IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2023-004-2086
[2023] NZDC 24875

IN THE MATTER OF	the Electoral Act 1993
AND	
IN THE MATTER OF	an Application for a Recount of Electorate Votes in the Māori electorate of Tāmaki Makaurau
BETWEEN	PEENI EREATARA GLADWYN HENARE Applicant
AND	KARL LE QUESNE Electoral Commissioner First Respondent
AND	ELECTORAL COMMISSION Second Respondent

Date: 15 November 2023

DECISION OF JUDGE K D KELLY
[OUTCOME OF JUDICIAL RECOUNT OF
TĀMAKI MAKAURAU DISTRICT CANDIDATE VOTES]

Introduction

[1] Mr Peeni Ereatara Gladwyn Henare stood as the Labour Party Candidate in the Māori electorate of Tāmaki Makaurau (the electorate) in the General Election held on 14 October 2023.

[2] On 8 November 2023, pursuant to s 180(5)(a) of the Electoral Act 1993 (the Act), I directed a recount to be undertaken of the electorate votes for the electorate.

[3] This recount took place at the Returning Officer's Headquarters at 15 Osterley Way, Manakau, Auckland on 13 - 15 November 2023 in accordance with my earlier direction.

Process

[4] The recount was undertaken in my presence and, as far as practicable, in the manner provided for in the case of the official count. The only persons present at the recount other than me were:

(a) the Returning Officer Ms Angelica Vargas and her assistants and headquarters staff;

(b) three scrutineers appointed by Peeni Ereatara Gladwyn HENARE;

(c) three scrutineers appointed by Takutai Tarsh KEMP;

(d) one scrutineer appointed by Hinurewa TE HAU;

(e) Mr Mark Lawson, Deputy Chief Electoral Officer, and staff from the National Office of the Electoral Commission; and

(f) counting staff.

[5] The recount commenced with the ballots for being removed from the sealed envelopes in which they were contained. Each envelope contained the votes for a

polling station in the electorate. As the ballots were manually recounted and checked, the results were recorded in worksheets with any necessary adjustments being made by reference to the worksheets from the official count. An initial demonstration was done so that everyone was clear about the process.

[6] The results for each polling station, as recorded in the worksheets, were then captured electronically and a results sheet produced.

[7] In the case of some polling stations, the votes in the official count were found to have been attributed to the wrong candidate. The reasons for this are unclear. In three polling stations this happened to groups of 5, 6 and 12 votes, respectively. These votes were counted against the correct candidate in the recount.

[8] Otherwise, there were some minor differences in numbers between the official count and the recount but these were all able to be reconciled on inquiry. In the case of some larger polling stations, I directed the recount to be done up to three times to ensure any initial discrepancies were reconciled. In short, I am satisfied that the results captured in the worksheets reflected the number of voting papers in the ballot boxes.

[9] The results sheets for each polling station were then used to create certificates of results which were again checked before being signed off by me and the Returning Officer in the presence of the scrutineers. The ballots were then sealed in their envelopes.

[10] The Electoral Commission's Official Count Instructions provide examples for counting staff, of the most likely kinds of errors that might occur which would render a vote to be informal and not able to be counted. There was no uncertainty about informal votes which reflected these instructions.

[11] Nevertheless, I directed that all informal votes (whether clear or not) were to be checked by me. This was done in the presence of the scrutineers. All informal votes were confirmed, reversed or set aside accordingly.

[12] The most common errors which resulted in informal votes involved voters casting two candidate votes. This may reflect some confusion about the instructions on the voting paper (to the effect that a voter has two votes), especially where English may not be a first language.

[13] The other most common scenario was where voters only cast party votes (i.e. they did not vote for a candidate).

[14] Where voters appeared to have crossed out a vote for one candidate in preference for another, the intent of the voter was clear in all but a few instances. There was nothing exceptional about this. The unclear ones were treated as informal votes.

[15] The other observation I make is that the orange pens tended to bleed in a number of instances making it necessary to look at the papers carefully to ensure what appeared to be a voter's mark was not just a stain left by another paper in the same envelope.

[16] I also reviewed the 312 disallowed special votes in the presence of the scrutineers and officials. This was done by separating the votes into categories with each category being sampled. Of the disallowed special votes:

(a) 220 were disallowed because the voter was not enrolled;

(b) 4 were disallowed because the vote was received late;

(c) 25 were disallowed because they were not signed by an authorised witness;

(d) 12 were disallowed because they were not signed by the voter;

(e) 6 were disallowed where the grounds for making a special vote was not set out;

(f) 41 were disallowed because they were dual votes;

(g) 3 were disallowed as post-writ deletions; and

(h) 1 was disallowed because no ballot paper was enclosed.

[17] Pursuant to s 180(8) of the Act I am satisfied that the decisions of the Returning Officer to disallow these special votes were correct and I confirm them.

Result

[18] The recount has resulted in variations to the official declaration of results made on 3 November 2023. Accordingly, pursuant to s 180(10) of the Act, I order the Electoral Commission to give an amended declaration of the result of the poll.

[19] The overall outcome is as follows:

Candidates	**Party**	**Official Result**	**Recount Result**
HENARE, Peeni	Labour Party	10,046	10,026
KEMP, Takutai Tarsh	Te Pāti Māori	10,050	10,068
TAMAKI, Hannah	Vision New Zealand	829	829
TANA, Darleen	Green Party	2,911	2,925
TE HAU, Hinurewa	National Party	1,274	1,275
Candidate informals		502	481
TOTAL		25,612	25,604

[20] I am satisfied that the difference in total votes have been checked and are due to counting errors plus a slight increase in the number of disallowed votes following the recount. I am satisfied that all votes have been accounted for when processing the results.

[21] In making this decision I wish to record my observations of the Electoral Commission staff and counters. I found the staff and counters to be professional and diligent in exercising the important process of the recount. The New Zealand voter should take comfort in the integrity of the process of counting votes.

[22] I also wish to record the contribution of the scrutineers appointed by the candidates. Scrutineers play an important role in bearing witness to the demographic process.

[23] The application was justified to the extent that minor differences have been identified notwithstanding that no change has resulted in terms of the successful candidate for the Tāmaki Makaurau electorate.

Order

[24] Pursuant to s 180(10) of the Act, I order the Electoral Commission to give an amended declaration of the result of the poll.

Costs

[25] No order has been sought as to costs. Should any party do so they are to file and serve a memorandum within 5 working days and the other party will have 5 working days to respond. A decision will then be made on the papers.

[26] Pursuant to s 180(11), I direct that the deposit which the applicant was required to pay, be returned to him.

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K D Kelly
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 15/11/2023