Roe v University of Waikato

2021 - ...

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Chapter 1

Judgment of Justice Toogood (16 July, 2021)

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
KIRIKIRIROA ROHE

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

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

Hearing: 24 March 2021

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

Judgment: 16 July 2021

RESERVED JUDGMENT OF TOOGOOD J

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

Registrar/Deputy Registrar
Date:

Solicitors:
Tompkins Wake, Hamilton for respondent

Copy to:
The applicant

Introduction

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

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

(a) Her enrolment start date, alleging that the University refused to enrol her within the timeframe in the University Calendar.

(b) The examination of her thesis, alleging that the University "refused to examine a thesis that had been submitted in accordance with University Calendar Regulations out for external examination [sic]."

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

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

Background

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

(a) critically investigates an approved topic of substance and significance; and

(b) demonstrates expertise in the methods of research and scholarship; and

(c) displays intellectual independence; and

(d) makes an original contribution to the research area.

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

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

[1] University of Waikato, Regulations for the Degree of Master of Philosophy (MPhil) 2018, reg 1.

…

20. Candidates must comply with the Dissertations and Theses Regulations 2015 which set out the University's requirements with respect to the submission and presentation of theses.

21. The Dean of the School of Graduate Research appoints two examiners who are external to the University and not directly connected with the candidate or the candidate's research. At least one of the external examiners is based overseas. In the case of divergent examination outcomes, the Dean of the School of Graduate Research will appoint a third examiner.

22. The Dean of the School of Graduate Research makes a final decision on the award of the Degree. On the basis of the final reports of the examiners, the Dean of the School of Graduate Research may resolve

    (a) that the thesis be accepted in its present form as fulfilling the requirements for the degree of Master of Philosophy, or

    (b) that the thesis be accepted as fulfilling the requirements for the degree of Master of Philosophy subject to the candidate undertaking minor amendments and/or correcting typographical errors as required by the examiner, to the satisfaction of the chief supervisor, or

    (c) that the thesis be accepted subject to the candidate completing substantial amendments to the satisfaction of the examiner or the chief supervisor, provided that these amendments are not so substantial as to necessitate re-submission and are completed within ten weeks, or

    (d) that an oral examination of the candidate be conducted, and a further report, based on the oral examination, be provided by the examiners to the Dean of the School of Graduate Research, or

    (e) that the thesis is not acceptable in its present form and will be returned to the candidate, who may revise it and re-submit it for examination after a re-enrolment for a minimum period of six months, or

    (f) that the candidate has failed to meet the required standard and that no degree be awarded.

23. A candidate will be permitted to revise and re-submit a thesis only once and only one oral examination will be held.

24. Applicants or candidates for the MPhil who wish to appeal a decision by the Dean of the School of Graduate Research or the [Postgraduate] Research Committee, or who have a concern about supervision or any other aspect of their candidature, may raise the matter under the Higher Degree Appeals and Complaints Regulations.

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

> Applications for Higher Research Degree study, which includes … Masters of Philosophy (MPhil), can be received at any time, but applications will only be considered three times each year. Once your application has been approved, you can choose to enrol from the first day of any month between February and November.
>
> …
>
> 1. **Applications Open**
>
> Applications open immediately proceeding[2] the closing date for the previous round. Please check your eligibility for higher degree study before submitting an application.
>
> …
>
> 3. **Applications Close**
>
> Applications closing dates will be **1 March, 1 July and 1 November annually**. Applications must be completed online and received by midnight (NZ time) on the deadline of the application round for which you are applying. Please note that paper applications cannot be accepted. If your online application to enrol arrives after one of these closing dates, your application will be considered in the following application round. **All incomplete or incorrect applications are unable to be considered further.**
>
> 4. **Applications under consideration**
>
> All completed applications will be forwarded to the appropriate Faculty for further consideration. After careful consideration all applicants will be notified by email of the outcome of their application. This could take up to seven weeks after the closing date for the round you applied for.

