IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2026-404-76
[2026] NZHC 472

UNDER	the Judicial Review Procedure Act 2016 and Declaratory Judgments Act 1908
IN THE MATTER	of an application for Judicial Review and for Declaratory Judgment
BETWEEN	KUNAL BHALLA First Applicant
	SANDEEP SAINI Second Applicant
	KUSHMANGARAN NAIR Third Applicant
	PARAMJEET SINGH Fourth Applicant
AND	DISTRICT COURT First Respondent

Cont'd over

Hearing: 17 February 2026

Appearances: B Keith for Applicants
S Mitchell KC for Second Respondent

Judgment: 5 March 2026

JUDGMENT OF ANDERSON J

This judgment was delivered by me on 5 March 2026 at 4.30 pm pursuant to r 11.5 of the High Court Rules 2016.

……
Registrar/Deputy Registrar

Solicitors:
Presland & Co, Auckland

AND

LEHOPOAME VI HAUSIA
Second Respondent

ELECTORAL OFFICER FOR
AUCKLAND COUNCIL
Third Respondent

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What this case is about

[1] Prior to each local body election Auckland Council's Governing Body must determine, among other things, what voting method is to be adopted. For the 2025 local body elections, the Council decided that the election would be by postal voting with an increased number of special voting centres.

[2] Kunal Bhalla, Sandeep Saini, Kushmangaran Nair and Paramjeet Singh (together, the applicants) were elected to the Papatoetoe Subdivision of the Ōtara-Papatoetoe Local Board as the four highest polling candidates. They had campaigned as the Papatoetoe-Ōtara Action Team (POAT).

[3] The second respondent, Vi Hausia, was the fifth highest-polling candidate, with 1,239 less votes than the next highest polling candidate. He filed a petition challenging the election on grounds, among others, of "the non-delivery, misuse, misallocation, or unauthorised possession of ballot papers".

[4] After conducting an inquiry into the election under Part 4 of the Local Electoral Act 2001 (LEA), Judge R J McIlraith in the District Court at Manukau determined that unknown persons had obtained other electors' voting papers and returned votes on behalf of another elector. Misuse of voting papers in this way is unlawful, constituting an offence under the LEA.[1] The Judge inferred from the evidence before him that this electoral fraud was more widespread than the specific instances that had been uncovered.

[5] The Judge determined that in his opinion this irregularity materially affected the election result (Decision).[2] He declared the election void and directed that a new election be held. The applicants seek relief by judicial review to set aside the Decision. Alternatively, they seek declarations under the Declaratory Judgments Act 1908 (DJA).

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1 LEA, ss 123(d) and 128.
2 *Hausia v Ofsoske* [2025] NZDC 29372 and LEA, s 98.

What this case is not about

[6] Some social media comments portrayed the Decision as demonstrating "immigrant corruption" and as concluding that the "Indian candidates masterminded fraudulent votes."

[7] This is a misleading and improper report of the Decision. Mr Hausia does not allege – nor did the Judge find – that the applicants had any involvement in the misuse of voting papers identified in the Decision. The applicants have strongly condemned that conduct, whether it arose through a misguided attempt to assist them or through other mischief. Police enquiries are continuing into the electoral fraud.

[8] The applicants' conduct is not impugned at all by the Decision. Nor is there any comment on the identity of those who may be associated with the misuse of voting papers. The Decision emphasises that this is by persons unknown.

The application

[9] The applicants seek judicial review of the Decision because of the following four alleged failures by the Judge:

(a) failure to apply the correct standard of proof of "beyond reasonable doubt;"

(b) failure to apply the criteria as to what a petitioner must prove to the requisite standard;

(c) misconstruction of the petition jurisdiction by relying on broader claims by the petitioner than are available in an inquiry sought other than by the Electoral Officer; and

(d) failure to comply with obligations of procedural fairness.

[10] Alternatively, the applicants seek declarations to this effect under the Declaratory Judgments Act 1908 (DJA).

The response

[11] Mr Hausia submits that the applicants are barred by s 103 of the LEA from bringing proceedings by way of judicial review to set aside the Decision. Mr Hausia accepts that, in principle, alternative declaratory relief is available to the applicants if the basis for the declarations is established. However, he says that in the exercise of my discretion under the DJA, I should decline to make the declarations. In any case, Mr Hausia denies that the grounds of review relied upon by the applicants have any substance or that the Judge erred in law.

[12] The other respondents to the application are the District Court and the Electoral Officer for Auckland Council. Both abide the decision of the Court. In the District Court, the Electoral Officer opposed the petition. None of his conduct was under inquiry in the petition.

Summary of conclusions

[13] I decline the orders sought by the applicants. The applications for judicial review and for declarations are dismissed.

[14] On the key issues:

(a) Section 103 of the LEA precludes removal of a petition determination or order to this Court by "any procedure". While such provisions are strictly construed because they purport to oust judicial review, in the context of an election petition, this clause needs to be given some effect.

(b) I find that s 103 has effect to preclude the Court from reviewing matters connected to the factual inquiry the Judge undertook. In this case, that relates to two fundamental aspects of the applicants' review that permeate many of the matters raised:

(i) The contention that it was impermissible for the Judge to draw an inference of fact that he used to form his opinion that misuse of voting papers extended beyond the specific identified

instances of voting paper misuse such as to have a material effect on the result of the election.

(ii) The contention that the Judge should have made further inquiry into the facts on that issue including making inquiry of the applicants who were aware of the petition but who had not filed a notice of intention to oppose it.

(c) The other matters raised by the applicants are not subject to the jurisdictional bar in s 103. These are the allegations of error in the standard of proof adopted, of misconstruction of the jurisdiction and aspects of the allegations of breach of natural justice. However, I have concluded that these review grounds are not established.

(d) The applicants sought declarations under the DJA as alternative relief if I found the jurisdictional bar precluded review. In the area where that bar applies (refer (b) above) I decline to make declarations under the DJA because they would not serve any useful guidance, have no relevant utility, and are specific to the facts of this case.

(e) As to utility, the applicants requested that I make declarations to level the playing field for the new election because they have been associated with the electoral fraud found by the Judge. The Judge made no findings that implicate the applicants. Declarations are not required, nor would it be appropriate to make them, to correct misreporting of the Decision.

Election petitions under the LEA

[15] By s 93 of the LEA, 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 demanding:

(a) an inquiry into the conduct of the election or poll; or

(b) an inquiry into the conduct of a candidate or any other person at the election or poll.

[16] The petition must be filed within 21 days after public notice is given declaring the result[3] and must "specify the specific grounds on which the complaint is based".[4] The petition must be heard and determined by a District Court Judge.[5]

[17] By s 94 no grounds other than those stated in the petition may be investigated, except with the leave of the District Court Judge hearing the petition. Leave may be given only after reasonable notice has been given to any "affected person."

[18] Section 95(1) provides that notice of intention to oppose a petition may be filed by:

> (a) any candidate or any 10 electors, if the petition concerns an election; or
>
> (b) any 10 electors, if the petition concerns a poll; or
>
> (c) an electoral officer or other electoral official, if the petition complains of the conduct of the electoral officer or other electoral official.
>
> (2) The person or persons who file a notice under subsection (1) are the respondent or respondents to the petition.

[19] Those who file a notice of opposition become respondents to the petition.[6]

[20] The inquiry is to be commenced within 14 days after the petition is filed, with not less than seven days' public notice of the time and place at which the inquiry will be held.[7]

[21] The powers of the District Court Judge conducting the inquiry are as follows:

> **97 Powers of District Court Judge**
>
> (1) For the purposes of the inquiry, the District Court Judge conducting it—
>
> (a) has and may exercise all the powers of citing parties, compelling evidence, and maintaining order that the Judge would have in the Judge's ordinary civil jurisdiction; and

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3 Section 93(2)(a)
4 Section 93(2)(d).
5 Section 93(2)(e).
6 Section 95(2).
7 Section 96.

(b) may, in addition, at any time during the inquiry direct a recount or scrutiny of the votes given at the election or poll.

(2) If a recount or scrutiny is conducted under subsection (1)(b), the District Court Judge must disallow the vote of every person who—

(a) has voted, despite not being entitled to vote at the election or poll; or

(b) has voted more than once at the election or poll.

