



# COURT OF APPEAL OF NEW ZEALAND

## TE KŌTI PĪRA O AOTEAROA

19 December 2024

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**SMITH v ATTORNEY-GENERAL [2024] NZCA 692**

PRESS SUMMARY

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

1. The Court of Appeal today dismissed the appeal in *Smith v Attorney-General*.

### **Background**

2. Mr Smith is an environmental advocate and elder of Ngāpuhi and Ngāti Kahu. He has a close connection to the whenua known as Mahinepua C Block where there are hundreds of sites of special cultural, historical and spiritual significance to his whānau. He is concerned about the impacts of climate change on this whenua and more generally on the vulnerability of Māori to the effects of climate change. His claim against seven New Zealand companies for their contribution to the adverse effects of climate change is proceeding following the Supreme Court’s ruling earlier this year in *Smith v Fonterra Co-operative Group Ltd*.

### **Claim against the Crown**

3. In addition to Mr Smith's claim against those seven companies, Mr Smith brought a claim in the High Court against the Crown, on behalf of himself, his whānau and iwi and future generations. His claim alleged that the Crown's response to climate change, principally through the Climate Change Response Act 2002 (the CCRA), does not effectively respond to the threats that climate change presents. He alleged that this response breached the right to life and the right to culture under the New Zealand Bill of Rights Act 1990 (NZBORA). He also alleged that the Crown's response breached the Treaty of Waitangi | te Tiriti o Waitangi, a fiduciary duty, and a (novel) common law duty to avoid dangerous interference with the climate system.

### **High Court decision**

4. The High Court struck out the claim on the basis that it raised no reasonably arguable cause of action.
5. Mr Smith appealed to the Court of Appeal from that decision.

### **Court of Appeal decision**

6. The question for the Court on appeal was whether the claim should be allowed to proceed to trial. In deciding this, the Court was required to assume that the pleaded facts could be established at trial. On that assumption, the Court was required to determine whether the claims were tenable (in which case the appeal could proceed to trial) or clearly untenable (in which case the appeal was to be dismissed).
7. The Court determined that the claims were untenable. This was because:
  - a. The claims under NZBORA required the Court to find that the CCRA was inadequate to respond to the risks to life and to culture that Mr Smith and those he represented were said to face from climate change. Under New Zealand's constitutional arrangements, it was not part of the court's role to second guess the policy choices made by Parliament that the CCRA reflected and which is intended to provide a framework for New Zealand's contribution to the global effort to limit the global average temperature to 1.5° C. It is the decisions that are made under the

CCRA (in respect of which judicial review could be sought) that would determine the adequacy or otherwise of New Zealand's response to the threat to life or to culture arising from climate change.

- b. The claims under the Treaty | te Tiriti and fiduciary duty were not available. The CCRA set out how the principles of the Treaty | te Tiriti were to be given effect. The claimed fiduciary duty was contrary to the scheme of the CCRA under which the Crown represented and was required to balance many interests.
- c. The novel common law duty was largely based on a doctrine that historically applied to provide rights of access to the seashore and navigable waters. Even if extended to apply to the wider environment, it could not operate where it would be inconsistent with legislation. Here, the claim would cut across the balancing of interests entrusted to the Minister under the CCRA.

8. The appeal was therefore dismissed.