

IN THE DISTRICT COURT
AT KAITAIA

CIV 2014-029-126

IN THE MATTER OF THE ELECTORAL ACT 1993

AND

IN THE MATTER OF AN APPLICATION BY HONE PANI
TAMATI WAKA MENE HARAWIRA,
FORMER MEMBER OF PARLIAMENT,
FOR AN ORDER THAT A RECOUNT
OF ELECTORATE VOTES IN THE TE
TAI TOKERAU ELECTORATE BE
CONDUCTED

Date: 20 November 2014

MEMORANDUM OF JUDGE T J BROADMORE

Introduction

[1] In my earlier decisions on this recount, dated 9 and 16 October 2014, I noted that I would issue a further judgment recording matters coming to my attention during the recount which were of concern to the parties but were not capable of affecting the result. Subsequently I invited the parties to furnish memoranda setting out those concerns.

[2] Having received those memoranda, I have considered the most appropriate way of dealing with the issues raised.

[3] As I have no decision making power in respect of the matters raised in the memoranda, I think it would be unwise of me to express any particular opinion as to whether or not the concerns expressed have a sound factual basis or are justified, or as to how they might be addressed. No doubt the parties will take their concerns to Justice and Electoral Select Committee of Parliament.

[4] Nevertheless it remains open to me to make some kind of commentary on the concerns raised, based on the experience of the recount in Te Tai Tokerau.

[5] The memoranda received from the Mana Party and the Labour Party are attached. In each case, I have no doubt that the concerns are genuinely held and are advanced in good faith. In my opinion, they deserve to be considered seriously; but whether they should be upheld or whether changes in the law should result is not a matter upon which I can comment. As to the aspects upon which I consider that I can comment, my comments follow.

Mana concerns

Right to vote

[6] I agree that the right to vote – universal suffrage, achieved after a century of struggle - must be the guiding principle of the electoral process. I accept that there are rules, in some areas quite complicated, that regulate the right to vote. It is not easy to escape the need for rules governing the process; whether the current rules are appropriate is not a matter for me. I add that, in my opinion, all the electoral officials with whom I came in contact had, as their first priority, the aim of qualifying, rather than disqualifying, potential voters.

Electoral Commission

I am unable to comment on the standard of promotion by the Commission of the Maori option and of engaging Maori in the voting process. But the large number of Maori who either failed to vote, or whose special declaration was not accepted by the Returning Officer so that their vote was unable to count, is a concerning feature. All

affected parties, including the Commission, the Justice and Electoral Select Committee, the political parties and Maori organisations will need to give attention to it.

Electoral officials

[7] I can make no comment on the examples of alleged malpractice by officials.

Electoral roll

[8] It seems that there are aspects of the Maori electoral option which may lead to particular difficulties for the enrolment and continued enrolment of Maori voters. As to the perceptions of Maori voters concerning their enrolment, I can offer no useful comment.

Special declaration votes

[9] As appears from my expanded decision of 16 October 2014, I spent some time with the scrutineers for each party examining a sample of special declaration votes. Arising out of that experience, I consider it likely that some Maori voters thought that by completing the special vote declaration, they were both being enrolled to vote and voting. I consider it likely that voters on the general roll who made special declaration votes on Election Day had the same belief. But I have no comment about what should be done to address that.

Enrolment forms

[10] I have no comment on this topic.

Enrolment at the polling booth

[11] As all voters are able to enrol up until the day before the election, it would seem obvious that persons attempting to vote during the advance voting process should be informed of the enrolment process. As to whether there are examples of voters, including Maori, who were not informed about this I can offer no comment.

Polling booths

[12] I received no information during the recount as to the experience of Maori voters at polling booths.

Rights of prisoners

[13] I believe this issue is primarily one for Parliament, to be addressed through the Justice and Electoral Select Committee. I am aware of the High Court litigation on the topic. As to whether remand prisoners at Ngawha Prison, and perhaps other prisons, were denied the right to vote, which they undoubtedly have if enrolled, I can offer no comment.

