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Judgment: approved by the Court for handing down | *Delivered:* **26/03/10**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

_____

CHANCERY DIVISION

_____

BETWEEN:

HONOR HAWTHORNE

Plaintiff:

-and-

OLIVE WHITTEN
And
JOAN BEGGS, sued on their own behalf and as Officers of the Association of Loyal Orange Women of Ireland and on behalf of all other members of the said Association

Defendants:

_____

McCLOSKEY J

I INTRODUCTION

[1] For reasons which will become apparent, the course which this trial ultimately took differed from that which one might have predicted in advance and, indeed, following completion of the first two days hearing. The Plaintiff was represented by Mr. Scoffield (of counsel) and the Defendants were represented by Ms Williamson-Graham (of counsel). The court acknowledges the quality of the written and oral arguments of both counsel.

[2] One of the cornerstones of the Plaintiff's case is her asserted lengthy association and strong affinity with the Loyal Orders. At the material time viz. October 2005, she occupied the important posts of Secretary of Mountnorris Women's Loyal Orange Lodge 24 ("W*LOL No. 24*") and Worshipful District Mistress of Armagh District No. 2 ("*ADWLOL No. 2*"). At the apex of the structural organization of the Loyal Orders lies the Association of Loyal Orangewomen of Ireland ("*the Association*"). The first-named Defendant, Olive Whitten, is sued on her own behalf and as Grand Mistress of the Association. The second-named Defendant, Joan Beggs, is sued on her own behalf and as Grand Secretary of the Association.

[3] As will be immediately apparent, this litigation has its origins in a dispute amongst prominent members of these Loyal Order organizations. Regrettably, this dispute is now of several years vintage and it has generated sufficient acrimony and polarization to require adjudication by the court, in circumstances where, notwithstanding strong judicial exhortations, the parties have unfortunately failed to achieve consensual resolution of their differences. That this should occur in any voluntary association is, self-evidently, highly regrettable. It has clearly had an adverse impact on the relationships amongst members of these organizations, it seems to have created two opposing factions and it has undermined the organizations themselves in consequence.

[4] The impetus for these proceedings was a letter dated 19th October 2005 written by the Acting District Secretary of ADWLOL No. 2, addressed to the Plaintiff and couched in the following terms:

> "*Dear Sister Mrs Hawthorne*
>
> *This is to advise you that the Special Meeting of Armagh District WLOL No. 2 held on Monday 17th October 2005 in Armagh Orange Hall it was the majority decision of the Sisters present that the Laws of the Association were violated by you and as a result you have been expelled from the association …*
>
> *Under Law 12 you have the right to appeal this decision to the next Superior Lodge*".

This decision to expel the Plaintiff from the association stimulated the proceedings which were duly initiated by Writ of Summons issued on 11th June 2007.

[5] The most recently amended Statement of Claim is that which was authorised by the court on the first day of trial. This articulates the Plaintiff's case with commendable focus and clarity. In summary, the impugned decision is attacked on the following central grounds:

(a) Breach of the principles of natural justice, which is particularised in a series of respects. The main complaints consist of an alleged failure to inform the Plaintiff of the gist of the case against her and the unfair

and procedurally irregular conduct of the critical meeting of ADWLOL No. 2, conducted on 17th October 2005.

(b) It was *ultra vires* the Laws and Ordinances of the Association of Loyal Orange Women of Ireland, in two principal respects. The first consists of the contention that ADWLOL No. 2 was not competent to try and determine the disciplinary charge preferred against the Plaintiff. The second is that, in any event, the penalty of expulsion was not an available sanction.

Bearing in mind the somewhat unusual character of this litigation and the course which the proceedings ultimately pursued, some reflection on the relief claimed by the Plaintiff is appropriate at this juncture. She seeks:

(i) A declaration that her purported expulsion was unlawful.

(ii) A further declaration that she remains a member of the above-mentioned Loyal Order organizations.

(iii) An injunction restraining any attempted enforcement of the impugned decision or further disciplinary action against her.

While the Plaintiff also claims damages, it was, appropriately, made clear by her counsel that the two forms of declaratory relief noted above are the primary remedies pursued.

