Roe v New Zealand Vice Chancellor's Committee

2021 - ...

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Chapter 1

Judgment of Justice Isac (1 April, 2021)

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 719

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

Hearing:	9 March 2021 (via AVL)
Appearances:	Applicant in person T Smith and H Kerry for Respondent
Judgment:	1 April 2021
Reissued:	27 April 2021

JUDGMENT OF ISAC J

Introduction

[1] Ms Roe is a former postgraduate student of the University of Waikato.[1] Her MPhil thesis was submitted to external examiners for assessment in October 2018. The examiners' reports were unfavourable. The Dean of the School of Graduate Research[2] advised Ms Roe that her thesis was not acceptable in its present form. She was invited to revise and resubmit it for examination after re-enrolment for a minimum of six months.

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1 In this judgment, unless the context otherwise requires, I will refer to the University of Waikato as "the University".
2 Referred to as "the Dean" in the balance of this judgment.

[2] Ms Roe was unhappy with the University's decision. In February 2019, she made a complaint to the New Zealand Vice-Chancellors Committee (the Committee). She alleged the University:[3]

(a) fraudulently recorded grades that were not earned or achieved (it appears by recording that she failed the MPhil when she refused to re-enrol);[4]

(b) refused to follow its own regulations, namely that the outcome of the examinations would be based on reports of external examiners; and

(c) requested "bribe payments" by stating that she had one month to pay additional fees for an extended period of re-enrolment when there was no basis for re-enrolment contained in the reports of the examiners.

[3] After consideration of the complaint against the appropriate policy the Chief Executive of the Committee determined that further investigation of the University's conduct was unwarranted.

[4] Ms Roe has applied for judicial review of the Chief Executive's decision. She says the respondent failed to apply its own Student Complaints Policy correctly. The Chief Executive, and therefore the Committee, wrongly determined there was no basis to investigate her claims of improper conduct.[5]

[5] In this review application it is the decision of the Chief Executive that is in issue rather than the decision of the University itself. Nevertheless, because the appropriateness of the Chief Executive's decision necessarily turns on the substance

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3 At the hearing Ms Roe helpfully confirmed that these three overlapping propositions accurately summarise the core of her complaint against the University and, therefore, form the underlying basis for her application for judicial review against the respondent.

4 As I understand her submission, Ms Roe contends that by conferring a failing grade for her MPhil thesis the University failed to act consistently with the examiners' reports, and, therefore, interfered with the normal process for assessing her degree and awarding grades.

5 At the hearing Ms Roe, who had only recently received and considered the respondent's submissions, responsibly conceded that an additional complaint she had made against the Committee, namely that it ought to have applied a different policy to her complaint (the Policy on Dealing with Claims of Serious Wrong-doing under the Protected Disclosures Act 2000) was unsustainable and she did not pursue that aspect of her application.

of Ms Roe's complaints against the University, it is necessary to consider in some detail her period of study and the decision not to approve her MPhil thesis.

Background

[6] Ms Roe enrolled in a Master of Philosophy degree in the University's Faculty of Arts and Social Sciences on 1 May 2018.[6] It was a one-year post-graduate course of study and required her to successfully complete examination by thesis by 31 April 2019 or face the prospect of re-enrolment and further tuition fees.

[7] Ms Roe's thesis was on disability and equity in medicine and public health. By October 2018 she had already completed a 55,000 word thesis that was submitted to two external examiners for review in keeping with the University's Calendar Regulations governing the MPhil degree.

[8] The examiners reports were made available to the University and Ms Roe in December 2018.

[9] The report of the New Zealand examiner is 20 pages long. After a detailed overview of the strengths and weaknesses of the thesis it goes on to set out detailed comments and suggested revisions needed to the thesis' five chapters. The New Zealand examiner's report concluded:

> The thesis shows an appropriate familiarity with some, but not all, of the relevant literature. The breadth of the task the student has set for herself will make showing an appropriate familiarity with all the relevant literature difficult. If a 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 Masters length of work. The approach to the research is of extremely mixed quality; at times it fails to meet the standards expected of both the 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.

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6 At the hearing Ms Roe submitted that she had been seeking to enrol from March 2018 and there was some delay before her enrolment was accepted by the University, but nothing turns on that question.

[10] The report of the overseas examiner was in similar terms. It briefly summarised the thesis' strengths before identifying what were said to constitute "significant deficiencies":

> Broadly speaking this is a thesis which shows some clear strengths but also some significant deficiencies that need to be addressed before this thesis will be acceptable.
>
> …
>
> In terms of weaknesses there were I think three significant deficiencies, and a few minor issues as well.
>
> The first significant issue which I think would help the thesis throughout is that while the concept of discrimination is used repeatedly throughout the thesis there is no analysis of this concept within this thesis. I think such an analysis would helpfully inform several sections of this thesis and make some of its conclusions more defensible. For example discrimination is typically considered immoral if it tracks a non-relevant characteristic, however several times this thesis suggests that this kind of discrimination is morally problematic.
>
> The second major issue has to do with an ongoing pattern of making significant empirical claims without providing references to underwrite these empirical claims. Some (non-exhaustive) examples of this include:
>
> …
>
> The final major issue has to do with the analysis and interpretation of some of those empirical claims, when rather than interpreting these charitably, instead the author seems to head to quite tendentious interpretations. While controversial interpretations can of course be correct, typically the evidential bar for such claims needs to be much stronger, otherwise you risk arguing against a straw man rather than the actual position you are trying to criticise. I felt that a common pattern of reasoning offered was comparing two positions, and then concluding that since one is false, the other must be true, however there are often many less contentious positions still available between the two. Some non-exhaustive examples of this are below:
>
> …
>
> This is an interesting project, and I offer this feedback in the spirit of improving the overall piece once it is completed.

The Dean's decision to invite re-enrolment

[11] On 10 January 2019 an advisor in the School of Graduate Research wrote to Ms Roe. The letter advised her that the Post-Graduate Research Committee had considered the examiners' reports of her thesis and concluded it was not yet of a sufficient standard to proceed to completion of the degree. The letter confirmed that

Ms Roe had been sent the examination reports by her supervisor in December 2018 in order to provide her with a timely understanding of the outcome of the examination process.

[12] The 10 January letter went on to invite Ms Roe to re-enrol, revise and submit her thesis for re-examination in these terms:

> You are now invited to re-enrol, revise and submit your thesis for re-examination. If you intend to accept this invitation to re-enrol, please note the following conditions:
>
> 1. You must complete the re-enrolment process within **one** month of the date of this letter. This requires you to enrol for additional months beyond those you have already completed enrolment for.
>
> 2. You must resubmit your thesis after a minimum period of six months enrolment.
>
> 3. You will be required to pay normal tuition fees for the additional enrolment period.
>
> Your six month re-enrol, revise and re-submit period could commence from either 1 January or 1 February 2019, whichever is your preference. As your 2018 fees cover the period of 1 May 2018 - 30 April 2019, you will only be required to pay fees for the additional months to take you up to the minimum six months of re-enrolment. If you choose not to re-enrol, or any of the above conditions are not met, please note that you will not qualify to complete your MPhil degree.
>
> The areas in which the thesis requires revision are outlined in the external examiners' reports, which are held by your Chief Supervisor.
>
> Please complete and return the enclosed form indicating your decision in this matter.