Costs

[14] I will deal with the matter of costs at the end of this Memorandum.

Labour Party

Enrolment at the time of advance voting

[15] This issue was also raised by Mana and the comments I made there apply.

On-line electoral roll

[16] It would seem obvious that if the electoral roll was publically available on-line, voters would be better able to check their enrolment status; but there may be issues of privacy, not to mention the cost of upgrading the Commission's computer systems, which would require consideration. My experience during the recount was that there were a number of sophisticated on-line tools available to returning officers to enable a voter to be located. Whether members of the public should be able to use these tools raises similar issues which would likely require the most detailed consideration. Debt collectors and stalkers are members of the public.

Enrolment follow-up procedures

[17] I offer no comment on the merits of the suggestions made.

Incentives to enrolment

[18] I think the suggestion is that enrolment might be a pre-condition to receipt of various forms of state support rather than the other way around, as the wording suggests. That is obviously very much a political question upon which I offer no comment.

Linking enrolment with other data bases such as the IRD

[19] Again, because of the privacy implications, this is very much a political question upon which I offer no comment.

Availability of a private roll

[20] This comment again has privacy implications. The proper balance between maintaining privacy and promoting enrolment and access to the roll is clearly a political question. There is of course a confidential roll, but enrolment on that roll, and access to it, is limited.

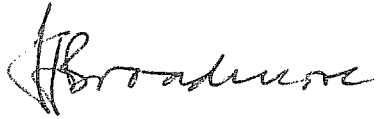
Maximising enrolment

[21] I can offer no useful comment on Labour's suggestions on this topic.

Costs

[22] Mana has applied for costs; Labour has made no submissions on that matter. As I said at the outset of this Memorandum, I consider that many of the concerns articulated by Mana both at the time of the application for a recount and subsequently are genuinely held, but, as it turns out, they can be the subject of action

only in the political sphere. I also accept that Mana approached the recount in a most responsible way and made concessions (as did Labour) which speeded up the recount considerably. In the light of those considerations, I direct that the deposit paid by Mana on the application for a recount should be returned to it.

A handwritten signature in black ink, appearing to read 'T J Broadmore', written in a cursive style.

T J Broadmore
District Court Judge

IN THE WHANGAREI DISTRICT COURT

UNDER Section 180 of the Electoral Act 1993

IN THE MATTER Of an application for a Judicial Recount in Te Tai Tokerau

MEMORANDUM OF SCRUTINEER FOR HONE HARAWIRA

Contact: Hilda Halkyard-Harawira - MANA Tai Tokerau

MEMORANDUM OF SCRUTINEER

1. Arising out of their observations during the 2014 General Election, the scrutineers representing Hone Harawira welcome the opportunity to relay some of their concerns with the administration of elections and with the Electoral Act itself.
2. These concerns cover the range of election processes, including enrolment, advance voting, and election day itself

THE ACT OF REMOVING A MĀORI FROM THE MĀORI ROLL WITHOUT PERMISSION, DISENFRANCHISES MAORI AND IS A BREACH OF MAORI RIGHTS UNDER TE TIRITI O WAITANGI

1. THE RIGHT TO VOTE

- The right to vote must be the principle that guides the electoral process, rather than the myriad of rules that are actively denying people that right.
- This paper sets out some of the ways in which Maori voters in Tai Tokerau were disenfranchised during the 2014 general election, and recommends ways in which those issues can be addressed.

2. ELECTORAL COMMISSION

- During the 2013 Maori Option and the 2014 general election, the electoral commission failed in its duty to properly promote the Maori option to Maori, and to engage Maori in the voting process. Those failings came about through the electoral commission not properly understanding Maori awareness, cutting back on funds to contract Maori to engage with Maori voters, and focusing most of its expenditure on television, radio and print advertising. Those failings also meant a drastic reduction in the level of engaged education to communities, and 'less effective engagement with Maori'.
- The electoral commission's messaging was also misleading. When the orange man said "if you have moved, ring us to update your details" voters naturally thought that when they updated their address details by phone, they would be properly registered to vote. They weren't, and Maori voters had their votes disqualified because of this.

