

**IN THE DISTRICT COURT  
AT WHANGAREI**

**I TE KŌTI-Ā-ROHE  
KI WHANGĀREI-TERENGA-PARĀOA**

**CIV 2025-088-679  
[2025] NZDC 24985**

UNDER the Local Electoral Act 2001

IN THE MATTER of an Application for a Recount of the Votes  
in the Local Government Election of 2025  
for the Wairoa Ward of the Kaipara District  
Council

BETWEEN ASHOK (ASH) NAYYAR  
Applicant

AND DALE OFSOSKE, Electoral Officer  
Respondent

Appearances: Applicant in person  
Respondent in person

Judgment: 30 October 2025  
(On the Papers)

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**JUDGMENT OF JUDGE K D KELLY  
[on application for a recount in the 2025 local government elections]**

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**Introduction**

[1] On 22 October 2025, pursuant to s 90 of the Local Electoral Act 2001 (the Act), Mr Ash Nayyar applied for a recount of the votes cast at the 2025 elections for the Wairoa Ward of the Kaipara District Council in which he was a candidate. The Wairoa Ward elected three members from 13 candidates.

[2] Mr Dale Ofsoske is the Electoral Officer for the election. Mr Ofsoske takes a neutral position in relation to whether there ought to be a recount, and the outcome of any recount (if ordered).

### **Grounds**

[3] The ground for Mr Nayyar's application is that he considers that there were irregularities and procedural concerns observed during the handling and counting of special votes and early votes. In particular, Mr Nayyar says that there was undue influence exerted by elected officials over electoral officials before and during an extraordinary meeting of the Kaipara District Council on 17 October 2025, held before the final results were declared.

[4] These matters, Mr Nayyar says, may have compromised the independence of the electoral process such that there is reason to believe that the vote counting, and special vote validation procedures were not conducted fully in accordance with the requirements of the Act.

### **Mr Nayyar's submissions**

[5] Mr Nayyar submits that he attended the extraordinary meeting of the Council in Mangawhai and says that he observed undue pressure and coercion being applied to the Chief Executive and deputy electoral officer. Mr Nayyar says that the mayor-elect repeatedly accused the electoral officer of impropriety and bias.

[6] While Mr Nayyar says that a recording of that meeting is available, he has not provided a copy with his application. Mr Nayyar also says that the Electoral Officer has made no mention of this meeting or the meeting agenda in his report.

[7] Mr Nayyar also submits that he has also been subject to "heavy-handed treatment" including:

- (a) alteration of the candidate information booklet to allow another candidate to place election signage a day early;

- (b) being issued an official warning letter for rudeness when this was raised with the deputy electoral officer; and
- (c) his contact details being altered on the Council's website.

[8] As Mr Nayyar says that because his access to his Kaipara District Council account has been disabled (as he is listed as a non-returning elected member), he is unable to produce copies of the warning given to him.

[9] Mr Nayyar also submits that he holds concerns that freshly enrolled voters may have been allowed to cast votes without declarations, which he says can then be counted as ordinary votes, and that some declaration forms may have been destroyed or altered, invalidating some special votes.

[10] Mr Nayyar submits that after filing his application, he received a revised 'already voted' list showing that 54 fewer votes than in an earlier version he had seen. Mr Nayyar says that several of these voters have confirmed to him that they cast votes for him and in one case involving a couple, only one vote appears on the list.

[11] Mr Nayyar is referring to the provision of information under s 68(6) of the Act (which relates to the general rules affecting scrutineers) and which reads:

An electoral officer may, at the request of a scrutineer or candidate made before the close of voting at an election, or at the request of a scrutineer made before the close of voting at a poll, supply to that scrutineer or candidate the names of persons from whom voting documents have been received, either at no cost or for a reasonable price, and in a format that the electoral officer considers appropriate.

[12] Mr Nayyar further submits that the handling of special votes raises a concern for him, specifically the unusually high proportion of special votes that were disallowed, and where votes were processed by Council staff who were not independent electoral officers.

[13] Mr Nayyar also asks that should additional evidence of procedural lapses or bias be identified during a recount, that the overseeing judge direct a judicial inquiry under the Act.

## **Electoral Officer's report**

[14] On 24 October 2025 I directed the Electoral Officer, Mr Dale Ofsoske, to file a report on the conduct of the election.

