

**IN THE HIGH COURT OF NEW ZEALAND  
HAMILTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
KIRIKIRIROA ROHE**

**CIV-2020-419-235  
[2021] NZHC 1808**

UNDER	the Judicial Review Procedure Act 2016
IN THE MATTER OF	an application for judicial review of decisions
BETWEEN	KELLY ALEXANDRA ROE Applicant
AND	THE UNIVERSITY OF WAIKATO Respondent

Hearing: 24 March 2021

Appearances: Applicant in person (via VMR)  
J A MacGillivray and C S Frost for respondent

Judgment: 16 July 2021

---

**RESERVED JUDGMENT OF TOOGOOD J**

---

*This judgment was delivered by me on 16 July 2021 at 5pm, pursuant to  
r 11.5 of the High Court Rules*

*Registrar/Deputy Registrar  
Date:*

Solicitors:  
Tompkins Wake, Hamilton for respondent

Copy to:  
The applicant

<b>Introduction</b>	<b>[1]</b>
<b>Background</b>	<b>[4]</b>
<b>Ms Roe’s application, its acceptance and the submission of her thesis for examination</b>	<b>[7]</b>
<i>The application and acceptance process</i>	[7]
<i>The submission of Ms Roe’s thesis</i>	[16]
<i>Instructions provided to the examiners of Ms Roe’s thesis</i>	[17]
<b>The reports of the examiners</b>	<b>[18]</b>
<b>Decision not to award the MPhil degree – invitation to re-enrol</b>	<b>[21]</b>
<b>Termination of enrolment – reconsideration and extension of time to re-enrol</b>	<b>[25]</b>
<b>Allegation of administrative errors regarding Ms Roe’s academic record</b>	<b>[28]</b>
<b>Relief</b>	<b>[29]</b>
<b>Issues</b>	<b>[30]</b>
<b>Ms Roe’s enrolment – backdating and timeframe</b>	<b>[32]</b>
<i>Discussion</i>	[34]
<b>Thesis treatment</b>	<b>[39]</b>
<i>The University’s rejection of the truncated timeframe sought by Ms Roe</i>	[41]
<i>Appointment of two external examiners</i>	[47]
<i>Outcome of the examination of Ms Roe’s thesis</i>	[54]
<i>Allegation of pre-determination</i>	[56]
<b>Other administrative errors</b>	<b>[58]</b>
<b>Further claims</b>	<b>[61]</b>
<b>Result</b>	<b>[62]</b>
<b>Costs</b>	<b>[63]</b>

## Introduction

[1] On 1 May 2018, Kelly Alexandra Roe accepted enrolment in a Master of Philosophy degree (MPhil) at the University of Waikato in the Te Mata Kairangi School of Graduate Research. The MPhil is a one-year research-based degree. After attempting to complete her thesis in a self-imposed, truncated timeframe, Ms Roe was informed that her thesis was not acceptable to fulfil the degree’s requirements. She was invited to revise and re-submit her work for examination, after re-enrolling at the University for a minimum period of six months.

[2] Ms Roe refused to re-enrol and her enrolment was terminated by the University on 1 January 2019. She now brings a judicial review proceeding relating to:

- (a) Her enrolment start date, alleging that the University refused to enrol her within the timeframe in the University Calendar.
- (b) The examination of her thesis, alleging that the University “refused to examine a thesis that had been submitted in accordance with University Calendar Regulations out for external examination [sic].”

- (c) The outcome of the examination of her thesis, alleging that the University “refused to base the outcome of examination on the reports of external examiners”.

[3] Ms Roe also seeks “financial compensation” in tort, alleging negligence and a breach of statutory duty.

### **Background**

[4] To be awarded the degree, MPhil candidates are required to successfully complete approved and supervised research, and present the results lucidly in a thesis which:<sup>1</sup>

- (a) critically investigates an approved topic of substance and significance; and
- (b) demonstrates expertise in the methods of research and scholarship; and
- (c) displays intellectual independence; and
- (d) makes an original contribution to the research area.

[5] The general University of Waikato Calendar regulations do not apply; the MPhil regulations that are relevant to this proceeding are:

- 10. Applicants approved to enrol in the MPhil by the Dean of the School of Graduate Research must enrol in the relevant Faculty and, subject to progress which meets expectations, pursue their research for
  - (a) one year, if they are enrolled on a full-time basis ...
- 16. Following enrolment, candidates must submit six-monthly reports on the progress of their research work.
- ...
- 18. An MPhil thesis may consist of the candidate’s published or unpublished material, or a combination. All such materials must have been produced within the term of enrolment.