[22] The outcome of the inquiry into an election is a determination by the District Court Judge under s 98 as to whether:

(a) as a result of an irregularity that in the Judge's opinion materially affected the result of the election or poll, the election or poll is void:

(b) in the case of an election, the candidate whose election is complained of, or any and which other candidate, was elected:

[23] Section 99 provides for certain matters that will not result in an election being declared void:

99 Election or poll not void by reason of certain irregularities

(1) If subsection (2) applies, an election or poll must not be declared void on the ground of—

(a) any irregularity in any of the proceedings preliminary to the voting; or

(b) any failure to hold the election or poll at any place appointed for holding the election or poll; or

(c) a failure to comply with the directions contained in this Act or any regulations made under this Act as to the conduct of the election or poll or the counting of the votes; or

(d) by any mistake in the use of prescribed forms.

(2) This subsection applies if the District Court Judge conducting an inquiry into the conduct of an election or poll, having taken account of whether the election or poll was conducted in accordance with the principles set out in section 4, considers that the irregularity, failure, or mistake referred to in subsection (1) did not affect the result of the election or poll.

[24] It was not suggested by the parties that s 99 has relevance to the interpretation of the other provisions set out above.

The District Court Decision

[25] The Judge identified the question for determination as whether, as a result of an irregularity that in his opinion materially affected the result of the election, the election is void.[8]

[26] He set out the petition grounds, which are as follows:

> (a) Statistical and turnout anomalies inconsistent with historic and current voting patterns in Papatoetoe;
>
> (b) The non-delivery, misuse, misallocation, or unauthorised possession of ballot papers;
>
> (c) Irregularities in the handling and verification of special and duplicate votes, and an unprecedented surge in special voting;
>
> (d) Discrepancies and inaccuracies in the list of persons from whom voting documents were received;
>
> (e) Unlawful campaign activities and interference with the voting process; and
>
> (f) Systemic weaknesses in the administration of the postal-voting system compromising election integrity.

[27] The Judge recorded that the burden of proof was on the petitioner to establish the irregularity asserted and its material effect. As to the standard of proof, he adopted a "higher level of probability" than the civil standard of the balance of probabilities.[9]

[28] The Judge identified the focus of the evidence as being alleged voting paper irregularities. He considered: [10]

> What is required for an "irregularity" is an assessment of circumstances on its particular facts. A significant irregularity must be demonstrated, mere technical breaches will not be considered to qualify and there must be something that has "infected or permeated the poll itself."

[29] The Judge had directed a scrutiny of certain votes where electors who had made a special vote had previously also purported to lodge an ordinary vote (by

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8 *Hausia v Ofsoske*, above n 2, at [21] and [70].
9 At [23].
10 At [73], citing *Aukuso v Hutt City Council* [2004] DCR 322 at [72].

post).[11] This identified 53 such votes. In those circumstances, the special vote was counted and the ordinary vote disallowed. The Judge found that of these 53 disallowed ordinary votes, 49 were cast for the applicants as the four successful candidates, and one was cast for three of the four of them.

[30] The Judge found that there was an irregularity in that at least 79 ordinary votes were cast by someone other than the elector, constituting electoral fraud by persons unknown. These votes comprised:[12]

(a) the 50 ordinary votes referred in [29] which were "cured" by subsequent special votes;

(b) a further 29 ordinary votes that were found to have been cast by post by someone other than the elector but where no subsequent special vote was cast, meaning these votes were not "cured" by the elector's subsequent special vote.

[31] The Judge found that there had been breaches of electoral law established for the above 79 votes although the identity of the person(s) involved was not known. The Judge then said:

> [82] It is important, not to gloss over that finding. The irregularity that has occurred here highlights a significant fragility in the postal voting system that I infer has been a concern held by many for some time but has not previously crystallised. What we have in this election is so far as I am aware, from the case law to which I was referred, the only example where a petition of inquiry has asserted (correctly) that votes have been cast by someone other than the elector on such a scale. These votes are clearly irregular. I consider that Mr Collins describing these votes in his submissions not only as irregular but as "fraudulent" was appropriate. We have here a situation of what can only be described as what appears to be large scale taking of voting papers with those voting papers being completed by someone other than the intended recipient. And, that is what is known.

[32] The Judge continued that the "real issue" was whether Mr Hausia had shown to the applicable standard of proof that the irregularities in the conduct of the election had materially affected the result. The Judge observed that it would be impractical to

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11 LEA, s 97(1)(b).
12 At [78].

make inquiries of all voters to ascertain who did not receive voting papers, so the number was difficult to quantify.

[33] However, the Judge inferred a material effect from certain facts he found to be proven.[13] The matters set out summarised aspects of the case put to him by Mr Hausia's counsel:

> (a) The irregularity in this election, the casting of fraudulent votes, is proven at a level of 79 votes (albeit with some cured by special votes) and this is unprecedented.
>
> (b) There is additional evidence of voters not receiving voting papers in circumstances where they did not take the steps to cast a special vote.
>
> (c) Sixteen complaints have been referred by the Electoral Officer to the Police for investigation.
>
> (d) All candidates other than those successful in the election have expressed the same concerns about it.
>
> (e) The large increase in voter turnout which has been contrary to the trend in Auckland city as a whole.
>
> (f) The correlation shown in the spatial map [filed by the applicant] between the location of greater voter turnout in the electorate and location of those electors making special votes or not receiving voting papers and who did not vote yet were recorded as having voted.

[34] As regards the point in (e), the number of votes in the Papatoetoe subdivision increased by 7.5 per cent from 2022 to 2025. The 2025 results reached 31.6 per cent, voter turnout equating to 3,239 additional votes compared to the 2022 local body election.

[35] The Judge described this as an unusual voter turnout increase and suggested that there were irregular voting patterns in the election. No other area in Auckland saw any increase. This is in the context of overall voting in Auckland reducing from 35.5 per cent in the 2022 election to 29.3 per cent in the 2025 election. The Judge recognised as a possibility suggested by the Electoral Officer that an increase in turnout was associated with a strong campaign engaging the community run by POAT. He recorded that there was no evidence of this before him.[14]

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13 *Hausia v Ofsoske* above n 2, at [97].
14 At [91].

[36] As to the spatial map referred to in (f), Mr Hausia had provided the District Court with a spatial map which overlayed an existing map. This identified the addresses of the electors for which voting paper misuse had been identified (the 79 noted above) overlaid with a map identifying streets where there was an increased voter turnout of more than 100 per cent. Mr Hausia had submitted that this showed a strong correlation between the two, and hence (he said) evidence of widespread fraudulent voting.

[37] Although the margin between the next lowest-polling successful candidate and Mr Hausia was 1,239 votes, the Judge concluded that he was compelled to draw the inference from the facts found that the result of the election would have been different had fraudulent voting not occurred.[15] The Judge was therefore satisfied that it was more likely than not that the extent of fraudulent voting in the election had materially affected the result.

[38] In final comments, the Judge said:[16]

> I am seriously concerned that the extent of votes being cast in this election by people other than for whom the voting papers were intended is much greater than the level known by [the Electoral Officer] and that it is more likely than not that they were cast for POAT candidates. This fraudulent voting has, in my view, "permeated or infected" the election to such an extent that it is more likely than not that the margin by which Mr Hausia (and possibly others) was unsuccessful may well have been extinguished. The District Court declared the election void and ordered a new election to be held.

Jurisdiction

Mr Hausia's Submissions

[39] Mr Mitchell KC, for Mr Hausia, submits that the applicants' judicial review proceedings are barred by s 103. This provides:[17]

> (1) Every determination or order under this Part is final and may not be removed into the High Court by any procedure.
>
> (2) No proceedings may be brought in the High Court questioning the validity of any election or poll under this Act.

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15 At [95].
16 At [99].
17 Chris Foote *Laws of New Zealand* Statutory Jurisdiction of the District Court in Various Other Matters (online ed, LexisNexis NZ) at [82].

[40] Provisions such as s 103 are known as "privative" or "ouster" provisions in that they seek to "oust" a person's access to the supervisory jurisdiction of the High Court.[18]

[41] From the first statutory provisions addressing parliamentary and local body elections, Parliament has endeavoured to legislate for finality of election petitions by excluding or severely limiting further judicial process by way of appeal or (in the case of the District Court) by way of review.[19]

[42] The predecessor to s 103 provided:[20]

> Every determination or order under this Part of this Act shall be final and conclusive, and no such determination or order shall be removed by certiorari or otherwise into the [Court], nor shall any proceedings be taken in the [Court] for trying therein the validity of any election or poll.

[43] "Certiorari" was a judicial review remedy used by the High Court to set aside unlawful decisions made by public bodies, tribunals, or inferior courts. Old forms of "writs" of this nature have now been supplanted by a simple procedure whereby a party makes an application for judicial review.[21] It is unsurprising that the modernisation undertaken by the LEA 2001 replaced that terminology with the current wording of s 103. I do not consider any change in effect was intended.

