IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE

CIV-2024-485-000588
[2024] NZHC 2976

UNDER	the Declaratory Judgments Act 1908
IN THE MATTER	of the advance directive of Francis Manewha Shaw dated 16 September 2022 and the medical instructions provided by Francis Manewha Shaw dated 9 August 2024
BETWEEN	THE CHIEF EXECUTIVE OF THE DEPARTMENT OF CORRECTIONS First Plaintiff
	HEALTH NEW ZEALAND (TE WHATU ORA) Second Plaintiff
AND	FRANCIS MANEWHA SHAW Defendant
	CAMERON SHAW, JANE MAXINE SHAW, RIKIHANA JAMES PORTER, TE ARA HOU RIKIHANA MIHIKOTUKUTUKU, DALE SHAW, PIKIHUIA HAENGA, MARTIN SHAW Interested Parties

Hearing:	10 October 2024
Counsel:	A P Lawson and A M Powell for First Plaintiff I H V Reuvecamp for Second Plaintiff F E Geiringer and G L Edgeler for Interested Parties W L Aldred KC and K O M Fitzgibbon – Counsel appointed to assist the Court
Judgment:	11 October 2024

REASONS JUDGMENT OF RADICH J

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[1] Mr Shaw has, since 2 July 2024, been serving a sentence of imprisonment at Rimutaka Prison.

[2] He arrived at the prison on 15 July 2024. On 17 July, he notified health staff at the prison that he was on a hunger strike and that he had not eaten since his arrival.

[3] On 4 August 2024, Mr Shaw provided staff with an advance directive dated 16 September 2022 and confirmed that it was to apply for the duration of his hunger strike. The directive is discussed in further detail shortly. It provides that he does not want to receive any medical treatment in any period during which he is on a hunger strike.

[4] The Chief Executive of the Department of Corrections (Corrections) and Health New Zealand (Te Whatu Ora)[1] seek:

(a) a declaration that Mr Shaw's advance directive, and his associated medical instructions dated 9 August 2024, are valid; and

(b) a declaration that all Corrections and Te Whatu Ora staff and agents will have a lawful excuse for adhering to the advance directive and medical instructions.

[5] The declarations sought are prospective in the sense that they would apply from the point in time at which Mr Shaw no longer has, due to the effects of his hunger strike, decision-making capacity.

[6] The proceeding was filed on 19 September 2024. An initial hearing (of the substantive proceeding under urgency) was held before La Hood J on 25 September 2024. It was adjourned *sine die* for reasons explained by La Hood J in a minute of 26 September 2024.[2] By way of summary, Mr Shaw had indicated, through his

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1 Te Whatu Ora was joined as a plaintiff in the proceeding on 20 September 2024 as it might need to provide care to Mr Shaw should a transfer to hospital be required.

2 *Chief Executive of the Department of Corrections v Shaw* HC Wellington CIV-2024-485-588, 26 September 2024 (Minute of La Hood J).

whānau who had at that hearing been joined as interested parties, that he may resume consumption of fluids if it was agreed that the proceedings be paused to allow his whānau to meet with him along with the Tumu Whakarae (Chief Executive) of Te Rūnanga o Toa Rangitira for the purpose, primarily, of advancing his political objectives.

[7] Yesterday's hearing, which began at midday, was scheduled only yesterday morning at the first plaintiff's request on the basis that Mr Shaw has refused to consume any liquids, including water, since the morning of 7 October 2024 and following confirmation from the prison doctor that his health will deteriorate quickly if he does not start drinking again and that he could die within three to five days.

[8] This decision provides reasons for the oral results decision I gave at the conclusion of the hearing last night.[3]

The terms of the advance directive

[9] The first advance directive (in the evidence) that was given by Mr Shaw was dated in February 2020. In it, Mr Shaw said that:

> I … advise that if I am not competent to make a decision about the health care or treatment, I decline to accept the following treatment/s
>
> - cardiopulmonary resuscitation
> - medications (eg antibiotics)
> - intravenous fluids
> - nasogastric feeding
>
> I confirm that I have received, and understand, information about the risks, and consequences of my decision.

It provided that he understood that "continuing to hunger strike and refusing interventions will hasten my death".

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3 *Chief Executive of the Department of Corrections v Shaw* [2024] NZHC 2959.