---

<sup>1</sup> University of Waikato, Regulations for the Degree of Master of Philosophy (MPhil) 2018, reg 1.

...

20. Candidates must comply with the Dissertations and Theses Regulations 2015 which set out the University's requirements with respect to the submission and presentation of theses.
21. The Dean of the School of Graduate Research appoints two examiners who are external to the University and not directly connected with the candidate or the candidate's research. At least one of the external examiners is based overseas. In the case of divergent examination outcomes, the Dean of the School of Graduate Research will appoint a third examiner.
22. The Dean of the School of Graduate Research makes a final decision on the award of the Degree. On the basis of the final reports of the examiners, the Dean of the School of Graduate Research may resolve
  - (a) that the thesis be accepted in its present form as fulfilling the requirements for the degree of Master of Philosophy, or
  - (b) that the thesis be accepted as fulfilling the requirements for the degree of Master of Philosophy subject to the candidate undertaking minor amendments and/or correcting typographical errors as required by the examiner, to the satisfaction of the chief supervisor, or
  - (c) that the thesis be accepted subject to the candidate completing substantial amendments to the satisfaction of the examiner or the chief supervisor, provided that these amendments are not so substantial as to necessitate re-submission and are completed within ten weeks, or
  - (d) that an oral examination of the candidate be conducted, and a further report, based on the oral examination, be provided by the examiners to the Dean of the School of Graduate Research, or
  - (e) that the thesis is not acceptable in its present form and will be returned to the candidate, who may revise it and re-submit it for examination after a re-enrolment for a minimum period of six months, or
  - (f) that the candidate has failed to meet the required standard and that no degree be awarded.
23. A candidate will be permitted to revise and re-submit a thesis only once and only one oral examination will be held.
24. Applicants or candidates for the MPhil who wish to appeal a decision by the Dean of the School of Graduate Research or the [Postgraduate] Research Committee, or who have a concern about supervision or any other aspect of their candidature, may raise the matter under the Higher Degree Appeals and Complaints Regulations.

[6] The Higher Research Degrees Application Process provides, so far as is relevant, that:

Applications for Higher Research Degree study, which includes ... Masters of Philosophy (MPhil), can be received at any time, but applications will only be considered three times each year. Once your application has been approved, you can choose to enrol from the first day of any month between February and November.

...

1. **Applications Open**

Applications open immediately proceeding<sup>2</sup> the closing date for the previous round. Please check your eligibility for higher degree study before submitting an application.

...

3. **Applications Close**

Applications closing dates will be **1 March, 1 July and 1 November annually**. Applications must be completed online and received by midnight (NZ time) on the deadline of the application round for which you are applying. Please note that paper applications cannot be accepted. If your online application to enrol arrives after one of these closing dates, your application will be considered in the following application round. **All incomplete or incorrect applications are unable to be considered further.**

4. **Applications under consideration**

All completed applications will be forwarded to the appropriate Faculty for further consideration. After careful consideration all applicants will be notified by email of the outcome of their application. This could take up to seven weeks after the closing date for the round you applied for.

**Ms Roe's application, its acceptance and the submission of her thesis for examination**

*The application and acceptance process*

[7] On 27 February 2018, Ms Roe submitted her application for an MPhil to the University, which accepted it for consideration on 28 February 2018, one day before the closing date for the application round. It was subsequently treated, incorrectly, as having been withdrawn because of an administrative error over Ms Roe's

---

<sup>2</sup> Meaning "following" or "after".

identification number within the University information system. Ms Roe re-submitted the application on 2 March 2018, omitting to file the supporting documents that were required. Although the University initially regarded the application as being out of time for consideration in the March round, it notified Ms Roe by email on 9 March 2018 that it would be placed before the 12 March 2018 meeting of Associate Deans if she filed the supporting documents that day.

[8] Ms Roe asserted in her application that the dates for her enrolment would be 5 March 2018 to 3 March 2019. She was told in the 9 March 2018 email from the University, however, that there was “still a 6 week period for applications to be processed, so ... [the ] earliest possible start date would be the 1st May 2018 as MPhil enrolment always starts at the beginning of a month, and all offers will be sent out on the 14th/15th April.” In fact, the formal offer of a place as an MPhil candidate was notified to Ms Roe in a letter dated 23 April 2018 that set out the terms of the offer, including:

- (a) a requirement that the offer “must be accepted within one month of the date of [the] letter”;
- (b) a requirement to “begin [her] enrolment within 12 months from the date of [the] letter”; and
- (c) that the “minimum term of enrolment is one year (full time equivalent) for MPhil enrolment.”