II THE MAIN ISSUES

[6] Sadly, the events giving rise to the dispute between the parties occurred in the context of the funeral of one Lily Boyce ("*the deceased*") who, per the amended Statement of Claim, had been a lifetime member of Markethill WLOL No. 105. There appears to be little dispute that members of the deceased's family enquired of the Plaintiff about the possibility of an "Orange" funeral being held and that, in consequence, the Plaintiff spoke to and sought authorization from the first-named Defendant (the significance of Law 95 of the Association's Law and Ordinances in this context will become apparent presently). The issue which has divided the parties from the outset of their dispute relates to the scope of the authorization duly given. The Plaintiff claims that she and others were permitted to participate at all stages of the funeral, commencing with the transfer of the hearse from the home of the deceased and ending with the burial in the graveyard, while displaying Orange regalia. The Defendants' case is that an authorization was given, but was specifically confined to the funeral service inside the Church. This is encapsulated in the letter of complaint dated 30th September 2005 from the first-named Defendant, addressed to the Acting District Secretary, intimating the laying of charges against the Plaintiff –

> " *…as to her behaviour on a number of issues but in particular as the Senior Officer of the District on Thursday 22nd September 2005 organising the carrying of the coffin of the late Sister Mrs. Lily Boyce and flanking of the hearse at the funeral procession to the Church, while wearing the District Mistress's collarette …*
>
> ***Permission was given only for the Sisters to wear their collarettes in the Church***".

[My emphasis].

While the issue which has divided the parties (and the opposing factions which seem to have materialised) ever since might appear to the outsider to be one of narrow compass, it has evolved into a matter of great moment and controversy and unquestionable strength of feeling.

[7] It is clear from all the evidence that this letter was the impetus for a series of ensuing events, culminating in the impugned decision communicated to the Plaintiff less than three weeks later, by letter dated 19th October 2005 (aforesaid). The impugned decision was made at the conclusion of the Special Meeting of ADWLOL No. 2, held on 17th October 2005. In her evidence, the Plaintiff advanced a series of complaints about the conduct of this meeting and the fairness of the overall process generally. She complained in particular that the charge against her had not been formulated with sufficient clarity; that she had not been provided with any supporting evidence, such as the identities of alleged complainants and the content of their complaints; that the gist of the case she had to meet was not communicated to her; that at the critical meeting she was not given a fair and reasonable opportunity to deal with the comments and questions of those present; that the person who chaired the meeting was not impartial and did not discharge her duties fairly; that the Plaintiff's accuser, the first-named Defendant, exerted unfair and improper influence in the conduct and course of the meeting; that the Plaintiff was given no opportunity to confront her accuser; and that her accuser should have played no part in the deliberations culminating in the impugned decision.

[8] This bundle of complaints of procedural irregularities and denial of due process featured prominently in the Plaintiff's evidence. By the third day of trial, the Plaintiff's evidence was uncompleted, the parties remained polarized and costs continued to escalate. Bearing in mind these factors, the principles and standards contained in the Overriding Objective enshrined in Order 1, Rule 1A of the Rules of the Court of Judicature and the highly desirable goal of achieving the maximum finality for the parties and the other protagonists involved in the dispute, I suggested to counsel that, logically, there appeared to exist two anterior issues of a jurisdictional nature. These are, respectively:

(i) Whether ADWLOL No. 2 was competent to try the charge against the Plaintiff and make the ensuing impugned decision.

(ii) Whether expulsion of the Plaintiff from the Association was an available penalty in any event.

While mindful of the "treacherous shortcuts" cautionary principle and decisions such as ***Re Lennon's Application (unreported)*** and ***Cullen –v- Chief Constable of the Royal Ulster Constabulary***[1], I invited counsel to seek their respective clients' instructions on the question of whether these two jurisdictional issues should be determined by the court, at this stage. Having done so, both counsel responded affirmatively. Taking into account the overriding objective, the desirability of saving costs and the prospects of achieving finality for the parties in their dispute, I decided to adopt this course. I was further influenced by the consideration that the *material* factual matrix surrounding the two jurisdictional issues is uncontroversial viz. (a) the agency which tried and convicted the Plaintiff is ADWLOL No. 2 and (b) the penalty imposed was that of expulsion from the organizations.