[15] Mr Ofsoske's report dated 28 October 2025 confirms that when progress results were released on 11 October 2025, Mr Nayyar was ranked in 6<sup>th</sup> place with 163 votes between him and the lowest provisionally elected candidate. When the preliminary votes were released on 12 October 2025 (reflecting all votes except special votes), Mr Nayyar was still ranked 6<sup>th</sup>, with 167 votes between him and the lowest provisionally elected candidate (who differed from when the provisional results were announced). Subsequently, when the final results were released on 17 October 2025 Mr Nayyar again ranked in 6<sup>th</sup> place with 187 votes between him and the lowest elected candidate (who was the same as when the preliminary results were announced). The final results included all special votes that were not included in the preliminary results.

[16] When voting closed, Ms Ofsoske reports that 235 special votes were received for the Wairoa Ward. Of these, 92 special votes (39%) were allowed. Of the 143 special votes (61%) that were disallowed:

- (a) 3 people voted twice (using both original and special voting documents);
- (b) 90 people were not on the roll (i.e. they were disallowed by the Electoral Commission as unqualified);
- (c) 48 declarations required to accompany special votes were incomplete; and
- (d) 2 had either no declaration or no special vote.

[17] Mr Ofsoske also reports that prior to each triennial election, the software and vote processes are certified as 'fit for purpose' by an independent auditor, and that this happened in this case. Mr Ofsoske's report also sets out details about how votes are processed.

[18] In relation to Mr Nayyar's concern about 'already voted' lists, Mr Ofsoske reports that Mr Nayyar requested a number of these lists including the final list following the election. Mr Ofsoske explains that when this last list was issued, it inadvertently included details of all electors (final electoral roll and special voters) who had voted district-wide. Mr Ofsoske says that normal practice is to include electors who had voted from the final electoral roll only. In this case, however, Mr Ofsoske says that the list included all details of all electors who had voted, including the 54 special voters to which Mr Nayyar refers. Once this was realised, Mr Ofsoske says that Mr Nayyar was asked to delete the first list he received, and a corrected list was provided to him. This, Mr Ofsoske says, is the reason why the 54 voters do not appear in the list.

[19] This issue, however, Mr Ofsoske says, did not have any effect on the votes that were announced.

[20] Finally, Mr Ofsoske reports that while candidates are able to appoint scrutineers to observe the vote counting process, including that counting process after the voting closed, no scrutineers were appointed by candidates for the Kaipara District Council, including Mr Nayyar.

### **Legal Framework**

[21] Section 90 of the Act provides:

#### **90 Application for recount**

(1) If any candidate has reason to believe that the public declaration by the electoral officer of the number of votes received by any candidate is incorrect, and that on a recount of those votes the first-mentioned candidate might be elected, he or she may, within 3 days after the public declaration, apply to a District Court Judge for a recount of the votes.

...

(3) If the District Court Judge is satisfied that the applicant has reasonable grounds to believe that the declaration is incorrect and that on a recount the applicant might be elected, the District Court Judge must, as soon as practicable after receiving the application, and the deposit required by subsection (2),—

(a) cause a recount of the votes to be made; and

- (b) give notice in writing to the electoral officer and to each of the candidates and to each scrutineer appointed under section 66 or section 91 of the time and place at which the recount will be made.

[22] The test in s 90(3) of the Act is not whether a judge believes that the declaration by the electoral officer may be incorrect and that on a recount the applicant might be elected. Rather, a judge must be satisfied that the applicant has reasonable grounds to believe that the declaration is incorrect and that he or she might be elected on a recount.

[23] As Judge Tuohy noted in *Smith v Lampp*, a decision pertaining to the local government elections in 2022:<sup>1</sup>

[28] There have been several decisions of District Court judges over the last decade or so in which the application of this test has been discussed. In *Butler v Jordan*<sup>2</sup>, Coyle DCJ said that the Judge needs to be satisfied on the balance of probabilities that there is sufficient evidence to justify a conclusion that the applicant has reasonable grounds to believe that the declaration is incorrect. This necessitates the applicant adducing evidence to enable the Judge to be satisfied that the grounds have been established. The reasonableness of the applicant's subjective belief must be assessed in the light of that evidence. 'Reasonableness' is to be construed in accordance with the usual objective test.<sup>3</sup>

[29] In *Kelliher v Jordan*,<sup>4</sup> Kellar DCJ departed from *Butler v Jordan* on the issue of the onus and standard of proof under s 90. Relying upon the Court of Appeal's approach in *R v White*<sup>5</sup> and *R v Leitch*<sup>6</sup> to the application of the term '*the Court is satisfied*', Kellar DCJ considered that the expression does not carry any implication of proof to any particular standard. Rather, a District Court Judge is merely required to make up his or her mind on reasonable grounds or in other words to come to a judicial decision on the matter at issue, that is, whether the applicant has reasonable grounds for her belief that the declaration is incorrect **and** that the applicant might be elected on a recount.

