

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CIV 2022-009-2361
[2022] NZDC 21346**

UNDER	the Local Electoral Act 2001
IN THE MATTER	of an Application for a Recount of the Votes in the Local Government Election of 2022 for the Innes Ward of the Christchurch City Council
BETWEEN	ALISON UNA ALLSOP Applicant
AND	JO DALY, Electoral Officer for the Christchurch City Council Respondent

Hearing: On the Papers

Counsel: J R Pullar and A E Kennerley for Applicant
W Palmer for Electoral Officer

Judgment: 2 November 2022

**JUDGMENT OF JUDGE K D KELLY
[on application for a recount of votes cast at local body election]**

Introduction

[1] Pursuant to s 90 of the Local Electoral Act 2001 (the Act), Ms Alison Una Allsop has applied for a recount of the votes cast at the recent 2022 elections for the Innes Ward of the Christchurch City Council.

Ms Allsop's application

[2] Public declaration by the Electoral Officer of the number of votes received by candidates was made on Friday 14 October 2022.

[3] Of the four candidates for the Innes Ward, for which there was one vacancy, Pauline Cotter received 2,653 votes. Ms Allsop (who ran under her maiden name Ali Jones) received 2,637 votes, a margin of 16 votes. Mark Wilson and Carl Bromley received 729 and 389 votes respectively. There were 38 informal votes.

[4] The grounds on which Ms Allsop seeks a recount are that:

- (a) she has concerns about the special voting process at the Beckenham Service Centre which may have led to informal votes; and
- (b) the margin between Ms Allsop and the elected candidate is smaller than the number of informal votes in the ward.

[5] In her affidavit in support of the application Ms Allsop says that she believes that because the margin between herself and Ms Cotter is so small, and because that margin is less than half the size of the number of informal votes, there is a chance that the vote count is incorrect and that if there were to be a recount she might be elected.

[6] Ms Allsop also says that a concern was raised with her by a member of the Spreydon ward about the process for special voting at the Beckenham Service Centre. In relation to this, the application is supported by an affidavit from [witness 1]. [Witness 1] says that when she went to vote by way of a special vote staff had been directed not to witness the voting papers, contrary to the instructions on the form for casting a special vote. Upon contacting Ms Daly, the Electoral Officer, [witness 1] says that Ms Daly acknowledged that she had told staff that they did not need to sign the form. [Witness 1] was concerned that this apparent irregularity could have affected her vote as well as the votes of other people who cast special votes. [Witness 1] contacted Ms Allsop as someone who she considered might be impacted by the process around special votes.

[7] Ms Allsop says that the issue raised by [witness 1] concerns her as it is possibly broader than the Beckenham Service Centre.

[8] Upon speaking to the Electoral Officer, Ms Allsop says that 37 of 167 special votes in the Innes Ward were disqualified, although she does not know why.

Electoral Officer's report

[9] I directed the Electoral Officer for the Christchurch City Council, Ms Jo-Anne Daly, to file a report on the conduct of the election canvassing:

- (a) the counting process followed for the election;
- (b) the performance testing that was conducted during the counting process;
- (c) the nature and character of excluded votes; and
- (d) the logistics and anticipated cost of any recount (both for an electronic and a manual recount), and including details of the potential venue and time in which a recount team could be stood up to inform s 90(3) notice to candidates and scrutineers

[10] In her affidavit to which this report is appended, Ms Daly confirms that there were 38 informal votes and 245 blank voting papers. The 38 informal votes were excluded because each elector had voted for more than one candidate. The blank voting papers were manually checked and confirmed to be blank.

[11] In relation to the issue about special voter declarations, Ms Daly says that electoral officials issuing special votes at nine sites, including Beckenham Service Centre, used an electoral stamp or official mark stamp when witnessing special voter declarations. During the course of the election Ms Daly says that it was brought to her attention that instructions she had given were that officials were not required to sign declaration forms. Upon reviewing the information, however, Ms Daly says she contacted each special voting site to clarify her instructions that along with the electoral stamp or official mark stamp, officials were to sign the declaration form.

