and encompass the type of misconduct described by Mr Jenner, but they are not referred to in cl 24.2.

[57] It is not for the Court at this preliminary stage to make a finding on the meaning of just cause or whether the allegations would come within that meaning.

[58] However, there is at least one claim that is problematic. CANZ asserts that Mr Jenner being a party to litigation against the union amounts to just cause because it potentially disqualifies him from nomination and has potentially misled union members.

[59] The union elaborated that Mr Jenner ran on a platform of seeking to minimise cost, which stood in contradiction to the fact that he is currently in proceedings with the union and has put them to expense. This claim is in addition to the suggestion that the litigation itself is indicative of Mr Jenner's self-interest, which diverges from CANZ's interests.

[60] Mr Jenner maintains that being a party to litigation against an organisation in which one holds office cannot possibly amount to just cause for removal from that office. His collective interest cannot override his individual interest; nor does it amount to just cause. He says he must be able to defend his interests and reputation, particularly when he perceives the union actions to be unlawful. Further, the litigation has been extant since May 2024.

[61] I consider that litigation asserting Mr Jenner's individual rights, which are currently before the Court and have not yet been determined, cannot amount to just cause for the purposes of removing him from his democratically elected position as vice president. It is a circumstance that will require appropriate management.

However, the suggestion that being a party to litigation would in itself amount to just cause is unsustainable and arguably inconsistent with public policy.

[62] Whether the additional allegations constitute grounds for removal under cl 24.2 will depend upon a definitive interpretation of “just cause” within the context of the constitution. That is not a matter for this hearing but is appropriate for a substantive hearing.

[63] Notwithstanding the hyperbole in Mr Jenner’s statement of claim, I consider that it is reasonably arguable that just cause in this context requires something of note. Removing a democratically elected member would more likely than not require something more than the views or collective opinion of the executive committee. There is a risk that the union’s suggested threshold for just cause could lead to a breach of the constitution and the removal of legitimate opponents, despite fair and free elections.

[64] While the threshold for just cause is a matter for the substantive hearing, at this stage there is sufficient evidence to indicate that there is a contest between the parties concerning that definition, and that Mr Jenner has a respectable chance of success in his substantive claim.

[65] The issue of just cause is also relevant to the parties’ disagreement over the interpretation and operation of cl 24.2 itself which provides:

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 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.

[66] Mr Little also submits that the way in which CANZ intends to operate cl 24.2 is a breach of the constitution. He submits that the wording of the clause requires that just cause be established before moving to the question of the manner of removal as set out in cl 24.2(a). He argues that it is the natural and ordinary meaning of the provision given the statutory requirement for the union to have rules that are democratic, not unreasonable, not unfairly prejudicial or contrary to law.<sup>15</sup> He says

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<sup>15</sup> Employment Relations Act 2000, s 14(1)(c).

that if there is no requirement that just cause be established first, duly and democratically elected officers could be removed on a whim, which would be inconsistent with the statutory requirements and undermine the democratic process.

[67] Mr Roberts submits that if the constitution had intended to require a pre-process to establish just cause, it would have explicitly stated so. He notes that dispute and disciplinary matters are dealt with elsewhere in the constitution (cl 11) but they are not referred to in cl 24, which must be deliberate. He says that cl 24 does not have the gloss that Mr Little seeks to apply to it.

[68] Clause 11 of the constitution deals with dispute resolution of disciplinary matters. It defines misconduct and states that any dispute or misconduct will be resolved in accordance with sch 1.

[69] Dispute is defined in cl 3 of the constitution as:

... a disagreement or conflict that is between:

- (i) 2 or more Members; or
- (ii) 1 or more Members and CANZ; or
- (iii) 1 or more Members and 1 or more Officers; or
- (iv) 2 or more Officers; or
- (v) 1 or more Officers and CANZ; or
- (vi) 1 or more Members or Officers and CANZ; and

the disagreement or conflict relates to an allegation that:

- (vii) a Member or an Officer has engaged in Misconduct; or
- (viii) a Member or an Officer has breached, or is likely to breach, a duty under the constitution, CANZ's bylaws or the Act; or
- (ix) CANZ has breached, or is likely to breach, a duty under this constitution, CANZ's bylaws or the Act; or
- (x) a Member's rights or interests as a Member have been damaged or Members' rights or interests generally have been damaged.

[70] On the face of it, it appears that most of the allegations against Mr Jenner would come within this definition. However, neither the two complainants nor Mr du Plessis

have utilised the comprehensive dispute resolution process. That would involve attempting to resolve allegations at the lowest level, including utilising mediation, investigation and determining disputes, and proposing resolutions which may include sanctions.

[71] I consider that there is a real contest between the parties in relation to whether, in seeking to utilise cl 24.2(a) in the way it has, CANZ is in breach of its obligation to have democratic rules and/or would be in breach of its own rules in relation to dispute resolution. The good faith implications of such an approach are dealt with below.

