

IN THE COURT OF APPEAL OF NEW ZEALAND

CA615/2014

BETWEEN NEW HEALTH NEW ZEALAND
INCORPORATED
Appellant

AND THE ATTORNEY-GENERAL FOR AND
ON BEHALF OF THE MINISTER OF
HEALTH
Respondent

Date of Hearing: 29 April 2015

Court: Randerson, Miller and Cooper JJ

Counsel: L M Hansen for Appellant
J Foster and A Williams for Respondent

Date of Minute: 29 April 2015

MINUTE OF THE COURT

[1] This is an appeal from a judgment of Collins J delivered on 9 October 2014, in which he held that hydrofluorosilicic acid (HFA) and sodium silico fluoride (SSF) are not medicines under the Medicines Act 1981 (the Act).¹ HFA and SSF are currently used to fluoridate domestic water supplies in New Zealand.

[2] The Judge dismissed the appellant's applications for declarations that HFA and SSF were medicines under the Act, and that the Ministry of Health was required to take all necessary steps to ensure the manufacture, distribution, sale and supply of HFA and SSF complied with the Act and regulations.

[3] Following delivery of the judgment the Medicines Amendment Regulations 2015 (the amending regulations) were made, coming into force on 30 January 2015. The amending regulations provided, as Collins J had determined, that HFA and SSF are not medicines or related products when used in water fluoridation.

¹ *New Health New Zealand Inc v Attorney-General* [2014] NZHC 2487.

[4] In a separate proceeding, commenced under the Judicature Amendment Act 1972 and the Declaratory Judgments Act 1908, the appellant challenges the validity of the amending regulations. The statement of claim in that proceeding includes allegations that prior to the coming into force of the amending regulations and contrary to the High Court's decision, HFA and SSF were in fact medicines. One of the causes of action alleges that the Order in Council was premised on a mistake in law, namely that the legal status of HFA and SSF was not being changed. Another cause of action alleges a failure to take into account as a relevant consideration the fact that HFA and SSF were medicines.

[5] The parties were earlier directed that the fixture for today would determine first whether the appeal was moot. Having heard counsel on the issue we were satisfied that, assuming the amending regulations were validly made, this appeal would be moot. That is the current position, and it remains the case unless or until the regulations are set aside.

[6] However, the outcome and/or reasoning of the High Court decision on the application to set aside the amending regulations may have the result that the appeal is no longer moot. Because of that possibility we decided the best course to follow was to adjourn the appeal pending delivery of the High Court's judgment in that proceeding.

[7] It was adjourned accordingly. When the High Court proceeding is determined, counsel are to advise the Registrar if it is desired to further prosecute the appeal.

[8] Costs on the adjournment are reserved.

Solicitors:
Wynn Williams Lawyers, Christchurch for Appellant
Crown Law Office, Wellington for Respondent