[44] For the contention that s 103 bars judicial review, Mr Mitchell places heavy reliance on *Single v District Court*[22] where Neazor J struck out judicial review of a District Court petition as barred by the predecessor to s 103 set out in paragraph [42] above. Mr Mitchell emphasises that this is the only New Zealand decision considering the ouster provision in the context of an election petition.[23]

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18 That is so, at least where there are no other statutory appeal or review processes and/or the privative clause has been crafted specifically to define when it applies such as in employment and accident compensation legislation: See for example *Parker v Silver Fern Farms Ltd* [2011] NZCA 564, [2012] 1 NZLR 256 at [50]–[52] in the employment context and *Ramsay v Wellington District Court* [2006] NZAR 136 (CA) at [29] in the ACC context.

19 Regulation of Local Elections Act 1876, s 57.

20 Local Elections and Polls Act 1976, s 108.

21 Judicial Review Procedure Act 2016, ss 8 and 11.

22 *Single v District Court* HC Napier CP 22/93, 23 August 1993.

23 In England, ouster provisions have been held not to exclude judicial review: *Regina (Woolas) v Parliamentary Election Court* [2012] 1 QB 1, at [46]–[47]; *R v Cripps, Ex p Muldoon* [1984] QB 68.

[45] Mr Mitchell relies on the *Single* decision as part of the relevant legislative history behind s 103. He submits that the legislature has modernised the wording, but presuming the law would remain as stated in *Single*. He says I should infer the legislature intended to wholly exclude judicial review.

[46] The LEA sits aside the Electoral Act 1993 that covers parliamentary petitions. These are heard by three Judges of the High Court under Part 8 of that Act. Section 242 provides:

> All decisions of the High Court under this Part shall be final and conclusive and without appeal and shall not be questioned in any way.

[47] Mr Mitchell submits that the position in relation to local body petitions should be final, in line with parliamentary petitions. He cited *Wybrow v Chief Executive Officer* where the Court considered that the equivalent predecessor provision was effective to exclude a challenge to a petition determination in the High Court.[24]

Applicants' submissions

[48] Mr Keith acknowledges the dicta in *Wybrow* on the finality of determination of parliamentary petitions heard by the High Court. He agrees that the question of whether scrutiny of the District Court under the current LEA is similarly constrained has not been considered in New Zealand. He points to the clear difference between the two jurisdictions: neither the High Court nor Court of Appeal have supervisory jurisdiction over the election court of three High Court Judges established for a petition under the Electoral Act. In contrast, the High Court has review jurisdiction over the District Court.[25]

[49] Mr Keith submits that the *Single* case is out of step with interpretation of provisions of this nature.[26] In addition to recent case law, he directs me to the 1995 case of *O'Regan v Lousich.*[27] In that case, Tipping J discussed the then recent

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24 *Wybrow v Chief Executive Officer* [1980] 1 NZLR 147.

25 Mr Keith noted that in England, the Court has held that it can review decisions of the specially formed panel of judges established under the English parliamentary election legislation: *Regina (Woolas) v Parliamentary Election Court*, above n 23, at [46]–[47].

26 He also says Neazor J characterised a statutory interpretation question in the petition inquiry as "within jurisdiction" using a distinction that is now anachronistic.

27 *O'Regan v Lousich; Proprietors of Mawhera v Māori Land Court* [1995] 2 NZLR 620 (HC).

developments in judicial review[28] and held that a section in the same form as that considered by Neazor J in *Single* did not exclude judicial review of the findings of the Māori Appellate Court made in breach of natural justice.[29]

Privative or ouster clauses

[50] The approach to interpretation of ouster provisions is summarised in *H v Refugee and Protection Officer.*[30] The Supreme Court said that Courts should be "slow to conclude that an ouster provision precludes applications to the High Court for judicial review alleging unlawfulness of any kind."[31] As the Court explained:[32]

> … the privative clause does not prevent the Court from exercising its supervisory jurisdiction to ensure that the requirements of the Act are met and the applicant's claim is considered lawfully. Since the decision of the Court of Appeal in *Bulk Gas Users Group v Attorney-General*, it has been settled law that a privative provision does not necessarily prevent scrutiny of a decision based on an error of law on the part of the decision-maker that is otherwise reviewable. The Court may strike out review proceedings where the Court is satisfied that the available appeal rights provide a more appropriate pathway to a remedy than might otherwise have been sought in the review proceedings. But for the reasons given, the deprivation of first instance determination as required by the statute could not be remedied by the alternative pathway of appeal in the present case.

[51] Section s 27(2) of the New Zealand Bill of Rights Act 1990 (NZBORA) also provides statutory affirmation of the right of a person affected by a determination of a tribunal or other public authority to apply for judicial review. This has been held to apply to a court.[33] Section 27(1) also affirms a person's right to natural justice. Hence, s 6 of NZBORA applies. A meaning of s 103 consistent with the right in s 27 is to be preferred.

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28 *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 (HL); and *Bulk Gas Users Group v Attorney-General* [1983] NZLR 129 (CA).

29 *O'Regan v Lousich: Proprietors of Mawhera v Māori Land Court*, above n 27, at 627; compare *Hampton v District Court at Christchurch* [2014] NZHC 1750, [2014] NZAR 953; *Quantum Laboratory Ltd v Dunedin District Court* [2008] 2 NZLR 541, [2008] NZAR 35.

30 *H v Refugee and Protection Officer* [2019] NZSC 13, [2019] 1 NZLR 433.

31 At [63].

32 At [78].

33 *Young v Police* [2007] DCR 261 (HC) at [29]–[38].

[52] In *Afghan Nationals v Minister for Immigration*, Cooke J discussed the appropriate approach to interpretation of an ouster provision (in the context of the Immigration Act 2009):[34]

> [47] I understand the authorities to mean that ouster clauses cannot be interpreted to exclude the Court's jurisdiction in its entirety. It is the constitutional function of the Court to ensure that the rule of law is observed. Decision makers must exercise powers lawfully, and cannot act above the law. So such clauses are not to be taken to mean that statutory decision makers are entitled to act inconsistently with the legislation from where they derive their power. That must be beyond Parliament's intent, and perhaps even its competence. As Lord Carnwath said in *Privacy International*:
>
> > … consistently with the rule of law, binding effect cannot be given to a clause which purports wholly to exclude the supervisory jurisdiction of the High Court to review a decision of an inferior court or tribunal, whether for excess or abuse of jurisdiction, or error of law. In all cases, regardless of the words used, it should remain ultimately a matter for the court to determine the extent to which such a clause should be upheld, having regard to its purpose and statutory context, and the nature and importance of the legal issue in question; and to determine the level of scrutiny required by the rule of law.
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> [48] So an application to the Court, be in declaratory judgment or judicial review proceedings, which properly raises the question whether the statute is being complied with engages the Court's constitutional role. This does not mean that no effect is given to clauses such as those in issue here. Here Parliament is indicating through these provisions that applications for judicial review are not part of the scheme for the making of immigration decisions, and the rights of appeal from such decisions. The Court must respect this aspect of the legislation — this is also part of the rule of law. A judicial review challenge to individual immigration decisions will be struck out if it falls within the terms of the ouster clause and is in the nature of an appeal of an individual case of the kind Parliament intended to exclude.
>
> [49] But that cannot exclude a challenge that involves an allegation that the statute is not being properly applied. It is for the Court to decide whether a particular judicial review challenge falls within the area of legitimate protection contemplated by an ouster clause. That is itself a question of law for the Courts. In the present case the Court must consider whether a challenge is to individual decision making that Parliament has indicated should not be part of the scheme, or alternatively that it engages its constitutional function to correct a failure to properly apply the law.

[53] I adopt Cooke J's approach to interpreting s 103 of the LEA in the present case.

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[34] *Afghan Nationals v Minister for Immigration* [2021] NZHC 3154, [2022] 2 NZLR 102 (footnotes excluded).

Analysis

[54] I accept Mr Keith's submission that *Single v District Court* is not authoritative for the proposition that s 103 of the LEA excludes judicial review of a local body election petition. This would run counter to the case law on ouster provisions, including *O'Regan v Lousich*, a decision which has been regarded as authoritative. I cannot impute to the legislature a clear intention to exclude judicial review when it enacted s 103 simply because of the *Single* decision.