[10] The advance directive was completed on a pre-printed Rimutaka Prison form. On 16 September 2022, Mr Shaw prepared, in his own words, a further advance directive. It includes the following content:

> I, Francis Manewha Shaw, make this directive to avoid any doubt that I do not want to receive any medical treatment during any period when I am on a hunger strike.
>
> I have made this decision freely after long and detailed consideration of the options available to me to address constitutional injustices and demand a just constitution for New Zealand that restores the mana of all the parties to the Treaty of Waitangi.
>
> I am very well informed about the health implications of a hunger strike. I have undertaken two extended hunger strikes while in prison previously.
>
> I intend the directive to apply under all circumstances that might arise during a hunger strike. My hunger strikes are political actions not evidence of illness.

The document went on to say that Mr Shaw would not accept any assessment of his mental health from a medical practitioner or a psychologist. He said in the document that it replaced all previous directives he had given.

[11] On 9 August 2024, a Corrections officer and the health centre manager completed a hunger strike management care plan for Mr Shaw. It is a detailed document which expands upon the term of the advance directive. It identifies impacts that hunger strike will have on his nervous system, immunity, wound-healing abilities, cardiovascular system, respiratory system, organs and muscles. It explains the changes that he might experience in each case (cognitive changes, infection, heart attack, shortness of breath, kidney failure and heart failure just to name a few) and provides in each case Mr Shaw's instructions, rejecting the provision of medical attention.[4]

[12] If there could be any doubt about Mr Shaw's intentions, on the basis of the two primary documents, the position was resolved through the terms of the written prison daily records since 15 July. They are many and detailed, but make it clear that he was well aware that his hunger strike could result in multiple significant medical complications and could lead to his death. Just to take a few examples:

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[4] With some minor exceptions such as providing hydrating cream for dry lips, having a blanket if cold and having his whānau called in certain situations.

(a) he said to a nurse on 18 August that he knows he might suffer from a stroke at any time;

(b) he said to a medical officer on 19 August that he was aware that organ damage could be caused – and most likely was being caused – and that he understood that the consequences of his actions were organ failure and/or death;

(c) he said to a principal primary health adviser on 21 August that he was fully aware of the damage his body was being subjected to (which was explained to him) and that "he felt he had maybe another week before things became so bad they could not be retrieved". The notes for that day include an entry that reads "when asked about what he was hoping to achieve he was clear that his death would create a response that would unite Māori in the push to self-determination".

(d) in a conversation with a nurse on 22 August, he said that he felt that he probably had a week left.

[13] Entries along similar lines continued throughout September.

Factual background

[14] Mr Shaw's sentence of imprisonment is for 10 months and 14 days following convictions for common assault, assault with a weapon and possessing an offensive weapon. The sentence began on 2 July 2024. His sentence end date is 28 May 2025. His statutory release date is 20 December 2024.

[15] This is day 103 of Mr Shaw's hunger strike. Since 18 July:

(a) custodial and medical staff have monitored him closely and have offered him food and drinks regularly;

(b) he has declined all food;

(c) he has requested voluntarily and consumed fluids from time to time including water, tea, coffee, milo, smoothies and Up&Go (a breakfast replacement drink).

(d) medical staff have provided treatment and assistance to him only in the terms described in his directives; and

(e) he has been offered but declined any psychiatric or psychological services.

[16] Mr Shaw has been segregated under s 60 of the Corrections Act 2004 for health oversight. On 7 October 2024, he was moved from the health bed cell in the intervention and support unit at Rimutaka Prison to one of the other cells in that unit after he rendered the health bed cell unusable by destroying various parts of it, including the bed itself and the emergency call buttons. He is unhappy with his present accommodation.

Evidence filed

[17] Detailed and helpful evidence has been filed by Corrections and Te Whatu Ora. I describe the evidence filed in general terms to the extent that it is relevant to the assessments that follow.

[18] Dr Michael Worobiec, a medical officer for the Department of Corrections, has described the health consequences for a person on a hunger strike over the course of time which can include fatal consequences usually between 55 and 75 days following organ failures. He has referred to Mr Shaw, nonetheless, being able to answer questions clearly about his advance directive and has concluded that he does not appear to be suicidal. He will, it is said, need to be transferred to a hospital setting at some point.

[19] Dr Jacqueline Short is a forensic psychiatrist with Te Whatu Ora. She describes the way in which the Forensic and Rehabilitation Service has not at any time been able to assess properly Mr Shaw's capacity to make the decision to proceed with the hunger strike and to refuse any kind of intervention, including treatment such as the provision

of artificial nutrition and hydration, because of his unwillingness to engage in any form of assessment. The view of Dr Barry-Walsh, a forensic psychiatrist whose report is appended to Dr Short's affidavit, is that, while an assessment could not be undertaken, a review of the materials did not, in Dr Barry-Walsh's view, reveal any evidence that he might have a psychiatric disorder that would influence his capacity.

