



THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

23/11/22

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*Lawyers for Climate Action NZ Incorporated v The Climate Change Commission [2022]
NZHC [3064]*

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.

Background

Climate change may be one of the most important issues humanity has ever faced. The Paris Agreement aims to strengthen the global response to the threat of climate change by, amongst other things, pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels (“the 1.5°C global effort”). Parliament enacted legislative amendments to the Climate Change Response Act 2002 to provide a framework by which New Zealand can develop and implement clear and stable climate change policies that contribute to the 1.5°C global effort. This included setting a net zero target by 2050, introducing requirements to set budgets for domestic emissions, and establishing the Climate Change Commission to provide advice to the Minister on the budgets and other advice as requested by the Minister.

For the first time under this new framework, the Commission gave its advice on 31 May 2021. Lawyers for Climate Action New Zealand (LCANZ) was incorporated as a non-profit group of over 350 lawyers to advocate for New Zealand to meet its commitments under the Paris Agreement. It brought judicial review proceedings challenging the Commission’s advice. The challenge related to two aspects of the Commission’s advice: (1) the level of commitment under New Zealand’s Nationally Determined Contribution (“NDC”) (a communication required by the Paris Agreement) that would be compatible with the 1.5°C global effort; and (2) the recommended domestic emissions budgets for consecutive periods between 2022 and 2035 with a view to meeting the 2050 target and contributing to the 1.5°C global effort.

Issues and the Court's findings

The first issue was whether the Commission had made a mathematical or logical error in its advice on the compatibility of the NDC with the 1.5°C global effort. The High Court (Mallon J) concluded that the Commission did not intend to make a direct mathematical comparison of pathways modelled by the International Panel on Climate Change (“IPCC”) that would be consistent with the 1.5°C global effort. The Commission intended to use this modelling as an indirect comparator, incorporating value judgments about New Zealand’s contribution to the global effort. While the Commission could have made this more clear in its advice, the Minister to whom the advice was given correctly understood the advice and made his decision on this and other advice that he received.

The second issue was whether the Commission misinterpreted or misapplied the statutory purpose and mandatory considerations when recommending the emissions budgets. The Court concluded that the Commission correctly understood that the emissions budgets should be set having regard to the considerations stipulated by the legislation with both the 2050 target and the 1.5°C global effort in mind. The Court also found that the Commission had not mischaracterised the stipulated considerations and therefore had not misapplied them.

The third issue was whether the Commission erred by recommending a particular accounting methodology, referred to as “MAB” (and being a modified version of the accounting methodology previously required for Kyoto Protocol targets), for accounting for net emissions in the budgets, and for how progress towards meeting the budgets and the 2050 target would be assessed. The Court rejected LCANZ’s contention that the legislation mandated national inventory reporting under the UNFCCC as the relevant measure. It found that the legislation provided for the Commission to provide advice on the accounting methodology and it was therefore able to recommend the MAB methodology.

The final issue was whether the Commission’s advice was irrational and unreasonable because it was inconsistent with New Zealand’s commitment to the 1.5°C global effort. The Court found that the Commission’s reasons and the information on which it was based justified its advice. LCANZ did not show any error in that reasoning or in the information on which it was based. Ultimately a reasonable decision depends on what Parliament tasked the Commission to decide. It did not task the Commission to meet a particular target by 2030 nor to follow the IPCC’s modelled pathways.

Result

The judicial review was therefore dismissed.