Association of Loyal Orange Women of Ireland Laws and Ordinances

[9] The jurisdictional issues entail consideration of certain of the provisions of the Association of Loyal Orangewomen of Ireland Laws and Ordinances (hereinafter "*the Laws and Ordinances*"). It is convenient to set out the material provisions in sequential form. Laws 11, 12, 16, 17 and 18 are all arranged under the rubric "General Laws". Firstly, Law 11 provides:

> "*In every case of a charge against a member, as such, the complaint must first be investigated by her Private Lodge, unless affecting the whole Association, and such as the Grand Lodge shall see fit to have tried otherwise*".

Law 12 states:

> "*Any member who may be dissatisfied with the decision of the Lodge shall have the right of appealing to the next Superior Lodge*".

[1] There is a plethora of judgments, both reported and unreported, in ***Cullen***. The reported judgments are [1999] NI 237 (the final decision of the Court of Appeal) and [2003] UKHL 39, the decision of the House of Lords dismissing the appeal. These were preceded by two unreported judgments of MacDermott LJ and an unreported first decision of the Court of Appeal [28th June 1996], sandwiched in between, which remitted the appeal to MacDermott LJ, emphasizing that "*… great care should be taken before a court decides a preliminary issue of law prior to the determination of the facts*" and adverting to the summary of this principle in Halsbury's Laws of England (4th Edition), Volume 37, paragraph 483. Hutton LCJ continued "*The objection to adopting the course of deciding the preliminary issue of law before deciding the facts is clear in this case*".

Law 16, which is of pivotal importance in the present litigation context, provides:

> "*The General Code of Punishment shall, so far as expedient, be arranged or published under the following classes and terms:*
>
> 1. ***Non-payment of dues or non attendance.*** *First offence, nine months suspension; second offence, two years suspension.*
>
> 2. ***Defiance of Lodge Authority.*** *Suspension to be graduated according to the nature of the offence.*
>
> 3. ***Violation of Laws of the Association, or repeating Lodge business outside.*** *First offence, two years suspension; second offence, five years suspension; third offence, seven years suspension.*
>
> 4. ***Offences against religion or morality.*** *Expulsion.*
>
> 5. ***Aggravated offences.*** *Expulsion.*"

Per Law 17, which is, plainly, closely associated with Law 16:

> "*Expulsion shall be limited to offences against religion or morality, and such are of a highly aggravated character, endangering the honour and dignity of the Association*".

There follows the closely related Law 18:

> "*In case of defiance to the authority of, or misconduct in, a Lodge, or of any breach of the Laws of the Association not otherwise provided for, the punishment shall be suspension, to be graduated to the nature of the offence, and not exceeding a period of seven years*".

[10] The next section of the Laws and Ordinances of significance in the present context are those arranged under the heading "Grand Lodge of Ireland", beginning with Law 33. This identifies the Grand Officers as, *inter alios*, the Grand Mistress and two representatives from each District. Law 35 states:

> "*The Grand Lodge shall have at least two stated meetings in each year viz. in November and May …*
>
> [**Law 37**] *On the assembly of each November meeting, the Grand Lodge shall … elect from the Purple Order the*

> *Grand Officers for the ensuing year, all to be installed and to commence office on the day of the election …*
>
> [**Law 42**] *The Grand Mistress … shall be empowered, on a requisition signed by twelve members of the Grand Lodge, to convene a special meeting thereof and at such special meeting the Grand Lodge and County Grand Officers shall have the right to exercise all the powers of a stated meeting …*".

The general thrust of these provisions, as one would expect, is to the effect that the Grand Lodge operates, and makes decisions, in a corporate fashion. The provisions highlighted above have a bearing on the question of the competence of the first-named Defendant in matters pertaining to the processing and determination of the disciplinary charge preferred against the Plaintiff, in particular the mode of trial.

[11] In the hierarchical structure established by the Laws and Ordinances, the regulatory provisions relating to County Grand Lodges follow, in Laws 51-62. Each County Grand Lodge also meets at least twice annually and elects the County Grand Officers for periods of one year. Special meetings are also possible. The next ensuing section of the Laws and Ordinances contains comparable provisions relating to District Lodges, in Laws 63-72. Laws 63 and 64 are concerned with the various officers of each District Lodge, including that of Worshipful District Mistress, and elections to these posts. Per Law 64, tenure of these offices is annual and elections are conducted at the yearly District Meeting, held in October. There are three other fixed annual meetings, while special meetings are also possible (per Law 65). Notably, every special meeting has "*all the powers of a stated meeting*" (per Law 55). I would highlight Law 65:

> "*Each District Lodge shall meet at least four times in each year viz. January, April, July and October, but no meetings shall be held without the presence of five members of the Lodge. Special meetings to be convened in accordance with the fifty-fifth Law*".