[55] By s 103 a petition determination or order cannot be removed to the High Court by "**any** procedure". On its face, the section plainly bars judicial review to this Court. But the case law is clear. Section 103 should not be interpreted to preclude an application to the High Court for judicial review altogether because it is the constitutional function of the Courts to ensure decision makers act consistently with the legislation from which they derive their power.

[56] In the seminal case of *Anisminic*, the House of Lords reasoned that if a tribunal makes an error of law (read broadly in *Bulk Gas* to include all grounds of review) then it has not made any "determination" at all (it is a nullity). Hence, an ostensibly effective ouster provision was ineffective to preclude judicial review by interpretation of the word "determination." The exercise remained one of interpretation. This reasoning was practically problematic and it does not survive the current "relative" theory of nullity.[35] Rather, as appearing from the case law referred to above, the courts' strict approach to ouster provisions is now directly based on the principle that Parliament is presumed not to legislate contrary to the rule of law.[36]

[57] But as Cooke J noted in the passage I cited above at paragraph [52], this does not mean I should give no effect to a statutory provision. That would also offend the rule of law. In my view, the words "any procedure" in s 103 is plainly directed at

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35 *Martin v Ryan* [1990] 2 NZLR 209 (HC).

36 *R (Privacy International) v Investigators Power Tribunal* [2019] UKSC 22, [2019] 4 LRC 303. This finds expression in New Zealand in the legality principle (*Fitzgerald v R* [2021] NZSC 131, [2021] 1 NZLR 551 at [51]).

review.[37] It is one thing to read down the provision. It is another thing to ignore the provision altogether.

[58] If the provision is intended to exclude judicial review, the question becomes what areas of review is it intended to exclude? That turns on the purpose and statutory context,[38] the nature of the decision-maker (here an inferior court), and the nature and issue in question.

[59] As to the broader purpose of the legislation, the immediate purpose of the LEA was to modernise the law governing local body elections.[39] More fundamentally, the Act's purpose is to implement important principles applicable to elections.[40] These include representative and substantial electoral participation in local elections; fair and effective representation for individuals and communities; that all qualified persons have a reasonable and equal opportunity to cast an informed vote; and the public confidence in, and public understanding of, local electoral processes.[41]

[60] The LEA outlines that the latter principle is achieved through (among other things) protection of the freedom of choice of voters and the secrecy of the vote; the provision of transparent electoral systems and voting methods and the adoption of procedures that produce certainty in electoral outcomes; and provision of impartial mechanisms for resolving disputed elections and polls.[42]

[61] The purposes and principles of the LEA (above) underscore that, unlike much of our legislation which addresses the effect of specific conduct on individuals, the LEA has objectives that transcend a particular person or candidate.

[62] Turning to the specific context of an election petition, there are sound reasons why the legislature would stipulate that an election petition be decided once and for all without further review. Like its predecessors, the LEA establishes a bespoke

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37 The section cannot be interpreted as intended to refer to removal and transfer of a proceeding to the High Court, because that would be a transfer prior to the determination or order being made.
38 Legislation Act 2019, s 10(1).
39 LEA, s 3.
40 LEA, s 3(d).
41 LEA, s 4.
42 LEA, s 4(1)(c).

process by which a District Court Judge determines the petition through an inquiry. This reflects that an election petition is a special statutory remedy in a field where the public interest is paramount.[43]

[63] As recognised in several previous cases, there is a strong public interest in the speedy determination of election controversies so that the representatives and their electors know their rights at the earliest possible moment.[44] An election petition has a direct impact on the candidates affected. But there are impacts from the petition for the whole electorate, not only in terms of the result, but the effect of uncertainty associated with delay.

[64] The "remedy", where an election is declared void, is the calling of a fresh election. That is, the irregularity is intended to be regularised by the new election, intended to ensure the free and informed vote of those in the electorate.

[65] If the District Court makes an unreasonable factual assessment as to whether there was an irregularity that impacted on the election result, a petition that ought not to have succeeded, succeeds. However, the new election will reflect the will of the electorate. Conversely, if the fact finding and inquiry the District Court undertakes can be challenged on judicial review, there are significant implications:

(a) First, judicial review on such matters is likely to be fact dense and may not be able to be heard promptly. The High Court's review decision can then be appealed as of right to the Court of Appeal, leading to an even more extensive delay before there is certainty.

(b) Second, a candidate's perception of an unreasonable factual finding or of failures by the District Court Judge to make inquiry is not objective. Whether factual findings are "unreasonable", "plainly wrong", or just "wrong" is, in

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43 *Re Wellington Central Election Petition, Re; Shand v Comber* [1973] 2 NZLR 470 (HC) at 478. Its genesis lies in the common law right to challenge an election by petition. Refer the discussion in *Re Hunua Election Petition* [1979] 1 NZLR 251 (HC) at 260; and *Morgan v Simpson* [1975] QB 151 at 161, [1974] 3 All ER 722 (CA) at 725.

44 For parliamentary elections, this point is made in *Wybrow v Chief Electoral Officer*, above n 24 at 150 citing the Privy Council in *Nair v Teik* [1967] 2 AC 31 at 38, [1967] 2 All ER 34 (PC) at 36 (in a passage adopted in *Re Wellington Central Election Petition*, 477–478). For the equivalent statutory objectives discussed for local elections refer *Single v District Court*, above n 22, at 9.

some respects, a question of degree, and in the eye of the beholder. If the factual inquiry is opened up to review, this does undermine the intended finality of that process because there is a risk that this invites scrutiny of all factual findings.

[66] The nature of the decision maker might be relevant. Reflecting the then law,[45] in both *Single* and *O'Regan* the Court stated that the presumption of interpretation that it was not Parliament's purpose to allow a decision-maker finally to decide any question of law does not apply to an inferior court such as the District Court. This was significant to Neazor J in his approach to the ouster provision.

[67] In *O'Regan*, however, Tipping J went on to say that the Court will nonetheless proceed on the basis that it is unlikely that Parliament would wish to give absolute protection to a decision of the District Court acting as an appellate tribunal. Tipping J's dicta was approved (although in obiter) in *Ramsay v Wellington District Council*.[46]

[68] Whether the same strictness of approach to ouster provisions applies to inferior courts as to other bodies or decision makers cannot be said to be free from controversy as the contrasting views on this in the *Privacy International* case demonstrate.[47] The prevalent view is not to treat an inferior court differently than other decision makers. Informing that in the New Zealand context is s 27 of the NZBORA. The right to access to judicial review by a tribunal or public authority has been held to include a court.[48]

[69] For present purposes, the point is that context does matter. The LEA contemplates the District Court exercising its full powers of fact finding. While I

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45 *Bulk Gas Users Group v Attorney-General*, above n 27, at 133, discussing *Re Racal Communications Ltd* [1981] AC 374 at 382–38 (HL).

46 *Ramsay v Wellington District Council* [2006] NZAR 136 (CA) at [29] citing *O'Regan v Lousich*, above n 27, at 627. The comment was strictly an obiter comment. That is because review sought of an appeal to the District Court on an ACC decision was covered by avenues for review under the ACC legislative scheme, which excluded review covering the same ground.

47 Refer discussion in *R (Privacy International) v Investigators Power Tribunal*, above n 36, per Lord Carnwath at [64]–[74], per Lord Lloyd-Jones at [154]–[163] and per Lord Sumption at [385]–[388].

47 Section 27(1) states that: "Every person whose rights, obligations, or interests protected or recognised by law have been affected by a determination of any tribunal or other public authority has the right to apply, in accordance with law, for judicial review of that determination." A tribunal or other public authority extends to a court: *Young v Police*, above n 33, at [29]–[38].

48 *Young v Police*, above n 33, at [29]–[38].

proceed on the basis that it is unlikely that Parliament would wish to give absolute protection to the District Court decision, in giving some effect to s 103, there is justification for demarcating fact finding and the inquiry from other reviewable matters. The fact that the parallel parliamentary election petition is also subject to finality has some relevance.[49]

[70] In my view then, to give some effect to s 103, the proper demarcation lies in whether the matter raised is directed at the sufficiency of the inquiry and the factual findings. If so, then for the reasons above, I consider s 103 excludes review.

[71] Section 103 contemplates that a reviewable decision will not be reviewable. Specifically, an unreasonable or untenable conclusion of fact by a decision maker is subject to judicial review either because this is an error of law or on natural justice grounds.[50] It follows from what I have said above that to give effect to s 103, such a review is barred by that provision. The same interpretation applies to contentions that the inquiry made by the Judge was insufficient. Judicial review is not otherwise excluded.

[72] I turn to the grounds of review.

