IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

BETWEEN	KELLY ALEXANDRA ROE Applicant
AND	THE UNIVERSITY OF WAIKATO Respondent

APPLICATION FOR LEAVE TO APPEAL

Filed by Kelly Alexandra Roe 6 December 2021.

[1] I am asking for leave to appeal the Judgment of Brown, J to decline to dispense with Security for Costs ($7,060) in the matter of *Roe v University of Waikato* which (if upheld) has the effect of denying Justice to Ms Roe because she cannot pay security for costs.

ROE v UNIVERSITY OF WAIKATO [2021] NZCA 612 [18 November 2021]

[2] Ms Roe's proceedings against the University of Waikato is more extensive than 'judicial review relating to the examination of her thesis by the respondent, the University of Waikato, and the outcome of that examination'.

[3] The proceeding relates to a series of problems:

- Unlawful refusal to enroll her in the programme she applied to.
- Unlawfully enrolling her in programmes she never applied to.
- Unlawfully refusing to get theses submitted for examination out to external examiners so as to prevent and prohibit them signing off on qualification completion.
- Unlawfully sending her master's thesis out for doctoral examination in order to force the examiners to say insofar as the thesis was to be accepted at all re-enrolment and alterations to the substance would be required (setting her up to fail the MPhil)
- Unlawfully refusing to base the outcome of examination on reports of external examiners
- Unlawfully refusing (again) to get work to external examiners to prevent and prohibit her from being signed off on qualification completion
- Unlawfully enrolling her (again) in programmes she never applied to
- Unlawfully keeping false transcripts (of her enrolments and of her being failed for one of the qualifications they enrolled her in)

[4] The University knew (because she told them up front from the very start) that she intended to complete a 120-point (1 EFT 1 year) MPhil in 2018 so as to study MBChB (Medicine) with Auckland in 2019. The University of Waikato Administration told her she

couldn't do it (they wouldn't allow it) every step of the way. They told her that graduate research students could not complete a 120-point (1 EFT 1 year) MPhil in 1 year. It could not be done. It was not allowed. It was prohibited. They also did not seem to want Ms Roe to study Medicine at all. They were very keen to supply the University of Auckland with information in support (only) of Ms Roe's 'ineligibility' to be enrolled in Medicine with the University of Auckland in both 2019 and again in 2020 on the grounds that Waikato was not done with her, yet. Ms Roe was re-enrolled for extra-time whether she had applied to be enrolled for extra-time or not and so Auckland would deny completing the qualification made her eligible to study Medicine because it wasn't completed in the 'minimum, normal, or standard time'. The idea, I suppose, is that it is entirely up to the University's discretion whether they acknowledge the Degree or not. Maybe it is entirely up to the Courts discretion now?

[5] Ms Roe has documented the lengths the University of Waikato went to in order to refuse her qualification completion in the 'minimum, normal, or standard time'. They refused to get her work to external examiners in order to keep her as a local slave. They do this to many if not most if not all of their graduate research students. This is not something Ms Roe merely believes. This is something that became apparent in Roe vs NZVCC proceedings. The NZVCC proceedings showed that the NZVCC judged that the University of Waikato had not treated Ms Roe differently from how they treat other graduate research students and how they treated Ms Roe was comparable to how other Universities in New Zealand treat their Graduate Research Students, too.

[6] That is to say, Graduate Research Students in New Zealand Universities are, often, prohibited and prevented by the University Administration from completing graduate research qualifications to the satisfaction of external examiners (aka internationally accepted standards of scholarship) normally, routinely, reliably, as a matter of course, because NZ Universities believe they are entitled to force things to run over-time so as to collect up maximum billings for having the students and to keep the student, effectively slaving, for the University in excess of requirements for their qualification completion.

Justice Brown states at [4] that that the Court of Appeal is bound by *Reekie v Attorney-General* [2014] NZSC 63, [2014] I NZLR 737.

> [35] ... we consider that the discretion to dispense with security should be exercised to as to:
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> > (a) preserve access to the Court of Appeal by an impecunious appellant in the case of an appeal which a solvent appellant would reasonably with 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.
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> 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.

[7] Justice Brown states at [5] that 'the Court also ruled that the review function of the judge in relation to security for costs is to be exercised de novo.

[8] I do not know what it means to 'secure the advantage of being able to prosecute an appeal which would not be sensibly pursued by a solvent litigant'. I suppose that is about being vexatious. If I cannot win the proceedings it seems to me that is only because of an injustice to do with the fact that I am self-represented and therefore cannot win because costs cannot be awarded to me therefore, I can only lose in the Courts of New Zealand. That does not seem to be just to me. I would not be pursuing this (at great personal cost to myself in terms of my time and energy and effort that I am forced to, effectively, slave to

the courts) if I did not genuinely believe that justice is on my side. I am not enjoying slaving for the courts at all. I take no pleasure in any of the proceedings that I have been forced to pursue against various of the Universities of New Zealand because they are refusing to do their jobs when it comes to fairly selecting students and signing off on qualification completions etc.