3. ELECTORAL OFFICIALS

- We were made aware of many occasions where offences were committed by electoral officials against Maori voters.
- Those offences included Maori people being turned away because their name wasn't on the roll; Maori people being turned away because they didn't have their 'ezy-vote' card (although many cards were not delivered until after advance voting had begun); Maori people being told they couldn't cast a special vote; Maori people being told they couldn't vote at certain polling booths; Maori people being told to wait while Pakeha voters were served first; Maori people being told they had to travel more than 40kms to vote; Maori people being told to vote on a general electorate voting paper; Maori

people not being offered assistance to vote; and Maori people having their identity questioned because of their many names.

- Whether intentional or not, such practices make Maori voters feel like they don't deserve to be in the polling booth, they put them off voting, and they effectively disenfranchise Maori voters.

4. ELECTORAL ROLLS

- Māori voters who were not found on the Māori Electoral Roll (who believed they were enrolled on the Māori roll) were not always checked to see whether they were on the Dormant or Supplementary Rolls, which could have allowed them to cast a valid electorate vote. Many simply left the polling booth rather than be embarrassed by electoral officials questioning their integrity.
- Furthermore, the manner in which the Maori electoral option is conducted means that Maori voters are more likely to be moved to the dormant roll (and therefore moved off it to completely unenrolled) more quickly than non-Maori voters (who are sent fewer letters that can be returned GNA).
- Maori voters on the Dormant Roll who voted at the 2014 election, were not told that if they are removed from the dormant roll within the next three years for failing to respond to requests to update their information, they would be struck off the roll.
- Maori voters think that once they have enrolled, they are enrolled for life.
- These electoral roll glitches meant that kaumātua, kuia and Maori voters generally, who have lived in their papakainga for several years, were disenfranchised in the last and current election.

5. SPECIAL VOTE DECLARATION

- Maori voters at the 2014 election also believed that by completing the special vote declaration (which includes all the necessary information to enrol) they were enrolled to vote. It was not made clear to them that under the current law this is not the case.
- The special vote declaration should be counted as an updated voter enrolment.

6. ENROLMENT FORMS

- The enrolment form, which enables people to choose to enrol on the Maori Roll by signing their name in a signature box on the right-hand side of the form, is poorly designed.
- During the Maori enrolment option and during general re-enrolment, many Maori voters were disenfranchised by accidentally signing the box on the left-hand side of the form, where almost all other Government forms would be signed.

7. ENROLMENT AT THE POLLING BOOTH

- Maori people who tried to cast advance votes and could not be found on the electoral roll, were not told that they might need to enrol (or re-enrol) first before their votes could be counted.

- Neither are they given the opportunity of enrolling at the polling booth.
- This disenfranchises Maori voters.

8. POLLING BOOTHS

- Although every polling booth is expected to serve both general and Maori electorates, given the very poor experiences that many Maori voters have had with schools, government agencies and local bodies, we believe that marae should be considered as polling booths to encourage more Maori to participate in the electoral process, particularly in areas of medium to high Maori populations.

9. RIGHTS OF PRISONERS

- Although legislation currently bars prisoners from voting, we note that prisoners have been dis-enrolled completely, rather than having their right to vote suspended while they serve sentence.
- We also note that although remand prisoners have a right to vote, remand prisoners at Ngawha Prison were denied that right on Election Day 2014.
- We also note with interest the high court electoral petition filed by Arthur Taylor which is set for a hearing of a Special Electoral Court, 13-14 November, which claims that prisoners were unlawfully stopped from voting in the 20 September 2014 elections.