[9] The letter informed Ms Roe that, if she wished to accept the offer, she should return the acceptance slip “as soon as possible” and gave an online address where she could find the current regulations for the MPhil. Ms Roe was told she had to provide confirmation of her start date and certain specified documents in order to complete her enrolment.

[10] Ms Roe purported to accept the offer that day, but she was informed that her intended start date of 4 March 2018 was invalid and could not be accepted. She was told the start date had to be no earlier than 1 May 2018.

[11] On 30 April 2018, Ms Roe sent an email to the Dean of the School of Graduate Research, Professor Kay Weaver, arguing that the requirement in clause 10(a) of the regulations, that applicants approved to enrol must pursue their research for “one year, if they are enrolled on a full-time basis”, refers to an academic year rather than a calendar year. Ms Roe said she had started working on her project from the time she applied for it.

[12] The University had made it clear in the regulations and correspondence with Ms Roe, however, that the earliest possible start date was 1 May 2018 and that material for the thesis must be produced after the start of her enrolment. In her reply to Ms Roe’s 30 April 2018 email, Professor Weaver told Ms Roe that the University could not enrol her for a start date in the MPhil that came before the date of the letter of offer and that she should not have been working on the project prior to being sure that she would be accepted into the MPhil because that would have indicated that she had been provided with supervision at no charge prior to acceptance. Professor Weaver said that it did not matter whether the enrolment period fell in a single calendar year or an academic year; the process of her MPhil, including its examination period, must take a year because the standard of the University’s degree would be questioned by the Tertiary Education Commission (TEC) if it could be completed “in about half a year.”

[13] On 1 May 2018, Ms Roe submitted her acceptance to the University by an email in which she said, among other things:

Please find attached acceptance of offer with 01/05/2018 start date (ROE-enrolment.PDF) for the attention of Janey McLean.

...

I want to check that we are on the same page because I am accepting the offer with 01/05/2018 start date because I believe it is possible for me to complete the work in that time from an administration point of view.

[14] Ms Roe calculated that she could obtain the necessary 120 study points by working five 7.5-hour days per week for 32 weeks and complete her thesis by 7 December 2018. Later that day she clarified that this goal included the examination

process. Since the examination process routinely takes approximately three months, that would have meant the thesis had to be submitted after only four months' work.

[15] On 9 May 2018, the University notified Ms Roe that her proposed truncated timeframe was not acceptable to the University as the MPhil was “a significant piece of work ... that requires a considerable investment of time, both in the research and the writing, but also in the refining of ideas and words through regular meetings with and feedback from supervisors”. She was told that truncating the time period as she had requested would not only put her under inordinate pressure but would also place an unreasonable burden on her supervisor. Ms Roe’s calculations took no account of her supervisor’s other commitments and the possibility that the thesis submitted on 14 September 2018 would require amendment. After further exchanges on the issue, the University reiterated on 18 May 2018 that while Ms Roe could enrol in the MPhil, the University could not approve her truncated enrolment and that its decision was final.

#### *The submission of Ms Roe’s thesis*

[16] Despite having been told she should not submit bound copies of her thesis until it had been considered by her supervisor, Ms Roe submitted bound copies of her thesis to the University for examination on 13 September 2018, three and a half months from her enrolment date. It was clear to Professor Weaver and Dr Kingsbury, Ms Roe’s chief supervisor, that the thesis was not ready for submission. On 17 September 2018, Dr Kingsbury suggested substantial revisions to the thesis, on the basis that the submitted version would be unlikely to pass examination. There were further exchanges between Ms Roe and the University about the need for Ms Roe to revise her work; Ms Roe was informed that the University would tell the examiners that it did not consider the thesis was ready for submission. Ms Roe withdrew the 13 September version and, on 4 October 2018, submitted a revised version of her thesis for examination. It was sent to the external examiners on 15 October 2018 for consideration.



*Instructions provided to the examiners of Ms Roe's thesis*

[17] Although the MPhil recommendation forms sent to the examiners contained an incorrect reference to a “doctoral” thesis in the introduction, it is clear from the body of the forms and the documentation provided in the examination pack, including the MPhil regulations, that the examiners were required to examine an MPhil thesis and not a doctoral thesis. Correspondence from the University to the examiners confirmed the thesis as having been submitted for a MPhil. I note also that both examiners’ reports were prefaced with references to an MPhil thesis.