[13] As will be evident from this exchange, while the University was inviting Ms Roe to re-enrol for a minimum period of six months, it was prepared to allow her re-enrolment to commence on 1 January 2019 and credit her with the remaining time of her then existing enrolment—to 31 April 2019. In practical terms the effect of re-enrolment as offered would have been to extend Ms Roe's period of study, and responsibility for the appropriate tuition fee, by two months.[7]

[7] That is, the period between 1 May 2019 and 30 June 2019.

[14] Enclosed with the 10 January letter was a form entitled "MPhil Resubmission". The form asked Ms Roe to tick an appropriate box and return it to the University. The form was in these terms:

☐ I wish to **ACCEPT** the offer to re-enrol, revise and resubmit my thesis for consideration for a University of Waikato MPhil.

I have read and accept the conditions listed below:

- I will complete the enrolment process within one month of the date of this letter.
- I will resubmit my thesis after 6 months of re-enrolment.
- I will pay the normal tuition fees, as required for the additional period of enrolment

OR

☐ I wish to **DECLINE** the offer to re-enrol, revise and resubmit my MPhil thesis.

Signed: .....

Dated: .....

ROE, Kelly

[15] The next day, 11 January 2019, the Dean of the School of Graduate Research also wrote to Ms Roe. That letter confirmed, on the basis of the examiners' reports, that Ms Roe's thesis was not acceptable in its present form and reiterated the invitation to revise and resubmit for re-examination after a re-enrolment for a minimum period of six months.

[16] Although no reference is made in the Dean's letter to the University's Regulations governing conferral of the degree, Ms Roe and the Committee were agreed that the decision was made under reg 25 of the University's Calendar. Regulation 25 provides that on the basis of the final reports of the examiners the Dean may determine:

> (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 Te Mata Kairangi 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.

[17] Self-evidently, then, the Dean's conclusion based on the examiners' reports was to invite Ms Roe to re-enrol and re-submit her thesis after a minimum period of additional study under reg 25(e), rather than approval of the thesis under reg 25(c).

Ms Roe appeals the Dean's decision to the Research Committee of the University

[18] On the same day the Dean notified Ms Roe of her decision, Ms Roe exercised her right to appeal that decision to the Research Committee of the University.

[19] In a letter of 29 January 2019, the Research Committee declined Ms Roe's appeal. The letter set out the reasons for the decision in these terms:

> In considering your appeal the sub-committee has determined that the Dean of Te Mata Kairangi School of Graduate Research reached an appropriate decision that was consistent with the examiners' feedback on your thesis, and made in accordance with the University's regulations. As a result, the Sub-committee determined that your appeal could not be upheld and the decision of Dean of Te Mata Kairangi School of Graduate Research should stand. The Sub-committee also discussed the issues you raised in your correspondence of 21 January 2019 regarding timeframes for enrolment and examination. After discussion of the matter they did not agree with your interpretation of the regulations and subsequent assertion that there had been a breach in your case.
>
> Your options are, therefore, as outlined in the letter sent to you by the Te Mata Kairangi School of Graduate Research on 10 January 2019. Please confirm your decision with them.

Ms Roe complains to the Vice-Chancellors Committee about the University's conduct

[20] On 29 July 2020, Ms Roe sent an email to the Committee indicating that approximately one year earlier she had complained to it about the University's conduct but had not received a response.

[21] The following day Mr Chris Whelan, the Chief Executive of the Committee, advised Ms Roe that the Committee would only look into a matter where it fell within the Committee's "authority"; that is, where the complaint concerned a matter of academic quality or academic integrity. Mr Whelan noted that Ms Roe's complaint might fall within the Committee's authority, but he would be unable to form a view on that without receiving "the facts". Accordingly, he invited Ms Roe to provide him with a summary of her complaints against the University, and to provide any correspondence or report outlining its decision and the reasons for it. Mr Whelan indicated that he would use Ms Roe's response to determine, firstly, if the complaint did fall within the Committee's authority and, secondly, if the matter appeared to be something which the Committee should investigate.

[22] On 31 July 2020, Ms Rowe provided Mr Whelan with the detail of her complaints. She advised that in 2018 she enrolled in a Masters of Philosophy programme at the University. On the basis of two reports of external examiners, her thesis was to have substantive changes "signed-off" by her supervisor or an examiner within 10 weeks of the outcome of examination.[8] Instead, the University refused to have her supervisor sign-off on her work and refused to allow an examiner to sign-off on it. Instead, the University re-enrolled her for an extended period in 2019 and then awarded her a "fail" for the degree.

[23] Ms Roe went on to advise that the Dean was required to base the outcome of examination on the reports of the examiners. She claimed there was no basis in the reports of examiners for any outcome other than one under reg 25(c), which would permit approval of the thesis by either a supervisor or one of the two examiners after substantial amendments taking not more than 10 weeks. In support of this interpretation of the reports, Ms Roe noted that neither examiner:

(a) said in their report that re-enrolment was required;

(b) said in their report that re-examination was required;

[8] As I understand Ms Roe's use of the term "sign-off", she refers to reg 25(c) of the University's MPhil Regulations, which are noted at [16].

(c) said in their report that the University "might like to reject the report of the examiners and invite the examiners to write another report at a later date";

(d) said in their report that 6 months' additional work was required;

(e) returned the thesis to the candidate (a reference to the language of reg 25);

(f) "said or did anything in their reports or their actions" for there to be a basis for the University to require re-enrolment and additional fees payments and another round of examination; and that

(g) the University refused to have Ms Roe's supervisor sign-off the updated thesis and instead demanded that she re-enrol for a further six months and pay tuition fees for the extended period of enrolment.

[24] Ms Roe went on to advise Mr Whelan that she had supplied a substantively updated thesis on 5 February to her supervisor for sign-off. The supervisor refused to sign the thesis off. She then supplied a substantively updated thesis on 24 February to her supervisor and the Dean to get it to the examiners for their sign-off. The Dean also refused this request. Ms Roe's complaint to Mr Whelan concluded by saying:

> Waikato refused to get my work to examiners, to allow me to work to international standards, refused to sign off on my Degree when that is what reports of external examiners required them to do.

[25] In support of her complaint Ms Roe provided Mr Whelan with the letters from the Dean and the Post-Graduate Research Committee of 10 and 11 January 2019, and the Research Committee's letter of 30 January declining her appeal.

[26] A few days later, on 31 July 2020, Ms Roe also sent Mr Whelan the examiners' reports.

Mr Whelan's decision on Ms Roe's complaint

[27] In an email of 6 August 2020, Mr Whelan advised Ms Roe of the outcome of his consideration of her complaint.[9]

[28] He acknowledged that at least at one point the University appeared to have erroneously mixed up the terms "MPhil" and "PhD", but on the face of the materials Ms Roe had provided (in particular the content of the reports themselves), Mr Whelan did not see anything that indicated "any substantive issues arising in relation to either academic quality or academic integrity".

[29] Mr Whelan went on to note that the views of the two thesis examiners were consistent in finding that the thesis was not at an adequate standard for achieving the MPhil degree. And the invitation given by the Dean to re-enrol for a further six months and re-submit was, in Mr Whelan's view, "fully in line" with the published regulations of the University, and normal practice in New Zealand universities generally. Finally, Mr Whelan noted that it was similarly normal practice for New Zealand universities to require re-enrolling students to pay additional fees where the period of study was extended.