Ms Daly acknowledges that her instructions had been inconsistent but it was only the Beckenham Service Centre that understood that they were not to sign declarations.

[12] Ms Daly says that she confirmed with *electionz.com*, the agency contracted to undertake the vote counting process, that any special vote declaration that had an electoral stamp or official mark stamp, with or without a signature, was to be regarded as having been witnessed and counted. Ms Daly directed these documents to have been verified and counted in accordance with the Act and Regulations.

[13] In relation to the 167 special votes cast in the Innes Ward, Ms Daly says 130 were confirmed as qualified and included in the final vote declaration. Of the other 37 special votes, 27 were confirmed as not having been enrolled and 10 had deficiencies with their special vote declarations.

[14] Ms Daly says further that the issue in relation to witnessing special vote declarations is not a matter related to a recount which is for the valid voting documents received for an election.

[15] In terms of the method of recount, Ms Daly confirms that the original count of the votes was undertaken by the electoral officer at secure premises in Christchurch using specialised electronic scanning equipment.

Ms Allsop's submissions

[16] Ms Allsop submits that while closeness of the margins of itself is not sufficient grounds for a recount,¹ where there are other issues identified in conjunction with a small margin, this may provide reasonable grounds for a recount. It is submitted that the courts have also acknowledged that where the margin is close, it is important that the results are seen to have integrity.² Further, where there data entry is occurring at speed, there is a risk of error.³

¹ *Kelliher v Jordan* [2016] NZDC 20990 at [15]

² *Butler v Jordan* [2011] DCR 399 at [9]

³ *Butler v Jordan*, above n 2 at [9] and *Lewers v Queenstown Lakes District Council* [2019] NZDC 20986 at [10]

[17] In relation to special votes, it is submitted that in *Re Bennett (No 2)*,⁴ the court considered declarations of special votes when undertaking a recount and allowed two votes that had not originally been included in the initial count. Given that there is evidence of an irregularity with instructions given to council staff issuing special voting papers, there may be voting papers here that have been considered invalid.

[18] While the Electoral Officer has acknowledged an issue with instructions and says that the special votes were treated as being valid, there are 10 special votes which were disallowed due to unspecified deficiencies with their declarations. It is submitted that it is not clear how these deficient declarations differed to the incorrect declarations completed by staff at the Beckenham voting centre.

[19] In addition, it is submitted there were 38 informal votes, twice the size of the margin between Ms Allsop and the successful candidate. This, it is submitted, also points in favour of a recount. On a recount, it is submitted, it is possible to review the informal votes to determine whether they were in fact informal votes, as was the case in *Lewers v Queenstown Lakes District Council*.⁵

[20] It is further submitted that the Courts have held that the second limb of the test in s 90 (namely that the applicant has reasonable grounds to believe that on a recount that applicant might be elected) has a low threshold which will be satisfied following a finding that there are reasonable grounds that the applicant believe that the declaration is incorrect.⁶

[21] In terms of the method of recount, Ms Allsop submits that she prefers a manual recount be undertaken to ensure that each ballot, in particular the informal, blank and special votes are individually reviewed to ensure that they are appropriately categorised.

⁴ *Re Bennett (No 2)* DC Waitakere 20 December 2011

⁵ Above n 3

⁶ *Lewers v Queenstown Lakes District Council*, above n 3 at [17], and *Butler v Jordan*, above n 2 at [11]

Submissions for Ms Daly

[22] Through her counsel, Ms Daly submits that the main plank of Ms Allsop's application centres on the closeness of the election but this is not, in itself, grounds for ordering a recount.

[23] It is submitted that Ms Allsop has not pointed to any specific issue or concern with the vote counting process but has focused on alleged irregularities with the special voting process and the possibility that votes were improperly discounted.

[24] It is submitted that given Ms Daly's instructions to *electionz.com*, any irregularity for witnessing special votes has had no impact on the election as it was remedied by Ms Daly's instructions.

[25] It is further submitted that there is no reason to believe that at least 16 of the 38 informal votes have been mischaracterised, or that they were mischaracterised in Ms Allsop's favour.