COSTS

- Section 180(11) of the Electoral Act, provides that subject to any order, the deposit paid by the applicant for a recount "shall ... be returned". Given the concerns raised that lead to this application for a recount, it is suggested that the return of the deposit is appropriate in the circumstances. The approach of raising these concerns through an application for a recount, rather than a significantly more expensive and more involving Election Petition was a prudent course to take, and the recount itself was conducted responsibly, with appropriate concessions enabling it to be completed expeditiously.

HILDA HALKYARD-HARAWIRA
TE RANA PORTER
FRANCES WAAKA

Judge Broadmore
c/- District Court
PB 5094
Wellington

Cc
Kristina Temel,
Manager, Electoral Policy
Electoral Commission

October 31st 2014

MEMORANDUM TO JUDGE BROADMORE CONCERNING WAYS TO IMPROVE SPECIAL VOTING AND ENROLMENT

We welcome the invitation from Your Honour to summarise our concerns.

The context of this submission is that Maori seats apparently experience a particularly high number of disallowed special votes, given the transience of a proportion of that population and the options of both General and Maori roll being available to those voters. (We understand that Iwi databases also experience the same problems). Labour proposes the following, with an indication in each on whether the action proposed requires law reform or could be addressed under current electoral law.

- a) During General Election 2014 double the number of people advance voted compared to General Election 2011. In that period, in principle, people can vote and enrol at the same time. This undermines the logic of not allowing enrolment on Election Day itself, a process which would remove many of the issues currently experienced. That would require law reform.
- b) There is inconsistent practice in advance polling places and Election Day polling places around their cooperation with enrolment procedures, with no guarantee that they will:
 - provide an enrolment form,
 - help someone to complete it *and*
 - receive it there (rather than sending the person to a Post Office)
 - in addition to allowing them to vote.

Since all these administrative functions are now contained within the Electoral Commission, this isn't adequate coordinated practice designed to maximise enrolment. As a matter of practice all advance voting places should also handle the three stages of enrolment as detailed above. This would significantly reduce the number of disallowed special votes. This would mean in practice that voters who can't be found on a roll are encouraged to complete an enrolment form at the polling place and the Returning Officer's staff then forward it to the Electoral Enrolment Officers. That form would assist by immediately qualifying some voters before Election Day and assisting in qualifying some votes by helping find a previous enrolment and - although not immediately qualifying the remainder who enrol on Election Day - they should go on the next roll so the pattern of disallowed special votes is broken. This is an administrative action.

- c) If the current electoral roll was available on-line in most or all voting places (advance and on the day), peoples' current enrolment status could be checked, reducing the number of invalid votes which could be cast. When such access is not possible, whenever a voter's name is not found on the roll they believe they ought to be on their name should be searched for on the equivalent Maori or general roll for that locality and the other electorates for which it is a joint polling place. These are administrative actions.

- d) Enrolments that don't indicate they have been at an address for a month should, after a month, be put on the roll at the new address provided contacting them does not result in a GNA. Enrolments not indicating whether a person has Maori ancestors should nevertheless be put on the Maori roll if they have chosen to enrol on the Maori roll unless a recent enrolment for them on the general roll is located. Everyone should remain on a new Party vote roll until there is evidence that they have died, even if they have not updated their changes of address. These are administrative actions.
- e) Unlike other countries, including Australia, NZ does not have a system of making receipt of various forms of state support (e.g. benefits, Housing NZ tenancy) a pre-condition to enrolment. This should be undertaken. This might require law reform.
- f) The fact of whether someone is enrolled or not, or relevant information such as telling voters which electorate their place of residence is in, should be linked to something near-universal such as having an IRD number. This might require law reform.
- g) There is a genuine fear among many voters of being traced (e.g. by debt agencies), and in the light of this the existence of the private roll is not adequately promoted. This is an administrative action.
- h) In general the Electoral Commission, through the Electoral Enrolment Centre, is charged with maximising enrolment, and they should be held to account for this. Specifically, the effectiveness of community providers contracted on a fee per vote basis should be monitored more closely, since the concept of their function is sound yet the impact seems very variable. This is an administrative action.

Tim Barnett
General Secretary
New Zealand Labour Party