It would appear that the impugned decision stimulating this litigation was taken at the regular October meeting of the relevant District Lodge (ADWLOL No. 2). I draw attention to the above provisions primarily because they have some bearing on the question of remedy (*infra*) and the choices and courses available to the parties and all other interested persons in the wake of this judgment.

[12] Within the framework of the Laws and Ordinances, separate prescription is made for Private Lodges. This is the most detailed regime of all, beginning with Law 73 and ending with Law 101. Within each Private Lodge there are five Officers (per Law 73) consisting of a Mistress, a Deputy Mistress, a Chaplin, a Secretary and a Treasurer, who discharge their functions in conjunction with a Committee

constituted by five Lodge members. Within this discrete cluster of provisions, Law 95 provides:

> "*Regalia shall not be worn at picnics or on excursions, or at any meetings other than an Orange assembly, so as to safeguard the dignity of the Association. The County Grand Mistress may on application grant permission to wear regalia on special occasions*".

In its wake follows Law 96, which is accompanied by the marginal note "Offences Against the Association":

> "*Any member offending against the Association at large may be tried as prescribed by the Eleventh Law by the Grand Lodge, or that of the County to which she belongs, provided she has not previously been tried for the same offence by her Private Lodge …*".

Per Law 99, every Private Lodge meets monthly. Law 100 states:

> "*Any member of the Women's Orange Association who may in the future become a member of the Independent Order, or in any way associates or identifies herself in support of said Independent Order shall be expelled*".

This explicit sanction of expulsion also features in Law 4, which states:

> "*Any member dishonouring the Association by marrying a Roman Catholic shall be expelled …*".

The cross-reference to Law 17 in the final clause of Law 4 is also noteworthy:

> "*And it shall be deemed an offence for any member to facilitate in any way Sunday sports or dances organized by Roman Catholics, and that such offending members be dealt with under Law 17*".

Law 17 being concerned with offences against religion or morality, *any* infringement of Law 4 appears to contemplate the sanction of expulsion.

III GOVERNING PRINCIPLES

[13] The two jurisdictional issues formulated in paragraph [8] above fall to be considered within the ambit of those provisions of the Laws and Ordinances highlighted in paragraphs [9] – [12]. In any case where it falls on the court to construe the rules and regulations of a private association, it is essential, at the outset, to identify the correct governing principles. Private associations, frequently

described as "clubs" (both terms being interchangeable and non-technical in nature), are governed by their internal rules and regulations. Typically, these specify the purposes of the organization and make provision for the admission of members, the payment of entrance fees and subscriptions, the management of the organization's affairs, routine and special meetings of members, alterations of the rules, disciplinary matters, including penalties, and the resignation of members.[2]

[14] In ***Halsbury's Laws of England,*** Volume 13 (5th Edition 2009), it is stated in paragraph 218:

> "*The interpretation of the rules is a matter of law which the courts will examine; consequently a rule which makes the committee or other body the sole interpreter of the rules and their decision in all cases final is contrary to public policy and void. The rules of a club must be applied in accordance with the principles of natural justice …*
>
> ***Expulsion from membership must be within the powers conferred by the rules of the club*** …
>
> [**Paragraph 219**] *The rules form part of the contract between the members themselves in the case of a members' club and both between the members themselves and also the members and the proprietor in the case of a proprietary club*".

[My emphasis].

As appears from paragraphs 233 and 234, the *resignation* of any member from an association is also strictly regulated by the rules. A major theme emerging clearly from these passages is the pre-eminence given to strict observance of every association's rules, inviting parallels with the field of contractual rights and obligations.

[15] Some of the more important principles are conveniently summarised in the extensive judgment of Murray J in ***Hawthorne –v- Ulster Flying Club and Others*** [1986] 6 NIJB 56, at pp. 87-88:

> "*It is well established that if a member is to be validly expelled from a club then inter alia (a) there must be an expulsion power in the rules (there is no implied power to expel), (b) the expulsion power must be exercised in strict conformity with the relevant rule and in good faith for the*

[2]See The Encyclopaedia of Forms and Precedents, Volume 7, 2006, paragraphs 1-14 generally and in particular the proposition that the rules of an association "*… embody the terms of the contract …they establish the contractual relationship between the members …*". See also the suggested form of rules.