First ground of review: standard of proof

Submissions

[73] The District Court Judge recorded:[51]

> The standard of proof is normally on the balance of probabilities, however in this case it was accepted that a higher level of probability is required because the primary allegations in this inquiry are of electoral fraud on a widespread scale.

[74] The applicants contend that this conclusion was wrong. They say that the standard of proof in electoral petition cases – at least those involving allegations of

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49 Although Mr Keith is undoubtedly correct that there a distinction in that there is no relevant supervisory jurisdiction from a High Court petition.

50 *E v Secretary of State for the Home Department* [2004] EWCA Civ 49, [2004] QB 1044 at [63]; *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [26]–[28]; and *New Health New Zealand Inc v Minister for COVID-19 Response* [2025] NZCA 592 at [104].

51 Decision of the District Court at [23]–[24], citing *Bright v Mulholland* [2002] DCR 196.

fraud – is the criminal standard of beyond reasonable doubt. The applicants rely on *Re Wairarapa Election Petition,*[52] *Peters v Clarkson*,[53] *Payne v Adams*,[54] and *Taylor v Key*,[55] all of which involve parliamentary election petitions under the Electoral Act.

Relevant case law

[75] New Zealand law recognises only two standards of proof: the "balance of probabilities" (in civil cases) and "beyond reasonable doubt" (in criminal cases). The Supreme Court majority in *Z v Dental Complaints Assessment Committee* confirmed that the civil standard generally applies in civil proceedings, even where serious allegations are made.[56] However, stronger (more cogent) evidence is needed to meet the civil standard where there are serious allegations.

[76] The Supreme Court described this as the "flexible application" of the civil standard. The Court clarified that this does not mean a "higher probability" is required which would mean there is an intermediate standard of proof between the civil and criminal standard. Rather, it means that the quality of evidence must be stronger depending on what is at stake.

[77] In *Z v Dental Complaints Assessment Committee*, the issue was whether the criminal standard should apply to disciplinary proceedings under the Dental Act.[57] The Supreme Court majority rejected that occupational disciplinary proceedings are an exception to the usual position that the civil standard applies to civil proceedings.[58]

[78] Election petitions are civil proceedings. The petition in *Re Wairarapa Election Petition* involved allegations of corruption. The Court stated:[59]

> This raises a question of the classification of the offence created by the [Electoral Act 1956]. We use the word "offence" advisedly because, although this is not a criminal proceeding, for which provision is made separately in the

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52 *Re Wairarapa Election Petition* [1988] 2 NZLR 74 (HC), a case under the Election Act 1956.
53 *Peters v Clarkson* [2007] NZAR 610 (HC), a case under the Election Act 1993.
54 *Payne v Adams* [2009] 3 NZLR 834 (HC).
55 *Taylor v Key* [2015] NZHC 722, [2015] 3 NZLR 770.
56 *Z v Dental Complaints Assessment Committee* [2008] NZSC 55, [2009] 1 NZLR 1 at [97].
57 The appellant had been acquitted in criminal proceedings of indecent assault charges. He argued unsuccessfully that the criminal standard of proof should apply to subsequent complaint proceedings relating to the same conduct.
58 At [113].
59 At 115.

> Act for trial on indictment, it could not be right that some different classification or standard should apply to the finding of guilt of corrupt practice by an Electoral Court on an electoral petition. We must apply the same principles in this hearing on this charge as would be applied in a trial on indictment charging the same matters.

[79] In *Peters v Clarkson*, the Court concluded that the criminal standard of proof applied to a parliamentary election petition concerning excessive electoral expenses, noting that this was implicit in the above passage.[60] In forming that view, the Court emphasised the serious consequences on a candidate if found guilty of a corrupt practice in the election petition in that their election will be void; and that person is exposed to a risk of prosecution under the offence provisions of the Electoral Act.[61]

[80] I contrast these conclusions with the subsequent analysis of the Supreme Court majority in the *Z* case. In disciplinary proceedings, the allegations against a practitioner commonly also constitute an offence. They did so in the *Z* case. The relevant statute referred to a practitioner as "guilty" of misconduct and serious penal consequences could be imposed on a guilty finding such as deregistration, suspension, and imposition of penalties.

[81] Nonetheless the Supreme Court majority reasoned that a universal application of the criminal standard to disciplinary proceedings was too rigid because the conduct that can be the subject of disciplinary proceedings ranges widely from professional inadequacy to serious crime.[62] It tested an alternate approach that the law could (at the discretion of the relevant tribunal) require the criminal standard to be met for serious allegations that founds serious criminal charges. However, this suffered from the absence of a coherent principle as to when it would be appropriate to require the criminal standard.[63] The Court considered that a flexible application of the civil standard did not require that line to be drawn, it had more conceptual integrity and was more straightforward.[64]

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60 At 625.

61 A finding of "guilt" for the purposes of an election petition exposes a person to the above consequences only in that the statutory scheme requires the petition court to report its findings to Parliament. The findings in a petition court cannot be relied upon as establishing guilt in criminal proceedings for an offence. I do not consider the Court in *Peters* was suggesting otherwise.

62 At [113].

63 The need for modification of a criminal standard in a petition case in such event was recognised in *Taylor v Key*.

64 At [114].

[82] Lastly, the Supreme Court majority noted that in disciplinary proceedings commonly not all protections offered to a criminal defendant are available to a practitioner, consistent with the legislative purpose of public protection. This aligned with how disciplinary proceedings differed from criminal proceedings, which involved an inquisitorial process and where evidence could be received that was not strictly admissible in court.

[83] The analysis in the *Z* case is equally applicable to parliamentary petitions under the Electoral Act. A petition can be founded on a range of circumstances or conduct (including in the same petition). An election court under the Electoral Act can consider evidence that would not be admissible in court and is inquisitorial.

[84] Accordingly, it may be that the application of the criminal standard for serious allegations in a petition under the Electoral Act does not survive close assessment because of the reasoning in the *Z* case. If it does, then this is because of the statutory language used. For reasons I have not had an opportunity to fully interrogate, election petitions in New Zealand for local body and parliamentary elections have been subject to materially different legislative provisions.[65] Unlike the LEA, the Electoral Act refers to a "trial of the election petition" in which the petition court can hear "a charge of a corrupt or illegal practice".[66] The election court can inquire into whether a person is "guilty of any corrupt practice".[67] The finding that this has been "committed" is reported to Parliament.[68]

[85] In *Jugnauth v Ringadoo*, the Privy Council concluded that the civil standard applied to bribery allegations in an election petition under a Mauritian statute.[69] The Privy Council distinguished case law under the English equivalent to our Electoral Act because the Mauritian statute did not adopt criminal law terminology. Their Lordships rejected that a purposive approach supported application of the criminal standard:[70]

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65 The history of elections is interesting but unduly diverting: Refer the discussion in *Re Hunua Election Petition*, above n 43, at 260; *Morgan v Simpson* [1975] QB 151 at 161, [1974] 3 All ER 722 (CA) at 725. Refer also the Parliamentary Elections Act 1868 (UK).

66 Electoral Act 1993, s 236.

67 Sections 235 and 237.

68 Section 238(1).

69 *Jugnauth v Ringadoo* [2008] UKPC 50, [2009] 4 LRC 271. The civil standard was also adopted by the High Court of the Cook Islands in *Re Mitiaro Election Petition* [1979] 1 NZLR S1.

70 At [14]–[16].

> Perhaps the strongest argument in favour of the appellant's contention, that proof beyond reasonable doubt is nevertheless the appropriate standard, is that the court should be slow to set aside the result of a democratic election and should do so only where the bribery etc is established to this high standard. But a powerful argument the other way can also be advanced: if the court is indeed satisfied on the evidence that the result of the election was tainted by bribery etc, then it should intervene and set aside the election in order to ensure that a fresh election can be held in which the result truly reflects the wishes of the electors.

[86] The terminology in the Electoral Act 1993 is so aligned with that used in criminal proceedings that there remains force in the conclusion in *Peters v Clarkson* that the criminal standard is intended, at least where corruption or illegal practices by identifiable persons are asserted.

Analysis

[87] In my view, the flexible application of the civil standard as articulated in the *Z* case applies to local body election petitions under the LEA. To the extent that a criminal standard still applies under the Electoral Act, the very different wording the legislature has used in that Act explains why that is the case. The LEA has none of the same indicia. As the Privy Council observed in *Jugnauth*, nor does a purposive approach support the adoption of the criminal standard.

