



**Supreme Court of New Zealand
Te Kōti Mana Nui**

27 JUNE 2018

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**NEW HEALTH NEW ZEALAND INCORPORATED v SOUTH
TARANAKI DISTRICT COUNCIL AND ATTORNEY-GENERAL FOR
AND ON BEHALF OF THE MINISTER OF HEALTH**

(SC 141/2016) [2018] NZSC 59 [2018] NZSC 60

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 Judicial Decisions of Public Interest www.courtsofnz.govt.nz

The Supreme Court is delivering two judgments dealing with three appeals by New Health New Zealand Inc (New Health), a consumer advocacy group which initiated a series of legal challenges relating to the fluoridation of drinking water.

The Council appeal

The background to this appeal, which we will call the Council appeal, was as follows. In December 2012, South Taranaki District Council decided to add fluoride to the drinking water it supplies to the towns of Patea and Waverley. The decision, taken for public health purposes to improve poor dental health in the two towns, followed public consultation. New Health challenged the decision of the Council by way of judicial review in the High Court. It claimed, among other things, that the addition of fluoride was unlawful both because it was outside the statutory powers of the Council under the Local Government Act 2002 and the Health Act 1956 and because it was in breach of the right everyone has under s 11 of the New Zealand Bill of Rights Act 1990 to refuse to undergo any medical treatment. New Health was unsuccessful in these contentions in the High Court and its appeal to the Court of Appeal was dismissed. New Health was granted leave to appeal to this Court.

In this Court, New Health contended that the Council had no power to add fluoride to water for therapeutic purposes in absence of clear statutory authorisation. Furthermore, it argued that fluoridation of water was an unjustifiable intrusion into the right to refuse to undergo any medical treatment in s 11 of the Bill of Rights Act. The Council disagreed, claiming it had authority to fluoridate pursuant to its powers and obligations under the Local Government Act 2002 and the Health Act 1956. It argued that fluoridation of drinking water is not medical treatment for the purposes of s11 of the Bill of Rights Act. It said further that even if fluoridation did amount to medical treatment, it would be a demonstrably justified limit in terms of s 5 of the Bill of Rights Act, which provides that the rights and freedoms contained in the Bill of Rights Act may be subject to “such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

The Supreme Court has dismissed the Council appeal by a majority comprising William Young, Glazebrook, O’Regan and Ellen France JJ. The Chief Justice dissented.

On the question of whether the Council had the legal authority to fluoridate water, the majority Judges held that it did. This was based on the Council’s general power of competence in s 12 of the Local Government Act and in light of its duty under the Health Act to protect, promote and improve public health in its region. The relevant provisions had to be interpreted against the background that fluoridation had been lawful in New Zealand for decades prior to enactment.

The Chief Justice disagreed. She concluded that the Council had no statutory authority to fluoridate water supplies.

On the question of whether the addition of fluoride to the water supply engaged the right to refuse to undergo medical treatment under s 11 of the Bill of Rights Act, the Chief Justice, Glazebrook, O’Regan and Ellen France JJ held that it did. Even having regard to the genesis of s 11, there was no basis to read down its text so as to exclude medical treatment which occurs outside of a therapeutic relationship.

William Young J disagreed, holding that a person who ingests fluoridated water does not thereby undergo medical treatment.

On the question of the application of s 5 of the Bill of Rights Act, O’Regan and Ellen France JJ considered that the conferral of a statutory power to fluoridate water to levels prescribed by the drinking water standards was a justified limit on the right protected by s 11 of the Bill of Rights Act.

Glazebrook J held that the Bill of Rights Act meant that local authorities could fluoridate water only where doing so in the particular district would be demonstrably justified in terms of s 5, an assessment which may depend on the local conditions.

Neither the Chief Justice nor William Young J addressed this issue as, on each of their approaches, it did not arise for consideration.

The practical outcome of the Council appeal is that, in accordance with the respective views of O'Regan and Ellen France J and William Young J, the Council has legal authority to fluoridate the water supplies in Patea and Waverley and that power is not constrained by s 11 of the Bill of Rights Act. On the approach taken by O'Regan and Ellen France JJ, that is because the provisions authorising fluoridation limit the s 11 right only to an extent that is demonstrably justified in a free and democratic society in terms of s 5 of the Bill of Rights Act. On the approach of William Young J, that is the practical outcome because s 11 of the Bill of Rights Act is not engaged.

Regulations and Medicines Act appeals

The background to the two appeals dealt with in this judgment was as follows. New Health had unsuccessfully sought a declaration in the High Court that the fluoridating agents for use in fluoridating drinking water were medicines under the Medicines Act 1981. Before its appeal against the dismissal of its application for that declaration had been heard, regulations were made under s 105(1)(i) of the Medicines Act, declaring that the fluoridating agents were not medicines for the purposes of the Medicines Act. New Health unsuccessfully challenged the validity of those regulations in the High Court, arguing among other things that they were made for an improper purpose of preventing New Health from succeeding in its appeal against the Medicines Act decision.

The Court of Appeal dismissed New Health's appeal against the High Court decision that found the regulations were valid. It also found that, because those regulations made it clear that fluoridating agents were not medicines, New Health's appeal against the Medicines Act decision was moot.

The Supreme Court has unanimously dismissed New Health's appeal against both aspects of the Court of Appeal decision. The Court found that the regulations were valid because they were not made for an improper purpose, nor were they made on the basis of an error of law. The Court agreed with the Court of Appeal that the question as to whether the fluoridating agents were medicines prior to the making of the regulations was moot.

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