[30] On those grounds, Mr Whelan concluded that there was nothing that the Vice-Chancellors Committee would investigate. He advised Ms Roe that if she was unsatisfied with his decision there was a right of appeal to the Ombudsman.

Statutory context and relevant policies

The University's Calendar and the MPhil degree Regulations

[31] While the Dean's decision to decline to award Ms Roe with the MPhil and invite her to re-enrol for a further period of study is not directly in issue in this

[9] In his affidavit of 5 February 2021 Mr Whelan detailed the various factors that fed into his decision not to recommend the Committee investigate Ms Roe's complaint further. While those detailed reasons are an amplification of the brief reasons set out in his email to Ms Roe of 6 August, I have preferred to focus in my decision on the reasons set out in Mr Whelan's email which, in my view, provided Ms Roe with the pith of his reasoning. They are also consistent with the greatly amplified explanation for his decision set out in his affidavit.

proceeding, it is important context when it comes to the assessment of Ms Roe's challenge to the decision of Mr Whelan to decline to investigate her complaint.

[32] The University's Calendar contains a set of Regulations setting down the requirements for the award of the MPhil degree. Those Regulations are said to be explicitly administered by the Dean of the School of Graduate Research and the University's Post-Graduate Research Committee.

[33] Under reg 24, the Dean 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 those external examiners needs to be based overseas. In the case of what is referred to in the Regulations as "divergent examination outcomes", the Dean is required to appoint a third examiner.

[34] Under reg 25, the Dean is provided with the power to make a "final decision on the award of the Degree". And as noted already, the regulation goes on to provide that the Dean has the power to determine which of five outcomes are appropriate based on the results of the examiners' final reports. In this case the two options in focus are reg 25(c), which Ms Roe says was the only outcome open to the Dean on the reports of the examiners, and reg 25(e), requiring resubmission after a minimum period of further study, which is what the Dean and the Research Committee of the University determined as the appropriate outcome.

Statutory constitution of the Vice-Chancellors Committee

[35] The Committee is a body corporate that was originally established under s 240 of the Education Act 1989 and was continued by s 311 of the Education and Training Act 2020. It is made up of the Vice-Chancellors of New Zealand's eight universities. They are assisted in the administration of the Committee's affairs by a range of sub-committees, working groups and an employed secretariat including a Chief Executive.

[36] Most of the provisions of the new 2020 Act, including those provisions dealing with the Committee, came into force on 31 July 2020. Ms Roe's complaint was made to the Committee on or before the commencement of the new Act, and while the

Education Act 1989 still applied. Mr Whelan's decision of 6 August 2020 was made after the new regime came into force. Despite this, other than noting the transition between the relevant enactments, Ms Roe did not submit that anything turns on the issue and she was right to do so. The provisions of the Education Act 1989 dealing with the functions and powers of the Vice-Chancellors Committee are carried over without any changes of consequence into the 2020 Act.[10]

[37] Part 4 of the new Act deals with tertiary education and vocational education and training. The purpose of pt 4 is set out in s 251, and includes "regulating learning and providing quality assurance for learning, including qualifications…[and] assessment standards…".[11] Pursuant to s 253(c), the Vice-Chancellors Committee is the body primarily responsible for quality assurance matters in respect of universities.

[38] Section 256 provides that universities may charge fees for domestic students. Under s 256(5), a domestic student may not be enrolled or continue to be enrolled in a programme of study unless they have paid to the University's Council the tuition fee.

[39] Mr Smith for the respondent submits that at the time of Mr Whelan's decision on Ms Roe's complaint, the Committee's statutory functions included: [12]

(a) the establishment of inter-university course approval and moderation procedures; and

(b) the exercise, in relation to universities, of the powers of the New Zealand Qualifications Authority under certain provisions of the Education and Training Act relating to the approval of academic programmes, and the granting of accreditations to provide approved academic programmes.

[40] These functions mean that, expressed in general terms, the Committee is the body primarily responsible for *quality assurance* matters for New Zealand

10 Compare ss 312 and 313 of the 2020 Act with ss 241 and 242 of the 1989 Act.
11 Education and Training Act 2020, s 251(e).
12 Education and Training Act 2020, ss 312, 453. The latter section grants the Vice-Chancellors Committee the powers of NZQA under s 439 to 448, 458(a)–(b) and 459 of the Education and Training Act.

universities. It is the statutory body charged with ensuring systemic regulation that achieves uniform minimum standards in relation to moderation procedures, course approval and academic assessment.

[41] While the systemic functions and powers of the Committee may properly be engaged by an individual bringing relevant issues to the attention of the Committee, the Committee does not act as a final appellate body in relation to complaints by individuals about the individual award (or otherwise) of academic qualifications by a university. The Education and Training Act makes a clear distinction between the role, powers and functions of individual universities, and those of the Committee.[13] Individual concerns regarding the award of degrees by a particular institution are for the institution to consider under its powers, subject to any appropriate internal appeal process and, ultimately, subject to supervision by the High Court.

[42] This high-level oversight, and the distinction between systemic regulation and appeals concerning individual academic achievement is reflected within the Committee's "Policy on Complaints by Students of Academic Wrong-doing", to which I now turn.

Committee's Student Complaints Policy

[43] In August 2017 the Committee adopted a policy on claims by students of academic wrongdoing within universities (the Student Policy).

[44] The Student Policy is not a requirement under the Education Act or the Education and Training Act. It therefore has no formal legal status.[14] Rather, it is intended to provide guidance to students and universities on the types of complaints the Committee can consider given the limits on its statutory functions and powers. Indeed, I observe that to the extent the Student Policy might purport to confer on the

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13 For example s 266 of the Act states "The object of the provisions of this Act relating to institutions is to give them as much independence and freedom to make academic, operational, and management decisions as is consistent with the nature of the services they provide, the efficient use of national resources, the national interest, and the demands of accountability." Sections 282, 283, and 284 go on to outline the powers of institutions and councils, including the power to provide courses of study or training, admit students (including provisionally and *ad eundem statum*) and grant awards.

14 This is not to say, though, that the Policy does not constrain the Committee at all.

Committee a wider power it would be subject to challenge on the basis the Policy was ultra vires and unlawful.

[45] The Student Policy notes that the Committee can only investigate and act on claims where they fall within the Committee's statutory functions.[15] Clause 3(a) of the Student Policy then goes on to say that a claim for academic wrongdoing should be made to the Committee "only where the student can provide evidence that":

(a) the appropriate complaints processes have been followed and fully exhausted (there is no issue that Ms Roe did this);

(b) all those involved in complaints and appeals at the university in question are involved in the wrongdoing (arguably, based on Ms Roe's allegations this requirement may have been met); and

(c) finally:

> The wrong-doing is being perpetrated at an *organisational level* and there is a strong case for Universities New Zealand [the Vice-Chancellors Committee] to bypass individual university complaint and appeal processes is necessary [sic] to protect the interests of all students pursuing a particular qualification.
>
> (emphasis added)

(Again, taken at face value, Ms Roe's allegations of corrupt practice both in the award of her degree and the demand for bribe payments could arguably have met this requirement.)