*Natural justice*

[72] Mr Jenner claims that if CANZ proceeds, it will be acting in breach of the rules of natural justice which are required by virtue of cl 24.2(a). Specifically, there was a failure to properly notify Mr Jenner of the allegations against him, the decision makers (the executive committee) were not free from bias and predetermination, and no steps were identified to eliminate these risks.

[73] The allegations laid against Mr Jenner have been described by Mr Little as a “hotch-potch of accumulated grievances”. Mr Jenner highlights that the 26 July 2025 email containing the notice of the process of removal did not include complaints later raised and did not particularise the allegations against him. Mr du Plessis’ email stated that concerns had been raised with him and he attached email correspondence of those complaints. It also stated that the concerns related to “behaviour and conduct during the election and your [Mr Jenner’s] earlier actions”. Mr Jenner says that there is a lack of clarity as to what those alleged “earlier actions” are.

[74] While the letter from the union’s lawyers on 30 July 2025 included further particulars of the grounds for removal, Mr Little argues that only the 26 July 2025 notice can be relied upon. He notes that the email does not specify grounds for removal such as a breach of rules or misconduct.

[75] Mr Jenner contends that given the seriousness of what is at stake, he is entitled to specificity.

[76] Mr Little also submits that the explanations are shifting. He says that certain issues were never put to Mr Jenner as grounds for removal in the notice, but have been raised subsequently in Mr du Plessis' affidavit. Further, he notes that these issues would not have been before the executive committee whose knowledge would have been confined to issues in the 26 July 2025 notice. It was therefore a breach of Mr Jenner's natural justice rights that these issues were contemplated but not notified as grounds for removal.

[77] In short, Mr Jenner says he does not know what he is being required to answer, and that constitutes a breach of his natural justice rights.

[78] On the issue of bias, Mr Jenner claims that there are a number of executive committee members who cannot consider the issues impartially, including Mr du Plessis and the executive committee members who made complaints about him during the election.

[79] Regarding the notice, the union argues that the grounds for just cause to remove Mr Jenner were further elucidated in a number of documents.

[80] CANZ claims that the full extent of the allegations against Mr Jenner were contained in the following: the 18 July 2025 email sent by Mr du Plessis, the 26 July 2025 notice initiating the process of removal, two emails by executive committee members complaining of Mr Jenner's conduct, and the letter sent by CANZ's lawyers. It submits that these documents set out the particulars that Mr Jenner is required to answer and the just cause for his removal.

[81] Mr Roberts submits that the Court should have regard to decisions of the Court of Appeal in relation to strike notices<sup>16</sup> where elucidation was permitted without requiring that the time for any notice be restarted. I accept that the letter of 30 July 2025 can be included in the mix in relation to notice. Further, given that the time for the meeting was pushed out, it would fall within the required notice period in any case.

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<sup>16</sup> Citations were not provided but the case referred to is likely *New Zealand Rail Ltd v New Zealand Combined Union of Railway Employees* [1995] 1 ERNZ 84 (CA).

[82] However, even with clarification, there remains a contest between the parties as to whether the notice is sufficient given the context – proposed removal from elected office. Further, while Mr Jenner may have had the benefit of some clarification or elucidation of the allegations against him, there is no evidence that the decision makers (the executive committee members) have been provided with the additional material.

[83] CANZ argues that natural justice is always contextual. In the context of cl 24.2(a) of the constitution, the process cannot be completely free from bias and predetermination in the manner Mr Jenner seeks.

[84] CANZ’s submission is that requirements of natural justice exist on a spectrum, with judicial decision making on one end, and on the other, decisions made by large bodies. In the latter, the requirement is to act fairly, keep an open mind and be amenable to persuasion.<sup>17</sup> In those circumstances, the body may have knowledge on the matter or may have partially formed a view. However, to fulfil natural justice requirements, the body must consider the matter with an open mind.

[85] The application of natural justice rights to the circumstances therefore requires the process of removal to be “tempered with realism”.<sup>18</sup> CANZ argues that it cannot be feasible for the removal process to require each member to be free from bias to the extent that would be required of a judge. Instead, each individual executive committee member is to be given knowledge of the grounds for just cause, able to form their own view, and be willing to be persuaded.

[86] There is merit in the argument that as a body, it is not practicable for individual executive committee members to be excluded on the grounds that they may have formed a view of another member subject to removal. However, that will depend on the circumstances of an individual’s case.

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<sup>17</sup> *Save Chamberlain Park Inc v Auckland Council* [2018] NZHC 1462 at [175-179]; *Whitford Residents & Ratepayers Assoc (Inc) v Manukau City Corp* [1974] 2 NZLR 340 at 346; and *Travis Holdings Ltd v Christchurch City Council* [1993] 3 NZLR 32 at 47.

