

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

**CA185/2021
[2021] NZCA 420**

BETWEEN

KELLY ROE
Applicant

AND

NEW ZEALAND VICE-CHANCELLORS
COMMITTEE
Respondent

Counsel: Applicant in person

Judgment: 2 September 2021 at 10.00 am
(On the papers)

**JUDGMENT OF BROWN J
(Review of Deputy Registrar's decision)**

The application to review the Deputy Registrar's decision declining a fee waiver is declined.

REASONS

Introduction

[1] On 7 April 2021 Ms Roe filed an appeal against a judgment of the High Court dismissing her application for judicial review of the decision of the Chief Executive of the New Zealand Vice-Chancellors Committee (the Committee) that further investigation of the conduct of the University of Waikato regarding her thesis submission was unwarranted.¹

¹ *Roe v New Zealand Vice-Chancellors Committee* [2021] NZHC 719.

[2] On 20 April 2021 the Deputy Registrar declined Ms Roe’s application under reg 5(1) of the Court of Appeal Fees Regulations 2001 for a waiver of the \$1,100 filing fee for the notice of appeal. Ms Roe now seeks a review by a Judge of the Deputy Registrar’s decision.

Factual background

[3] Ms Roe was a postgraduate student at the University of Waikato. In October 2018 her Master of Philosophy thesis was submitted to external examiners. The examiners’ reports of December 2018 indicated that substantial revisions were required. In January 2019 the Dean of the School of Graduate Research informed Ms Roe that her thesis was not acceptable in its then form and she was invited to revise and resubmit it after re-enrolling for a minimum of six months. In February 2019 Ms Roe supplied an updated thesis to her supervisor for sign-off, but this was refused.

[4] Ms Roe then complained to the Committee, alleging that the University fraudulently recorded grades that were not earned, refused to follow its own regulations, and requested bribe payments by requiring her to pay additional fees for an extended period of re-enrolment. The Chief Executive of the Committee (Mr Whelan) considered the complaint and determined that further investigation of the University’s conduct was unwarranted. The High Court judgment dismissing Ms Roe’s application for judicial review is the decision presently under appeal.

Ms Roe’s fee waiver application

[5] Ms Roe’s application for a fee waiver was made in reliance on the ground in reg 5(2)(b) that the proceeding concerns a matter of genuine public interest. Reg 5(4) provides that a proceeding concerns a matter of genuine public interest if it is:

- (a) a proceeding that has been or is intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public; or
- (b) a proceeding that—
 - (i) raises issues of significant interest to the public or to a substantial section of the public; and

- (ii) is an appeal against a judgment, decree, or order given or made in a proceeding commenced by an organisation that, by its governing enactment, constitution, or rules, is expressly or by necessary implication required to promote matters in the public interest.

[6] In response to the request in the fee waiver application form for details of each issue or question of law raised by the proceeding Ms Roe stated:

The NZVCC wrote a student complaints policy they refused to follow.

They maintain following the policy is ultra vires.

Ms Roe maintains they violated statutory function in either:

- 1 writing policy they did not have authority to make; or
- 2 refusing to follow their policy.

This is the external complaints process (together with Ombudsman) for tertiary students to complain about bribery, slavery etc. The NZVCC was charged with upholding the integrity and quality of NZ Universities. They seem intent on quashing complaints and destroying the universities.

The Deputy Registrar's decision

[7] The Deputy Registrar did not consider that the criteria in either reg 5(4)(a) or (b) were satisfied, stating:

Reg 5(4)(b) does not apply here. That regulation only applies to proceedings commenced by an organisation required to promote matters in the public interest. The current proceeding was commenced by you. This means reg 5(4)(a) applies instead. This regulation requires that the proceeding is "intended to be commenced to determine a question of law that is of significant interest to the public or to a substantial section of the public".

This proceeding is an appeal of a decision of Isac J dismissing your application for judicial review of the decision of the Chief Executive of the Vice-Chancellors Committee that further investigation of the University's conduct regarding your thesis submission was unwarranted. I understand you consider the proceeding highlights corruption within New Zealand universities. However, ultimately the appeal concerns one decision of the Chief Executive, relating to a complaint you made regarding how your thesis submission was treated. The issues to be determined in this appeal are whether there is a reviewable error in that decision of the Chief Executive and, if so, whether and what relief should be granted. These issues will ultimately turn on the facts, particularly the examiners' reports of your thesis. Those facts are unique to the parties. I do not consider anyone other than the parties is likely to be directly affected by the appeal.

In your application you say the Committee violated its statutory function by writing, or alternatively not following, its student complaints policy. However, I am not satisfied the appeal was commenced to determine either of these issues. First, the decision to write the student complaints policy is not the one under review. The policy is just part of the background against which the Chief Executive's decision regarding your complaint is judicially reviewed. Secondly, Isac J already found the student complaints policy had not been followed in your case.

Accordingly, I do not consider the appeal raises a question of law (such as an issue of statutory interpretation) that is of broader application to the public. I am therefore not satisfied the proceeding will determine a question of law that is of significant interest to the public or to a substantial section of the public. Accordingly, the appeal does not meet the "genuine public interest" criteria in reg 5(4) of the Fees Regulations.