[46] Clause 3(b) of the Student Policy then provides:

> [The Committee] will consider and, if appropriate, investigate claims of wrong-doing where all the following criteria are met:
>
> i. The claim is made by a student of the university to which the allegation relates. "Student" means any existing or former person enrolled on a full-time or part-time course of study at the university in question.

[15] Student Policy, cl 2(c).

ii. The disclosure concerns conduct capable of being academic wrongdoing within the statutory authority of [the Committee]. Some examples of what [the Committee] would consider wrongdoing include:

• fraudulent awarding of marks or grades to students or awarding of marks or grades that have not been fairly gained by students;

• failure to follow policy and regulations in making decisions where the intent is to award marks that have not been fairly gained by students;

• misrepresentation of the level of academic preparedness of students for the course to which they are admitted;

• receiving money or other gifts in return for award of marks that have not been fairly gained.

iii. There is sufficient evidence provided or able to be provided with the claim that the Executive Director believes there is a prima facie case for further investigation

iv. The claim regards an academic programme or qualification offered by a New Zealand university.

v. The claim involves an allegation that one or more of the CUAP-imposed conditions applying to an approval of or accreditation to offer an academic programme have been breached or not met.

[47] Clause 6 of the Student Policy regulates the process for handling student claims once received. It provides that after considering the criteria in cl 3 of the Student Policy, the Chief Executive, "and one other person (usually the Deputy Chair of CUAP) will determine whether it is appropriate for [the Committee] to further investigate the claim".[16] Clause 6 goes on to provide that the Chief Executive and the additional decision-maker may consider the process followed by the relevant university and findings from any review carried out by the university in determining if further investigation is warranted. Only where a further investigation is found warranted does the Committee itself then investigate the matter.[17] However, if the Chief Executive and additional decision maker do not consider it appropriate for the Committee to further investigate the claim, they may advise the complainant that the

16 The CUAP is a sub-committee of the Vice-Chancellors Committee established to administer the Vice-Chancellors Committee's statutory functions, and is called the Committee of University Academic Programs (CUAP).

17 Student Policy, cl 6(b).

Committee declines to investigate the claim, and that the complainant can pursue the matter through the Ombudsman's Office or another appropriate authority.[18]

Parties' submissions

Ms Roe's case

[48] The key plank of Ms Roe's case is that based on the examiners' reports, the *only* decision open to the Dean and the Research Committee concerning her thesis was under reg 25(c); that is, the thesis should have been accepted subject to Ms Roe completing substantial amendments to the satisfaction of her supervisor within 10 weeks.

[49] Ms Roe went on to argue that the examiners' reports themselves nowhere stated that the examiners required Ms Roe to revise and resubmit the thesis for examination, and certainly did not record that she was required to re-enrol for a minimum period of six months or pay any additional tuition fees.

[50] On this basis, Ms Roe contends that the decisions of the University and the Dean were unlawful, and that the University's request for fees in the event of re-enrolment was a demand for a bribe payment (on the basis that the examiners' reports required the approval of her thesis pursuant to reg 25(c)). Ms Roe also says that the University's recording of a "fail" mark for her degree is fraudulent, because it is an outcome which is not based on the examiners' reports.

[51] She also contended that the University's refusal to have her supervisor "sign-off" on her substantially revised thesis in early February 2019, and the subsequent refusal later that month to refer her revised thesis to the external examiners, was inconsistent with the requirements of reg 25(c). So again, the University refused to follow its own regulations on this matter of process.

[52] Ms Roe says these complaints went to the heart of academic integrity and academic quality and, therefore, the Committee's statutory functions and powers, and

[18] Student Policy, cl 6(c)(i) and (v).

the Committee's Student Policy, were fully engaged. Mr Whelan's decision on her complaint was affected by the same errors as that of the University.

[53] Ms Roe does not take issue with the Student Policy itself. She takes issue with its application. In support of that challenge, she relies on the three grounds of complaint[19] made in support of her claims against the University. She says the Chief Executive wrongly determined that there was no basis to investigate her allegations against the University.

[54] During the hearing of the application Ms Roe developed a number of arguments that I now set out, although at times their link to her pleaded claims was tenuous:

(a) Ms Roe argued that the cover page on each of the examiners' reports that refer to examination for a PhD rather than an MPhil indicate that the examiners were misled as to the correct status of her thesis and assessed it against the wrong degree requirements. She submitted that a reading of the examiners' reports themselves indicate that the substantial revisions recommended by the examiners were intended by them to bring her thesis up to PhD standard. In essence, she says there was a radical error on the part of the assessors due to an administrative error by the University and that, in effect, her MPhil thesis has never properly been assessed as such.

(b) Ms Roe's industry had been such that she had been able to complete a 55,000 word MPhil thesis between 1 May 2018 and October, when it was submitted for examination. Given the examiner's reports were available in December 2018, that provided her with approximately four months to make any revisions needed to have the thesis "signed-off" by her supervisor pursuant to reg 25(c). She says she revised the thesis in light of the examiners' comments and sought to obtain her supervisor's sign-off (and, presumably, the award of the MPhil degree) twice in February 2019. But the University refused to

[19] That is, fraud, failure to follow regulations and demands for a bribe payment.

permit her supervisor to give her sign-off, and then refused Ms Roe's request to have the revised thesis referred to the examiners for re-assessment. Instead, the University demanded that she re-enrol for a further six months and pay a fee — all this against a backdrop of having four further months left of her original enrolment to run and having paid fees for a full year. Although she did not articulate it this way, I took her point to be that she was deprived the benefit of a quarter of the time available to her to complete her degree, and the value of the fees that she paid for a full year while being faced with a demand for a further minimum of six months' tuition fees.

(c) While Ms Roe accepted when I asked her at the hearing that her thesis was not in a state appropriate for the award of an MPhil, she contended the *only* clear interpretation of the examination reports was nevertheless the approval of her thesis under reg 25(c). Amplifying this submission, she went on to contend that the proper interpretation of the examiners' reports is such that it was not open to the Dean or the University's Research Committee to make a decision under reg 25(e). Neither of the reports make any mention of re-enrolment for a minimum period of six months. Neither of the reports make any reference to a requirement to pay further tuition fees. On this basis, the "demand" (as Ms Roe put it) for a further six month's tuition fee, when the examiners' reports plainly indicated the degree should be accepted under reg 25(c), amounted to a demand for a bribe payment.

(d) In a very literal construction of reg 25(e), Ms Roe contended that the words "[the thesis] will be returned to the candidate" meant that the hard copy bound manuscript which she presented to the University for the assessment of the examiners needed to be physically returned to her, but the University had failed or refused to return the hard-copy manuscript, thus demonstrating a failure to follow its own regulations.

(e) All of these points, but particularly the demand for payment when there was no honest or legitimate basis for one, and the failure to accept her

thesis despite the plain terms of the examiners' reports requiring the degree to be confirmed under reg 25(c), amounted to a fundamental crisis for the academic integrity not only of the University but for all universities throughout New Zealand. Actions such as those of the University were not unique, and the standing of New Zealand universities in the international academic community was now at rock bottom. Mr Whelan's refusal to refer her complaint to the Committee for investigation was part of the problem affecting the university sector.

