

**IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY  
I te Koti Matua o Aotearoa  
Te Whanganui-a- Tara**

**CIV-2020-485-181**

In the Matter of an application under the Judicial Review Procedure Act 2016, the Medicines Act 1981, the Fair Trading Act 1986, the NZ Bill of Rights Act 1991 and the Health and Disabilities Commissioner Act 1994

Between **NGA KAITIAKI TUKU IHU MEDICAL ACTION SOCIETY INCORPORATED,**  
Plaintiff

**AND THE MINISTER OF HEALTH**  
First defendant

**AND THE DIRECTOR GENERAL OF HEALTH**  
Second defendant,

**AND CHRISTOPHER JAMES**  
Third defendant

**AND THE PRIME MINISTER OF NEW ZEALAND**  
Fourth defendant

**AND THE MINISTER OF COVID RESPONSE**  
Fifth defendant

**AND THE ATTORNEY GENERAL**  
Sixth Defendant

**MEMORANDUM OF COUNSEL FOR PLAINTIFF/APPLICANT  
FOR TELEPHONE CONFERENCE of 22 APRIL 2021**

**Next event: Telephone conference before Hon Justice Ellis  
Date: 22 April 2021 at 10.30am**

This document is filed by:  
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May it please the Court:

1. This memorandum is filed in response to matters raised by the defendants in their memorandum filed yesterday afternoon.

#### **Pfizer NZ**

2. The plaintiff spent much of Monday 19 April attempting to find a contact for service of Pfizer NZ.
  - a) The Crown was unable to provide a contact name, number or email.
  - b) The telephone numbers for PfizerNZ defaulted to an Australian messaging service.
  - c) Counsel was eventually able to make contact with an Australian based sales representative for Pfizer, who kindly agreed to forward an email to the relevant person.
  - d) Soon afterwards Emma Moran of DLA Piper made contact to advise she was authorised to accept service.
  - e) Ms Moran was immediately served with copies of all relevant documents.
  - f) Ms Moran then filed an appearance for PfizerNZ reserving rights.

#### **Standing**

3. The incorporation and purpose of the plaintiff society are explained in the affirmation of **JOSEPH THOMAS RIFICI** dated 14 April 2021. A copy of the purpose of the society is annexed as JTR-B.
4. The relevance of the proceedings to the Society and its members is further explained in the affidavit of **ALAN FRANK SIMMONS** dated 19 April 2021 at paragraphs 1-8 where he explains his membership of the Society, the impact on this challenge on himself, his mother and the considerable amount of communications and information he is privy to from members and related groups and supporters of the society.
5. The standing of incorporated society for judicial review type proceedings challenging the lawfulness of government actions is well established. One similar example challenging decisions under the Medicines Act is "the fluoride case" *New Health New Zealand Incorporated v South Taranaki District Council and the Attorney-General* [2018] NZSC 60 which went to the Supreme Court.

#### **The relief sought**

6. The interlocutory application was amended to seek declarations in accordance with section 15(3) of the Judicial Review Procedure Act 2016 in accordance with court directions.
7. The other issues raised by the Crown stem from:
  - a) The failure of the first defendant to identify the "limited number of persons" that the provisional consent gazetted pursuant to s23(1) of the Medicines Act for the Pfizer vaccine was intended to apply to. Refer Affidavit of Dr ALISON JANE GOODWIN dated 8 April 2021 annexure "G"; and

- b) the unorthodox treatment of this application compared to the expectation that medicines with provisional consent which are still undergoing clinical assessment will be used on a restricted basis (refer AFS- Annexure D -Medsafe Guidelines Part 2 at Para 3.4)
8. Instead the Crown has published a “vaccination rollout plan” which purports to roll out the vaccine to everyone in New Zealand aged 16 and over in four stages (refer JTR-J)
  9. The plaintiff could simply seek a declaration that the gazettal of the Pfizer vaccine is unlawful, and that the entire rollout of the Pfizer vaccine is in breach of the Medicines Act.
  10. Instead the plaintiff has tried to take a more targeted approach, to seek to identify which categories of persons are within the “limited number of patients” envisaged by s23(1).
  11. The starting point is assessing the relative risk of the novel Pfizer vaccine, compared to the risk of harm from Covid-19. Much of this assessment has been undertaken by government advisors including the Medsafe Adverse Reaction Committee (refer AFS-C), and by Pfizer itself in the Safety Data sheet – but then was apparently overlooked in the Crown’s public relations and media campaign which asserts the vaccine has Medsafe approval and is “safe and effective”.
  12. The amended interlocutory application seeks determination by reference to:
    - a) the four Groups in the “vaccination rollout plan”,
    - b) the health and risk factors of individuals within those Groups;
    - c) information sourced from the Crown which identified health and safety concerns, and information gaps about the Pfizer vaccine for people with different medical conditions eg AFS-C Minutes of the Out of Session Medicines adverse Reaction Committee Meeting dated 20 January 2021, published 13 April –at 2.2.1 Cominarty – Risk Management Plan
    - d) the requirement for informed consent explained by Dr Alison Goodwin and in the Health and Disability Code.
    - e) The fundamental rights protected by NZ Bill of Rights Act including:
      - (i) section 10 -the right not to be subjected to medical or scientific experimentation
      - (ii) section 11- the right to refuse medical treatment – reflecting the principle of “Tangata Mana/body sovereignty”
  13. The plaintiff also seeks declarations on the lawfulness of recent assertions by the Crown of “No Jab No Job” for different categories of workers. As a matter of principle can consent can be informed and freely given when it is obtained under threat of loss of employment. Is such a threat lawful and reasonable when the Job is experimental and has only provisional consent. The plaintiff does not seek compensation or other employment remedies for workers.

### **Timing**

14. Counsel for the plaintiff wrote an OPEN LETTER to the defendants on 31 March 2021 which summarised the concerns about noncompliance with the Medicines Act s23(1), misleading and deceptive claims. The Crown has to date failed to provide a substantive response despite its considerable resources compared to the plaintiff.
15. Most of the documentation relied on by the plaintiff is sourced from the Crown.
16. The Plaintiff requires only a handful of documents to prove its case. It has provided other supporting documentation including the affidavit of **DR SIMON JAMES THORNLEY** dated 21 April 2021 to assist with context and to address matters flagged by the court at the first call.
17. It is respectfully submitted that the underlying difficulty for the Crown is that neither the law, nor its own medical documentation, support the scale of the proposed rollout or the claims that this novel vaccine is "safe and effective" (JTR-J).

### **Public interest**

18. There is considerable public interest in:
  - a) The Crown acting lawfully and upholding the rule of law;
  - b) The Crown upholding the integrity of the Medicines Act;
  - c) Ensuring the novel Pfizer vaccine -which is only part way through clinical (safety) trials- is offered only to the limited number of patients where the net benefit clearly outweighs or is likely to outweigh the risks;
  - d) Recognising that Medsafe fine print acknowledges that the Pfizer vaccine does not prevent transmission or infection and that it may result in asymptomatic carriers;
  - e) Ensuring that individuals have access to balanced information to enable informed decisions to be made, including information that the Pfizer vaccine has only provisional consent from Medsafe because safety assessments are not complete;
  - f) Ensuring individuals are able to make decisions about whether or not to accept or reject the Pfizer vaccine without duress;
19. The plaintiff seeks the urgent assistance of the court and the cooperation of the Crown (recognising the public interest and the Crown's obligation to act as a model litigant) to assist with preparing this case for urgent determination.



S J Grey

Counsel for plaintiff