[30] Kellar DCJ also held that closeness of the voting by itself does not provide reasonable grounds to believe that the declaration is incorrect and that on a recount the applicant might be elected, a conclusion with which other judges have agreed in subsequent decisions.<sup>7</sup>

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<sup>1</sup> *Robyn Anne Smith v Warwick Lampp for Greater Wellington Regional Council 2022 Local Government Elections* [2022] NZDC 22080 at [28] and following

<sup>2</sup> *Butler v Jordan* [2011] DCR 399

<sup>3</sup> *Butler v Jordan* *supra*, at [8]

<sup>4</sup> *Kelliher v Jordan* [2017] DCR 44

<sup>5</sup> [1988] 1 NZLR 264 (CA)

<sup>6</sup> [1988] 1 NZLR 42 (CA)

<sup>7</sup> *Lewers v Queenstown Lakes District Council* [2019] NZDC 20986 at [12] (M Callaghan DCJ); *Lester v Lampp and Foster* [2019] NZDC 22157 at [52] (KD Kelly DCJ).

[31] As to the second limb of the test in s 90, that is, whether there are reasonable grounds to believe that on a recount the applicant might be elected, in *Butler v Jordan*, Coyle DCJ considered that the threshold is low if there are prima facie reasonable grounds for the applicant to believe that the declaration is incorrect.<sup>8</sup>

[24] As did Judge Tuohy, I agree with the approach of Judge Kellar in respect of the judge's task in deciding whether the test in s 90(3) has been satisfied. Otherwise, again like Judge Tuohy, there is no apparent reason to depart from the principles recognised in the previous decisions to which Judge Tuohy referred.

[25] In addition, in *Smith v Lampp*, Judge Tuohy noted that there is a significant difference in the language Parliament has used in formulating the two limbs of the test in s 90(3). As his Honour said: "The applicant must have reasonable grounds to believe that the declaration is incorrect but only that she **might** be elected on a recount. The latter refers to a possibility, the former to an actuality."<sup>9</sup> I agree with this.

### **Discussion**

[26] The issue for determination is whether the evidence satisfies me that Mr Nayyar has reasonable grounds to believe both that the declaration of final result is incorrect and that on a recount he might be elected.

[27] Mr Nayyar's evidence comprises parts of the Agenda Notes related to the extraordinary meeting of the Kaipara District Council on 16 October 2025, and some emails exchanged between the Chief Executive of the Council and the Electoral Officer which he says are relevant to the alleged irregularities.

[28] An email dated 15 October 2025 from the outgoing mayor, who called the extraordinary meeting, shows that the outgoing mayor called the meeting to:

- (a) approve a complaint and request for an investigation into the conduct of the 2025 Kaipara District Council local government election and 2025 Northland Regional Council Māori constituency referendum; and

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<sup>8</sup> *Butler v Jordan* above n 2 at [11] approved by KD Kelly DCJ in *Hicks v Gore District Council and Bell* [2022] NZDC 21348 at [28]

<sup>9</sup> Above n 1, at [35]

- (b) authorise the mayor on behalf of the council to lodge the complaint and request for an investigation with the “relevant authorities.”

[29] An undated letter from the outgoing mayor to the Department of Internal Affairs (DIA) and the Electoral Officer then raises allegations that:

- (a) vote collection places have been established in remote areas that appear to favour one demographic group; and
- (b) council staff or persons acting under the authority of the Electoral Officer may have offered incentives (such as assistance with rebate forms, giving of food, or other benefits) that could be construed as “treating” or “undue influence” under ss 122-125 of the Act.

[30] These concerns, the letter suggests: “raises concern about the integrity and neutrality of the electoral process”. The outgoing mayor requests urgent advice on:

- (a) what immediate steps DIA or the Electoral Officer can lawfully take before the results are declared to ensure compliance with the Act and maintain public confidence in the election outcome; and
- (b) whether the declaration of results can or should be delayed pending investigation of the existing and further credible evidence of improper influence; and
- (c) what formal procedure should be followed if elected members or members of the public wish to submit evidence or complaints under the Act.

[31] A bundle of ‘relevant information’ is provided in apparent support of these concerns. The status of this information, and whether it formed part of the material considered by the Council or proposed to be sent to DIA and the Electoral Officer, is not apparent from Mr Nayar’s application.



[32] Mr Nayyar has also provided to the Court an email from his son to the Council, the Electoral Commission (i.e. elections.govt.nz), and the Ombudsman, in which he complained of election signs being displayed across 'key locations' ahead of the times stipulated in the Council's policies. He also complained of alleged modifications made to the Council's candidate handbook.