(f) Mr Whelan was required under the Student Policy to consider her complaint with another person but did not do so. That error was material because the presence of another person ensures independence and operates as a check on the decision-making of the Chief Executive.

(g) Finally, in relation to relief, Ms Roe alluded to the possibility of some form of private prosecution of Mr Whelan but accepted that was not likely to be within the Court's power to order. Instead, she sought an order for Mr Whelan's removal from office and orders preventing New Zealand universities from refusing to give thesis work by post-graduate students to external examiners. I took her also to seek a declaration that requiring fees to be paid by a student for unnecessary re-enrolment was a corrupt practice.

[55] Although a number of Ms Roe's points appear to touch on matters of concern for her involving the University of Auckland and the University of Otago, she helpfully confirmed those matters are not pursued in this proceeding. She advised me that she had separate judicial review proceedings on-foot against the University, and both the University of Auckland and the University of Otago.[20] Those additional matters will be resolved within the context of her other proceedings.

[20] See the recent judgment of *Roe v University of Auckland* [2021] NZHC 368.

The Committee's case

[56] For the Committee Mr Smith submitted Ms Roe's application must fail because there was no reviewable error in deciding not to further investigate Ms Roe's complaint. Instead, Mr Whelan's decision was inevitable:

(a) the Committee may only investigate complaints relevant to its statutory functions and powers, relevantly including academic wrong-doing;

(b) Ms Roe's core allegations that the University requested a bribe payment and failed to follow regulations in relation to her thesis was not supported by the material submitted by her to Mr Whelan for consideration. Instead that material showed:

(i) a reasonable assessment by the Dean, on the basis of the examiners' reports, and in accordance with the University's MPhil Regulations, that Ms Roe's thesis was not in an acceptable form (an assessment upheld by the Research Committee on Ms Roe's appeal of the Dean's decision);

(ii) the provision of an opportunity to resubmit the thesis after a period of enrolment to complete the necessary work was again consistent with the University's regulations (which are in turn consistent with the regulations of other New Zealand universities);

(iii) a requirement, in accordance with s 256 of the Education and Training Act, that fees would be paid in relation to any additional period of enrolment.

The issues for determination

[57] I pause at this point to note that many of Ms Roe's grounds of review seemed to be more a reflection that she was — unsurprisingly — unhappy with the final decision not to investigate her complaint. But to succeed in judicial review

proceedings, applicants must broadly point to errors of law or processes that have affected the relevant decision or the exercise of a power. Mere unhappiness with the substantive outcome of a decision will not suffice.

[58] And of course, context is everything in law.[21] The facts of each case will — and must — have a bearing on deciding whether there is a reviewable error.

[59] The decision of the University not to award Ms Rowe 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?

[60] After considering these questions I will turn to consider the Committee's decision and process under the following headings:

(a) Was there a reviewable error in Mr Whelan's decision to decline to investigate Ms Roe's claims further?

(b) Was the appropriate decision-maker involved on behalf of the Committee, and if not, does anything material arise from the error?

(c) Should any relief be ordered and, if so, what form of relief?

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[21] *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532 (HL) at [28].

Analysis

First issue: did the examiners mistakenly assess Ms Roe's thesis against the requirements of the PhD rather than the MPhil?

[61] The factual foundation for Ms Roe's submission that her thesis was assessed against the requirement for the wrong degree appears to be a reference to a clear error on the cover-page to both examiners' reports. Both cover pages have the following words at the top: "Doctoral Examination Information".

[62] It is not clear whether the cover pages, which include the emblem for the University of Waikato, were in fact part of the examiners' reports, or were added by the University at a later date. It is likely the cover pages were added later by an employee of the University because the reports are, appropriately, anonymized. Regardless, nothing turns on that question.

[63] Ms Roe went on to submit that the examiners' error was not limited to the words on the cover page. She contended that it was plain from the contents of the reports themselves that the examiners had mistakenly assessed her for a PhD, and that the detailed comments and criticisms they had made of her thesis were intended by them to bring her paper up to the level of a PhD. In that way, she would say, the mistake was fundamental to their assessment of her thesis. The implication of Ms Roe's argument is that her MPhil has never been assessed against the appropriate degree requirements due to the error.

[64] I have no hesitation in rejecting this aspect of Ms Roe's submission. Having reviewed the contents of the reports themselves (as opposed to the cover sheets), there is nothing in them at all to indicate the examiners misunderstood the level of degree they were assessing Ms Roe's thesis against. Indeed, a plain reading of the reports leads to precisely the opposite conclusion. Notwithstanding the erroneous reference on the cover page to a "doctoral examination", the content of both reports indicate that the examiners clearly understood that Ms Roe's thesis had been submitted to them for examination against the requirements of the MPhil.

[65] For example, the New Zealand examiner's report notes in its first line:

Kelly Roe, MPhil Thesis …

[66] In the first paragraph of the report, the examiner goes on to remark:

> The breadth of the thesis makes a sufficiently comprehensive coverage of the subject matter very difficult within a *masters length work*
>
> (emphasis added).

[67] The overseas examiner's report also indicates the examiner was aware they were examining a masters-level degree. The opening line of the report is:

> Feedback regarding *MPhil Thesis*.
>
> (emphasis added).

[68] Given the examiners' comments, I have no difficulty rejecting Ms Roe's submission that there has been a material error on this point.

[69] It follows that this underlying factual contention must be dismissed.

Second issue: is Ms Roe's interpretation of her thesis examiners' reports tenable?

[70] Given the way she presented her case, Ms Roe's application for review stands or falls on the proper interpretation of the examiners' reports.[22] If as she contends the *only* option available to the Dean based on the reports was to accept her thesis conditionally under reg 25(c), her challenge to Mr Whelan's decision might be sustainable. Equally, if Ms Roe's interpretation of the reports is untenable, her other criticisms of the University's conduct and, therefore, Mr Whelan's assessment of it, cannot be sustained.[23]

[71] The views of the examiners were, as Ms Roe put it, "convergent" in finding that her thesis was not of an adequate standard. The New Zealand examiner said the quality of language, expression and general presentation of the thesis was poor. Both

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[22] While nothing in this judgment constitutes a finding in relation to the appropriateness of the Dean of Postgraduate Research's decision under reg 25, that issue is nevertheless the cornerstone of Ms Roe's challenge to the ViceChancellors Committee's decision to decline to investigate Ms Roe's complaint against the University of Waikato.

[23] If it was open to the Dean to decline to approve Ms Roe's thesis under reg 25(c), the invitation for her to re-enrol under reg 25(e), and the obligation to pay tuition fees, cannot be said to involve a failure by the University to follow its own regulations, or a demand for a bribe payment.

examiners went on to conclude that significant changes would be needed before the thesis would be acceptable or make an original contribution to academic scholarship. With respect to Ms Roe, I think it is fair to conclude that the level of revisions signalled in the reports went well beyond the frame of reference contemplated by reg 25(c) and "sign-off" by Ms Roe's supervisor.