> *benefit of the club (and not for any indirect or improper motive) and (c) the principles of natural justice must be observed in effecting the expulsion (unless expressly excluded)*".

In ***Weir –v- Hermon and Others*** [2001] NIJB 260, where the Plaintiff sought an injunction to restrain the North Down Unionist Association from holding a special meeting to deliberate on questions of suspension of membership and deselection, Girvan J stated, at p. 265:

> "*It is common case that the rules of the Association constitute a contract between the members and* [fall] *to be construed and applied as terms giving rise to contractual rights and obligations. It is common case that on matters of law the court's jurisdiction cannot be ousted by any provision in the rules of the Association*".

In that case, the proper construction of the Association's Rules was the critical issue to be determined by the court. The pre-eminence of the rules of an association is also evident in the decision in ***Murphy –v- Synnott*** [1925] NI 14, where it was held that while a power to expel the Plaintiff, a member of the club, existed it had not been exercised in accordance with the procedure prescribed by the rules: see especially pp. 25-26 (per Wilson J).

[16] The decision in ***Reel –v- Holder*** [1981] 3 All ER 321 illustrates clearly the elementary proposition that where in any legal proceedings the rules of an association fall to be construed, this is a matter of law to be determined by the court: see per Lord Denning MR, at pp. 324-325. Noting that one could "*argue to and fro on the interpretation of these rules*", the Master of the Rolls observed that the courts "*… have to reconcile all the various differences as best they can*" (at p. 325e) and made the following further observation (at p. 325g):

> "*There was no provision in the 1956 Rules for their being altered in any way. It was a membership of a club. There was a contract between the parties. If the rules are to be altered, that can only be done by agreement between all the parties.*"

Consistent with the principles outlined above, it has long been recognised that a club possesses no inherent power to expel one of its members. In ***Dawkins –v- Antrobus,*** [1881] 17 Ch. D 615, the Master of the Rolls, having adverted to the question of whether the Plaintiff's expulsion from the Travellers' Club had been effected pursuant to a rule binding on him, stated (at p. 620):

> "*Now that does not depend on the inherent power of a club to pass a rule to expel one or more of its members; I for one am unaware of the existence of such a power and I was*

> *surprised to hear such a proposition put forward. There is no more inherent power in the members of a club to alter their rules so as to expel one of its members against the wishes of the minority than there is in the members of any society or partnership which is founded on a contract, that written contract of course expressing the terms on which the members associate together; and it is intolerable to imagine that the majority should in such a case claim an inherent power of expelling the minority*".

His Lordship condemned the contrary proposition as unarguable. With regard to the second issue, being one of construction, he continued (at p. 621):

> "*… I think it is my duty to construe the rules fairly and in the same way as I should any other contract and I have no right to give the words other than their ordinary meaning or to construe the rules otherwise than in their ordinary sense*".

See also ***Halsbury***, Volume 13, paragraphs 236-237 and in particular the uncompromising statement:

> "*A power of expulsion must be exercised in strict conformity with the rules by which it is given, otherwise the purported expulsion will be inoperative*".

[17] It is appropriate to add that in a context such as the present the court is not engaged in an exercise in construction of a statute. I would also draw attention to the modern approach to the construction of contractual terms in the speech of Lord Hoffmann in ***Investors Compensation Scheme –v- West Bromwich Building Society*** [1998] 1 ALL ER 98 and, in particular, the first, fourth and fifth of his Lordship's canons of construction:

> "*(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract …*
>
> *(4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars;* ***the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean ...***

> *(5) The 'rule' that words should be given their 'natural and ordinary meaning' reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had*".

[At pp 114-115, emphasis added].

Thus there is a strong emphasis on context, while the court must simultaneously guard against any temptation to impose its own distant, detached and, frankly, uninformed interpretation, without intense concentration on the particular framework and circumstances.

IV CONCLUSIONS

[18] Giving effect to the legal principles rehearsed above, I construe the relevant provisions of the Laws and Ordinances in the following way.