[20] Associate Professor Angela Ballantyne is an Associate Professor of Bioethics at the University of Otago, Wellington School of Medicine. She explains that it is a cornerstone of medical ethics that the voluntary decisions of competent individuals should be respected, including through advance directives. She explains the broad consensus within medical professional bodies and in codes of medical ethics that respect for autonomy extends to respecting a competent person's voluntary refusal of food and artificial nutrition, including incarcerated people.[5] Associate Professor Ballantyne goes on to explain that a hunger strike is not morally equivalent to suicide. A person performing a hunger strike is presumed competent. They make a sustained and repeated choice, consciously and deliberately, to refuse food as a form of protest while, primarily, suicide attempts are viewed as both impulsive and irrational. While there is a generic ethical obligation on health providers to prevent suicide, that should not, it is said, be taken as a warrant to ignore a valid and competent refusal of nutrition in the context of a hunger strike.

[21] Dr Andries Cromhout is a specialist in emergency medicine and the interim Chief Medical Officer of Te Whatu Ora Capital, Coast and Hutt Valley district. He explains what would happen, in practical terms, to Mr Shaw in the context of four possible scenarios. If Mr Shaw was to break his fast voluntarily and accept treatment or if the Court otherwise makes a decision that would declare his advance directive to be invalid, then he would likely be admitted to hospital. Dr Cromhout explains the significant difficulties that would be faced by health practitioners, from an ethical perspective if Mr Shaw's advance directive was not upheld and he needed to receive nutrition as a consequence. It is, Dr Cromhout says, contrary to the fundamental principle of respect for individual autonomy for someone like Mr Shaw to be sedated

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5 She refers, for example, to the World Medical Association Declaration of Tokyo 1975 and the Declaration of Malta on Hunger Strikers 1991 and to the 2006 position of the World Medical Association which condemns all forced feeding.

deeply (as would become necessary – and for up to a couple of weeks) to allow slow feeding. He would, in addition, need to be intubated (through placement of a breathing tube down his trachea) and ventilated (through a breathing machine). Alternatively, if the directive is declared to be valid, then palliative care can be provided, either in the hospital or in prison.

[22] Dr Karl Geiringer is Mr Shaw's general practitioner. He has explained the way in which Mr Shaw had discussed with him, in February 2023, his wish for a new advance directive, to be prepared in relation to his intention to begin a hunger strike when next incarcerated. Dr Geiringer's consultation notes include the following entry:

> Should he commence a hunger strike in prison, Francis recognises that as a result of not eating there are a number of medical events such as cardiovascular, central nervous system events that would take place in the latter stages some of which would cause irreversible damage and then death.

[23] The notes go on to record that Mr Shaw had undertaken previous hunger strikes and that he is well versed on the history of prison strikes including those that have resulted in the death of inmates – referring to Bobby Sands.

[24] Dr Monasterio is a consultant psychiatrist. He was engaged by Te Whatu Ora to interview and assess Mr Shaw but Mr Shaw declined to see him. Nonetheless, from reading Mr Shaw's clinical files and reviewing a media interview with Mr Shaw, Dr Monasterio was able to conclude that there was no evidence that Mr Shaw suffers or has suffered from a mental illness, intellectual impairment or medical conditions which would impair his decision-making capacity. There is no indication, Dr Monasterio has said, that Mr Shaw does not have decision-making capacity in relation to the undertaking of his hunger strike, his advance directive and the medical instructions he has given.

[25] Dr Monasterio went on to express the opinion that death by hunger strike in this instance cannot be equated with suicide. As he explained, the deliberate taking of one's life is the clinically agreed definition of suicide, whereas Mr Shaw has denied consistently suicidal ideation or intent. He has reported that the hunger strike is driven by a political cause and that its purpose is to draw attention to that cause. The reported

purpose, therefore, is not to die but to achieve these political aims. While Mr Shaw appears to realise that the hunger strike may lead to his death, that is not his purpose.

[26] Dr Jonathan Adler is a consultant palliative medical physician at Wellington Regional Hospital. His evidence aligns with that of Dr Monasterio in explaining that a competent person's freedom to make voluntary health-care decisions is in keeping with clinical recommendations on best practice, even if the decision from a medical perspective is seen to be unwise. In the absence of clear evidence of incapacity, Dr Adler says, a decision to go on a hunger strike is a strategic and political decision, not a medical one.