[9] Justice Brown states that 'Ms Roe did not claim to be impecunious. That is because Ms Roe was informed that even if she was, she would need to pay security because the case had no merit. Ms Roe has supplied to the Supreme Court evidence of her financial position that means she cannot pay security for costs. She has supplied evidence to the courts of New Zealand over and over and over and over and over and over and over. It is true that sometimes Ms Roe gets confused what she had done for what proceeding. It is also true that things seemed to be undergoing combinatorial explosion in the Court of Appeal where every High Court Judgment needed to have 2 appeals initiated (one for the substantive judgment and one for the costs judgment) and each of those needed evidence of Ms Roe's financial position and application for waiver of filing fee etc...

[10] Ms Roe does start to feel like she is going insane filing the same thing over and over and over and over and over and over and over. She wonders why the courts still aren't getting it or still aren't listening. So the tries to explain things differently. Again. More clearly. There would be something wrong with Ms Roe if she did not feel like she was going slightly mad having to handle all of this (matters she is personally involved in in fact) all by herself with no legal representation. Lawyers are not supposed to represent themselves because they are not capable of being suitably objective about their own case. Ms Roe is not self-represented by choice at all.

[11] Justice Brown considers that the registrar states that Ms Roe's 'appeals turned on their particular facts given that ... The Deputy Registrar saw little prospect of success in the appeals and did not consider that a reasonable and solvent litigant would proceed with them'.

[12] I think the above paragraph sounds like something the Deputy Registrar would say to decline to dispense with security for costs to *anybody* who attempted to apply for security for costs to be waived. I don't know what 'magic words' I am supposed to say in response to this. I am self-represented and this is not a class-action suit. That is to say I am bringing a case before the courts that is particular in how the University handled my thesis submission. As a self-represented applicant, I can only bring before the courts a case in which I am personally involved. That does not mean that any case I bring cannot be a case of public interest because I am only one person, however.

[13] When I complained to the NZVCC about the conduct of the University of Waikato the NZVCC said Waikato treated me comparably to how any other University in NZ treats any of their graduate research students. That case did not find that Ms Roe was complaining about how she was treated, personally, in a way that is unlikely to affect anybody else if it were to go unchecked.

[14] Justice Brown considers something along these lines in paragraphs [9] and [10] and concludes that the beliefs I have about the conduct of NZ Universities aren't sufficient to turn the proceedings into public interest cases and 'the Supreme Court recently observed in relation to that case (and two others), they involved a very particular litigation where the underlying disputes are personal to Ms Roe and do not raise issues of general or public importance.'

[15] I do not understand the allegation that the 'underlying disputes are personal to Ms Roe and do not raise issues of general or public importance'. Is the idea that the University has power or authority to decide, on personal grounds, that they get to choose what Degree is right for a student and what degree their work will go out to external examiners for (if any) and what Degree will be awarded to the student (if any)? Is the idea that the University has the authority to decide (on personal grounds) that they didn't want Ms Roe completing the qualification and going off to Medical school so they were allowed to make some kind of exception or exemption where she was concerned where they would simply refuse to process her work or progress her qualification?

I really can't parse the idea that this is a personal dispute. This isn't a matter of custody of a kid that is a personal dispute (and if there was an injustice then that makes it a public matter, I would have thought. Setting precedent to help prevent and prohibit future or further injustice.

[16] *Banks v Ports of Auckland Ltd* is not a case that I can access to find any magic words. It is a court of Appeal case, rather than a Supreme Court case.

[17] The court of appeal had the information (that the court of appeal has been supplied with over and over and over and over and over and over again that I am in receipt of supported living payment as my primary source of income. But still, the court of appeals finds that I have provided 'no information in her application which would have provided a basis for dispensation on the grounds of impecuniosity'.

[18] There is no reason to consider me irrational or unreasonable. The ADHB kept me for observation for 5 days (refusing to allow me to meet in person with a lawyer and refusing to allow me to appear before a judge for any of those 5 days), and on the 5th day they declared they had no grounds to continue to hold me under the Mental Health Act. There is no reason to think I am irrational or unreasonable.

[19] The issue is that the Education Act says that Academic Freedom means that the Universities are required to allow students and staff the academic freedom to work to internationally accepted standards of scholarship where appropriate. The University interprets that to mean that the University administration gets to choose whether or not it is appropriate for them to get theses that have been submitted for external examination out to external examiners or whether they have the statutory authority or discretion to refuse to get the work out to externals because they would prefer (for whatever reasons whether personal or non-personal) to keep the student working or slaving (unpaid working) domestically.

[20] The Bill of Rights does not mention Education to help me further interpret the Education Act.

[21] I maintain that it is not being subject to demands of accountability to think that the Universities get to choose if or when a thesis that has been submitted for examination goes out to external examiners or not. The thing about 'where appropriate' means that it may not be appropriate for them to expect that undergraduates are in fact working to that level yet. It is not intended to provide discretion to the University to prohibit or prevent them from allowing students to work to internationally accepted standards of scholarship. It is not providing license to NZ Universities to choose that it is not appropriate for Māori to not plagiarize, say, or not cheat on their stats, say. Or providing discretion to the Universities to only advance and sign off on students who either agree to not work to internationally accepted standards (e.g., only sign off on students who pay bribes or who do not attend their work-place requirements or only sign off on students who agree to perform cervical smears without getting consent) etc.

Kelly Roe.