[26] In terms of the closeness of the election, it is submitted that in *Kelliher v Jordan*,⁷ Judge Kellar said that something more is required.

[27] In *Lewers*, it is submitted, an important factor was that there was a single vote difference which is a material difference between that case and this one.

Decision and Reasons

[28] Under s 90(3) of the Local Electoral Act 2001, if a District Court Judge is satisfied that the applicant has reasonable grounds to believe that the declaration by the electoral officer of the number of votes received by any candidate is incorrect and that on a recount that applicant might be elected, the District Court Judge must as soon as practicable after receiving the application and the required deposit:

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

⁷ *Kelliher v Jordan* [2016] NZDC 20990

- (b) give notice in writing to the electoral officer and to each of the candidates and to each scrutineer appointed under s 66 or s 69 of the time and place at which the recount will be made.

[29] 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.

[30] In *Kelliher v Jordan*, Judge Kellar had cause to consider whether there should be a recount of votes for the Dunstan Constituency for the Otago Regional Council in 2016. Judge Kellar said that the closeness of voting by itself does not amount to reasonable grounds for a belief that the declaration is incorrect. Something more is required by reference to the possibility of errors in the way the votes are counted.⁸ I agreed with this in *Lester v Lampp* relating to the 2019 Wellington Mayoral election.⁹

[31] In the present case Ms Allsop has provided evidence of an irregularity in the way special votes were processed. This irregularity has been acknowledged by Ms Daly although Ms Daly contends it is an unrelated matter.

[32] I am satisfied that the concerns of Ms Allsop around special voting constitutes grounds for a reasonable belief that the declaration by the electoral officer of the number of votes received by Ms Allsop may be incorrect and that on a recount she might be elected. If some of the 37 special votes were deemed informal because the accompanying special voting declaration was not witnessed (because of Ms Daly's acknowledged inconsistent instructions), on a recount those informal votes may have a significant impact on the outcome of the election.

[33] In *Re Bennett*, Judge Adams found that a cluster of votes had been disallowed by the Returning Officer because there was no official stamp on the documentation.

⁸ *Kelliher v Jordan* [2016] NZDC 20990 at [13]

⁹ *Lester v Lampp* (D Ct, Wellington, CIV-2019-085-816, 8 November 2019) at [51]-[53]

Judge Adams decided the defect must have been official error and allowed these votes.¹⁰ This may be a possibility in this case and it renders Ms Allsop's concerns to be more than just a matter of closeness of the result.

[34] For completeness, the registrar has confirmed that the deposit has been paid.

[35] In terms of the method of counting, pursuant to s 90(2)(a) of the Act the recount "must, as far as practicable, be in the manner provided in the case of the original count unless the District Court Judge (the judge presiding over the recount) orders otherwise". I am not satisfied the entire election needs to be conducted manually. I consider that the recount should take place using the same specialised electronic scanning equipment that was used in the original count, however, all informal, blank and special votes ought to be individually reviewed by the overseeing judge to ensure that they have been appropriately categorised and counted.

Result

[36] For the reasons stated, the application is granted. I order that a judicial recount of the votes for the Innes Ward of the Christchurch City Council be undertaken.

[37] I order that the method of counting is to use the same specialised electronic scanning equipment that was used in the original count subject to all informal, blank and special votes being individually reviewed by the overseeing judge to ensure that they are appropriately categorised and counted.

[38] I also direct the Electoral Officer to advise the Registrar by 5:00pm on Thursday 3 November 2022 of the time and place (in Christchurch) for undertaking the recount so that the Court may give notice in writing to the electoral officer and to each of the candidates and to each scrutineer pursuant to s 91 of the Act, with the recount preferably occurring no later than Tuesday 8 November 2022.

[39] Copies of this decision are to go to the Electoral Officer and to each of the candidates.

¹⁰ *Re Bennett (No2)* DC Waitakere CIV-2011-090-987654 (20 December 2011) at [25]

Costs

[40] Costs are reserved pending the outcome of the recount.

K D Kelly
District Court Judge