

Struggling to satisfy 'climate' justice

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Climate change is an issue that will continue to challenge central and local government for the foreseeable future, but the issues are extremely complex and difficult. They cross jurisdictional boundaries, are worsening and have the potential to cause unprecedented loss and damage.

Against this background, climate litigation is a burgeoning area. A recent United Nations report entitled *The Status of Climate Change Litigation* advises that governments are often the defendants in these types of cases. This was the situation in a recent decision of the High Court of New Zealand called *Christensen v Attorney General* [2020] NZHC 1872.

Christensen brought claims in public nuisance and negligence and sought damages. Some of the damages were to be put aside to promote his climate change theory, and the balance was to compensate him because he says he has been denied the opportunity to work for a living as he has assumed a burden on behalf of the community to attend to a global emergency.

He is described in the judgment as; “passionately concerned about the future of humanity given the catastrophic likely effects of climate change.”

Christensen has a theory about the causes of climate change based on what he calls; “The Electricity School”. This is not the same as the usual generally accepted theory, which he calls “The Emission School”. He went to Court to prove that his theory is the correct one and to promote his view that the emission school theory is “poisoned science”.

In the statement of claim Christensen refers to the advent, in 1996, of tidal turbines at Saint Malo in France that he says marked a time before which there was no appreciable change in climate.



The trends that have subsequently occurred have; “appeared since the consequent unmitigated draw, by tidal turbines, on the gravitational potential of roughly 200 megawatts.”

Christensen’s claim was struck out. In respect of the public nuisance cause of action the Court held that Christensen had not: Set out an arguable basis for an unlawful action done by the government; and shown any harm to him over and above that suffered by the general public (i.e. it was his own actions that had led to his financial losses, rather than anything done by the government).

For the negligence claim, the court noted that Christensen had not attempted to formulate the elements of the tort. He instead relied on a bare assertion that “[a] burden that should have been taken on by the nation state through the auspices of the civil service has instead been left to rest on the shoulders of the plaintiff alone. The burden has been too great to permit the plaintiff an ordinary enjoyment of work and earnings from work.”

Finally, the court found that Christensen’s statement of claim offended against all the requirements of a claim in the High Court rules. It was overly prolix and almost incomprehensible. Even the heading was “puzzling” in that

it referred to; “In the matter of a civil proceeding of squaring off”.

In summary the statement of claim was struck out because: No tenable claim was made; it breached the High Court Rules; it was an abuse of process; and it was likely to cause prejudice and delay to the government.

The court noted the genuineness of Christensen’s belief that his theory must be promoted in order to save humanity. The court said that it was not the venue for promoting his theory. Reference was made to the extra judicial observations of Winkelmann CJ and Glazebrook and France JJ in a paper presented at the Asia Pacific Judicial Colloquium in Singapore in 2019 called *Climate Change and the Law*.

That paper is well worth reading and can be found at: <https://www.courtsofnz.govt.nz/assets/speechpapers/ccw.pdf>.

The learned Judges conclude that parties will increasingly resort to the courts to hold governments and local authorities to commitments in domestic legislation interpreted in light of international treaties and agreements.

The Courts are however constrained and the demand for climate justice may be a demand the courts struggle to satisfy. **LG**