[27] Dr Rees Tapsell is a consultant psychiatrist who was appointed by the Court as an expert under r 9.36 of the High Court Rules 2016. He is the Director of Clinical Services for Te Whatu Ora in Waikato and is the Clinical Director of the Midland Regional Forensic Psychiatric Service. He focuses on the interface between Māori cultural concepts and the provision of forensic psychiatric services to Māori, having published extensively in the area. In Dr Tapsell's first affidavit for the Court in late September, he expressed some concern that the advance directive he had seen did not include an express acceptance on the part of Mr Shaw that his ongoing hunger strike could lead to severe disability and/or death and expressed a concern about the possibility that he might lack capacity. It was not clear to Dr Tapsell that Mr Shaw had accepted that his refusal to eat would in fact end his life. Dr Tapsell expressed the view that the directive was inadequate and should not be accepted by the Court unless it is first rewritten to include all potential serious consequences of refusing medical intervention, including serious disability and/or death.

[28] In a further affidavit, completed by Dr Tapsell just before the hearing yesterday, he referred to the broader range of documents that I have referred to in [11] and [12] above. While Dr Tapsell refers to the way in which these documents contain discussions about the consequences of Mr Shaw's hunger strike and refer to death as a potential consequence, Dr Tapsell, understandably, would prefer ("expect", as he put it) a single document that records all of the common and severe consequences of the hunger strike decision, which is signed by Mr Shaw and a suitable qualified staff member, which outlines Mr Shaw's explicit wishes and which includes a clear

statement by the doctor that there are no grounds to assume that he might be incompetent.

The positions of the parties

[29] The parties all addressed the requirements of a valid advance directive in New Zealand, whether the advance directive in this case was valid and whether, in any event, authorities on whether or not a hunger strike could be equated with suicide and on the relevance of Mr Shaw's incarceration were such as to warrant the declarations being made.

[30] The parties' submissions are incorporated within the analysis that follows.

The validity of the advance directive

[31] The Code of Health and Disability Services Consumers' Rights (the Code)[6] provides that every consumer may use an advance directive in accordance with the common law.[7] The code defines an advance directive as:

> a written or oral directive – (a) by which a consumer makes a choice about a possible future health care procedure; and (b) that is intended to be effective only when he or she is not competent.[8]

[32] "Choice" is defined as a decision to receive, refuse or withdraw consent to services.

[33] As Ms Lawson said, there is no statutory guidance about the requirements of a valid advance directive in New Zealand and the common law has not developed far in dealing with them. Panckhurst J in *Department of Corrections v All Means All* confirmed that a valid advance directive could be put in place by a hunger-striking prisoner but did not consider expressly the requirements of a valid advance directive.[9]

[34] In the United Kingdom, in *Re T (adult: refusal of medical treatment)* the Court of Appeal found in 1992 that, in considering the validity of an advance directive, the

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6 Made under the Health and Disability Commissioner Act 1994.
7 Code, right 7(5).
8 Code, cl 4.
9 *Department of Corrections v All Means All* [2014] NZHC 1433, [2014] 3 NZLR 404.

Court needs to consider the person's capacity at the time it was made, whether it represents the person's independent decision, and not the will of others, whether the refusal is vitiated by the person having misleading or insufficient information about the decision, and what the scope of the advance directive is.

[35] Subsequently, the requirements of advance directives in the United Kingdom have been addressed in the Mental Capacity Act 2005. The focus under that Act is on competency, decision-making capacity, the voluntary nature of the disclosure and the sufficiency of information communicated to its writer about the consequences of their decision.

[36] As Ms Reuvecamp said, the law recognises the right of a person to make decisions about their own body. It is unlawful to touch another person without their consent when delivering health and disability services, without some lawful justification or excuse. The provision of informed consent provides a lawful justification or excuse for something that may otherwise constitute an assault or battery in criminal law, or a trespass to the person in civil law.[10]

[37] As Associate Professor Ballantyne explained, these principles apply also to the provision of treatment to people while in prison, including in the context of a prisoner who goes on hunger strike. In that context, as Ms Reuvecamp has observed, the World Medical Association has made it clear that, from its perspective, forcible feeding is never ethically acceptable, even if intended to benefit.[11]

[38] Relevant statutory provisions do not affect the application of the principles I have discussed to the provision of treatment while in prison. Under the Crimes Act 1961, people detained by Corrections are "vulnerable adults".[12] As a result, Corrections has a legal duty to provide prisoners with necessities and to take reasonable steps to prevent them from injury.[13] Moreover, any person who has actual care and charge of a vulnerable adult may be criminally responsible for omitting to

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10 *Airedale National Health Service Trust v Bland* [1993] AC 789; *R (Burke) v General Medical Council* [2005] EWCA Civ 1003, [2006] QB 273 at [30].

