

IN THE SUPREME COURT OF NEW ZEALAND

SC 73/2011  
[2012] NZSC 89

BETWEEN                      RIGHT TO LIFE NEW ZEALAND INC  
   Appellant

AND                              THE ABORTION SUPERVISORY  
   COMMITTEE  
   Respondent

Court:                      Elias CJ, Tipping, McGrath and William Young JJ

Counsel:                  P D McKenzie QC for Appellant  
   C R Gwyn and W L Aldred for Respondent

Judgment:                25 October 2012

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**JUDGMENT OF THE COURT (COSTS RECALL)**

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**The recall application is dismissed.**

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**REASONS**

[1]     The appellant, Right to Life, applies for recall of that part of the judgment of this Court in this appeal which dealt with costs,<sup>1</sup> on the ground that no direction was given in relation to the costs orders made in the Court of Appeal. That Court had ordered Right to Life to pay costs for a complex appeal to the Abortion Supervisory Committee. The appellant says that, as a result of its partial success in this Court, the Court of Appeal's costs order should be set aside.

[2]     Two points are made in support. First, the appellant submits that the approach of this Court differed from that of the Court of Appeal regarding the observations made by Miller J in the High Court. The Court of Appeal was critical

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<sup>1</sup>     *Right to Life New Zealand Inc v Abortion Supervisory Committee* [2012] NZSC 68.

of the comments and said that they should not have been made and that they had no legal effect. This Court said what Miller J said did not amount to conclusions on the issues before him and were the type of comments on the materials before the Court which it is not uncommon for a judge to make.<sup>2</sup> The sole point of agreement with the Court of Appeal was that the observations had no legal effect. In these circumstances the appellant argues that this Court agreed with its submissions on this ground of appeal.

[3] Secondly, the appellant submits that its partial success on the central issue before the Court – whether the Abortion Supervisory Committee had the power to review or scrutinise the decisions of certifying consultants and form its own view about the lawfulness of their decisions to the extent necessary to perform its functions – demonstrates that it properly brought before the Court matters relating to the interpretation of relevant sections of the Contraception, Sterilisation and Abortion Act 1977.

[4] Under the Supreme Court Rules, this Court may make any orders that seem just concerning the whole or any part of the costs and disbursements of a civil appeal or an application to bring such an appeal.<sup>3</sup> One of the principles identified by this Court in the application of this rule is that it will rarely be just to require a successful party to bear the full costs of its case.<sup>4</sup>

[5] This Court's judgment upheld the Court of Appeal's finding that the Abortion Supervisory Committee was not empowered to review the decisions of clinicians in individual cases. The appellant did not succeed on that argument. On the other hand, the Court also held that the Committee's functions included undertaking general inquiries to keep under review the provisions of the abortion law and to ensure consistency of the administration of the law throughout New Zealand. Overall, both parties had some success on this issue.

[6] The Court also decided not to interfere with the Court of Appeal's costs orders. That was a considered decision of the majority although the reasons for it

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<sup>2</sup> At [49].

<sup>3</sup> Supreme Court Rules 2004, r 44(1).

<sup>4</sup> *Prebble v Awatere Huata* [2005] NZSC 18, [2005] 2 NZLR 467.

were not stated explicitly. The decision took into account both parties' partial success in the appeal, but also the many other grounds addressed in the Court of Appeal's judgment on which Right to Life was not given leave to appeal by this Court. In these circumstances, this Court decided that the just outcome was to leave the Court of Appeal's costs orders in place. All members of the Court are of the view that the appellant's submissions show no basis for recalling that or any other aspect of this Court's costs orders.

[7] The recall application is accordingly dismissed.

Solicitors:  
P J Doody, Christchurch for Appellant  
Crown Law Office, Wellington for Respondent