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Probitas Court Case Raises Questions

The recent Tauranga District Court decision against the Probitas fertiliser company raises questions, whichever side of the fertiliser debate one is on. In the case, the Commerce Commission laid charges against Probitas under the Fair Trading Act for making false and misleading claims about its fertiliser product.

If you are an advocate of a traditional, inorganic chemical fertiliser regime, you are likely to see this decision as a victory for, and an endorsement of granular fertilisation. If, on the other hand, you see plant growth and productivity as involving more than soil chemistry, you are likely to view the decision with some dismay, for the court decision could seem to imply that alternatives to the status quo have been discredited.

Before commenting further, I need to state that I was not at the court and didn't hear the evidence presented. However, after reading several of the press reports of this trial, some areas of concern present themselves. Firstly, Probitas apparently did not seek any legal representation but was instead represented by its own company director. Secondly, apparently the company presented no evidence on its own behalf and seems simply to have relied on attacking the credibility of the key prosecution witness. Without any evidence to consider, other than that presented by the prosecution, and no legal representation to raise any pertinent issues, is it too surprising that the court found against the defendant? Thirdly, the press reports associated with this trial suggest that Probitas may have as many as one thousand satisfied clients using their fertiliser products up and down New Zealand. It's hard to believe that so many farmers would be "sucked in" if this fertiliser is only "snake oil."

Please don't get me wrong, I'm not writing to defend Probitas, or any of its products, or the actions of any of its personnel. What does concern me, is that rightly or wrongly, the decision of the court creates an impression that anyone doing anything within the fertiliser industry that does not fit under the traditional status quo umbrella, is suspect. This is unfortunate, because in any industry, much of the innovation and improvement is often driven by the smaller players on the fringes, rather than the main players.

The New Zealand fertiliser industry today is still dominated by a few big companies. However, there are also many more companies selling fertiliser products now than was ever the case in the past. Some of the products on offer may indeed be unproven, and, if they are suspect, they will not survive. Farming and farmers are also changing. There is a growing awareness that agriculture is not just about applying more and more inorganic nutrient to the soil; rather, it is about "working with nature," getting the balance right and stimulating and encouraging the biology within the soil. It is about being sustainable and good stewards of the both the soil resource and our environment. Increasingly, farmers are understanding that soil biological processes are the main drivers of soil fertility.

Whether the final chapter of the Probitas story has been written is as yet unclear. If the District Court decision is appealed, then a higher court will hopefully have the opportunity to consider and weigh the evidence from both points of view and judge accordingly.