[72] More problematic still for Ms Roe is that reg 25(c) requires the Dean to resolve that the thesis should be "*accepted subject to* the candidate completing substantial amendments to the satisfaction of the examiner or chief supervisor, provided that these amendments are not so substantial as to necessitate re-submission and are completed within ten weeks" (emphasis added). The examiners' reports noted a wide range of fundamental problems with the thesis. Neither examiner suggested the thesis should be accepted by the Dean, whether provisionally under reg 25(c) or otherwise. And given the scope of the issues identified in the reports, the amendments also appear to be far more substantial than reg 25(c) envisages. Given the contents of the reports themselves, it is difficult to see a decision by the Dean to approve the thesis under reg 25(c) could have been open. Such a decision might well have resulted in the very criticisms Ms Roe now levels at the respondent in relation to the maintenance of academic integrity and standards.

[73] As I have noted already, given I am unable to accept Ms Roe's interpretation of the examiners' reports, the further criticisms she makes that were contingent on that interpretation fall away. But it is nevertheless useful to address Ms Roe's argument in full.

[74] At first blush, there could be an argument that the University's invitation to Ms Roe in early January 2020 to re-enrol for a minimum period of six months deprived her of the benefit of tuition and the fees she paid up to the end of April 2020. As noted, Ms Roe enrolled on 1 May 2018 and had a year to complete her degree. Her thesis was submitted to examiners in October 2018, and their reports were made available in December of the same year. One might consider that with the benefit of a further four months available to her it would have been appropriate for Ms Roe to have used that time to undertake any substantial revisions to the thesis for resubmission, and the requirement to re-enrol for a further six months was, therefore, unreasonable.

[75] There are three difficulties with that argument. The first is that it does not reflect Ms Roe's complaint to the Committee, or the case she has presented to the Court. Ms Roe does not accept that the University was lawfully permitted to require *any* re-enrolment under reg 25(e), given her interpretation of the examiners' reports. Rather, she says that the only decision open to the Dean was under reg 25(c), and as a result the only remaining step after substantial revisions was for her supervisor to give "sign-off" to her thesis and the award of the MPhil degree. Ms Roe says, at most, the revisions contemplated would only require 10 weeks as required by reg 25(c).

[76] So, Ms Roe does not argue she has been deprived of the full benefit of her one-year MPhil; her complaint relates to the substantive outcome of the examination process and the requirement for her to re-enrol rather than a conditional approval of her thesis.

[77] The second difficulty is that the University was not inviting Ms Roe to enrol for an additional six-month period. That is clear from the terms of the letter from the School of Graduate Research to Ms Roe of 10 January 2019, set out at [11]–[12] above. The invitation to re-enrol indicated that Ms Roe could if she wished commence the six month period from 1 January 2019 and that her 2018 fees would cover the period of her re-enrolment to the end of April 2019. As a result, the net effect of the invitation to re-enrol would have been to extend Ms Roe's period of study and examination by, at most, two months only, and she would receive the full credit and benefit of the period of her original enrolment and tuition fees.

[78] Third, while the invitation was to re-enrol for a period of six-months, there was nothing in that invitation that would have prevented Ms Roe from re-submitting her thesis for re-assessment before the expiry of the enrolment period. That is evident from the fact that she had been able to submit her thesis to examiners in October 2019 when she had only enrolled in May of that year.

[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.

[80] Ms Roe's contention that the *only* decision open to the Dean was the conditional approval of her thesis is unsustainable, especially when viewed against an objective assessment of the findings of the examiners. Contrary to her submission, based on the evidence before me I consider that it was plainly open to the Dean and the Research Committee to decline to accept Ms Roe's thesis and to invite her to re-enrol for a period of study under reg 25(e).

Third issue: who had the power of decision under reg 25? The Dean or the examiners?

[81] Ms Roe's application for review proceeded on the basis that it was the examiners' reports that determined whether or not a thesis was accepted under reg 25(a)-(e).

[82] However, this misunderstands the role of external examiners with that of the Dean under the University's Regulations.

[83] The Regulations require that external examiners provide examination reports on a candidate's thesis.[24] The Regulations also make clear that the decision whether to accept a thesis for the award of the MPhil under reg 25 is that of the Dean.[25] While the Dean's decision is clearly circumscribed by the examiners' reports, it is not for the examiners to determine which of the outcomes in regs 25(a)-(e) are to follow. That question is reserved for the Dean alone. In essence, the examiners examine; that is their area of expertise. They do not, after examining, decide what then should be done with the thesis.

[84] This misunderstanding reveals a further weakness with Ms Roe's complaints to the Committee, and on review of that decision to this Court. The split responsibilities contemplated by the University's Regulations explains the absence of any reference to reg 25 within the examiners' reports. While Ms Roe strongly argued

[24] University of Waikato Calendar, Regulations for MPhil degree, reg 24.
[25] University of Waikato Calendar, Regulations for MPhil degree, reg 25.

the absence of any reference in the reports to a requirement for re-enrolment or payment of fees was fatal to the Dean's decision under reg 25(e), the logic of her own argument is fatal to her claim in this proceeding. That is because the reports do not mention the requirements of reg 25(c) either.

Fourth issue: was there a reviewable error in Mr Whelan's decision to decline to investigate Ms Roe's claims?

[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 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.

[86] I accept that the material provided to Mr Whelan showed:

(a) a reasonable assessment by the Dean, on the basis of the examiners' reports, and in accordance with the University's Regulations, that Ms Roe's thesis was not in an acceptable form (an assessment that was ultimately upheld on appeal by the University's Research Committee);

(b) the provision of an opportunity to resubmit the thesis for a further period of enrolment to complete the necessary work was again consistent with the University's Regulations; and

(c) the requirement, in accordance with s 256 of the Education and Training Act, that a fee would be paid in relation to any additional period of enrolment.

[87] Measured against the statutory functions of the Committee, and the scope of the Student Policy, I can find no error in the approach adopted by Mr Whelan to the decision which he reached on Ms Roe's complaint.

[88] I find that in determining whether the Committee ought to carry out an investigation into Ms Roe's complaint, Mr Whelan addressed himself to the correct question, being whether the materials provided by Ms Roe in support of her complaint disclosed any conduct capable of being academic wrongdoing within the statutory authority of the Vice-Chancellors Committee. In undertaking that consideration, Mr Whelan did not take into account irrelevant considerations or fail to take into account mandatory considerations. And nor does Ms Roe say Mr Whelan did so.

[89] While Mr Whelan gave a detailed account of the reasons for his decision in affidavit evidence, I find his succinct but informative email of 6 August 2020 to Ms Roe an adequate outline of the reasons for his decision. It is clear that Mr Whelan had read and considered the examiners' reports, and their conclusions on Ms Roe's thesis. He also had regard to the outcomes available to the Dean under reg 25. Having considered those matters, and Ms Roe's detailed allegations of corruption and fraud, he concluded that it was open to the Dean to determine to decline to award the degree and invite re-enrolment under reg 25(e). That decision was plainly open to him in my view.

[90] Overall, Mr Whelan concluded that the University had followed its own Regulations, and that its Regulations were reasonable.[26] Those conclusions were relevant to the extent Ms Roe's complaints concerned conduct capable of being academic wrongdoing within the statutory purview of the Committee.

[91] I conclude that there was no reviewable error affecting Mr Whelan's decision.

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[26] The University's MPhil Regulations are broadly consistent with equivalent regulations at Victoria University of Wellington, and the University of Canterbury.

