

**IN THE HIGH COURT OF NEW ZEALAND
NEW PLYMOUTH REGISTRY**

CIV-2013-443-107

UNDER the Judicature Amendment Act 1972 and Declaratory
Judgments Act 1908

IN THE MATTER of an application for judicial review and an application for
declaration

BETWEEN **NEW HEALTH NEW ZEALAND INC**

Plaintiff

AND **SOUTH TARANAKI DISTRICT COUNCIL**

Defendant

AMENDED STATEMENT OF DEFENCE

Dated 20 November 2013

 **Simpson Grierson**
Barristers & Solicitors

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The defendant says by its solicitors in response to the allegations in the statement of claim:

Parties

1. It admits paragraph 1.
2. It has insufficient knowledge, and therefore denies paragraph 2.
3. It admits paragraph 3.

More about the plaintiff

4. It has insufficient knowledge, and therefore denies paragraph 4.
5. It has insufficient knowledge, and therefore denies paragraph 5.

Fluoridation of water supplies

6. It admits paragraph 6.
7. In relation to paragraph 7, it:
 - (a) says that the purpose of fluoridation is to improve public health by reducing the incidence of tooth decay;
 - (b) has a duty under section 23 of the Health Act 1956 to improve, protect and promote public health within its district; and
 - (c) otherwise denies paragraph 7.
8. In relation to paragraph 8, it:
 - (a) admits the plaintiff is opposed to fluoridation for all or any of the reasons listed in paragraphs 8.1 to 8.5; but
 - (b) otherwise denies paragraphs 8.1 to 8.5.

The decision

- 9.** It admits paragraph 9 except that it says that the decision was made 10 December 2012.
- 10.** It admits paragraph 10, and further says its consultation process included the following steps:
 - (a) it sent a letter and fact sheet to affected persons on 26 September 2012;
 - (b) it held public information evenings in Waverley and Patea on 8 and 9 October 2012 respectively;
 - (c) it received written submissions between 8 October 2012 and 9 November 2012, and it also received late submissions at a meeting on 26 November 2012; and
 - (d) it held a meeting on 26 November 2012 where it heard oral submissions.
- 11.** It admits paragraph 11.
- 12.** In relation to paragraph 12, it:
 - (a) admits that the New Zealand Fluoridation Information Service provided a submission that spanned several hundred pages;
 - (b) says that the submission raised the matters in paragraphs 12.1 to 12.2; but
 - (c) otherwise denies paragraph 12.
- 13.** In relation to paragraph 13, it says:
 - (a) prior to making its decision on 10 December 2012, it had received submissions supporting and opposing fluoridation of the water supplies;

- (b) the submissions supporting fluoridation included those from various health bodies and other individuals and organisations within the health sector;
- (c) it held a meeting on 26 November 2012 at which those making submissions had the opportunity of being heard;
- (d) it made its decision on 10 December 2012 after considering all of the written and oral submissions and the information provided to it; and
- (e) otherwise denies paragraph 13.

New Zealand Bill Of Rights Act 1990

- 14.** It is not required to plead to paragraph 14, but further says NZBORA must be read in its entirety.
- 15.** It denies paragraph 15.
- 16.** It denies paragraph 16.
- 17.** It is not required to plead to paragraph 17, but repeats paragraph 14 above.
- 18.** It is not required to plead to paragraph 18, but repeats paragraph 14 above.

Ex Relatione Lewis v Lower Hutt City

- 19.** It is not required to plead to paragraph 19, as it is a pleading of law, but further says that the Privy Council's decision must be read in its entirety.
- 20.** It is not required to plead to paragraph 20, as it is a pleading of law, but further says section 240 must be read in its entirety and in the context of the other provisions in the Municipal Corporations Act 1954 as a whole.

21. It is not required to plead to paragraph 21, as it is a pleading of law.
22. It relation to paragraph 22, it:
- (a) says section 240 of the Municipal Corporation Act 1954 is not identically worded to section 379 of the Local Government Act 1974; but
 - (b) it is not required to plead to paragraph 22, as it is a pleading of law.
23. In relation to paragraph 23, it:
- (a) says that section 379 was repealed by the LGA 2002;
 - (b) further says section 130 of the LGA 2002 places an obligation on local government to provide water services, which includes providing "drinking water" as defined in section 124 of the LGA 2002; and
 - (c) otherwise denies paragraph 23.

Defendant's powers under the Local Government Act 2002 and Health Act 1956 do not authorise it to add fluoride to the drinking water supplies for therapeutic purposes.

24. It is not required to plead to paragraph 24, as it is a pleading of law.
25. It is not required to plead to paragraph 25, as it is a pleading of law.
26. It is not required to plead to paragraph 26, as it is a pleading of law.

Adding fluoride is a breach of the NZBORA

27. It is not required to plead to paragraph 27, as it is a pleading of law, but for the avoidance of doubt denies paragraph 27.
28. It denies paragraph 28.

Adding fluoride in breach of the NZBORA is not prescribed by law

First cause of action: ultra vires

29. It repeats paragraphs 1 to 28 above.

30. It denies paragraph 30.

Seeking an alternative ground of review – failure to take into account relevant considerations.

31. It repeats paragraphs 1 to 28 above.

32. In relation to paragraph 32, it:

- (a) denies that the matters referred to in paragraphs 32.1 to 32.9 were mandatory relevant considerations;
- (b) if contrary to (a) above, all or any of matters are referred to in paragraphs 32.1 to 32.9 are mandatory relevant considerations, they were in substance considered by the defendant to the extent that it was necessary in the circumstances;
- (c) denies that there was any breach of section 11 of the NZBORA;
- (d) says that if there was a breach of section 11 of the NZBORA any limit on the right contained in that section is justified as a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society; and
- (e) otherwise denies paragraph 32.

This document is filed by **DUNCAN JAMES SIMPSON LAING** solicitor for the defendant of the firm Simpson Grierson.

The address for service of the defendant is at the offices of Simpson Grierson, HSBC Tower, Level 24, 195 Lambton Quay, Wellington.

Documents for service on the defendant may be left at that address for service or may be posted to the solicitor at PO Box 2402 Wellington, or left for the solicitor at a document exchange for direction to DX SX11174, or transmitted to the solicitor by e-mail to duncan.laing@simpsongrierson.com, or transmitted to the solicitor by facsimile to +64-4-472 6986.