

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 111/2025
[2025] NZSC 192**

BETWEEN	NEW ZEALAND INDEPENDENT COMMUNITY PHARMACY GROUP INCORPORATED Applicant
AND	TE WHATU ORA HEALTH NEW ZEALAND First Respondent
	GDL RX NO8 LIMITED Second Respondent
	ATTORNEY-GENERAL Third Respondent

Court:	Glazebrook, Ellen France and Williams JJ
Counsel:	R A Kirkness, N R Coates, M D N Harris and W H Ranaweera for Applicant S M Bisley and B J Maltby for First Respondent M R Crotty and L H Mau for Second Respondent No appearance for Third Respondent
Judgment:	11 December 2025

JUDGMENT OF THE COURT

- A The application for leave to appeal is dismissed.**
 - B The applicant must pay the first respondent costs of \$2,000.**
 - C The applicant must pay the second respondent costs of \$500.**
-

REASONS

[1] The applicant is a group of community pharmacies. It issued judicial review proceedings challenging decisions made by two District Health Boards which enabled the second respondent to operate new pharmacies in Countdown supermarkets in Gisborne¹ and Wainuiomata. The High Court dismissed the challenge to those decisions.² The appeal against the High Court decision was dismissed by the Court of Appeal.³ The applicant now seeks leave to appeal to this Court.

[2] The relevant decision maker, the Hutt Valley District Health Board, was disestablished on 1 July 2022 and replaced by the first respondent, Health New Zealand | Te Whatu Ora. Importantly, the relevant governing legislation, the New Zealand Public Health and Disability Act 2000, was repealed on 1 July 2022. It was replaced by the Pae Ora (Healthy Futures) Act 2022.⁴

[3] We accept the submission of the first respondent that there are no private rights involved (given there is now no application to quash the decisions and the applicant seeks only declaratory orders). Further, while we accept that there may be issues of principle involved in the proposed appeal, we accept the submission of the first and second respondents that, given the change in legislation, it is not in the interests of justice that we grant the application for leave.⁵ Any issues of principle should be resolved in a proceeding brought under the current legislation.

Result

[4] The application for leave to appeal is dismissed.

¹ The pharmacy at Gisborne ceased operating on 30 September 2022.

² *New Zealand Independent Community Pharmacy Group v Te Whatu Ora – Health New Zealand (formerly Hutt Valley District Health Board)* [2023] NZHC 1486 (Gwyn J) [HC judgment].

³ *New Zealand Independent Community Pharmacy Group Inc v Health New Zealand* [2025] NZCA 443 (Mallon, Ellis and Cooke JJ) [CA judgment].

⁴ An amendment Bill introduced in July 2025 would introduce further changes if passed: see Pae Ora (Healthy Futures) Amendment Bill 2025 (179).

⁵ Senior Courts Act 2016, s 74(1). No issue of general or public importance arises: s 74(2)(a).

[5] The applicant must pay the first respondent costs of \$2,000 and the second respondent costs of \$500.⁶

Solicitors:

BDM Lawyers, Wellington for Applicant

Buddle Findlay, Wellington for First Respondent

Russell McVeagh, Auckland for Second Respondent

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Third Respondent

⁶ The first respondent filed more extensive submissions than the second respondent. The third respondent advised that the Attorney-General would not file submissions and did not take a position on this application.