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

The application and acceptance process

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

[2] Meaning "following" or "after".

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

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

(a) a requirement that the offer "must be accepted within one month of the date of [the] letter";

(b) a requirement to "begin [her] enrolment within 12 months from the date of [the] letter"; and

(c) that the "minimum term of enrolment is one year (full time equivalent) for MPhil enrolment."

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

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

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

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

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

> Please find attached acceptance of offer with 01/05/2018 start date (ROE-enrolment.PDF) for the attention of Janey McLean.
>
> …
>
> I want to check that we are on the same page because I am accepting the offer with 01/05/2018 start date because I believe it is possible for me to complete the work in that time from an administration point of view.

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

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

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

The submission of Ms Roe's thesis

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

Instructions provided to the examiners of Ms Roe's thesis

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

The reports of the examiners

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

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

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

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

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

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

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

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

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

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

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

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[3] At [6] above.

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

(a) she made efforts to revise her thesis;

(b) she could only re-submit her revised thesis for examination after a minimum full-time re-enrolment period through until 30 June 2019;

(c) she paid the normal tuition fees required for the additional period of re-enrolment; and

(d) any amendments made to her thesis during the re-enrolment period needed to be to the satisfaction of her thesis examiners.

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

Allegation of administrative errors regarding Ms Roe's academic record

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

Relief

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

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

[4] At [58]–[60].

(b) Declarations that:

(i) the University is required to examine work that has been submitted for examination by students to internationally recognised standards of examination;

(ii) the theses submitted for examination are required to be sent out for examination in a timely fashion; and

(iii) the exercise of statutory power of decision to fail Ms Roe for her thesis submitted in October 2018 was invalid because the University does not have the power to base the outcome of examination on anything other than reports of external examiners.

(c) A direction that the University shall:

(i) update Ms Roe's transcript to show that the substantively updated thesis she supplied to the Dean on 24 February 2019 (within 10 weeks of the outcome of examination on 11 January 2019) is required to be accepted in fulfilment of regulations for the degree;

(ii) reinstate the enrolment dates on her previously completed MA so it can be seen that the MA was completed over two calendar years (part-time) but the MPhil was completed over one calendar year (full-time).

(d) Damages of $324,000 being the equivalent of two years' salary at a rate she would have earned as a senior doctor in the public health system.

Issues

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

(a) Whether the University complied with the law and its policies and procedure that were lawful policies, and whether it acted reasonably and fairly in accordance with natural justice in relation to Ms Roe's enrolment.

(b) Whether the University's decisions in respect of Ms Roe's thesis complied with the law and its lawful policies and procedures, and whether they were fair and reasonable decisions.

(c) Whether the University kept accurate records about Ms Roe.

[31] I consider each in turn.

Ms Roe's enrolment – backdating and timeframe

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

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

(a) she began her course of study on 5 March 2018, the date on which her prospective supervisor made suggestions about literature she should review;

(b) (although she did not call any evidence about it) the practice for many universities, including the University of Waikato, is to have a "shopping period" of some weeks after courses officially start, in which students can begin work on courses even if they are not enrolled;

(c) the practice is for enrolments to be regularly backdated to an earlier time; even if she enrolled too late, the University ought to have backdated her enrolment to 5 March 2018;

(d) the University did not process her enrolment in accordance with the seven-week timeframe provided in their policy, with her application being processed in seven weeks and five days instead; and

(e) the University was obliged to let her complete the MPhil in the "minimum normal standard amount of time"; in other words, as quickly as possible.

Discussion

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

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

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

[5] Ministry of Education and Tertiary Education Commission – Single Data Return Manual – 2018 (version 2.0).

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

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

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

Thesis treatment

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

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

[6] Education Act 1989, s 161(1).

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

(b) Ms Roe says it is clear on the evidence that the Court should find that the quality of her work was not relevant to any decision about terminating her enrolment, or not awarding her the MPhil degree. She suggests that, in not enrolling her immediately, the University violated her academic freedom, and directly harmed her by slowing the process down.