11 World Medical Association *WMA Declaration of Malta on Hunger Strikers* (World Medical Association, 1991).

12 Crimes Act 1961, s 2(1).

13 Section 151.

discharge or perform the duty, if it were a major departure from the standard of care expected of a reasonable person to whom that duty applies and who performs the unlawful act. There could be responsibility also for manslaughter and for failing to protect a vulnerable adult.[14]

[39] Under the Corrections Act 2004 and the Corrections Regulations 2005:

(a) The purpose of the corrections system is to (among other things) improve public safety and contribute to the maintenance of a just society by ensuring that sentences are administered in a safe, secure, humane and effective manner.[15]

(b) The Chief Executive, prison managers and Corrections officers are required to ensure the safe custody and welfare of prisoners, who must be provided certain minimal entitlements including access to a "sufficient quantity of wholesome food and drink" and reasonably necessary medical treatment.[16] The Chief Executive must ensure that the health needs of prisoners are promptly met and that, as far as practicable, their physical and mental health is maintained to a satisfactory standard.[17]

[40] The duties and obligations under the Corrections Act and Regulations are not enforceable directly in the Courts but a failure to meet the duties could support civil claims.[18]

[41] As Lord Steyn said in *R v Secretary of State for the Home Department, ex parte Simms*:[19]

> A sentence of imprisonment is intended to restrict the rights and freedoms of a prisoner. Thus the prisoner's liberty, personal autonomy as well as his freedom of movement and association are limited. On the other hand, it is

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14 Sections 160 and 171.
15 Corrections Act 2004, s 5(1)(a).
16 Sections 8(1)(b), 12(b) and 14(1)(a), 69–78.
17 Corrections Regulations 2005, cls 72(b) and (d).
18 *Cuttance v Attorney-General* [2022] NZHC 1766.
19 *R v Secretary of State for the Home Department, ex parte Simms* [2002] AC 115 (HL) per Lord Steyn at 120.

> well established that "a convicted prisoner, in spite of his imprisonment, retains all civil rights which are not taken away expressly or by necessary implication.

[42] Accordingly, the provisions I have described do not affect Mr Shaw's fundamental right to make the decisions he has made.

[43] I do not see Mr Shaw's right to make decisions about his medical treatment as being inconsistent in any way with the application of relevant rights under the New Zealand Bill of Rights Act 1990. A number of rights are engaged here: the right not to be deprived of life,[20] the right not to be subjected to torture or cruel treatment,[21] the right to refuse to undergo medical treatment,[22] freedom of expression,[23] the right to manifest one's beliefs[24] and the right of persons arrested or detained to be treated with humanity and with respect for the inherent dignity of the person.[25]

[44] As the Court of Appeal said in *B and B v Director-General of Social Welfare*, in addressing the different and separate rights of a child to life and of the child's parents to manifest their religion, at points of potential conflict (in circumstances not ultimately dissimilar to those that are faced in this case) the conflict is not best resolved by employing s 5[26] but, rather, on the basis that rights are to be defined so as to be given effect compatibly.[27] Respecting Mr Shaw's advance directive in the circumstances I have described not only upholds his right to refuse to undergo medical treatment but is not at odds with other rights, as I have identified them. For example, in *S v Attorney-General*, Ellis J found that for the positive duty on custodial authorities to protect and keep detainees safe from harm to be breached, there would need to be an "unacceptable and serious departure from the standard of care expected of a reasonable person in the position of the detaining authority".[28]

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20 New Zealand Bill of Rights of Act 1990, s 8.
21 Section 9.
22 Section 11.
23 Section 14.
24 Section 15.
25 Section 23(5).
26 Through which a justified limit on the rights would be considered.
27 *B and B v Director-General of Social Welfare* [1996] 2 NZLR 134 (CA) at [143] – and see *Te Whatu Ora Health New Zealand Te Toka Tumai Auckland v A and N* [2023] NZHC 1864 at [30].
28 *S v Attorney-General* [2017] NZHC 2629 at [245(h)].