Law 11

(a) This establishes a general (but not inflexible) rule that every charge against a member should be determined by the member's Private Lodge. I consider that, viewed in its full context, the verb "*investigate*" denotes the entire process, culminating in a determination.

(b) This general rule does not apply where there is a double determination of (or certification by) the Grand Lodge that (i) the complaint in question is one "*affecting the whole Association*" and (ii) it should, in consequence, be "*tried otherwise*".

(c) Where the Grand Lodge thus certifies, the complaint will be considered and determined at such level other than that of the accused member's Private Lodge as the Grand Lodge may prescribe.

Law 12

[19] This Rule, properly construed, is based on the premise that the *general rule* enshrined in Rule 11 has been given effect, with the result that the agency making the decision at first instance is the Private Lodge. In such a case, the member concerned has a right of appealing to "*the next superior lodge*" – which, under the hierarchy established by the Laws and Ordinances, would be the District Lodge.

Law 16

[20] My construction of the assorted provisions enshrined in Law 16 is as follows:

(a) There being (according to the evidence presented) no separate "General Code of Punishment" in existence, Law 16 enshrines this Code, for the time being.

(b) This Law specifies a series of disciplinary offences, in a graduated fashion.

(c) The least serious disciplinary infractions attract the least serious penalties, while the most serious infractions are punishable by the heaviest penalties.

(d) Law 16/3 is engaged only where a discrete provision of the "Laws of [the] Association" is in play. Having regard to the provisions which surround it, Law 16/3 excludes the offences specified in paragraphs 1, 2, 4 and 5 – albeit all of these offences, logically, must also constitute a violation of the "Laws of [the] Association".

(e) Bearing in mind the present context, Law 95 is an illustration of one of the "Laws of [the] Association".

(f) The only sanction for violating any of the "Laws of [the] Association" belonging to the framework of Law 16/3 is suspension.

(g) The sanction of expulsion for infringing any of the "Laws of [the] Association" *belonging to the framework of Law 16/3* is not available.

(h) The periods of suspension specified in Law 16/3 have the character of fixed, inflexible penalties. This construction flows from the terms in which Law 16/3 is framed and the contrast with Law 16/2 and Law 18, each of which expressly employs the terminology "*suspension to be graduated according to the nature of the offence …*". This invites the conclusion that the distinction is plainly intentional, establishing and reflecting a sliding scale of disciplinary offences.

(i) For either "*offences against religion or morality*" or "*aggravated offences*", the only available penalty is expulsion from the Association.

(j) Offences against religion or morality and aggravated offences fall within the ambit of the "Laws of [the] Association". However, they are accorded special attention and treatment. Offences against religion or morality constitute a freestanding category, while "*aggravated offences*" would appear to denote **any** infringement of the Laws of the Association of an aggravated nature, *other than* an offence against religion or morality.

Law 17

[21] (a) I refer to the overlapping assessment in paragraph [20] (i) and (j) above.

(b) The category of "*offences against religion or morality*" is not defined and will depend upon the individual context.

(c) Properly analysed, Law 17 both supplements and complements Law 16/5. Its wording is not felicitous. However, immediately following the first clause, the remainder is in my view to be construed as if phrased "*and such other offences against the Laws of the Association as are of a highly aggravated character, endangering the honour and dignity of the Association*". I further consider that the words "*endangering the honour and dignity of the Association*" qualify only the immediately preceding words – and do not qualify the words "*offences against religion or morality*" (which, *per se*, would presumably be deemed to endanger the honour and dignity of the Association). The words "*highly aggravated*" convey the flavour of *particularly serious*.

Law 18

[22] This Law recognizes the dichotomy of (a) breaches of the Laws of the Association for which a specific (or fixed) penalty is provided and (b) breaches for which no specific penalty is provided. In the former category, the specified penalty applies. In the latter category, the punishment is discretionary, entailing suspension for a maximum period of seven years, to be measured according to the gravity of the offence. The terms of Law 18 and Law 16/2 reinforce the interpretation that Laws 16/1 and 16/3 embody fixed penalties, importing no element of discretion.

Laws 33-46

[23] Decisions of the Grand Lodge are to be made in corporate fashion, in accordance with the procedural requirements and conditions prescribed. The

competence of the Grand Mistress is confined to the express powers conferred on the holder of this office by these provisions of the Laws and Ordinances – see in particular Laws 42 and 43. The Grand Mistress has no power of decision or certification under Law 11.