(Footnotes omitted.)

Ms Roe's submission on review

[8] No challenge was directed to the ruling that reg 5(4)(b) was inapplicable. Rather the focus of Ms Roe's contention was the finding that reg 5(4)(a) was not engaged. She submitted that the Deputy Registrar had chosen to characterise the issue as one that was Ms Roe's particular problem and she took issue in particular with the observations in the last three sentences of the second paragraph quoted above.

[9] She responded to those observations in this way:

My complaint was not about how my thesis submission was treated. My complaint was about serious wrong-doing within the University of Waikato. The NZVCC has the statutory function of investigating complaints of serious wrong-doing. The NZVCC has written policy documents on how they will investigate and *what they will do with the evidence of information they have collected during their investigation*. The issue I brought before the courts was the issue of how Chris Whelan (in his capacity as CE of the NZVCC) refuses to investigate complaints of serious wrong-doing / refuses to get the evidence and information he has collected from his investigation to the relevant authorities. He hoards complaints rather than performing his statutory function. I do not believe it plausible to think that I am that special that he made an exception just for me. I think it far more plausible to think that he makes a habit of refusing to investigate complaints and refusing to get the evidence of wrong-doing that he has collected to the relevant authorities.

[10] Ms Roe went so far as to contend that the alleged practice of quashing complaints of serious wrongdoing, and in her particular case refusing to confer a qualification, amounted to corruption.

Discussion

[11] As has been held in relation to reviews concerning security for costs,² the review function of a Judge in relation to filing fee waiver decisions is to be exercised *de novo*. Hence I am required to consider whether Ms Roe's proceeding will determine a question of law that is of significant interest to the public or a substantial section of the public.

[12] Ms Roe's proceeding was an application for review of the decision of the Chief Executive of the Committee determining that further investigation was unwarranted of the University's decision that her thesis was not acceptable in its then form. In identifying the issues for determination in that proceeding Isac J explained:³

[59] The decision of the University not to award Ms [Roe] her an MPhil is in the context of this proceeding a question of fact underlying her challenge to the Committee's decision. There are three pivotal aspects of Ms Roe's criticisms of the University's decision-making process that inform the outcome of her review application. Those issues are:

- (a) Did the examiners mistakenly assess Ms Roe's thesis against the requirements of the PhD rather than the MPhil?
- (b) Is Ms Roe's interpretation of her thesis examiners' reports tenable?
- (c) Who had the power of decision under reg 25: the Dean or the examiners?

[13] Having considered those issues the Judge concluded:

[85] Given I have found on the evidence before me that:

- (a) the examiners did not mistakenly assess Ms Roe's thesis against the requirements of the PhD;
- (b) Ms Roe's interpretation of her thesis examiners' reports is unsustainable, and the Dean's decision under reg 25(e) was open to her; and
- (c) it was the Dean rather than the examiners who had the power of decision under reg 25

I can see no error in Mr Whelan's decision of 6 August 2020. As Mr Whelan put it, on the face of the material provided to him by

² *Reekie v Attorney-General* [2014] NZSC 63, [2014] NZLR 737 at [23].

³ *Roe v New Zealand Vice-Chancellors Committee*, above n 1.

Ms Roe there was nothing to indicate any issue concerning academic quality or integrity had arisen, or that the invitation to re-enrol was a demand for a corrupt payment.

Consequently the Judge concluded that there was no reviewable error affecting Mr Whelan's decision. It is only that decision which can form the basis of her appeal to his Court.

[14] As the quoted passages from the judgment reflect, the proceeding concerns the process which was followed in the assessment of Ms Roe's thesis. That is the ambit of the proceeding. I am unable to identify any feature of the proceeding which extends beyond Ms Roe's personal interest so as to raise an issue of significant interest to the public.

[15] It may be that Ms Roe contemplates that her proceeding might serve an ancillary purpose of enabling her to ventilate beliefs she holds concerning the practices of various academic institutions. There is a flavour of that noted in the judgment:

[79] In light of these realities, and in particular the content of the examiners' reports themselves, it is rather surprising that Ms Roe preferred to instigate review proceedings in the High Court rather than use her time to bring her thesis up to an acceptable standard. That said, Ms Roe made it clear during the hearing that she is not focussed on the eventual award of the MPhil; the purpose of her proceedings is to expose improper and corrupt academic practices, both at the level of New Zealand universities, and the Committee.

[16] However such an objective cannot be invoked as the basis for transforming the proceeding from its plain subject matter. That proceeding concerns the facts and the process pertaining to the consideration of Ms Roe's thesis. On this issue I reach the same conclusion as the Deputy Registrar that the facts are unique to the parties and that no one other than the parties is likely to be directly affected by the appeal.

[17] The fact that Ms Roe harbours the suspicions which are apparent from the excerpt from her application for review at [9] above has no bearing on the evaluation of the proceeding itself against the criteria in reg 5(4)(a).

Result

[18] The application to review the Deputy Registrar's decision declining a fee waiver is declined.