(c) Ms Roe submits that reg 21 of the University regulations states that the Dean will provide the thesis to two external examiners for assessment, and in the case of divergent outcomes, the thesis will be provided to a third examiner. Ms Roe says her thesis was provided to two external examiners and also to her chief supervisor. Ms Roe submits that, despite the University not receiving divergent outcomes, they chose to appoint her supervisor as a third examiner.

(d) Ms Roe also submits that the external examiners were misinformed about the degree for which she was enrolled. Since their information package included a discussion of the PhD, she suggests the examiners might have been under the impression that the work was aimed at a higher standard; the form that was sent to the examiners referred to a "doctoral thesis".

(e) Ms Roe argues also that:

(i) the evidence is insufficient to justify the decision requiring her to re-enrol for a further six months to make changes to her thesis;

(ii) the names of the external examiners have been redacted in the evidence before the Court, with the consequence the "external examiners" could be her supervisor; and

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

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

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

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

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

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

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

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

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

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

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

Appointment of two external examiners

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

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

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

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

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

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

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

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

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

Outcome of the examination of Ms Roe's thesis

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

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

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

Allegation of pre-determination

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

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

Other administrative errors

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

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

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

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

Further claims

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

Result

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

Costs

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

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

Toogood J

Chapter 2

Minute of Justice Toogood as to Costs (30 July, 2021)

IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY

I TE KŌTI MATUA O AOTEAROA
KIRIKIRIROA ROHE

CIV-2020-419-235

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

Hearing: On the papers

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

Minute: 30 July 2021

MINUTE OF TOOGOOD J
[As to costs]

Solicitors:
Tompkins Wake, Hamilton for respondent

Copy to:
The applicant

[1] On 16 July 2021, I issued a judgment dismissing Ms Roe's application for judicial review of various decisions and alleged errors and omissions of the University of Waikato.[1] In the judgment I said:

> [63] As the successful party, the University is entitled to an award of costs on a category 2B basis.
>
> [64] If the parties cannot earlier agree on costs, the University shall file and serve any costs memorandum by ***13 August 2021***. Ms Roe shall file and serve any costs memorandum in reply by ***10 September 2021***. The costs memoranda shall not exceed three pages in length, excluding the intituling cover page and any annexed schedule of costs and documents related to disbursements. Unless the Court directs otherwise, costs shall be determined on the papers.

The University's claim for costs and disbursements

[2] Counsel for the University have prepared a schedule of the costs claimed according to the categorisation of 2B costs under the High Court Rules 2016. I am satisfied that the claims accord with the schedule and are appropriate. The University also claims to recover its filing fees for the notice of opposition to an interlocutory application filed by Ms Roe and its statement of defence. It also claims $107.99 for photocopying carried out in the New Zealand Law Society library. Mr McGillivray explains in his memorandum that the copying relates to the provisions of reported versions of cases that were included in the bundle of authorities but which were not available on the on-line databases.

Ms Roe's submissions

[3] Ms Roe objects to payment of those copying costs, arguing that she does not accept that it was reasonable for the respondent's counsel to invoice the sum claimed for searching "obscure cases located behind a pay-wall given high-quality free information that is not located behind a pay-wall. The respondent was not to write a research paper or a thesis to justify those research costs for a High Court proceeding".

[4] I consider the copying costs to be reasonably claimable. While it may have been possible for counsel and for the Judge to obtain on-line access to those judgments through databases available to them, they would not easily have been available to

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1 *Roe v University of Waikato* [2021] NZHC 1808.

Ms Roe. Counsel for the University were obliged to disclose to her all of the relevant authorities upon which they relied, including any which may have been of assistance to her case of which they were aware. Moreover, it assists a trial judge to have a bound volume comprising all relevant authorities.

[5] I am satisfied that the disbursement claimed is reasonable and properly related to the conduct of the proceeding.

