

Recent case prompts election petition revisit

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Revisiting election petitions under the Local Electoral Act 2001: *Christchurch Central Ward Election Petition* [2019] NZDC 24331

In the case of *Re Christchurch Central Ward Election Petition* [2019] NZDC 24331, Judge Kellar sitting in the District Court at Christchurch, revisited the requirements for a valid petition challenging an election under the Local Electoral Act 2001 (the Act). While dismissing the petition on other grounds, the Court found that the Petition was validly brought.

The Petitioners had brought a petition pursuant to section 93(1)(b) of the Act alleging that the electoral process in Christchurch City Central Ward was seriously compromised. The winning candidate, the City Council, Electoral Officer, and two local political groups were joined as Respondents.

The central issue the Court had to consider was the meaning of the word 'elector' in the context of s 93(1) which states 'Any candidate or any 10 electors with a complaint about the conduct of an election or poll may file a petition in the District Court...'

This issue and the requirements of s 93 had been considered in the case of *Bright v Mulholland* [2002] DCR 196, which was relied upon by counsel for the successful candidate. In *Bright*, which was decided barely five months after the Act came into force, the Court found that the petition was invalid due to the petitioners coming from various wards within the Auckland area, rather than all from within the ward election being petitioned. McElrea J found that the restrictive interpretation of the word 'elector' was to be preferred as it afforded internal logical consistency to the Act when read in relation to other sections and s 5 'definitions'.

Counsel for Christchurch City Council and the Electoral Officer submitted that *Bright* had been wrongly decided or, alternatively, that the outcome would be different following the amendments that have been made to the Act in the intervening 18 years. Counsel submitted that the Act should be read purposively and that the correct interpretation should be through the lens of s 4 of the Act which sets out the principles of the Act, and in particular s 4(1)(aa) and (c)(iv) & (v) which includes; substantial electoral participation, transparent electoral procedures, and impartial mechanisms for resolving disputed elections and polls. These had not been considered in *Bright*.

In addition, the Act has seen numerous amendments and Counsel submitted that the addition of s 4(1)(aa) changed the way in which s 5 should be interpreted with the principle of 'electoral participation' in mind. The Local Electoral Amendment Act 2002 had inserted section 19C into the Act and introduced the concept of 'ward electors', this concept had not been brought into s93 which continues to use the word 'electors'.

Earlier electoral acts had not included any mention of the purpose and principles underpinning them. This was a novel introduction in the Act which indicated to the Judge that Parliament intended a new approach which allowed a widening of the scope and inclusivity that the Act wishes to foster. The permissive interpretation would not open the floodgates to meddling or spurious claims as only electors affected by the election would have standing under this interpretation.

Further, the Judge found that the duty of each councillor is to the territorial authority rather than individual ward and was reflected in the oath each councillor takes. Each elector living within the area governed by the Council would, therefore, take a keen interest in the ward elections and have an interest in the democratic process across the greater city area.

The Judge found that the principles outlined in s 4 mandate a permissive interpretation of the Act and that a purposive approach should be preferred allowing any 10 electors, regardless of ward, to bring a petition.

The judgment is a useful summary of the relevant principles in relation to election petitions and a welcome guide to interpretation of the Act that is in keeping with the move towards greater transparency and democratic involvement in New Zealand society.

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