**The reports of the examiners**

[18] On 4 December 2018, the University received the first examination report from the New Zealand examiner. The detailed report contained the recommendation that Ms Roe’s thesis should be revised and re-submitted for re-examination after re-enrolment for a minimum period of six months. The report was sent to Ms Roe on 7 December 2018 with an email from Professor Weaver informing her that the University would not recommend acceptance of her thesis at that stage.

[19] On 7 December 2018, the University received an indication from the overseas examiner that Ms Roe’s thesis would need to be revised and re-submitted for examination. When the overseas examiner’s report was received on 17 December 2018, Janey McLean, graduate adviser, asked the overseas examiner whether the examiner was recommending six months of revision and re-submission. The overseas examiner responded “[Y]es that is what I am recommending”.

[20] On 19 December 2018 the examiners’ reports were sent to Ms Roe by Dr Kingsbury. Ms Roe was informed that the University was closing that day and that the School of Graduate Research would be getting in touch with her after it re-opened on 3 January 2019. Dr Kingsbury said she was happy to work with Ms Roe on revisions if she chose to revise and re-submit the thesis.

**Decision not to award the MPhil degree – invitation to re-enrol**

[21] On 10 January 2019, Janey McLean wrote to Ms Roe, saying:

The Postgraduate Research Committee has considered the examiners' reports for your thesis. I regret to advise that your thesis is not yet of a sufficient standard to proceed to completion. I am aware that to provide you with a timely understanding of this outcome before the University closed for Christmas, your Chief Supervisor was sent your examination reports and that she communicated with you about these, and sent them to you in December.

[22] Ms Roe was invited to re-enrol, revise and submit her thesis for re-examination. That invitation was consistent with the option available as set out in para 22(e) of the MPhil regulations.<sup>3</sup> The University offered a re-start date of 1 February 2019. It also noted that, as Ms Roe's 2018 fees were paid in advance for a year, her fees were covered until 30 April 2019 and she would be required to pay fees to cover the six months' balance only.

[23] On 11 January 2019, Professor Weaver confirmed to Ms Roe, on the basis of the examiners' final reports, that the MPhil thesis submitted on 4 October 2018 was not acceptable and invited her to revise it and re-submit it for examination after a re-enrolment for a minimum period of six months. Ms Roe appealed unsuccessfully to the Post-Graduate Research Committee which advised Ms Roe on 30 January 2019 that Professor Weaver's decision not to award Ms Roe the MPhil degree and to recommend re-enrolment was appropriate.

[24] Ms Roe did not re-enrol, despite several requests to do so from Professor Weaver. Instead, on 5 February 2019, she provided her supervisor with a superficially revised version of her thesis and requested that the supervisor sign off the thesis. The supervisor refused to do that, saying Ms Roe was required to re-enrol, revise her thesis and re-submit it.

### **Termination of enrolment – reconsideration and extension of time to re-enrol**

[25] On 14 March 2019, Professor Weaver wrote to Ms Roe informing her that, at its meeting on 13 March 2019, the Post-Graduate Research Committee had considered a request from the School of Graduate Research to terminate her MPhil enrolment. Relying on regs 10, 15 and 22 in the MPhil regulations, Ms Roe's MPhil enrolment was terminated, effective on 1 January 2019.

---

<sup>3</sup> At [6] above.

[26] The termination was reconsidered, however, after Ms Roe informed Dr Kingsbury she intended to re-enrol and, by a letter dated 18 April 2019 on behalf of the Appeals Sub-Committee of the Research Committee, Ms Roe was given until 3 May 2019 to re-enrol on the basis that:

- (a) she made efforts to revise her thesis;
- (b) she could only re-submit her revised thesis for examination after a minimum full-time re-enrolment period through until 30 June 2019;
- (c) she paid the normal tuition fees required for the additional period of re-enrolment; and
- (d) any amendments made to her thesis during the re-enrolment period needed to be to the satisfaction of her thesis examiners.

[27] Ms Roe was reminded that the Dean of the School of Graduate Research makes the final decision on the award of the MPhil degree. She was told that the appeal decision was final. Ms Roe did not re-enrol.