[33] Without in any way wishing to downplay Mr Nayyar's concerns, the difficulty with the information provided by Mr Nayyar for present purposes is that the irregularities to which he refers are about the conduct of the election, or the conduct of a candidate or other person at the election.

[34] The information does not in itself establish that Mr Nayyar has reasonable grounds to believe that the *declaration* itself is incorrect and that on a recount he might be elected. Mr Nayyar has not explained how the irregularities in relation to how votes were cast, or policies were breached, if borne out, might result in a difference to the votes from when they were cast, or how they might now be treated differently.

[35] Viewed in this way, Mr Nayyar's concerns are about matters outside the scope of a recount and are matters which a recount will not address.

[36] As Mr Nayyar himself recognises in his submissions, s 93 of the Act provides a mechanism where a candidate (such as himself) or any 10 electors with a complaint about the conduct of an election or about the conduct of a candidate or any other person, may file a petition in the Court.

[37] The test for a judicial recount, however, is different and is whether I consider that Mr Nayyar has reasonable grounds to believe that the declaration is incorrect, and that he might be elected on a recount.

[38] In short, no evidence is provided in Mr Nayyar's affidavit of any voting irregularity as to the way in which votes were counted so as to inform Mr Nayyar's subjective belief when assessed against the objective test for reasonableness.<sup>10</sup> Nor was any scrutineer present to inform such a belief.

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<sup>10</sup> *Butler v Jordan* above n 2, at [8]

[39] As Judge Tuohy said in *Smith v Lampp*:<sup>11</sup>

... suspicion is not enough. That is not the test as explained above. The test is whether Ms Smith has an objective and credible basis for believing that the declaration is incorrect. The possibility or even the likelihood of error does not meet that test. There must be a basis for an objective belief that it is highly likely that the declaration is incorrect.

[40] Again, without wishing to downplay Mr Nayyar's concerns, here as in *Smith*, the basis for such a reasonable belief is simply not available on the evidence before the Court.

[41] In relation to the 'already voted' lists, I accept the Electoral Officer's explanation that this would not have affected the votes announced.

[42] Finally, the report of Mr Ofsoske does not suggest any irregularity in the treatment of special votes. I am satisfied that each of the reasons provided for disallowing special votes are all grounds for disallowing votes. Section s 20 of the Act governs eligibility to vote, and r 38 of the Local Electoral Regulations 2001 provides the mandatory requirement for any declaration. Mr Nayyar's evidence does not provide any basis for a reasonable belief that these requirements were not observed by the Electoral Officer in considering and counting the votes.

[43] I acknowledge that Mr Nayyar says that this report does not address his concerns about the handling of ballot boxes by Council staff. On 20 September 2025 Mr Nayyar asked Mr Ofsoske whether he was receiving ballot boxes straight from collection points by courier, or whether Council staff were emptying them in Council offices first before putting them in courier boxes. Mr Nayyar said that he hoped the latter was not true.

[44] In response, Mr Ofsoske asked Mr Nayyar to leave the running of the election to him and advised Mr Nayyar that as a candidate he cannot instruct or direct him as to what he can or cannot do and that his responsibility is to adhere to the Act.

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<sup>11</sup> *Smith v Lampp*, above n 1, at [60]

[45] I do not form a view on whether whatever practice was undertaken was proper. That is beyond the scope of the determination I need to make in relation to Mr Nayyar's application. Nevertheless, I have considered whether the question supports Mr Nayyar having reasonable grounds to believe both that the declaration of final result is incorrect and that on a recount he might be elected. In short, I do not. Once again, this issue relates to the conduct of the election more generally. Even if there was some impropriety here (and, again I am not required to determine whether or not there is), in itself I do not think that it evidences that final declaration is incorrect per se.

[46] For these reasons I am not satisfied that the first limb of the test that I need to apply, is satisfied.

[47] Even if I am wrong on this, however, in relation to the second limb of the test the final results put Mr Nayyar 187 votes behind the lowest elected candidate after 92 special votes were allowed. Even if the remaining 143 special votes that were disallowed went to Mr Nayyar, he would still remain 44 votes behind the lowest elected candidate. In addition, on the final results, Mr Nayyar was ranked in 6<sup>th</sup> place for three available positions. Accordingly, I do not consider that Mr Nayyar has reasonable grounds to believe that on a recount he might be elected.

### **Result**

[48] For the reasons stated, the application is dismissed. I decline to order a judicial recount of the votes for the Wairoa Ward of the Kaipara District Council.



K D Kelly  
District Court Judge