

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

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2020-485-574
[2021] NZHC 1293**

UNDER	The Judicial review Procedure Act 2016
BETWEEN	KELLY ALEXANDRA ROE Applicant
AND	NEW ZEALAND VICE-CHANCELLORS COMMITTEE Respondent

Hearing:	On the papers
Counsel:	Applicant in Person T Smith and H Kerry for Respondent
Judgment:	3 June 2021

**JUDGMENT OF ISAC J
[On costs]**

Introduction

[1] In a judgment of 1 April 2021 I dismissed Ms Roe’s application for judicial review.¹ I noted that costs would ordinarily follow the event, and if costs were sought by the respondent I would be minded to grant them on a 2B basis.²

[2] The respondent has now sought costs on a 2B basis in the sum of \$17,686 together with disbursements of \$95.65. It does not seek certification for second counsel.

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

² At [104].

[3] Ms Roe in turn seeks costs against the successful respondent of \$21,749 and disbursements of \$1,600.³

[4] Ms Roe denies that the proceeding was a challenge to the non-conferral of a degree. Rather, she contends the proceeding centred on a bribe payment, fraud and extortion. She maintains her position that the correct procedures for investigating complaints were not followed, and that the proceeding is properly characterised as one involving whether Universities New Zealand is performing its statutory function to uphold the quality and integrity of university qualifications.

[5] She submits that her belief in fraud and corruption ought to be established by a public prosecution of the Chief Executive of the respondent. Her claim for costs is based on the submission that bringing her complaint to court came at a considerable personal cost, and that “you might say [Ms Roe] was forced to slave for the courts.” She also asserts that the sum she seeks is less than her actual costs.

Discussion

[6] All matters relating to costs are discretionary.⁴ The discretion must be exercised on a principled basis. And the determination of costs, so far as possible, should be both predictable and expeditious.⁵

[7] In this case, I see no reason to depart from the usual course that the party who fails with respect to a proceeding should pay costs to the party who succeeds.⁶

[8] I do not accept Ms Roe’s characterisation of the proceeding, and nor do I accept that it would meet the requirements under r 14.7(e) — that the proceeding concerned a matter of public interest — to justify no order for costs or a reduction in costs. The test for determining whether a proceeding is in the public interest, and therefore

³ Ms Roe seeks filing fees as a disbursement but notes in her memorandum she was granted a fee waiver. In the event disbursements are granted to her she proposes to pay the filing fee to the Ministry of Justice.

⁴ High Court Rules, r 14.1.

⁵ Rule 14.2(1)(g).

⁶ Rule 14.2(1)(a).

justifies a departure from the usual rule that costs follow the event, was summarised in *Taylor v District Court at North Shore (No 2)*.⁷

... the proceeding must concern a matter of genuine public interest, have merit and be of general public importance beyond the interests of the particular unsuccessful litigant. To obtain the benefit of the exception in rule [14.7(e)], the unsuccessful litigant must also have acted reasonably in the conduct of the proceeding.

[9] This proceeding does not fit into the category of cases that have engaged the public interest exception to costs.⁸ Nor is there any proper foundation to support Ms Roe's claim for costs.

Result

[10] Costs are awarded to the respondent on a 2B basis as claimed.

Isac J

Solicitors:
Chapman Tripp, Wellington

⁷ *Taylor v District Court at North Shore (No 2)* HC Auckland CIV-2009-404-2350, 13 October 2010 at [9].

⁸ See for example *West Coast ENT Inc v Buller Coal Ltd (Costs)* [2013] NZSC 133; *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513 (PC); *EDS v New Zealand King Salmon* [2014] NZSC 167.