### **Allegation of administrative errors regarding Ms Roe's academic record**

[28] Ms Roe also alleges that the University made several errors in administering her documents, which she submits were motivated maliciously, simply to require her to pay more fees. I address these matters below.<sup>4</sup>

### **Relief**

[29] Shorn of discursive passages, the relief sought is:

- (a) The issue of an order directing the University to enrol Ms Roe in the 120 point MPhil from the date she started supervised work (one month after her application was received) on 5 March 2018.

---

<sup>4</sup> At [58]–[60].

- (b) Declarations that:
- (i) the University is required to examine work that has been submitted for examination by students to internationally recognised standards of examination;
  - (ii) the theses submitted for examination are required to be sent out for examination in a timely fashion; and
  - (iii) the exercise of statutory power of decision to fail Ms Roe for her thesis submitted in October 2018 was invalid because the University does not have the power to base the outcome of examination on anything other than reports of external examiners.
- (c) A direction that the University shall:
- (i) update Ms Roe's transcript to show that the substantively updated thesis she supplied to the Dean on 24 February 2019 (within 10 weeks of the outcome of examination on 11 January 2019) is required to be accepted in fulfilment of regulations for the degree;
  - (ii) reinstate the enrolment dates on her previously completed MA so it can be seen that the MA was completed over two calendar years (part-time) but the MPhil was completed over one calendar year (full-time).
- (d) Damages of \$324,000 being the equivalent of two years' salary at a rate she would have earned as a senior doctor in the public health system.

## Issues

[30] At the start of the hearing before me, Ms Roe agreed with counsel for the University that there were three issues for the Court's determination:

- (a) Whether the University complied with the law and its policies and procedure that were lawful policies, and whether it acted reasonably and fairly in accordance with natural justice in relation to Ms Roe's enrolment.
- (b) Whether the University's decisions in respect of Ms Roe's thesis complied with the law and its lawful policies and procedures, and whether they were fair and reasonable decisions.
- (c) Whether the University kept accurate records about Ms Roe.

[31] I consider each in turn.

**Ms Roe's enrolment – backdating and timeframe**

[32] Ms Roe observes that the University Calendar regulations provide that applications must be made a month prior to the intended start date for thesis enrolments. She suggests that this is ambiguous: it could mean either one month proper, which is to say around four weeks, or "in the preceding month". She suggests that since the University's computer system let her select the start date of 5 March 2018 when she applied on 28 February 2018, the latter interpretation should be preferred. Since she applied in the month preceding her preferred start date in March, she should have been enrolled.

[33] Ms Roe also argues that the University erred in holding that her enrolment began on 1 May 2018. She says:

- (a) she began her course of study on 5 March 2018, the date on which her prospective supervisor made suggestions about literature she should review;
- (b) (although she did not call any evidence about it) the practice for many universities, including the University of Waikato, is to have a "shopping period" of some weeks after courses officially start, in which students can begin work on courses even if they are not enrolled;

- (c) the practice is for enrolments to be regularly backdated to an earlier time; even if she enrolled too late, the University ought to have backdated her enrolment to 5 March 2018;
- (d) the University did not process her enrolment in accordance with the seven-week timeframe provided in their policy, with her application being processed in seven weeks and five days instead; and
- (e) the University was obliged to let her complete the MPhil in the “minimum normal standard amount of time”; in other words, as quickly as possible.

### *Discussion*

[34] The University Calendar did not apply to Ms Roe’s enrolment. The admissions and enrolment section of the 2018 University Calendar contained general information about standard thesis enrolment dates and deadlines, but the MPhil is a higher research degree governed by its own regulations, policies and procedures. The University made it clear to Ms Roe, in several communications following her application, that the earliest start date for her study was 1 May 2018. She accepted the University’s offer of enrolment dated 23 April 2018 on that basis.

[35] There is no merit in Ms Roe’s submissions on the point of “backdating”. To backdate student enrolments would breach the rules set by the TEC and the Ministry of Education relating to enrolment periods and funding.<sup>5</sup> The TEC and the Ministry require the University to record and provide to them accurate data regarding student enrolment and start dates. Some of this data enables the University to provide what is called a single data return, or “SDR”, to the TEC and the Ministry.

[36] Because the University receives Student Achievement Component (SAC) funding from the government, it is required to provide SDRs to report correctly student start and end dates to determine the payment of funding entitlements. The University was careful to ensure that Ms Roe was made aware that she was unable to have her

---

<sup>5</sup> Ministry of Education and Tertiary Education Commission – Single Data Return Manual – 2018 (version 2.0).

enrolment backdated and that she should not undertake work prior to receiving her student offer. I accept that Ms Roe's prospective supervisor provided some very broad suggestions as to reading material that Ms Roe could canvass in preparation for her study, but that does not determine her enrolment start date. It is standard practice for students to engage in preparatory reading prior to enrolling in a course.

