



## Shortland v. Northland Health Ltd.

Shortland v. Northland Health Ltd., [1998] 1 NZLR 433 (HC) (N.Z.).

**Country:** New Zealand

**Region:** Oceania

**Year:** 1998

**Court:** High Court

**Health Topics:** Chronic and noncommunicable diseases, Health care and health services

**Human Rights:** Right to life

### Facts

W suffered from Type II diabetes and was admitted to the hospital of the respondent (Northland Health Ltd) with chronic renal failure and brain damage in September 1996. He was discharged after he received dialysis and his condition improved. He was readmitted to hospital in June 1997 with end stage renal failure, the only cure for which is a renal transplant with dialysis being administered to a patient pending transplant. From June to September 1997 W was assessed by a team of specialists for his suitability for acceptance onto a dialysis treatment programme. The team concluded that, as dialysis is extremely demanding on the patient and requires a great deal of patient co-operation and participation, W's impaired mental state meant that he was incapable of performing any form of home dialysis. Furthermore, they concluded that dialysis was unlikely to improve his quality of life or improve his diabetes and dementia. On 3 September 1997, S, a spokesperson for the family of W, received notification from Northland Health that W had not been accepted onto the renal replacement programme and that interim dialysis treatment would be discontinued on 17 September 1997. S instituted judicial review proceedings on behalf of W in the High Court and applied for an interim order requiring the provision of dialysis treatment. He alleged that the decision to discontinue treatment was a breach of Northland Health's statutory duty. The application was dismissed. On appeal it was argued that, inter alia, the decision to discontinue dialysis was unlawful as it breached s 8 of the Bill of Rights Act 1990 which provides that: 'No one shall be deprived of life except on such grounds as are established by law and are consistent with the principles of fundamental justice.'

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### Decision and Reasoning

In dismissing the appeal, it was held that:

Section 151 of the Crimes Act 1961 places a legal duty on Northland Health to supply W with 'the necessaries of life'. A failure to perform that duty 'without lawful excuse' can lead to criminal responsibility. This position is related to Art 6(1) of the International Covenant on Civil and Political Rights which states that: 'Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life', and the understanding of Art 6(1) elaborated by the United Nations Human Rights Committee in General Comment 6/16 on that provision, which was adopted on 27 July 1982.

The extent of the duty to provide the necessaries of life must be assessed in the context of the intensive appraisal of W's condition by the clinical team which had knowledge of his condition and his ability to benefit from dialysis.

The court is concerned with the lawfulness of the decision to discontinue dialysis and not with the likelihood of the effectiveness of the treatment (R v Cambridge Health Authority; ex parte B [1995] 1 WLR 898, 905 (UK E&W CA) applied). In light of the careful assessment of W by the clinical team, who had come to a bona fide decision that the cessation of treatment was in his best interests, Northland Health could not be said to be in breach of its duty to provide the necessaries if life.

In addition, the refusal to provide dialysis treatment would not 'deprive' W of life in terms of s 8.

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## Decision Excerpts

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