
IN THE HIGH COURT OF NEW ZEALAND
NEW PLYMOUTH REGISTRY

CIV 2013-443-107

UNDER THE **Judicature Amendment Act 1972 and the
Declaratory Judgments Act 1908**

IN THE MATTER OF **an application for judicial review and an
application for a declaration**

BETWEEN **NEW HEALTH NEW ZEALAND INC**

Plaintiff

AND **SOUTH TARANAKI DISTRICT
COUNCIL**

Defendant

**MEMORANDUM OF COUNSEL IN SUPPORT OF APPLICATION BY
ATTORNEY-GENERAL FOR LEAVE TO INTERVENE**

2 July 2013

Judicial Officer: Heath J
Next Event Date:


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MAY IT PLEASE THE COURT:

1. This memorandum is filed in support of the Attorney-General's application for leave to intervene in these proceedings.
2. The plaintiff has sought judicial review of a decision by the defendant to fluoridate the water supplies that serve Patea and Waverley. The three grounds upon which the lawfulness of that decision is challenged include an assertion that the intended fluoridation of the water would infringe the right of persons living in those towns to refuse medical treatment. That right is guaranteed by s 11 of the New Zealand Bill of Rights Act 1990.
3. These judicial review proceedings raise important issues relating to the scope of s 11, including the width that should be given to the notion of medical treatment for the purpose of that section and whether there is a *de minimis* threshold before the right is engaged.
4. Even if the scope of that issue were confined to the subject of fluoridation of public water supplies it would be a matter of general public importance as a considerable number of public water supplies in New Zealand are fluoridated. Section 11, of course, has much wider resonance and the extent to which it may constrain the ability to take measures to improve public health has wider implications for the general public.
5. The Attorney-General wishes to be heard, and assist the Court on the following issues:
 - 5.1 Is fluoridation of a public water supply "medical treatment" for the purpose of s 11 of the New Zealand Bill of Rights Act 1990?; and
 - 5.2 If fluoridation is medical treatment for that purpose, does the inclusion in the water supply of fluoride up to one part per million limit the right of any person under s 11.

Date: 2 July 2013



A.M. Powell
Counsel for the Attorney General

TO: The Registrar, High Court, New Plymouth
AND TO: The plaintiff (New Health New Zealand Inc.)
AND TO: The defendant (South Taranaki District Council)