IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

CIV 2005-485-999

IN THE MATTER OF	Part 1 of the Judicature Amendment Act 1972 and Rule 623 of the High Court Rules
AND	
IN THE MATTER OF	The Contraception, Sterilisation and Abortion Act 1977
BETWEEN	RIGHT TO LIFE NEW ZEALAND INC Applicant
AND	THE ABORTION SUPERVISORY COMMITTEE Respondent

Hearing: 7 September 2009 (On papers)

Counsel: P D McKenzie QC and I C Bassett for the Applicant
C Gwyn and W Aldred for the Respondent

Judgment: 9 September 2009

JUDGMENT OF MILLER J
(AS TO COSTS)

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[1] Both sides move for costs following my judgments of 9 June 2008 and 3 August 2009.

[2] The applicant seeks costs on a 2B basis, less an allowance for the unsuccessful relief hearing. The respondent seeks costs of the entire proceeding on the same basis, alternatively a direction that costs lie where they fall.

[3] In my first judgment I held:

> Having succeeded in part, the applicant is entitled to costs, which I am minded to set on a 2B basis with provision for two counsel. Memoranda may be filed if costs cannot be agreed.

[4] Having refused relief, I held in the second judgment:

> In my judgment of 9 June 2008, I held that the applicant was entitled to costs, which I was inclined to set on a 2B basis with provision for two counsel. While it remains the position that the applicant has been successful overall, it has failed on this part of the case and some allowance ought to be made for that. Counsel may file memoranda if costs cannot be agreed.

[5] The central question is which party may claim victory. The respondent maintains that it succeeded in defending a substantial part of the application for review on each of the pleaded grounds. Further, it succeeded in staving off the claim for relief. At best, this could be regarded as a case in which the parties enjoyed a similar degree of success, viewed overall.

[6] I accept that the applicant failed on some important limbs of its argument, in particular the question whether the unborn child enjoys the right to life under the legislation. However, I remain of the view that the applicant succeeded in substantial part and is entitled to costs. Success is not simply a matter of tallying up outcomes on each cause of action. Nor in the circumstances of this case is it to be measured by the relief ultimately obtained. The applicant succeeded on the central question, whether the respondent had misinterpreted its statutory functions and powers in relation to the work of certifying consultants. Both parties also contested the question whether the abortion law is being complied with, and the applicant also succeeded on that aspect of the case.

[7] Accordingly, the applicant will have costs for the first hearing, with an adjustment in the respondent's favour for the costs of the relief hearing.

[8] Mr McKenzie calculates the costs of the first hearing at $$45,954.26, and Ms Gwyn calculates the costs of the second at $3,440, all on a 2B basis. Ms Gwyn has not indicated whether she accepts the applicant's calculation of its costs. In the absence of any apparent dispute, I have not checked the figures. Rather than fix the amount, I will simply order that the applicant will have costs of the first hearing less

costs of the second, all calculated on a 2B basis with provision for two counsel. I will reserve leave to apply in the event that there is a dispute about the calculation.

Miller J

Solicitors:
P J Doody, Christchurch for the Applicant
Crown Law, Wellington for the Respondent