[45] Sections 8 and 25(5) do cut both ways. These rights inform positive duties to not deprive a person of life (except on grounds established by law and consistent with principles of fundamental justice) and to protect prisoners. But facilitating the types of procedures that I have mentioned in [21] above against Mr Shaw's will can be viewed as an affront to, and a breach of, his right to be treated with humanity and respect for the inherent dignity of the person and for his right, exercised on an informed basis, to pursue his hunger strike, in full knowledge of the consequences.

[46] And I am quite satisfied on the evidence that there is nothing to suggest that Mr Shaw was not competent to, or did not have the capacity to make, the advance directive. His decision was his own, he had accurate and sufficient information about the decision that he was making and sufficient information was communicated to him effectively. While I accept that the views of Dr Tapsell, described in [28] above, on the ideal content of an advance direction representing best practice expectations, MrShaw's advance directive, considered in the context of the medical instructions described at [11] and the multiple conversations Mr Shaw is recorded as having had with appropriately qualified prison staff, as referred to in [12] make it quite clear that Mr Shaw is aware of the common and severe consequences of his decision and that he has accepted them.

Case law

[47] It has been held that there is a positive operational duty on the part of those administering prisons and hospitals to take positive steps to protect the lives of those within their care and supervision, including to prevent suicide.[29] However, as Panckhurst J said, in similar circumstances to these, in *Department of Corrections v All Means All*, it is not right to equate a hunger strike with suicide.[30] Panckhurst J emphasised the point, as I have, that suicide is an intentional killing of oneself where death is the desired and intended end result. That is not the case here. The situation here is not, for example, aligned with a voluntary refusal to eat and/or drink as a result of an eating disorder or a mental illness.

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29 *Savage v South Essex Partnership NHS Foundation Trust* [2008] UKHL 74; *Osman v UK* (App no 23452/94) (1998) 29 EHRR 245; and *Osman v UK* (App no 23452/94) (1998) 29 EHRR 245.

30 *Department of Corrections v All Means All*, above n 9, at [44].

[48] Moreover, this is not a case in which there is any doubt as to the validity of an advance directive such that the cases that would in those circumstances favour preserving life should be applied.[31]

[49] For the reasons I have given, I have no doubt as to the validity of Mr Shaw's advance directive.

[50] On much the same basis as that expressed in similar circumstances by Barniville J, the President of the High Court of Ireland, in *Governor of a Prison v XY*, I am satisfied that Mr Shaw had the ability and capacity to make the advance directive, that the advance directive was valid and that the respondents are entitled to give effect to it in the event that Mr Shaw was to lose capacity.[32]

Outcome

[51] Under the Declaratory Judgments Act 1908, I made the following declarations in my oral results judgment:

(a) A declaration that the defendant's advance directive dated 16 September 2022 and medical instructions dated 9 August 2024 are valid.

(b) A declaration, unless instructed to the contrary, by the defendant, the advance directive mentioned in the first declaration, is such that the Chief Executive of the Department of Corrections and all staff and agents of the Department of Corrections including medical staff, and Health New Zealand and all staff and agents of Health New Zealand including health professionals, will have a lawful excuse, including for the purpose of s 151 of the Crimes Act 1961, for adhering to the

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31 See, for example, *HE v A Hospital NHS Trust* [2003] EWHC 1017 (Fam), [2003] FLR 408 at [20] and [23] and see Andrew Butler and Petra Butler *The New Zealand Bill of Rights Act: A Commentary* (2 ed, Nexis Lexis, Wellington 2015) at [11.7] where the authors "agree" with the view expressed by Lord Donaldson in *Re T* [1993] Fam 95 (CA) that doubt falls to be resolved in favour of the preservation of life.

32 *Governor of a Prison v XY* [2023] IEHC 361 – a decision in which a different approach was taken than that in an earlier decision of the High Court of Ireland in *AB v CD* [2016] IRHC 541.

defendant's advance directive dated 16 September 2024 and the medical instructions dated 9 August 2024.

[52] In the event that any issue arises as to costs, the best approach in the circumstances will be to convene a teleconference in the first instance.

Radich J

Solicitors/Counsel:
Crown Law Office, Wellington for First Plaintiff
Vida Law, Wellington for Second Plaintiff
Woodward Law, Lower Hutt for Interested Parties
Wendy Aldred King's Counsel, Wellington – Counsel appointed to assist the Court