<sup>18</sup> *CREEDNZ Inc v Governor-General* [1981] 1 NZLR 172 (CA) at 194.

[87] As already noted above, there is a real contest as to the sufficiency of the notice at this stage and whether there has been a failure to meet the requirements of natural justice in that regard. Mr Jenner has a respectable chance of success on that issue.

*Failing to be active and constructive in maintaining a productive relationship*

[88] It is apparent from the affidavit evidence that Mr Jenner and Mr du Plessis both consider that the other has failed in his obligation to conduct himself in good faith. Each would say that he has been responsive to the other's communication. Mr Jenner has only been in the role of vice president for just over a month. It is arguable that moving to take steps to remove him from his elected position in such a short timeframe is inconsistent with the obligation to be active and constructive in maintaining a productive relationship. Other than the attempt to set up one meeting, there is no evidence of any active steps being taken to maintain a productive relationship.

[89] I do not consider that the correspondence between the parties is sufficient. This is of particular concern where the constitution itself has a process for the resolution of disputes, including a commitment to resolving complaints at the earliest possible opportunity and the lowest possible level.<sup>19</sup>

[90] Accordingly, I consider that there is a real contest between the parties as to whether there has been a breach of good faith and whether, on the evidence before the Court, the applicant has a respectable chance of success.

*Conclusion*

[91] When considered at this early stage, there is sufficient evidence to indicate that there is a real contest between the parties in relation to the claims made by Mr Jenner,<sup>20</sup> the majority in which he has a respectable chance of success.

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<sup>19</sup> The constitution at sch 1, cl 2.1.

<sup>20</sup> See above at [43].

*Are interim orders necessary to preserve the applicant's position?*

[92] If interim orders are not made, the executive committee of CANZ will proceed with the process to remove Mr Jenner from his role as vice president. If that process is successful, his only recourse is an appeal to all members, which would effectively entail another election.

[93] At the present stage, it is not clear that such a process could be carried out fairly in light of the issues with the sufficiency of the notice of allegations, the nature of those allegations and whether they amount to just cause, the contest over the definition of just cause and the application of cl 24.2. Accordingly, there is a real risk of breach of the constitution, the obligations of good faith, and the applicant's right to natural justice. Further, if the constitution is applied in the manner proposed, there is also a risk that CANZ would be in breach of the statutory requirement to have rules that are democratic and not unreasonable.

[94] Therefore, I consider that pending the Court being able to properly address the merits of Mr Jenner's claims, interim orders are necessary to preserve his position. However, while the threshold test has been met, that is not the final word on the matter. It is necessary to assess whether the Court should exercise its discretion to issue the orders.

*Should the Court's discretion be exercised in favour of Mr Jenner?*

[95] These proceedings arise in the legal and factual context of judicial review proceedings being brought against a body corporate. However, it is also relevant that because CANZ is a union, good faith obligations apply to it that do not necessarily always apply under rules of a body corporate towards its members and office holders. As a result, this increases the extent to which the union can be found liable in comparison to other body corporates.

[96] There is no evidence that the union will suffer any loss if it is unable to undertake the cl 24.2(a) process at its August 2025 meeting. This is not the only matter for the four-day meeting; presumably the time can be well utilised with other business. Mr Jenner has filed undertakings as to damages in relation to any loss suffered by

CANZ in consequence of any order issued by the Court, so this factor cannot stand against any interim orders.

[97] I do not consider that there has been any delay in Mr Jenner seeking interim relief. The notice indicating the process of removal from office was given to him on 26 July 2025. He instructed his lawyer to contact CANZ's lawyers on 29 July 2025 and when agreement could not be reached, proceedings were filed on 31 July 2025.

[98] The making of orders will maintain the status quo while the parties attend mediation as contemplated by the Act. Given the ongoing nature of the relationship, this counts in favour of the injunction.

[99] Other than the current discomfort between Mr du Plessis and Mr Jenner, there is no prejudice to CANZ in Mr Jenner remaining vice president, provided that the proceeding can be heard promptly. The Court has already indicated a willingness to accommodate a hearing within a timeframe that would allow for a hearing and judgment to be delivered before the next executive committee meeting in November 2025.

#### *Overall justice*

[100] Standing back, I consider that the applicant has established that there is a real contest between the parties and that there is a reasonable chance that he will be successful in that contest.

[101] Although interim orders will be frustrating for CANZ and cause some discomfort to some members of the executive committee, I consider that in all the circumstances, an interim injunction is necessary to preserve the applicant's position pending the hearing in relation to the substantive judicial review application.

#### **Result**

[102] The application for an interim injunction preventing the respondent from conducting a process for removal against the applicant is granted until further order of the Court.

[103] Costs are reserved.

Kathryn Beck  
Judge

Judgment signed at 9.15 am on 11 August 2025