[88] The only basis for applying the criminal standard is that the petition court may be addressing serious allegations, such as misuse of voting papers, bribery or other corrupt practices, that constitute a criminal offence under the LEA.[71] I do not consider that is sufficient to conclude that local body electoral petitions are an exception to the usual position that the civil standard applies to civil proceedings.

[89] It follows that the Judge here was not wrong to apply the civil standard of proof rather than the criminal standard. His only error is in describing the flexible application of the civil standard as requiring "higher probability" when, as the majority clarified in the *Z* case "without meaning to be pedantic" the true position is not that there is an intermediate standard of proof, but that stronger evidence is required. If anything, this was to set the standard higher than appropriate.

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[71] LEA, ss 121–131.

[90] In the *Z* case, the majority explained that the reason for the flexible application of the civil standard where allegations are serious is concerned more with judicial policy as to what the ends of justice require outside of the criminal justice system, than the proposition sometimes identified[72] that serious misconduct is more improbable.[73] In the present case, the allegations of electoral fraud are against persons unknown. The ends of justice are arguably less compelling where the allegations in issue are not directed at specific persons, which may impact on the cogency of evidence required.

[91] Moreover, here, the evidence of electoral fraud was extremely cogent. The applicants do not suggest otherwise. What they take issue with is whether the Judge was correct to infer that the extent of this had a material effect on the election. The test applicable to the latter issue may well be the civil standard (without requiring cogent proof of each instance of fraud) because of the policy reason stated in *Jugnauth* of ensuring that an election truly reflects the wishes of the electors. However, nothing turns on this qualification.

[92] The applicants' challenge to the Judge's inference is a challenge to his factual finding.

Second and third grounds of review - materiality and specificity

Submissions

[93] It is convenient to address the second and third grounds of appeal together.

[94] The second ground is that the District Court did not apply the criteria as to what a petitioner must prove to the requisite standard of proof. The applicants say that the facts relied upon by the Judge did not demonstrate a material effect on the result and that certain facts he identified were not relevant. They refer me to a range of evidence to seek to demonstrate that the inference is unsupportable and to challenge Mr Hausia's contentions in the District Court.

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72 *Re H (Minors)* [1996] AC 563 at 586, [1996] 1 All ER 1 (HL) at 17 per Lord Nicholls.

73 The latter is one theory but has been criticised: *Z v Dental Complaints Committee*, above n 56, at [107], n 169.

[95] The third ground is that the District Court misconstrued the petition jurisdiction by applying a standard of whether the election was "permeated or infected" by irregular voting, which they say was inconsistent with the terms of s 98(a).

[96] They also say that this was contributed to by impermissibly broad grounds of the petition. Section 93(2)(d) requires a petition "to specify the specific grounds on which the complaint is based". Mr Keith notes the double emphasis on specificity. He submits the present grounds took the District Court Judge away from the core enquiry required.[74]

[97] For both these grounds of appeal, they appellants contend that because the focus of a petition under s 93 is on materiality of the irregularity to the election result, the Judge was required to take a strictly numeric approach and hence to establish forensically that counted votes in excess of the lowest winning margin of 1,239 were cast by persons other than the elector.[75] The applicants say that only 29 counted votes satisfied this numeric test on the evidence before the District Court, which is an irregularity not capable of affecting the result.

[98] A number of the petition grounds alleged did not relate to such issues. For example, Mr Keith points to the last of the grounds in the petition that is directed at systemic issues with postal voting. He said this was not properly the subject of an enquiry contemplated under s 93.

[99] The applicants emphasise the distinction between a petition brought by a candidate or electors and an inquiry that can now be sought from the District Court by application of the electoral officer.[76] An inquiry into an irregularity on application by the electoral officer results in the District Court Judge making a determination under s 102G(1)(a) as to whether or not an irregularity occurred that has:[77]

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74 I took the applicants to suggest that the lack of specificity in the grounds may also have invalidated the petition, but this was not pleaded.

75 The applicants say the process in an inquiry on an election petition ought to be of the nature that the Court undertook in *Re Taupo Election* [1982] 2 NZLR 244 (HC) where the election court was concerned with considering the validity or invalidity of particular votes.

76 Amendments introduced by the Local Electoral Matters Act 2019.

77 Section 102G(1)(a). The District Court Judge also makes a determination whether as a result of the irregularity, the election or poll is void (s 102G(1)(b)).

(i) materially affected the result of the election or poll (which may include, for example, an irregularity resulting in an insufficient number of votes being capable of being counted or relied upon for there to be confidence in any result); or

(ii) directly or indirectly severely undermined public confidence in the integrity of the election or the validity of the results (or both).

[100] The applicants say that the petition grounds here were directed at public confidence matters in (ii) and the Judge's Decision wrongly reflected this. In consequence, the Judge erred in the grounds he drew on to support the Decision, and on the conclusions he made. These fell outside the proper scope of an election petition under s 93.

[101] Under this head the applicants also say that the Judge's reference to voting papers having "permeated or infected"[78] the election is wrong and misled him, because such misuse, by its nature, not something that can "permeate" or can be contagious.[79] Rather, each instance remains separate and individual.

Analysis

[102] The applicants characterise the Judge's reviewable errors as a failure to act consistently with s 98(a) and as misconstruing the specificity of the jurisdiction. However, as with the previous ground of review, the true complaint is that the Judge erred in fact. Reviewing the matters raised:

(a) The Judge's inquiry was focused on the petition ground he found established, that is "the non-delivery, misuse, misallocation, or unauthorised possession of ballot papers." This ground is undoubtedly sufficiently specific. Therefore, there is no basis for invalidating the petition for lack of specificity simply because other grounds were expressed broadly. Nor can the Judge be criticised for taking the opportunity to express his concerns on the broader issue of frailties in the postal voting process exposed by the election fraud.

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78 At [99].

79 *Featherston v Tully* [2002] SASC 243 at [135], citing *Bridge v Bowen* (1916) 21 CLR 582 (HCA) at 619 per Isaacs J and see also *Featherston v Tully*, at [129].

(b) The Judge was obviously mindful of the correct legal test that the petitioner must meet. Having noted this at the outset and in his summary of reasons he explicitly returned to the "real issue" in the case after finding fraud proved as "whether Mr Hausia has shown to the applicable standard of proof that the irregularities in the conduct of this election have had a material effect on the result."[80]

(c) The Judge identified the margin between Mr Hausia and the next highest polling candidate and concluded that this may well have been extinguished due to the fraud he concluded was established on the basis of certain facts proved and an inference from them.[81]

(d) Accordingly, the Judge appreciated that a "numerical" approach was required in that he had to form the opinion that the misuse of voting papers materially affect the result as a matter of fact. The applicants' complaint is about the inference he drew to find this fact established. There can be no real question that the drawing of inferences is a permissible way for a fact finder to determine facts. Section 98 does not prohibit this mechanism, nor does it mandate that a "numerical" (counting) approach or other specific mechanism is the only way facts can be proved for certain types of irregularity.

[103] While I see the applicants' arguments as in substance on factual findings, Mr Keith stated in oral argument that the applicants do not see the case as one where the Judge "erred in law" due to a finding of fact being untenable, in the sense discussed in *Bryson v Three Foot Six*[82].

[104] However, even if that is really the argument, for reasons discussed earlier, I consider this is a matter that is barred by the ouster clause in s 103.

[105] Because of my view on jurisdiction, it is not appropriate that I go on to consider the detail of whether, in my view, the inference the Judge drew on the facts was of a

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80 At [21] and [70].
81 At [99].
82 *Bryson v Three Foot Six*, above n 50.

character susceptible to judicial review under the factual analysis the applicants invited me to undertake.

Fourth ground of review - Breach of procedural fairness

Submissions

[106] The last ground of review is that the Judge was in breach of procedural fairness.

[107] The first point relates to Mr Hausia's claim that the increased voting turnout in the Papatoetoe Subdivision could not be explained other than by misconduct. The Judge is said to have breached procedural fairness in accepting that proposition:

(a) by adopting this as a presumption rather than requiring positive proof, contrary to the onus on Mr Hausia;

(b) when the Judge did not conduct a sufficient inquiry into that issue using the powers available to him;

(c) when this entailed an adverse inference against the applicants who were not on notice of that contention.

[108] Second, the applicants say that the District Court ought not to have relied on supporting statements by other candidates.

[109] Third, the applicants say that they were not properly served with the petition as required. They also say that the inquiry investigated far-reaching claims affecting them that emerged in the inquiry as to fraudulent voting and that it was in breach of procedural fairness that the Court did not notify them or make inquiry of them of these matters.[83]

[110] Addressing these grounds require more to be said about the statutory process and the factual background to the present petition inquiry.

