IN THE SUPREME COURT OF NEW ZEALAND

SC 73/2011 [2011] NZSC 97

BETWEEN RIGHT TO LIFE NEW ZEALAND INC

Appellant

AND THE ABORTION SUPERVISORY

COMMITTEE Respondent

Court: Blanchard, Tipping and McGrath JJ

Counsel: P D McKenzie QC and I C Bassett for Appellant

C R Gwyn and W L Aldred for Respondent

Judgment: 26 August 2011

JUDGMENT OF THE COURT

A Leave to appeal is granted.

B The approved grounds are:

- (a) Whether the respondent Committee's functions under ss 14(1)(a), (i) and (k) and 36 of the Contraception, Sterilisation and Abortion Act 1977 empower it 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.
- (b) If so, whether there is any evidential foundation for the High Court's finding that "the approval rates [for abortions] seems remarkably high, bearing in mind that under s 187(A) [of the Crimes Act 1961] the consultants must form a good faith opinion that continuance of the pregnancy would result in serious danger to the mother's health".
- (c) Whether the High Court has jurisdiction to consider whether certifying consultants are obeying the "abortion law" (as defined) and, if so, whether there is any evidential foundation for the High Court's

finding that "there is reason to doubt the lawfulness of many abortions authorised by certifying consultants".

REASONS

[1] We decline leave to appeal on all other grounds raised by the appellant (being those encompassed in paragraphs 1.9–1.19 of the application for leave dated 28 June 2011) because it is plain that the legislation was based on the premise of the "born alive" rule, in the face of which the proposed arguments are untenable. Likewise the proposed argument concerning independence of counselling cannot succeed for the reasons given by the Court of Appeal.

Solicitors:

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