[37] Addressing Ms Roe's allegations about the processing of her enrolment concerns, there is no dispute she was an eligible candidate for the MPhil degree. In accordance with s 224 of the Education Act 1989 (which then applied), the University processed and accepted Ms Roe's application to enrol (made on 28 February 2018) in the MPhil degree, and issued her a student offer (on 23 April 2018). The University's policy indicated that it could take up to seven weeks to process Ms Roe's application. Ms Roe's claim under the Education Act is that the University was required to process her application to enrol immediately, but the Act does not stipulate a timeframe in which tertiary institutions are to process an enrolment. The seven-week period was a reasonable, indicative timeframe and did not represent a specific deadline. Although the processing of Ms Roe's application took five days longer than the period indicated, no breach of duty occurred.

[38] I am satisfied that the University acted reasonably and fairly in accordance with the applicable regulations, provisions and the principles of natural justice in processing Ms Roe's enrolment and in declining to backdate it. Her first day of enrolled study for the MPhil was properly determined to be 1 May 2018.

### **Thesis treatment**

[39] Ms Roe advances several grounds for her submission that the University did not comply with its obligations regarding her thesis:

- (a) She submits that her supervisor acted unfairly in not sending her work to the external examiners as soon as it was submitted. The Education Act declares it to be the intention of Parliament that academic freedom is to be preserved and enhanced.<sup>6</sup> As a result, her work should have

---

<sup>6</sup> Education Act 1989, s 161(1).

been sent to external examiners regardless of what her supervisor thought was appropriate.

- (b) Ms Roe says it is clear on the evidence that the Court should find that the quality of her work was not relevant to any decision about terminating her enrolment, or not awarding her the MPhil degree. She suggests that, in not enrolling her immediately, the University violated her academic freedom, and directly harmed her by slowing the process down.
- (c) Ms Roe submits that reg 21 of the University regulations states that the Dean will provide the thesis to two external examiners for assessment, and in the case of divergent outcomes, the thesis will be provided to a third examiner. Ms Roe says her thesis was provided to two external examiners and also to her chief supervisor. Ms Roe submits that, despite the University not receiving divergent outcomes, they chose to appoint her supervisor as a third examiner.
- (d) Ms Roe also submits that the external examiners were misinformed about the degree for which she was enrolled. Since their information package included a discussion of the PhD, she suggests the examiners might have been under the impression that the work was aimed at a higher standard; the form that was sent to the examiners referred to a “doctoral thesis”.
- (e) Ms Roe argues also that:
  - (i) the evidence is insufficient to justify the decision requiring her to re-enrol for a further six months to make changes to her thesis;
  - (ii) the names of the external examiners have been redacted in the evidence before the Court, with the consequence the “external examiners” could be her supervisor; and



- (iii) the University pre-determined the outcome of the external examiners' reports and had made the decision to compel her to re-enrol before receiving them.

[40] As the basis for inferring what would be a dishonest manipulation of her study, she points to the fact that her programme's official hand-in date was 30 June 2019. That extended what should have been a 12-month programme to 14 months, taking the start of May as her start-date as the University suggested. This, Ms Roe suggested, was identical to the result of the proposed six-month extension. Ms Roe suggests that this was for financial reasons, inferring that the University wanted to delay her progress to justify charging her additional fees.

*The University's rejection of the truncated timeframe sought by Ms Roe*

[41] Was the University correct in its decision to decline Ms Roe's proposed truncated thesis completion timeframe? Ms Roe's self-reported goal was to complete her MPhil thesis by 7 December 2018 so that, once she obtained the MPhil degree, she would be eligible to enrol for study at the Auckland Medical School in 2019. Accounting for the three-month examination period, she would have been required to submit her completed thesis for examination at the start of September 2018 to meet her deadline. That would mean she would have had less than four months to complete 12 months of research and produce an MPhil thesis that was of an acceptable standard.

[42] Ms Roe sought the University's approval of her truncated timeframe and provided a breakdown of what she considered to be an achievable timeframe for completing her thesis. Her proposal ignored the clear terms of the applicable regulations.

[43] It is clear from the MPhil regulations and the terms of the Higher Research Degrees application process that the University intends that an MPhil thesis should be a considered, research-based contribution of original thought and argument that would not usually be completed in under a year.