Law 95

[24] As a general rule, members are permitted to display Orange Regalia only in the context of an Orange assembly. The purpose of this general rule is to safeguard the dignity of the Association. This general rule may be relaxed by the County Grand Mistress, on request and in relation to "*special occasions*" only. In principle, all aspects of the funeral/burial service precipitating the dispute in the present case could qualify as a "*special occasion*".

Law 96

[25] Properly construed, it seems to me that Law 96, though less than felicitously phrased, does not emasculate the generality of Law 11. Accordingly, any alleged contravention of the Laws and Ordinances possessing the particular characteristic of "*offending against the Association at large*" can, in principle, be tried at any of the various tiers – Private Lodge, District Lodge, County Lodge or Grand Lodge. However, the latter option may be invoked only where the Grand Lodge engages in the exercise of certification, or determination, specified in Law 11: see paragraph [18](b) above.

V CONCLUSIONS

[26] Consequential upon the construction of the Laws and Ordinances set out above:

(a) I conclude that Armagh Women's District LOL No. 2 was not competent to consider and determine the charge preferred against the Plaintiff through the medium of the first-named Defendant's letter dated 30th September 2005.

(b) Absent the determination (or certification) by The Grand Lodge rendered necessary by Law 11, only the Plaintiff's Private Lodge was competent to consider and determine this charge.

(c) The first-named Defendant, as Grand Mistress of the Association, was not competent to make the determination, or certification, required by Law 11. Furthermore, on the evidence, she did not do so as a matter of fact.

(d) It follows that the impugned decision viz. the purported expulsion of the Plaintiff from the Association, together with any subsequent ratification thereof by any of the superior tiers, was made without legal authority: adopting the time honoured Latinism, it was *ultra vires* the powers contained in the Laws and Ordinances.

(e) Further, and in any event, the sanction of expulsion of the Plaintiff from the Association was not available, having regard to the offence with which she was charged.

I would add that, as the trial progressed, the correctness of conclusion (e) was, properly, acknowledged on behalf of the Defendants.

[27] Thus I determine the jurisdictional issues in the Plaintiff's favour. As appears from the introductory paragraphs, this judgment does not purport to determine the totality of the issues litigated by the Plaintiff. However, what is determined by this judgment should suffice to bring finality not only to the present litigation but also the underlying dispute, subject to consideration of the issue of *remedy*.

[28] While this judgment does not determine the issues of procedural irregularities and unfairness, I observed during the course of the hearing, and repeat, that the contents of the "meeting report" generated by the key event on 17th October 2005 disclose *prima facie* improprieties. In contemporary society, those who come face to face with the requirements of natural justice frequently act correctly. They do so instinctively and intuitively. However, *prima facie*, that did not occur in the present instance. I note that the Defendants appear to have acted without legal advice at the material time and I have some sympathy with them, since the requirements of natural justice in the present context were, in retrospect, somewhat sophisticated and elaborate. However, it is trite to observe that the requirements of natural justice are immutable. I would further observe that while the Plaintiff would also have sought to establish bad faith (or improper motive) on the part of the Defendants, and without determining this issue, the hurdle to be overcome in this respect is invariably an elevated one and the available evidence suggests that the Plaintiff would have encountered difficulty in this respect.

VI RELIEF

[29] As noted in paragraph [5] above, the primary remedies sought by the Plaintiff are declaratory in nature. The parties have, helpfully, agreed certain facts which have some bearing on the issue of remedy. These are:

(a) Prior to October 2004, the Plaintiff had been Secretary of WLOL No. 24 for several years.

(b) In October 2003, the Plaintiff was elected, unopposed, to the post of Worshipful Mistress of ADWLOL No. 2 and her period of tenure commenced in January 2004. She was re-elected in October 2004.

(c) At a meeting held on 1st October 2005, when the Plaintiff was one of two candidates seeking election, her competitor was elected to this post and she has been re-elected subsequently on successive occasions. Thus she is currently in her fifth year of office.

(d) As a result, when the impugned expulsion occurred, the balance of the Plaintiff's tenure of the post was approximately ten weeks.

(e) The forthcoming meeting of ADWLOL No. 2, in April 2010, is a quarterly meeting, not an election meeting.

