



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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08 AUGUST 2022

**MEDIA RELEASE**

SMITH V FONTERRA CO-OPERATIVE GROUP LTD

(SC 149/2021)

**CASE HISTORY SYNOPSIS**

This synopsis is provided to assist in understanding the history of the case and the issues to be heard by the Court. It does not represent the views of the panel that will hear the appeal in the Supreme Court. The synopsis does not comprise part of the reasons for the judgment of the Court of Appeal. A direct link to the judgment is included at the end of this synopsis.

**Background and Procedural History**

The appellant, Mr Smith, is the climate change spokesperson for the Iwi Chairs Forum. In 2020 he issued proceedings against the respondents, seven major New Zealand companies. He claims that they are substantial emitters of greenhouse gases and therefore contribute materially to climate change. Mr Smith alleges the respondents' emissions have, and continue to, cause damage to his whenua, and sites of cultural and historical significance for him and his whānau. Mr Smith formulated his claim around the following causes of action:

- (1) the respondents' greenhouse gas emissions constitute a public nuisance;
- (2) the respondents are in continuing breach of their duty to take reasonable care not to operate their businesses in a way that contributes to climate change; and
- (3) the court should impose a new legal duty on the respondents to cease contributing to climate change.

In reliance on these causes of action Mr Smith asks the Court to direct the respondents to reduce their greenhouse gas emissions to acceptable levels, or in the alternative, to cease their emissions altogether.

The respondents accept that climate change poses a challenge, and that New Zealand should transition to a lower carbon future. But they say that Mr Smith's claims are legally untenable. They applied to strike out Mr Smith's claims. In March 2020, the High Court struck out the first and second causes of action, concluding they were untenable. The Court declined to strike out the third cause of action.

Mr Smith appealed to the Court of Appeal against the High Court's decision to strike out the first two causes of action. Before that appeal was heard he also proposed to amend his claim



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to invoke relevant principles of tikanga Māori. The respondents cross-appealed against the High Court's refusal to strike out the third cause of action.

In October 2021, the Court of Appeal upheld the High Court's decision to strike out the first two causes of action and allowed the cross-appeal, striking out the third cause of action as well. The Court held that there are strong policy reasons against imposing private law duties on greenhouse gas emitters; matters of this complexity are best dealt with legislatively.

### **This appeal**

Mr Smith applied for leave to appeal to the Supreme Court against the Court of Appeal's decision. He argues that he should be permitted to pursue all three causes of action to trial.

In March 2022, the Supreme Court granted Mr Smith leave to appeal against the Court of Appeal decision. The approved question is whether the Court of Appeal was correct to dismiss the appeal and allow the respondents' cross-appeal.

This appeal asks the Supreme Court to consider whether Mr Smith's claims are clearly untenable and should not be allowed to proceed to trial.

Because of the issues raised in this appeal the following organisations have also been granted the right to provide submissions to the Court: Lawyers for Climate Action NZ Inc, Te Hunga Roia Māori o Aotearoa and the Human Rights Commission.

### **Viewing of hearing**

This hearing will take place in Auckland in the main courtroom of the Auckland Environment Court on Monday 15 August to Wednesday 17 August 2022. The Courtroom is open to the public in accordance with the [COVID 19 Protection Framework Protocol](#).

This hearing of the appeal will be livestreamed. Details about access to the livestream and the conditions of access will be posted on the [Courts of New Zealand website](#) shortly before the hearing. No recording is permitted.

Contact person:

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High Court decision: [\[2020\] NZHC 419](#) (6 March 2020)

Court of Appeal decision: [\[2021\] NZCA 552](#) (21 October 2021)

Supreme Court leave decision: [\[2022\] NZSC 35](#) (31 March 2022)