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[83] *Re Erebus Royal Commission* [1983] NZLR 662 (PC) at 671; and *Peters v Davison* [1999] 2 NZLR 164 (CA) at 185.

Statutory provisions

[111] The LEA process is premised on public notice to the electorate of the petition[84] and that those intending to oppose (either candidates or any ten electors) will take steps to do so by filing a notice of intention to oppose.[85] There is no provision for updating the public as the inquiry proceeds. No doubt this is why it is not open for a petitioner to amend its grounds of petition unless with leave and on reasonable notice to "affected persons."[86]

[112] When a petition is filed, the registrar is required to provide a copy to the electoral officer.[87] By s 95, any notice of an intention to oppose a petition may be filed by a candidate, by 10 electors or by the electoral officer. They then become respondents to the application. No timeframe for filing notice is stipulated.

[113] By s 96, the inquiry must be commenced within 14 days after the filing of the petition, and not less than 7 days' public notice must be given of the time and place at which the inquiry will be held. Although this does not state that the petition itself is to be the subject of the public notice, this is the only mechanism in the Act for notice of the petition.[88]

[114] Section 94 of the LEA precludes investigation into grounds other than those stated in the petition except with the leave of the District Court Judge hearing the petition. Reasonable notice must be given to any "affected person" before leave is granted. Thus, public notice has given the requisite notice of the original petition to all persons with specific notice then to be given to persons affected where the grounds are amended.

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84 LEA, s 96.
85 LEA, s 95.
86 LEA s 94.
87 LEA, s 93(3).
88 The only other mechanism would be by implication that the electoral officer would give public notice. By s 15, an electoral officer is responsible, in accordance with the provisions of this Act and regulations made under this Act, for the publication of any public notice relating to elections but this seems to contemplate public notice specifically prescribed elsewhere.

Factual background

[115] Mr Hausia filed his petition on 7 November 2025 stating the grounds set out in paragraph [9] above.

[116] On 12 November 2025, Judge KD Kelly minuted the file, recording that the petition had been filed, setting out its grounds, and noting the statutory timeframes for commencing the inquiry and for public notice. The minute stated who was entitled to file a notice of intention to oppose the petition and recorded that such persons become respondents to the petition.

[117] The Judge set out directions for the date the inquiry was to commence, directed the notice of opposition to be filed, and directed that the Registrar publicly notify the time and place at which the inquiry was to be held. He directed that "the Registrar is to provide each candidate … with a copy of this minute." This did not use the language of "service" on each candidate, no doubt reflecting that no formal service requirements are specified in the legislation.

[118] Mr Hausia's petition was publicly notified on 13 November 2025 advising the date and place it was to be heard. When the matter was called on 21 November 2025 before Judge McIlraith, he noted no opposition had been filed (other than by the electoral officer).

[119] The District Court has confirmed that the Registrar did not provide a copy of this minute to candidates as directed by Judge Kelly because the Registry did not have contact details for them.

[120] In the Decision the Judge recorded:

> [9] I understand that all candidates in this election are aware of this petition. All unsuccessful candidates have made their support of Mr Hausia's petition known. The four successful candidates have not, however, taken the opportunity to participate. They had no obligation to do so, and I draw no adverse inference from their non-participation.

[121] Although candidates had not been provided with Judge Kelly's minute, the Judge was correct that all candidates were aware of the petition. Specifically,

Auckland Council had circulated the petition by email to all the Council members including the applicants.

[122] Moreover, on 26 November 2025, Mr Hausia had emailed all candidates in the election advising that an inquiry was being undertaken by the District Court into the election and requesting they sign an attached "supporting statement" which largely replicated the grounds of the petition.

[123] Mr Bhalla responded on 27 November 2025, copying in the other applicants (and others), noting that the statement referred to several significant issues, noting they were substantial claims that warrant clarity, and advising that he had not seen evidential foundation or supporting documentation for the assertions.

[124] Mr Bhalla recorded that to determine the position responsibly he would need a clearer understanding of the material being relied upon and how it aligned with the matters before the Court. He concluded by advising he was open to review verified information and would be in a position to consider the matter further once he had a factual basis on which to assess the request.

[125] All unsuccessful candidates returned the forms.

Analysis

[126] Because the grounds of a petition cannot be changed without leave, in my view the Act contemplates that the grounds will not be highly particularised. That would impose an unnecessary straitjacket on a petitioner.

[127] In the absence of a change of grounds (which is not alleged to have occurred here) the statutory scheme does not contemplate a "checking in" with anyone that is affected by a petition during the course of the inquiry where the investigation receives information on issues that are within the scope of the petition. The public notice of the petition is intended to serve the purpose of ensuring that those who want to oppose the petition or who are interested in its outcome can be engaged in the process.

[128] Here, although the District Court minute was not provided to the applicants as directed, there had been public notice as required. More significantly to the facts, it is very plain that the applicants had received the petition.

[129] Obviously, the outcome of the petition affected them: they had been the successful candidates who would need to contest a fresh election for their places on the Board in the event of a successful petition. Yet the applicants contend that they were not aware at the outset that there would be allegations of electoral fraud affecting them. They say that the detailed investigation that then occurred by which 79 fraudulent votes were identified leading to the possibility of a finding of "widespread electoral fraud" was conduct affecting them that should have been advised to them as a matter of procedural fairness.

[130] I do not accept the applicants' submission. Mr Hausia's petition alleged "the non-delivery, misuse, misallocation, or unauthorised possession of ballot papers". In my view this plainly conveys that unlawful conduct, which may well amount to fraud, is being investigated. Moreover, for the petition to be successful, there would need to be a finding that this was widespread, given the applicants' margin above the first unsuccessful candidate. The ground in the petition is sufficiently specific to give the applicants' notice.

[131] The applicants correctly emphasise that a statute does not need to outline specific steps to be taken to comply with procedural fairness. That is because this is a requirement of the law. It is also a right affirmed by s 27(1) of NZBORA. The applicants refer me to *Re Erebus*, the seminal case in which the Privy Council held that the Commissioner had breached natural justice by failing to give Air New Zealand the notice and the opportunity to respond to the serious adverse findings it made in its report on the Erebus disaster.[89] The applicants say that in the circumstances here, procedural fairness required that the Judge place the applicants on notice of the specific allegations against them.

[132] As outlined above, the applicants were well aware of the petition; that candidates were being asked to support it; that it extended to allegations of unlawful

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[89] At 671.

conduct involving the misuse of votes; that their election was at risk if these allegations were accepted; and that if so, this would need to be widespread unlawful conduct.

[133] They were affected parties with a very strong interest in opposing the petition and providing the enquiry with evidence opposing such allegations. However, having been notified of the petition, they chose not to do this.

[134] Turning back to the reliance on the *Erebus* case, while they were affected parties because of the impact on the election if the petition was successful, they were not affected in the sense that their conduct was impugned in any way. Any inferences that they are behind the fraud are improper. The Judge drew no such inference and indeed, was at pains to say the fraud was by persons unknown, and that he was not drawing any adverse inferences from the fact that they did not take part.

[135] Had there been a breach of natural justice in the relevant sense, then for the reasons outlined above, s 103 of the LEA would not preclude this Court interfering with the Judge's determination and Decision. I do not accept procedural fairness was breached in a way that requires the Court's intervention.

[136] I have considered the related issue raised by the applicants that the Judge should have made further inquiries into the applicants' election campaign, and into investigating reasons why the 7.5 per cent increase might be explained. The applicant say the Judge has effectively make adverse findings based on lack of evidence about their campaign. They say the Judge should also have investigated other reasons explaining the increased turnout and better interrogated the propositions put to the Judge.[90]

[137] The applicants make a fair point that the Judge's inference of electoral fraud based on an increase in voter participation contrasts with the purposes of the Act in promoting participation. Nonetheless, in my view the drawing of inferences is an aspect of the factual inquiry that is barred by s 103. Moreover, this is not a case as in *Erebus* where adverse factual findings have been made against the applicants without

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[90] One example is the reliance on increased voting in certain streets or areas as supporting electoral fraud when in one instance this was a street in which one of the applicants' lived and in another instance there had been population explosion.

notice to them. Rather they challenge the sufficiency of the steps the Judge took before drawing inferences in circumstances where they had an opportunity to take part.

[138] It is problematic for a candidate who has not taken part in the inquiry to assert later that insufficient inquiry was made about their campaign or matters affecting them. While I do not suggest this happened here, opening the door to this as a ground of review could result in gaming by a candidate who has acted improperly but wants to avoid investigation.