(f) The next annual election meeting is scheduled to be held on 1st October 2010.

[30] As a consideration of some of the more important reported cases confirms, the grant of declaratory relief seems to me a recurring feature of litigation of this kind. On one view, the starting point should be that since the conclusions of the court vindicate the Plaintiff, an appropriately formulated remedy should follow. I note, in this respect, the unhesitating approach of Murray J in ***Hawthorne*** (at p. 88). In ***The Declaratory Judgment*** (Zamir and Woolf, 3rd Edition), the authors highlight that two of the salient features of a declaration are (a) its flexibility and (b) its discretionary nature [cf. paragraph 4.001]. Even where the Plaintiff succeeds, the grant of a declaration does not follow as a matter of right, given that the court's discretion "*… has always been a dominant feature of the declaration*" [paragraph 4.002]. In ***Chief Constable of Wales –v- Evans*** [1982] 1 WLR 1155, Lord Brightman stated, at p. 1172:

> "*It would, to my mind, be regrettable if a litigant who establishes that he has been legally wronged … has to be sent away from a court of justice empty-handed save for an order for the recoupment of the expense to which he has been put in establishing a barren victory*".

It might be said that, as a general rule, adequate vindication of a successful Plaintiff requires the grant of a suitable remedy.

[31] The authors of ***The Declaratory Judgment*** also espouse, with some strength, the view that a declaration should serve some useful purpose, the essential pre-requisite being that there is an enduring live dispute between the parties arising out

of extant facts, the determination whereof will be of practical consequence to the parties or the public [paragraph 4.092]. It is clear that the court should also make an assessment of the balance of convenience and, in my view, this must encompass, where appropriate, potential impact upon and the interests of non parties. Furthermore, the court cannot ignore the passage of time and its effects. Finally, it seems to me that the merits of a claim for declaratory relief are likely to be enhanced in circumstances where some other form of relief, in particular damages (as in the present instance), which seems inappropriate, is pursued.

[32] Applying the principles outlined above, I consider it appropriate to make a declaration in the present case. In my view, the Plaintiff will be satisfactorily vindicated if the court (a) declares unlawful the decision whereby the Plaintiff was expelled from the Association and (b) further declares that the Plaintiff remains a member of the Orange organizations from which she was purportedly expelled. It is difficult to conceive of any clearer and fuller remedy in the particular circumstances. Taking into account the extensive passage of time since the relevant events and the series of imponderables bearing on what might have occurred in the absence of the impugned decision, together with accrued third party rights and interests, I consider that any more intrusive or far reaching declaration would be inappropriate. The effect of the declaration which the court is minded to make is that the Plaintiff is reinstated forthwith as a member of the Association, with all the rights and obligations attendant thereon. The court has found that she was unlawfully expelled and that her membership should have continued and a simple declaration to reflect this finding is the fair, balanced and effective remedy which should flow therefrom.

[33] The Plaintiff's initially contended that the court should also make a *quia timet* injunction restraining the Defendants (and those whom they represent) from initiating any fresh or further disciplinary proceedings against the Plaintiff arising out of the contentious events. The evidential foundation for this discrete form of relief seemed unclear and , in the event , the Plaintiff did not press this .. Finally, the order of the court will incorporate a provision for liberty to apply.

Costs

[34] The Defendants submit that the court should make no order as to costs *inter-partes*, given that, in the history of the dispute, both parties were guilty of mistakes; taking into account the Plaintiff's delay in initiating these proceedings; and having regard to the advanced stage which her tenure of the post of Worshipful District Mistress had reached. The general rule is that costs should follow the event. Having regard to the conclusions which this judgment makes in the Plaintiff's favour, I consider that the Defendants' submissions fall well short of displacing the general rule. Accordingly, the Plaintiff will recover her costs from the Defendants.

VII POSTSCRIPT

[35] I sincerely trust that, aided by the clarification, certainty and finality which this judgment seeks to provide, some *rapprochement* between the parties will be possible. The organisations concerned in this matter are of greater importance than any individual member and they will survive, come what may. However, recognizing the potential which such organizations possess to do good for society , it is important that they go forward into the future fortified, rather than weakened. This kind of legal dispute, regrettable though it is, can have positive and beneficial consequences and one sincerely trusts that all parties will consider, and give effect to, the judgment of the court in this spirit.