Fifth issue: did the appropriate decision-maker make the decision not to investigate Ms Roe's complaint and if not, does anything material arise from the error?

[92] Clause 6(a) of the Student Policy provides that, after considering the criteria in cl 3, the Executive Director (now the Chief Executive – Mr Whelan) "and one other person" will determine whether it is appropriate for the Committee to investigate a claim.

[93] Since the adoption of the Student Policy, the Committee has modified its delegations so that only one person determines whether it is appropriate for the Committee to investigate claims. That change in practice has not, however, found its way into the Student Policy.

[94] In her pleadings and submissions,[27] as noted, Ms Roe argued that the requirement for a second decision-maker to consider complaints under cl 6(a) was material because it would ensure transparency and accountability, and provide a check on the decision making of a single individual.

[95] It is clear the Committee failed to follow its own policy in relation to the number of decision-makers involved in the decision under review. A misapplication or a breach of policy by a decision-maker is a potentially reviewable error,[28] but the significance of a misapplication or breach depends upon the context in which it occurred.[29]

[96] The Policy did not have the force of law. As Mr Smith submits, the Student Policy does not operate as a regulation and the Committee is entitled to modify its delegations framework and practices to ensure efficient resourcing decisions and how best to administer its statutory functions and powers.

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27 It was agreed that Ms Roe's second affidavit would be treated as her submissions at the hearing.

28 See for example *Chiu v Minister of Immigration* [1994] 2 NZLR 541 (CA).

29 *Chiu v Minister of Immigration*, above n 28, at 550. See also *Attorney-General v Problem Gambling Foundation of New Zealand* [2016] NZCA 609, [2017] 2 NZLR 470 at [125] where the Court of Appeal held that a breach of mandatory rules imposed upon Government departments by Cabinet does not automatically give rise to an illegality so as to vitiate a decision.

[97] Given the findings I have made — particularly in relation to the examiners' reports — I have no hesitation concluding that the alleged error is immaterial.[30] In saying this, the Committee should update the Student Policy to reflect the fact that only one person determines whether it is appropriate to further investigate claims.

[98] I also accept Mr Smith's argument that when considering the issue under the lens of legitimate expectation there could be no plausible claim to reliance by Ms Roe on the representation in the Policy that there were two decision-makers involved in the initial assessment under cl 6(a). That is because, until she filed her second affidavit, Ms Roe's case was that her complaint ought to have been considered under a different policy altogether.[31] It was only at the hearing that Ms Roe conceded Mr Whelan had correctly considered her complaint under the Student Policy. It follows that, had it been an issue, there would be no basis to find that Ms Roe had relied on the Student Policy's requirements to have two decision-makers, and that even if there had been such reliance, that it was reasonable for her to do so.[32] Rather, the gravamen of her case is simply that there was an error in the application of the policy to the facts of her case.

[99] Finally, even if the lack of a second decision-maker amounted to a reviewable error on Mr Whelan's part, I would find the error was immaterial and does not justify the grant of relief.[33]

Sixth issue: relief?

[100] It will be evident from the reasons set out above that Ms Roe has been unsuccessful in her application for review and the question of relief does not arise.

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30 Any error must have affected the actual making of the decision and affected the decision itself. See *Lumber Specialties Ltd v Hodgson* [2000] 2 NZLR 347 (HC) at [140], citing *Peters v Davison* [1999] 2 NZLR 164 (CA).

31 Ms Roe's original claim was that Mr Whelan ought to have considered her complaint under the Committee's Policy on Dealing with Claims of Serious Wrong-doing under the Protected Disclosures Act 2000. Ms Roe abandoned this part of her claim at the commencement of the hearing having received and considered Mr Smith's written submissions for the Committee.

32 A legitimate or reasonable reliance on a promise or commitment is a requirement for the doctrine of legitimate expectation. See *Comptroller of Customs v Terminals (NZ) Ltd* [2012] NZCA 598, [2014] 2 NZLR 137 at [126]; *Green v Racing Integrity Unit Ltd* [2014] NZCA 133, [2014] NZAR 623 at [13].

33 As at [97], there would again be a lack of materiality to the error (if there was one) in these circumstances.

[101] I observe, however, that had I found any of Ms Roe's claims made out to the extent that it sounded in relief I would not have granted the relief which she sought, being an order directing the removal of Mr Whelan from his office and various declarations affecting all universities at a fundamental level. Nothing in the evidence I have seen could justify the outcomes Ms Roe sought, even if it was open to the Court to make the orders.

[102] The appropriate relief in this instance — which would only be relevant, of course, if reviewable errors were identified and the claim succeeded — would most probably be for the decision to be reconsidered.[34] But Ms Roe does not seek such relief. So, the relief this Court would grant in the event Ms Roe could point to reviewable errors would be of little value to her.

Result

[103] For the reasons set out above I dismiss the application for review. Ms Roe's characterisation of the University's invitation to re-enrol to complete her thesis could not ever have been fairly described as a "demand" for a "bribe payment". Nor was it appropriate to describe the University's conduct as "fraudulent". I have recorded this so there is a public record that these serious allegations have not in any way been made out.

[104] Costs would ordinarily follow the event. Should the Committee wish to pursue costs, I would be minded to grant them on a 2B basis.

[105] If there is an application for costs, the respondent is to file a synopsis no longer than three pages in length within ten working days. Ms Roe is to file any submissions in reply ten working days thereafter. I will then make a determination on the papers.

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Isac J

Solicitors:
Chapman Tripp, Wellington

[34] Judicial Review Procedure Act 2016, s 17.

Chapter 2

Judgment of Justics Isac as to Costs (3 June, 2021)

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.

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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

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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

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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.

Chapter 3

Minute of Justice Brown (2 Sept, 2021)

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

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

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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.

Chapter 4

Judgment of Justice Brown (6 Sept, 2021)

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA185/2021
[2021] NZCA 437

BETWEEN	KELLY ROE Applicant
AND	NEW ZEALAND VICE-CHANCELLORS COMMITTEE Respondent

Counsel: Applicant in person
T D Smith and H H E Kerry for Respondent

Judgment: (On the papers) 6 September 2021 at 10.00 am

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

A The application to review the Deputy Registrar's decision declining to dispense with security for costs is declined.

B Security for costs of $7,060 is payable by 27 September 2021.

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]

[2] By letter dated 9 April 2021 the applicant was advised by the Registry that security for costs had been set at $7,060 and this was required to be satisfied by 6 May 2021. Ms Roe made an application for dispensation from the requirement to pay security for costs. In a decision dated 5 May 2021 the Deputy Registrar declined the application for dispensation.

[3] Ms Roe now seeks a review of that decision which is opposed by the respondents.

The relevant principles

[4] The principles applicable to dispensation from security for costs were reviewed by the Supreme Court in *Reekie v Attorney-General*.[2] The Court stated that the Registrar should dispense with security if of the view that it is right to require the respondent to defend the judgment under challenge without the usual protection as to costs provided by security.[3] The Court explained:

> [35] … we consider that the discretion to dispense with security should be exercised so as to:
>
> (a) preserve access to the Court of Appeal by an impecunious appellant in the case of an appeal which a solvent appellant would reasonably wish to prosecute; and
>
> (b) prevent the use of impecuniosity to secure the advantage of being able to prosecute an appeal which would not be sensibly pursued by a solvent litigant.
>
> A reasonable and solvent litigant would not proceed with an appeal which is hopeless. Nor would a reasonable and solvent litigant proceed with an appeal where the benefits (economic or otherwise) to be obtained are outweighed by the costs (economic and otherwise) of the exercise (including the potential liability to contribute to the respondent's costs if unsuccessful). As should be apparent from what we have just said, analysis of costs and benefits should not be confined to those which can be measured in money.

