



COURT OF APPEAL OF NEW ZEALAND

TE KŌTI PĪRA O AOTEAROA

27 SEPTEMBER 2016

MEDIA RELEASE

**NEW HEALTH NEW ZEALAND INC v SOUTH TARANAKI DISTRICT COUNCIL
(CA159/2014)**

**NEW HEALTH NEW ZEALAND INC v ATTORNEY-GENERAL FOR AND ON
BEHALF OF THE MINISTER OF HEALTH (CA615/2014)**

**NEW HEALTH NEW ZEALAND INC v ATTORNEY-GENERAL FOR AND ON
BEHALF OF THE MINISTER OF HEALTH (CA529/2015)**

[2016] NZCA 462

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

The Court of Appeal has today released a judgment dismissing three appeals brought by New Health New Zealand Inc (New Health) relating to the fluoridation of public water supplies.

The principal appeal related to a proposal by the South Taranaki District Council to add fluoride to the water supplies in Patea and Waverley. New Health argued that Rodney Hansen J had been wrong to find in the High Court that the Council had lawful authority to fluoridate the water supplies and that the proposal did not infringe s 11 of the New Zealand Bill of Rights Act 1990. Section 11 guarantees the right of persons to refuse to undergo “medical treatment”. New Health argued that fluoridation of water amounts to medical treatment under s 11.

The Court of Appeal disagreed. Justice Randerson, delivering the reasons for the Court, emphasised that the Court was concerned with the lawfulness of the process of fluoridation. The merits of fluoridation were at issue only in a secondary sense as part of New Health's argument under the Bill of Rights Act.

The Court ruled that the power for local councils to add fluoride to the water supply was found in the Local Government Act 2002 (LGA) and the Health Act 1956. Fluoridation had been occurring in some parts of New Zealand since 1954 under previous legislation, and Parliament must have intended this to continue when it chose not to prohibit fluoridation when passing the LGA. This conclusion was further supported by the New Zealand Water Standards permitting fluoride in drinking water up to the level of 1.5 parts per million.

The Court also ruled that fluoridation did not breach the right to refuse medical treatment. For the purposes of s 11, "medical treatment" meant treatment received in a direct therapeutic relationship (such as from a doctor or other health professional), rather than broader public health measures. The Court of Appeal also found that, even if fluoridation had breached the right to refuse medical treatment, the breach was justifiable given the importance of its objective (reducing tooth decay), and because it was within the range of reasonable measures available to Parliament to address the problem.

While there was room for differences of scientific opinion, there was a sufficient basis in the evidence presented to support the High Court's conclusion that the significant advantages of fluoridation outweigh the only acknowledged drawback, the increased incidence of fluorosis (mottling of teeth).

The second and third appeals were closely related to each other. New Health had argued in the High Court that fluoride compounds added to the water supply were medicines for the purposes of the Medicines Act 1981. Collins J in the High Court disagreed, ruling that fluorides were not medicines. However, he also recommended the Ministry of Health consider passing a regulation under the Health Act to put the matter beyond doubt. In due course, and with some urgency, the Ministry of Health passed a regulation declaring fluoride was not a medicine. In the meantime New Health appealed against the decision of Collins J that fluorides were not medicines. It then challenged the Ministry's decision to pass the regulation, arguing this was designed to prevent them exercising their right of appeal.

The Court of Appeal ruled that the regulation was properly made. There was nothing improper in passing regulations to achieve legal certainty. The fact that this had the effect of impairing New Health's right of appeal did not mean the regulation was invalid. In turn, this meant the appeal against the decision of Collins J was effectively moot (pointless).

Contact person: Clare O'Brien, Registrar of the Court of Appeal, 04 914 3540.