



Ring of Truth

The Skeleton Argument below formed the ‘legislative’ base for a performance of *Ring of Truth* performed on Saturday July 8th 11am at The Timber Festival 2023 set in the National Forest - a former coal mining area in the Midlands, UK

Set in 2030 *Ring of Truth* imagined a Rights of Nature Act existed in English Law. Three scientists from MEMBRA’s Treescapes Research programme acted as expert witnesses. The performance - and Skeleton Argument - grew out of a creative collaboration led by *Walking Forest* artist Lucy Neal with scientists Dr Bruno Ladvoat Cintra, Dr Scott Hayward, Rachel Mailes; classicist Dr Katherine Earnshaw and Lawyer for Nature, Paul Powlesland. The audience acted collectively as judges to decide on the Court Order for the Defendant.

IN THE HIGH COURT OF JUSTICE

CLAIM NO: 2030 EWHC (Admin) 230

KINGS BENCH DIVISION

ADMINISTRATIVE COURT

BETWEEN:

THE KING

**(ON THE APPLICATION OF THE GUARDIANS OF THE FEANEDOCK
OAK)**

Claimant

- and -

SECRETARY OF STATE FOR CLIMATE & ECOLOGICAL BREAKDOWN

Defendant

**CLAIMANT’S SKELETON
ARGUMENT**

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1. The Rights of Nature Act 2028 gave legal personhood and guardianship to nature for the first time. It also enshrined many substantive rights for the natural world. The Claimant relies on section 5 of that Act, which states:

“All trees have the right to exist, thrive & to perform and receive essential functions within their ecosystem.

The above rights are subject to such restrictions as are necessary and proportionate within a sustainable and balanced society.

The Secretary of State may make such Regulations defining the nature and extent of these rights and any restrictions upon them as they see fit.”

2. The relevant regulations in this case are the Rights of Nature (Rights of Trees) Regulations 2029. Reg 25 states:

“In light of the ecosystem services they provide and their inability to regenerate, oak trees of the genus *Quercus Robur* that are in excess of 150 years old have a right not to be cut down, uprooted, damaged or destroyed, save in exceptional circumstances or emergencies.”

3. As both the Rights of Nature Act and the accompanying regulations are relatively new, there is not significant amounts of relevant caselaw. However, there are two relevant cases:

Sheffield City Council v Berkley Homes [2029] EWHC (KBD) 230 decided that deliberately poisoning a tree in order to kill it and remove the tree to facilitate development would be in breach of Reg 25.

Guardians of Epping Forest v Smith [2030] EWCA (Civ) 154 held that the exception to the rights of veteran oak trees in Reg 25 is subject to a reasonableness and proportionality test.

4. The Claimant will produce expert evidence to show that increased carbon dioxide levels are damaging the Feanedock Oak. By analogy with the Berkeley Homes case, the Claimant avers that the increased carbon dioxide levels in the atmosphere are effectively poisoning the oak, and this is causing damage including limb drops and decreased life expectancy. This therefore clearly represents a breach of the rights of the oak under Reg 25.
5. It is expected that the Defendant will rely on the exceptional circumstance's exemption, which is subject to a reasonableness and proportionality test (as per the *Guardians of Epping Forest* case). This would be on the basis that, although increased carbon dioxide levels are harming the tree, it is not reasonable or proportionate to reduce the levels sufficiently to stop harming the tree, due to the economic and other impacts on humans that this would cause. However, the Claimant submits that this is incorrect for the following reasons:
 - A. The UK already has obligations (both national and international) to reduce its carbon emissions to levels that would not harm the tree. Examples include the Climate Change Act 2008 (and its subsequent updates) and the 2016 Paris agreement (which it ratified). Therefore, in order to uphold the legal rights of the tree, the government would only be fulfilling its existing legal obligations.
 - B. Although this case is about the Feanedock Oak, it is applicable to pretty much all veteran oaks in the UK. The Claimant will produce evidence to show that increased carbon dioxide levels will affect most oak trees in the UK, as well as many other species of tree and potentially other living beings such as insects and organic matter like soil. Therefore, whilst reducing UK emissions to save one tree might be deemed to be disproportionate, it

can be seen that it would not be disproportionate in order to save millions of trees and indeed, huge portions of the living world.

- C. The Claimant will provide evidence that increased carbon dioxide will reduce the ability of trees and other parts of the natural world (e.g. soil) to uptake carbon. This puts the UK's net zero strategy (which relies on natural carbon sequestration) in doubt and risks creating a vicious cycle where nature is less able to uptake carbon, leading to more carbon in the atmosphere and further decreased uptake. In other words, nature can help reduce carbon, but can't do it alone; human emissions reductions are vital and, in the context of what we stand to lose, reasonable and proportionate.

PAUL POWLESLAND

7th July 2023

Lawyers for Nature

For more details about *Ring of Truth* contact Jo Mackie jo@walkingforest.co.uk or Lucy Neal lucy@walkingforest.co.uk