

Excerpt - National Planning Framework Treaty Impact Analysis (draft)

Greenhouse gas emissions	<i>Smith v Fonterra Co-Operative Group</i> High Court decision: [2020] NZHC 419 Court of Appeal decision: [2021] NZCA 552 Supreme Court leave decision: [2022] NZSC 35 (permission to grant appeal to Supreme Court) 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: • the respondents' greenhouse gas emissions constitute a public nuisance;
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	- 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 - 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 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. 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 <u>approved question</u> 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. SUPREME COURT DECISION Still pending