[6] Ms Roe does not argue that the costs claimed on behalf of the University do not accord with the High Court Rules. She suggests, however, that costs be allowed to lie where they fall "… until the case has been resolved through the court of appeal and supreme court and UN if NZ Universities and courts are some combination of unwilling and unable to accept evidence and hear reason". Ms Roe says that she does not wish to appeal a costs decision separately as she is attempting to keep costs down for the University.

[7] She then devotes six paragraphs of argument addressing the substantive judgment and saying why she considers it to be wrong.

Decision

[8] As the party that was successful in the proceeding, the University is entitled to its costs.[2] I have directed that they be fixed on a category 2B basis and the calculation of costs claimed by the University is correct. I have ruled that the disbursements claimed are reasonable.

[9] I appreciate that Ms Roe has a concern about filing a separate appeal against a costs judgment, if she is dissatisfied with it, but it is not appropriate for the respondent to have to wait for its costs pending the hearing of one or more appeals which Ms Roe may be contemplating. I am aware that she has filed a notice of appeal in the Court of Appeal against the substantive judgment. I invite Ms Roe to confer with counsel for the University about any intention to appeal this costs decision and how such an appeal might be accommodated within the current appeal proceeding.

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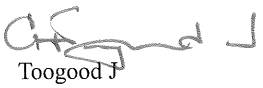
2 High Court Rules 2016, r 14.2(1)(a).

[10] The applicant shall pay the respondent the sum of $20,793 in costs and $327.99 in disbursements.



Toogood J

Chapter 3

Minute of Justice Cooper (17 Sept, 2021)

IN THE COURT OF APPEAL OF NEW ZEALAND
I TE KŌTI PĪRA O AOTEAROA

CA459/2021
CA488/2021

	BETWEEN	KELLY ALEXANDRA ROE Appellant
	AND	THE UNIVERSITY OF WAIKATO Respondent

Counsel: Appellant in Person
C Frost for Respondent

Date of Minute: 17 September 2021

MINUTE OF COOPER J

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[1] I make orders directing that appeals CA459/2021 and CA488/2021 (Roe v University of Waikato) be heard together and that only one payment of security for costs need be made.

Chapter 4

Judgment of Justice Brown (18 Dec, 2021)

IN THE COURT OF APPEAL OF NEW ZEALAND

I TE KŌTI PĪRA O AOTEAROA

CA459/2021
[2021] NZCA 612

BETWEEN	KELLY ALEXANDRA ROE Applicant
AND	UNIVERSITY OF WAIKATO Respondent

CA488/2021

BETWEEN	KELLY ALEXANDRA ROE Applicant
AND	UNIVERSITY OF WAIKATO Respondent

Counsel: Applicant in Person
J A MacGillivray for Respondent

Judgment: (On the papers) 18 November 2021 at 10.30 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 9 December 2021.

REASONS

Introduction

[1] On 23 July 2021 Ms Roe filed an appeal against a judgment of the High Court dismissing her application for judicial review relating to the examination of her thesis by the respondent, the University of Waikato, and the outcome of that examination.[1] The High Court's subsequent costs judgment was the subject of a separate notice of appeal filed on 6 August 2021.[2] On 17 September 2021 it was directed that the appeals be heard together with only one payment of security for costs being required.

[2] Ms Roe applied under r 35(6)(c) of the Court of Appeal (Civil) Rules 2005 (the Rules) for dispensation from the requirement to pay security for costs, which had been fixed in the sum of $7,060, on the ground that the substantive appeal involves a matter of considerable public interest. In a decision dated 22 September 2021 the Deputy Registrar declined the application for dispensation.

[3] Ms Roe now seeks a review of that decision.

