

**IN THE HIGH COURT OF NEW ZEALAND
TIMARU REGISTRY**

CIV 2008-476-000125

IN THE MATTER OF AN ON NOTICE COURT INJUNCTION

BETWEEN ROGER JOHN PAYNE
 Applicant

AND ALL NATIONAL PARTY BOARD
 MEMBERS
 Respondent

Telephone Conference

Hearing: 20 March 2008

Counsel: Mr Payne appears In Person, Applicant
 P T Kiely for Respondent

Judgment: 20 March 2008

ORAL JUDGMENT OF PANCKHURST J

[1] Late yesterday Mr Payne applied for an interim injunction to “halt the unjust National Selwyn Electorate Candidate Selection Process, pending proper action being taken”. The application has been heard as a matter of urgency by telephone conference this morning. In the meantime Mr Kiely had filed a notice of opposition on behalf of the New Zealand National Party.

[2] Mr Payne was nominated for selection as the National Party candidate for Selwyn. Nominees must gain support at electorate level, after which the nomination is forwarded through the divisional office and onto the national office. Recently Mr Payne was advised that his nomination had not been approved by the National Executive. Reasons were not given for that decision.

[3] Unsurprisingly, he is aggrieved. He fears that adverse information has been provided to the National Executive of which he is unaware and which he has had no

opportunity to answer. He knows that referees nominated by him were approached and he remains confident that they would have provided wholehearted support in relation to his nomination. In the course of the telephone conference he expressed the concern that potentially defamatory material may have influenced the decision taken effectively behind closed doors.

[4] Upon considering the papers it was immediately apparent to me that the legal basis of Mr Payne's challenge was unspoken. In particular he did not refer to the rules of the National Party and did not, therefore, identify the requirements upon the Executive in relation to the approval, or not, of nominations. Those nominees who receive approval then progress to the next stage being the selection of a candidate which, as I understand it, occurs at electorate level.

[5] The notice of opposition filed by Mr Kiely raised as the first ground that there was no serious issue to be tried in that:

- (a) neither the notice of application nor the affidavit filed in support of the application disclose a legal or factual basis for the applicant's claim, and
- (b) in any event, there is no legal or factual basis for the applicant's claim, in particular the candidate selection process was undertaken in accordance with the Constitution and Rules of the National Party.

The notice of opposition also referred to *Peters v Collinge* [1993] 2 NZLR 554 (HC).

[6] Perusal of that case suggested that the process by which the National Executive approves nominations was entirely discretionary. As at 1993 the relevant rule provided:

any approval or otherwise shall be at the absolute discretion of the National Executive or Candidate Selection Emergency Committee and no reasons need to be assigned.

[7] Absent a copy of the present rules I raised with Mr Kiely whether the position today is as it was in 1993. He confirmed that it was, the relevant provision now being r94 which is to similar effect as the 1993 rule.

[8] In my view this development was fatal to the present application. In short, I am satisfied that there is no serious question to be tried, absent a basis in the rules to suggest that the decision of the National Executive was unlawful. As I observed to Mr Payne in the course of the telephone conference my focus was necessarily upon the existence of a serious question to be tried and not upon the broad merits of his situation. He responded that he had been unable to source an up-to-date copy of the rules and hence was hamstrung in that regard. I sympathise with his position in relation to this aspect and also generally.

[9] However, for these reasons, I do not find that there is a basis for injunctive relief. The application is dismissed. I make no order as to costs.

Solicitors:

Applicant - Mr R J Payne, Willowbank Farm, 73 Muff Road, Orari R.D. 26, TEMUKA
Kiely Thompson Caisley, Auckland for Respondent