



Right to Life New Zealand Inc. v. Abortion Supervisory Committee (Judgment on Declaratory Relief)

[2009] NZHC 1215

Country: New Zealand

Region: Oceania

Year: 2009

Court: High Court

Health Topics: Health care and health services, Health systems and financing, Sexual and reproductive health

Human Rights: Right to life

Facts

In an earlier decision - *Right to Life New Zealand Inc v the Abortion Supervisory Committee* [2008] NZHC 865 - the presiding judge reserved his opinion on whether he ought to order declaratory relief in favour of the applicant, *Right to Life New Zealand Inc (RTL)*. In that case RTL successfully argued that the respondent, the Abortion Supervisory Committee (the Committee) was not properly carrying out its statutory duty to oversee abortion law in New Zealand. Specifically, it misinterpreted its statutory functions by refusing to review particular decisions by certifying consultants, who enjoyed statutory authority to authorise or refuse abortions in any given case. RTL argued that because the Court found against the Committee, it was entitled to relief in the form of a declaration from the Court to clarify the Committee's statutory functions regarding abortion law.

In response, the Committee argued that declaratory relief was unnecessary and inappropriate, and would result in the Court effectively rewriting the abortion legislation. The Committee asserted the original judgment speaks for itself and further declarations on the matter would likely lead only to further confusion. Moreover, declarations are not needed to vindicate any of the applicant's rights, as it had not suffered any serious prejudice.

Decision and Reasoning

The Court declined to make the declarations sought by RTL. The Court noted that declaratory relief is discretionary, but that once an applicant has established a ground for intervention, it is generally entitled to relief. The Court found that the applicant had suffered prejudice as it acted for the interests of the unborn child that were protected under statute and which were being materially adversely affected by the liberal application of abortion law in New Zealand.

Nevertheless, there were five reasons why declaratory relief was inappropriate in these circumstances:

The previous judgment speaks for itself in regards to how the Committee should properly carry out its statutory functions;

There is no reason to suppose the Committee would fail to comply with the previous judgment;

Parliament supervises the Committee's functions and can hold it to account if it does not administer the abortion law honestly;

The declarations risk inappropriately restricting the Committee's statutory discretion in carrying out its statutory functions;

The declarations exceed the statutory language and risk becoming a substitute for it.

The Court also noted that any declaratory relief would not infringe the freedom of speech for Parliamentary proceedings within the Bill of Rights as it would not impose requirements on the Committee's reports to the House of Representatives.

Decision Excerpts

“[9] I also accept that the applicant can point to prejudice, albeit not to the applicant itself. Contrary to Mr McKenzie's oral submissions, unborn children as a class are not party to this proceeding . . . Nor can the applicant represent them in any formal sense, although I readily accept that it acts in their interests. However,

I held that Parliament recognized the interests of the unborn child in the substantive criteria and the procedures of the abortion law. Although parliament must have deliberately decided not to spell out any legal rights in an unborn child . . . the legislation does assert a state interest in protecting it . . . the matter is handled indirectly by surrounding the lawful termination of a pregnancy with the precautionary process of authorization by two certifying consultants which must be obtained if the abortion is not to breach the criminal law. I accept accordingly that there would be prejudice to unborn children, to the extent that the Committee's misunderstanding of its statutory functions contributed to abortions being authorized unlawfully. I held, without reaching a final conclusion on the point, that there is reason to believe the law is being applied more liberally than Parliament intended.

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