

New Zealand Court Dismisses Legal Attack By Climate Skeptics on Climate Data:

On September 7, 2012, the New Zealand High Court dismissed a case brought by the New Zealand Climate Science Education Trust (“the Trust”) against the National Institute of Water and Atmospheric Research Limited (“NIWA”).¹ The Trust is associated with the NZ Climate Science Coalition, a group “who are concerned at the misleading information being disseminated about climate change and so-called anthropogenic (man-made) global warming.”²

NIWA is a New Zealand Government-owned company which was established pursuant to the Crown Research Institutes Act 1992 (NZ). Part of the core purpose of NIWA is “to provide understanding of climate and the atmosphere and increase resilience to weather and climate hazards”³ To assist in carrying out this purpose, NIWA has maintained a national climate data base for New Zealand since 1992, which includes information relating to temperature, rainfall, wind and other climate parameters.⁴

The Trust applied to the High Court for judicial review of the following decisions made by NIWA:

- the decision in 1999 to publish a statistical time series of nationally averaged annual mean surface temperature trends, known as the “Seven Station Temperature Series” (“7SS”). The adjusted data in this series indicates that “New Zealand experienced a warming trend of approximately 0.9 degrees Centigrade (C) from 1909 to 2009;”⁵
- the decision in 2009 to publish an “Eleven Station Temperature Series” (“11SS”), following criticism of the 7SS from the NZ Climate Science Coalition. The 11SS comprises unadjusted temperatures recorded at a diverse number of weather stations from 1931 onwards;⁶ and
- the decision to publish a review in December 2010 of the 7SS data from the period from 1908 to 2008.

The Trust alleged that each of these decisions either departed from “recognized scientific opinion” or contained “obvious deficiencies in its data.”⁷ While deciding that decisions of NIWA could be subject to judicial review in principle, Justice Geoffrey Venning went on to dismiss all substantive claims made by the Trust. To begin, he noted that courts should grant considerable deference to specialist organizations when they make decisions within their own field of expertise:

I consider that unless the Trust can point to some defect in NIWA’s decision-making process or show that the decision was clearly wrong in principle or in law, this Court will not intervene. This Court should not seek to determine or resolve scientific questions demanding the evaluation of contentious expert opinion.⁸

Justice Venning also questioned the credentials of two of the three expert witnesses called by the Trust. Some evidence given by one of these experts was held to be inadmissible on the basis that he had no applicable qualifications in the science of meteorology or climate change, and that simply being interested in the field “does not sufficiently qualify him as an expert.”⁹ Further, parts of his evidence were inadmissible on the basis that they were submission rather than impartial evidence as to factual matters or opinion.¹⁰ The evidence of a second expert was also held to be inadmissible on the basis that, while he was

¹ New Zealand Climate Science Education Trust v. National Institute of Water and Atmospheric Research Limited, [2012] N.Z.H.C. 2297 (7 September 2012).

² THE NEW ZEALAND CLIMATE SCIENCE COALITION, *About Us & Contact*, http://nzclimatescience.net/index.php?option=com_content&task=blogsection&id=12&Itemid=45 (last accessed Sept. 11, 2012).

³ NIWA, *Statement of Core Purpose*, <http://www.niwa.co.nz/about/scp> (last accessed Sept. 11, 2012).

⁴ *New Zealand Climate Science Education Trust*, [2012] N.Z.H.C. 2297 at ¶ 3.

⁵ *Id.* at ¶ 4.

⁶ *Id.* at ¶ 5.

⁷ *Id.* at ¶ 11.

⁸ *Id.* at ¶ 48.

⁹ *Id.* at ¶ 51. The expert these comments referred to was a retired journalist: *Id.* at ¶ 14.

¹⁰ *Id.* at ¶ 52.

a general expert in statistical techniques and computer modeling, he had no expertise in “the specific field of applying statistical techniques in the field of climate science.”¹¹

The substance of the judicial review claim related largely to the methodology used by NIWA when selecting and adjusting data. Justice Venning was careful not to claim to decide the scientific debates regarding these methodologies which were raised by the submissions of the parties.¹² Instead, Justice Venning based his decision on the “evidence that NIWA applied credible scientific methodology,”¹³ which was enough to establish that it had fulfilled its statutory duty or otherwise not given rise to a valid claim for judicial review. The Trust was ordered to pay NIWA’s costs for the litigation.

A copy of the decision can be accessed at <http://www.nzlii.org/cgi-bin/download.cgi/cgi-bin/download.cgi/download/nz/cases/NZHC/2012/2297.pdf>.

¹¹ *Id.* at ¶ 54.

¹² See, e.g., *Id.* at ¶¶ 161 & 173.

¹³ *Id.* at ¶ 180.