[44] The University concluded that Ms Roe's calculations about when she could complete her thesis did not make a realistic assessment of the variables that would

affect her ability to complete the expected workload to the required standard. They included not only the candidate's research writing commitment but also the time required for consideration by and discussion with Ms Roe's supervisors, who had other work to undertake. As Dr Kingsbury said in her critique of Ms Roe's thesis:

... there is a very good reason for the normal practice of spreading the work of an M.Phil. over a full calendar year. It is expected to be a major piece of academic research, and the way to make a good job of it is to allow time to let your ideas develop, share those ideas in draft form with supervisors and ideally with others working in the area, and take the time to thoughtfully revise in response to their feedback.

[45] This view reflected the advice given to Ms Roe, only eight days after she accepted the offer of a 1 May 2018 enrolment date, that MPhil reg 10 required that applicants must pursue their research for one year, if they are enrolled on a full-time basis, and that the MPhil is a significant piece of work that required a considerable investment of time in the research and writing, and also in the refining of ideas and words through regular meetings with and feedback from supervisors.

[46] The assessment of what work was necessary to satisfactorily complete the degree requirements, and the reasonable time required, was a matter for the academic staff of the University. I am satisfied that the University's decision to decline to approve Ms Roe's proposed truncated thesis timeframe was lawful, fair and reasonable; it complied with the MPhil regulations which required enrolment for a period of 12 months. No actions by the University curtailed Ms Roe's academic freedom.

#### *Appointment of two external examiners*

[47] There is no merit in Ms Roe's claim that the University appointed her supervisor as a third examiner despite the reports of the other two examiners not having divergent outcomes. Dr Kingsbury provided a short, three-paragraph report in her role as Ms Roe's chief supervisor, after considering the examiners' comprehensive assessments.

[48] Further, there is no foundation to Ms Roe's claim that the University was unjustified in making the decision requiring her to re-enrol for a further six months to

make changes to her thesis; all of the evidence supports the decision that the thesis was not adequate in its submitted form. The reports of the New Zealand examiner and the overseas examiner were comprehensive, the New Zealand examiner's views being particularly detailed.

[49] The overview to the New Zealand examiner's comments includes the following:

The thesis shows an appropriate familiarity with some, but not all, of the relevant literature. The breadth of the task the student has set herself will make showing an appropriate familiarity with all the relevant literature difficult. If the research hypothesis is refined, and made clearer throughout the thesis, this will make the thesis clearer and the arguments may be improved. The breadth of the thesis makes a sufficiently comprehensive coverage of the subject matter very difficult within a Master's length work. The approach to the research of the student is of extremely mixed quality; at times it fails to meet the standards expected of both a philosophy thesis and, in particular, a work of applied philosophy. The quality of language, expression and general presentation is poor. Finally, the thesis cannot make an original contribution to knowledge as it stands because of the need to correct factual claims and improve argumentation. Faults aside, the thesis does have the potential to make an original contribution to knowledge after substantial revision.

[50] The examiner also made comments on the structure, style and referencing of the thesis and noted "many errors". The overseas examiner said that, broadly speaking, Ms Roe's thesis was one which showed "some clear strengths but also some significant deficiencies that need to be addressed before this thesis will be acceptable". Three "significant" deficiencies were described, as well as a number of typographical errors, broken sentences and grammatical issues throughout the thesis. Nevertheless, the overseas examiner concluded with an observation that the project was interesting and that the feedback was offered "in the spirit of improving the overall piece once it is completed".

[51] As Ms Roe's chief supervisor, Dr Kingsbury was entitled to express her own view of the thesis in common with those of the two examiners.

[52] The allegation that because the names of the external examiners were redacted in the evidence before the Court they could have in fact been her supervisor borders on the delusional.

[53] I accept that the examiners' MPhil recommendation forms contained a technically incorrect reference to a doctoral thesis. It is clear, however, from the correspondence between the University and the examiners, and from the examiners' reports, that the submission that the examiners were misled into believing they were examining a PhD thesis has no basis in fact. The instructions to the examiners, the further documentation provided to them in their examination pack containing the MPhil regulations, and the general correspondence clearly set out that the examiners were to examine an MPhil thesis and not a doctoral thesis. Both examiners' reports referred to Ms Roe's thesis as an MPhil thesis, with the New Zealand examiner stating "Kelly Roe, MPhil Thesis" in the first line of the report. I am satisfied that both examiners were aware that Ms Roe's thesis was an MPhil thesis, not a PhD thesis, and that they assessed the thesis accordingly.