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1 *Roe v New Zealand Vice-Chancellors Committee* [2021] NZHC 719.
2 *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.
3 At [31].

[5] The Court also ruled that the review function of the judge in relation to security for costs is to be exercised de novo.[4]

The Deputy Registrar's decision

[6] Having correctly recited the relevant principles from *Reekie,* the Deputy Registrar first recorded that Ms Roe did not claim or make her application on the ground that she could not afford to pay security for costs. No evidence of impecuniosity was offered or supplied. Ms Roe was not legally aided.

[7] Turning to consider the issue of public interest, the Deputy Registrar recognised that Ms Roe's allegations that New Zealand universities do not allow work to be graded properly and that the Committee had undermined the quality and integrity of New Zealand degrees would be of public interest. However, the Deputy Registrar did not consider it to be genuinely at issue in Ms Roe's judicial review proceeding. She perceived that proceeding as concerning one decision of the Committee regarding a complaint made by Ms Roe about how the Dean of the School of Graduate Research treated her thesis submission.

[8] After reviewing the findings in the High Court judgment the Deputy Registrar concluded that Ms Roe's appeal was not comparable to the genuine public interest litigation in *Banks v Ports of Auckland Ltd.*[5] The Deputy Registrar's decision concluded in this way:

> [20] Ms Roe has not claimed or established that she is impecunious. Her application for dispensation is solely based on public interest. However, I do not consider the appeal genuinely raises the issues of public interest that Ms Roe says it does. In my view, the appeal will turn on its specific facts, and therefore does not raise substantive issues of public interest that could justify dispensing with security in the absence of impecuniosity. I also do not consider that a reasonable and solvent litigant would pursue the appeal, as its merits appear weak, and I see little prospect of Ms Roe obtaining the benefits she seeks. I am satisfied that the respondent should not have to defend the decision under appeal without the usual amount of security for its costs.

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4 At [23].
5 *Banks v Ports of Auckland Ltd* [2015] NZCA 150, (2015) 22 PRNZ 461.

The application for review

[9] By an email dated 9 May 2021 Ms Roe sought to appeal the Deputy Registrar's decision to refuse to dispense with security for costs. She maintained that her claim is one of those rare cases of public importance where security for costs can be dispensed with even if impecuniosity is not established. She contended that her claim is genuine public interest litigation relating to the refusal of New Zealand universities to allow graduate research students to work to international standards of scholarship by refusing to get their work to external examiners for examination and refusing to base the outcome of examination on reports of examiners.

[10] She explained:

> Ms Roe brought this issue (which appears to be systematic by their own admission) to the NZVCC and the NZVCC refused to get evidence of serious wrongdoing (effectively forcing students to labor as slaves and / or pay bribes otherwise they will never receive their graduate research degree) to third parties in order to prevent government prosecution. As things stand with the courts it appears the courts have condoned these practices of NZ Universities refusing to get their students work to external examiners and refusing to allow the external examiners to sign off on students work. As things stand with the courts it appears the courts have condoned the NZVCC from refusing to investigate complaints and / or refusing to pass the outcome of the evidence collection process onto third parties thereby preventing prosecution of serious wrongdoing within the Universities of New Zealand. This is an issue of quality and integrity of NZ Degrees. These are public (not private) institutions. There is an additional matter of tertiary education being a multi-billion dollar business for the NZ government where we profit from international student enrolments while refusing to process complaints of serious wrongdoing in violation of our commitments to international community. I have given the NZ government (and the courts as the branch of government that is the judiciary) every opportunity to put things right internally. If NZ refuses to properly process complaints of corruption within NZ then Ms Roe has no choice but to go to [the] international community so that international sanctions can be imposed on NZ to inspire it to do what it promised it would do.

[11] The lengthy email concluded by observing that a reasonably solvent litigant would not do business with New Zealand universities. That theme was developed in a further email dated 10 May 2021 which commenced in this way:

> There would not [be] any such thing as a "reasonably solvent" litigant, in NZ BECAUSE (for the reason that) the courts or judiciary of NZ REFUSE TO DELIVER CONSEQUENCES OR SANCTIONS OR PENALTIES FOR WRONGDOING so as to make court worthwhile. The courts choose to protect / preserve the position of the wrongdoer, only.

The balance of that email reflected upon the adequacy of Mr Whelan to discharge his employment obligations.

Discussion

[12] Given the footing on which Ms Roe's application for dispensation and her review of the Deputy Registrar's decision have been made, I consider that consideration of her review involves two issues:

(a) Does her claim involve an issue of public interest?

(b) Would a reasonable and solvent litigant pursue an appeal from the High Court judgment?

[13] I have already had reason to consider the first issue in the course of a prior judgment on Ms Roe's application to review the Deputy Registrar's decision to decline a fee waiver.[6] The review was advanced in reliance on the ground in reg 5(4)(a) of the Court of Appeal Fees Regulations 2001 that the proceeding was intended to determine a question of law that is of significant interest to the public or to a substantial section of the public.

[14] After considering the High Court judgment I concluded:

> [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] As I explained, Ms Roe may contemplate her proceeding as serving an ancillary purpose of enabling her to ventilate beliefs she holds concerning the practices of various academic institutions. But I considered this fact cannot convert a proceeding that simply concerns only the facts and process pertaining to the consideration of Ms Roe's thesis into one raising a broader issue of public interest.

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6 *Roe v New Zealand Vice Chancellors Committee* [2021] NZCA 420.

[16] I also drew attention to the observation of Isac J that 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.[7] In my view that observation is pertinent to the second issue of whether a reasonable and solvent person would pursue an appeal from the judgment.

[17] As the Judge recorded, Ms Roe made it clear during the hearing that she is not focused on the eventual award of an MPhil. Indeed, in discussing the question of relief, the Judge observed that, if reviewable errors had been identified and Ms Roe's claim had succeeded, the appropriate relief would most probably have been for the Committee's decision to be reconsidered. Significantly however the Judge noted that Ms Roe did not seek such relief.

[18] Thus it appears that Ms Roe's focus is no longer the completion of her thesis but instead a broader objective which is reflected in the relief sought in the judicial review proceeding, namely an order directing the removal of Mr Whelan from his office and various declarations affecting all universities at a fundamental level. However, as Isac J stated, nothing in the evidence could justify such outcomes even if it was open to the Court to make such orders.[8]

[19] In my view a reasonable and solvent litigant would not pursue an appeal against a judgment which so clearly recognised and rejected such a litigation objective.

Result

[20] The application to review the Deputy Registrar's decision declining to dispense with security for costs is declined.

[21] Security for costs of $7,060 is payable by 27 September 2021.

Solicitors:
Chapman Tripp, Wellington for Respondent

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7 *Roe v New Zealand Vice-Chancellors Committee*, above n 1, at [79].
8 At [101].