The relevant principles

[4] The principles applicable to dispensation from security for costs were reviewed by the Supreme Court in *Reekie v Attorney-General*.[3] 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.[4] 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

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1 *Roe v University of Waikato* [2021] NZHC 1808 [Substantive decision].
2 *Roe v University of Waikato* HC Hamilton CIV-2020-419-235, 30 July 2021.
3 *Reekie v Attorney-General* [2014] NZSC 63, [2014] 1 NZLR 737.
4 At [31].

(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.

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

The Deputy Registrar's decision

[6] Having correctly cited the relevant principles from *Reekie*, the Deputy Registrar first recorded that Ms Roe did not claim to be impecunious and did not make her application on that ground. Instead her application was advanced on the basis that the appeal against the substantive decision is one of public interest.

[7] The Deputy Registrar rejected Ms Roe's submission that her substantive appeal involved a matter of considerable public interest, observing that the appeals turned on their particular facts given that the respondent's decision related to Ms Roe's enrolment and examination results. 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.

Discussion

[8] In support of the review Ms Roe explained that her appeal is "intertwined" with other litigation she has with New Zealand Vice-Chancellors Committee, contending that her treatment is not simply an issue between herself and the respondent but rather an issue with how all New Zealand universities treat their graduate research students. She suggested that her appeal will be of interest to domestic and international students when they are deciding whether they want to invest in a New Zealand university education.

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5 At [23].

[9] In her submissions Ms Roe engaged at some length with the merits of her case, in particular the requirement that she re-enrol, stating:

> This was not an academic decision. The University administration decided to demand (demand a bribe payment and an additional period of unpaid therefore slave labor) without academic grounds. They do this always. It is systematic. They believe they are entitled.

[10] She described the issue in this way:

> 16) The issue is what it is or means to have a degree from a NZ University. University administration thinks that all NZ University degrees are honorary degrees to be granted or withheld at the discretion of the University administration. That is to say they can decide whether you paid enough money to university editing services or whether you lived in your supervisors house for long enough. Whether you carried their groceries with joy on your face. Whether you did what they said when they said because they said. The University administration has total discretion to grant or withhold University Degrees quite aside from internationally accepted standards of scholarship.

[11] As I explained in a previous review sought by Ms Roe, the beliefs she holds concerning the practices of various academic institutions does not have the consequence of converting proceedings, that concern facts and processes that pertain only to her and her academic pursuits, into a broader issue of public interest.[6] As the Supreme Court recently observed in relation to that case (and two others), they involved very particular litigation where the underlying disputes are personal to Ms Roe and do not raise issues of general or public importance.[7]

[12] Like the Deputy Registrar I do not regard her appeal as qualifying as genuine public interest litigation of the nature recognised in *Banks v Ports of Auckland Ltd*.[8] Consequently there are no grounds on that account for dispensation from the requirement to pay security for costs.

[13] Notwithstanding that impecuniosity was not a ground for her application for dispensation, Ms Roe's submissions also stated that she does not have funds to pay security for costs. However she did not provide any details of her financial

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6 *Roe v New Zealand Vice Chancellors Committee* [2021] NZCA 437 at [15].
7 *Roe v New Zealand Vice-Chancellors Committee* [2021] NZSC 158 at [5].
8 *Banks v Ports of Auckland Ltd* [2015] NZCA 150, (2015) 22 PRNZ 461.

circumstances in support of that contention. Indeed her submissions made it clear that she is opposed to doing so:

> 3) I am opposed to presenting my financial records to the court as I am opposed to presenting a film to the court of me doing various things in the bathroom or the bedroom. Privacy. There is nothing wrong with picking one's nose but there is something wrong with people forcing things like that to take up the time of the courts. I have attested to my financial position and there is no reason to think me a liar.

[14] Ms Roe's veracity is not the issue. There was simply no information in her application which would have provided a basis for dispensation on the grounds of impecuniosity.

Result

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

[16] Security for costs of $7,060 is payable by 9 December 2021.

Solicitors:
Tompkins Wake, Hamilton for Respondent

Chapter 5

Filing for Supreme Court (6 Dec, 2021)

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:
>
> (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.
>
> 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.