*Outcome of the examination of Ms Roe's thesis*

[54] I have held that submission by the University of Ms Roe's thesis to both of the external examiners was reasonable and timely. Ms Roe's MPhil thesis was examined by the examiners who considered independently that it was not of a sufficient standard. Their recommendation was that the thesis should be revised and re-submitted for re-examination, after Ms Roe re-enrolled for a minimum period of six months. That option is available under MPhil reg 22(e). It was a fair and procedurally correct conclusion that was available to the examiners who extended Ms Roe the opportunity to revise an unsatisfactory piece of work. They were helpful in their feedback. Their views were supported by the chief supervisor and the Dean of the School of Graduate Research.

[55] I conclude that Ms Roe was driven by a determination to gain entry to a course in medicine at the University of Auckland in 2019, using the MPhil as a vehicle. In order to achieve her goal of attending medical school, she submitted, only six months after she claims to have started it, a thesis that had been prepared in half the time the University considered reasonable for an academic paper worthy of the conferment of a Master's degree. On the evidence of the opinions of the examiners and the chief supervisor; Professor Weaver and the Appeals Sub-Committee of the Post-Graduate Research Committee, and despite many warnings by University personnel throughout

the process, I find that Ms Roe produced a thesis that was predictably incomplete, inadequate and below the standard reasonably required for conferment of the MPhil degree.

#### *Allegation of pre-determination*

[56] Ms Roe alleges that the University pre-determined the outcome of her examination and decided that she would be required to re-enrol, even before the University received the external examiners' reports. The allegation has no foundation in fact. The documentary evidence provided by the University demonstrates that the University's decision was made and communicated subsequent to receipt of the examiners' assessments.

[57] Ms Roe's allegation that the quality of her work was irrelevant to the University's decision to recommend re-enrolment and that the decision was based purely on the University's wish to make money out of the additional fees she would be required to pay is wholly without foundation.

#### **Other administrative errors**

[58] Ms Roe submits, in similar vein, that the University made several errors in administering her documents, which she submits were motivated maliciously, simply to require her to pay more fees. She suggests that the University enrolled her in programmes that she did not enrol in, and changed her grades retrospectively to a "Y" grade. The effect of these changes is not clear and Ms Roe does not elaborate. She submits that they invoiced her (as Ms Roe had a student loan, the cost was paid by StudyLink) as if she had enrolled for a PhD.

[59] Section 225(a)(1) of the Education Act relevantly states that an institution shall keep records that show "the progress of each student at the institution (including the principal results achieved by the student) in ... her programme of study". The University kept accurate records and Ms Roe was invoiced for her MPhil enrolment. In September 2019, Ms Roe made a formal complaint to the University's Vice-Chancellor that the invoice for her MPhil enrolment referred to a PhD examination. The Vice-Chancellor, Professor Neil Quigley, explained on 8 October 2019 that the

reference to “PhD Examination fee waiver” is standard wording generated on University invoices when a MPhil/PhD student is being examined. The Vice-Chancellor then agreed that the invoice could be amended to refer to the MPhil rather than the PhD for clarity. Ms Roe was invoiced correctly – nothing turns on this point.

[60] In relation to contended errors on Ms Roe’s transcript of grades, the University was correct to record that Ms Roe had failed her MPhil degree. Any other errors were consequences of a 2019 software upgrade, undertaken at the University, that caused the display of certain qualifications on Ms Roe’s transcript to be altered. This was resolved by the University at Ms Roe’s request. These are minor digital record-keeping errors that the University accepted and remedied in a timely manner. I am satisfied that the University kept accurate records about Ms Roe and acted in accordance with s 225 of the Education Act in this regard.

#### **Further claims**

[61] Ms Roe did not expand on her tortious claims against the University beyond the pleading and she did not provide supporting evidence of her claim for loss. There being no evidence to support the claims, they are dismissed.

#### **Result**

[62] I dismiss Ms Roe’s application for review.

#### **Costs**

[63] As the successful party, the University is entitled to an award of costs on a category 2B basis.

[64] If the parties cannot earlier agree on costs, the University shall file and serve any costs memorandum by **13 August 2021**. Ms Roe shall file and serve any costs memorandum in reply by **10 September 2021**. The costs memoranda shall not exceed three pages in length, excluding the intituling cover page and any annexed schedule of costs and documents related to disbursements. Unless the Court directs otherwise, costs shall be determined on the papers.

**Toogood J**