[139] Moreover, the proposition that further inquiry should have been undertaken on the facts of this case is also problematic. The applicants' affidavit evidence details an extensive campaign, including door-knocking, community meetings, attendance at festivals and religious events, and targeted efforts to increase enrolment and turnout, particularly among the Indian New Zealand community in Papatoetoe. However, as Mr Mitchell submits, information about the applicants' campaign as explaining higher voter turnout would need to be tested relative to other successful campaign in other areas in Auckland, to assess whether that explained the higher turnout.

[140] Similarly, the applicants point to other reasons for increased turnout, including a significant rise in registered voters, and demographic changes. They challenge what conclusions can or should be drawn from the spatial map the Judge was referred to, and other conclusions drawn from the evidence Mr Hausia provided the Judge. Again, a proper assessment in a review of all this analysis would require further evidence, perhaps from a statistician or psephologist. These are densely factual issues that I consider are not properly reviewable under s 103.

[141] Finally, I consider the applicants' contention that the District Court breached procedural fairness by relying on supporting statements by other candidates and a lack of such statements from the applicants.

[142] There is no substance in this point, whether or not it is a reviewable error. The applicants are correct that the statements were in a standard form provided to them by Mr Hausia and was not detailed. One statement added nothing to the others on additional concerns. However, the rote form and limited detail was patent for the

Judge to see. Although the Judge identified this as a fact found amongst the list of matters proved and from which he drew an inference of materiality, I do not infer that he placed undue weight on this point.

[143] As to the lack of such statements from the applicants, it is wrong to say that the Judge identified or saw as relevant that the applicants had not provided such statements. That cannot be inferred simply from his factual reference to concerns by candidates "other than successful candidates".[91]

[144] The Judge had previously made clear that he was not drawing an adverse inference from the applicants' lack of involvement, and it was not suggested that the applicants were involved in the conduct.

[145] The applicants say that the Judge did not take into account that Mr Hausia was a political opponent and there was no obligation on them to provide statements. An omission by the Judge to discuss reasons why the applicants did not make statements or investigate why that may be so is neither here nor there. Similarly, I do not accept that there was a breach of natural justice due to Mr Hausia not providing the Judge with Mr Bhalla's response to his request for a statement.

[146] Accordingly, in summary while notice aspects are reviewable, there was no failure here. Procedural fairness assertions based on inquiries that ought to have been made of the applicants are in my view barred by s 103 for the reasons outline earlier. There is no substance in the applicants' asserted breach of natural justice involving the statements provided by other candidates.

[147] The Judicial review relief is declined.

Alternative claim for declarations under the Declaratory Judgments Act 1908

Declarations sought

[148] In the alternative to judicial review, the applicants seek declarations that parallel the judicial review grounds.

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91 At [33](e) of the Decision.

Legal approach to declarations

[149] Under the DJA, s 2 provides the High Court "may make declarations of right, whether any consequential relief is or could be claimed or not".[92]

[150] The jurisdiction to make orders under the DJA is designed to provide a speedy and inexpensive method of obtaining a judicial interpretation where the matter in dispute cannot conveniently be brought before the Court in its ordinary jurisdiction and where a declaratory judgment would be appropriate relief.[93]

[151] Section 10 of the DJA provides that the jurisdiction conferred upon the Court to give or make a declaratory judgment or order shall be discretionary and that the Court may, on any grounds which it deems sufficient, refuse to give or make any such judgment or order.

[152] The jurisdiction is not excluded by the fact that the Court has no power to give relief in the matter to which the judgment or order relates or that such a matter would, independently of the Act, be within the exclusive jurisdiction of any other Court.[94] That is, the Court can make declarations in this proceeding under the DJA even if judicial review is excluded by s 103 or under the parallel provision in s 242 of the Electoral Act 1993, by which parliamentary election petitions are declared final, conclusive and not subject to appeal.

[153] In *Wybrow v Chief Executive Officer*[95] the applicant successfully sought declarations as to whether certain irregularities in a voting paper invalidates the vote, notwithstanding that this issue had been addressed in an election petition decision on the most recent general election.[96] The Court of Appeal rejected that the jurisdictional bar applied or that it should exercise its discretion against making a declaration. The

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92 The jurisdiction for making a declaration derives from both the Declaratory Judgments Act 1908 and the general equitable jurisdiction of the Court: *Attorney-General v Taylor* [2017] NZCA 215. citing *Association of Dispensing Opticians of New Zealand Inc v Opticians Board* [2000] 1 NZLR 158 (CA).

93 *New Zealand Insurance Co Ltd v Prudential Assurance Co Ltd* [1976] 1 NZLR 84 (CA) at 85.

94 DJA, s 11.

95 *Wybrow v Chief Executive Officer*, above n 24.

96 *Re Hunua Election Petition*, above n 43, at 253, which was followed three days later by another election petition case in the Supreme Court: *Re Kapiti Election Petition* SC Wellington 41/79, 14 May 1979.

Court held that the jurisdictional bar was only concerned with the finality of the petition determination and did not fetter the jurisdiction of the Courts to consider questions of interpretation of the Act in other proceedings. The declarations sought did not impact on the past election and were important for guidance in the future.

[154] However, generally, in proceedings for declaratory relief, the Court will exercise its discretion to refuse:[97]

(a) to answer mixed questions of fact and law;[98]

(b) to grant a declaration that is hypothetical, abstract or has no utility; or[99]

(c) to relitigate issues already determined in a previous proceeding.

[155] Mr Keith for the applicants emphasised that in *Tate* the Court of Appeal held that it is not a basis to refuse to make a declaration on a ground "*which is inconsistent with the Courts' essential function*."[100] That is, the Courts have the function of determining legislation's legal meaning so far as is necessary to decide a case before it.

Analysis

[156] The applicants seek the following declarations:

(a) The standard of proof under s 98(a) is beyond reasonable doubt;

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97 *Sim's Court Practice* (NZ), Other Legislation: Declaratory Judgments Act 1908, s 10; with this passage approved by Clifford J in *Secretary for Internal Affairs v Kilbirnie Tavern Ltd* HC Wellington CIV-2007-485-1988, 14 November 2008 at [33].

98 *Electoral Commission v Tate* [1999] 3 NZLR 174 (CA) at [30]; *New Zealand Insurance Co Ltd v Prudential Assurance Co Ltd*, above n 93; *IHC New Zealand Inc v Accident Compensation Corporation* [2008] NZAR 251 (HC).

99 *Electoral Commission v Tate*, above n 98 at [30]; *Turner v Pickering* [1976] 1 NZLR 129 (HC) at 141–142; *Re Chase* [1989] 1 NZLR 325 (CA); *Simpson v Whakatane District Court (No 2)* [2006] NZAR 247 (HC); *Birkenfeld v Yachting New Zealand Inc* [2008] NZCA 531, [2009] 1 NZLR 499; *Greenpeace of New Zealand Inc v Electoral Commission* [2014] NZHC 2135, [2014] 3 NZLR 802 at [129] per Mander J.

100 At 182.

(b) The interpretation of s 98(a) determined by the first applicant is otherwise wrong in law in the particular respects also given under the second and third grounds of review;

(c) The Decision was made contrary to natural justice in the particular respects also given under the fourth ground of review.

[157] No cross-application was filed.

[158] For those grounds that could be characterised as raising issues of interpretation, application of a legal test, or of reviewable natural justice not barred by s 103 I have not found the grounds established so would not make declarations of the nature sought.

[159] The remaining area that I have not addressed because I concluded it was barred by s 103 is the inference drawn by the Judge and as to the sufficiency of his inquiry. In my discretion I decline to make declarations bearing on those matters for the following reasons:

(a) The issues are one of fact or at best mixed fact and law.

(b) They are tied to the specific determination and have no utility as forward-looking guidance on issues under the LEA.

(c) Because the Judge's determination is that the election is void, and I have not set aside his decision, the declarations sought have no utility.

(d) The applicants contend that declarations should be made because it is important to them to provide an even playing field for the new election. However, the justification for this is founded in the public associating the applicants with the fraudulent conduct. That is a link that is not founded in the determination, its reasoning or the matters decided but in a misinterpretation of the Decision. I do not consider this gives utility to any declaration I would make. I have made clear in my decision, that the applicants' conduct is not impugned.

[160] The applicants' application for declarations under the DJA is declined.

Result

[161] The applicants' claims for judicial review and declarations are dismissed.

[162] If a costs decision is required, counsel are to confer on and advise the Court of a timetable for filing submissions and I will address costs on the papers.

Anderson J