Perspective

How Wiles v the University of Auckland strengthens academic freedom in New Zealand

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While academic freedom is embedded in the New Zealand Education and Training Act 2020, the Act is not explicit as to how the resulting rights and corresponding obligations should be exercised by universities and their staff. The recent employment court judgment in favour of Associate Professor Siouxsie Wiles in her dispute with the University of Auckland highlighted how the broader environment in which academic commentators participate has deteriorated, with women or those from minority groups, targeted with threats and abuse when they step into the public sphere. The judgment also demonstrated that even when the principles of academic freedom are embedded in policies and employment contracts, this does not always translate into practice. As Dr Wiles' case shows, the statutory responsibility of universities in New Zealand to preserve and enhance academic freedom requires a genuine and active commitment from senior management.

Introduction

The COVID-19 pandemic was a difficult and disruptive time for tertiary institutions globally, with shifts to on-line learning and disruption of international student enrolments. In New Zealand, as in other parts of the world, many academics stepped up to become involved in the wider public health response (French et al., 2025). Some contributed technical expertise, while others helped keep the public informed through the mainstream media and social media (Hendy, 2025). A few of these science communicators became household names during the pandemic. In New Zealand this included Associate Professor Siouxsie Wiles, a microbiologist at the University of Auckland.

Over the course of the pandemic Dr Wiles gave thousands of interviews to the media. She featured daily on television, on radio, and in print media, and many of these appearances would be widely shared on social media (Wiles et al., 2023). She became a trusted figure for many New Zealanders and in early 2021 was recognised for these efforts by being named New Zealander of the Year. However, as the pandemic went on, she was also subject to a torrent of on-line abuse. By 2021 this had spilled over into threats to confront her physically, and indeed, some of these threats were carried out. As is well documented, this has had a severe and detrimental effect on Dr Wiles and her family, and has served as a stark warning for other academics who would seek to follow her example (Isaac, 2023).

An exacerbating circumstance was the lack of support Dr Wiles received from her employer, the University of Auckland. Although the University used her profile to promote its interests (its 2020 annual report mentions her several times, for instance, University of Auckland, 2020), Dr Wiles found that it was slow in responding to her requests for help and, when it did take notice, adopted a stance that she described as "victim-blaming". As a result Dr Wiles took the University to the Employment Court, winning a judgment that has set an important precedent in New Zealand employment law (New Zealand Employment Court, 2024). Dr Wiles's win also has implications for the wider university sector.

Most importantly, the Court found that media commentary was part of Dr Wiles' job as an academic and that the University should have had an effective health and safety plan in place to mitigate the harm arising from her commentary (Higgins, 2024). This lack of a plan constituted a breach of the University's employment obligations, in the Court's view. Furthermore it found the way the University handled the complaints by Dr Wiles also constituted a breach of good faith and a failure to act as a good employer, with two senior managers singled out for particular criticism. Dr Wiles was awarded damages for the unjustified disadvantage that these breaches created, and later awarded substantial costs.

It was reported in the media that the Court did not find that there had been a breach of academic freedom, a view that appears to have originated from a public statement by the University of Auckland (University of Auckland, 2024). However, the Court was not asked to consider any standalone claims of such a breach (New Zealand Employment Court, 2024). Despite the Employment Court noting in its judgment that academic freedom was only "tangentially engaged", the Court of Appeal would later clarify that academic freedom had been manifested through the duties of the employer, and these had indeed been breached by the University (New Zealand Court of Appeal, 2025).

In this article I hope to give a consistent account of events and the Courts' findings. I will review the

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background that led to the legal dispute, and discuss some of the issues around academic freedom that were considered by the Court. I will summarise the Court's judgments and consider its implications for the academic community and its institutions. Finally I discuss the gaps that the judgment leaves, particularly those resulting from the manner in which it considers academic freedom, and how the community might take steps to address these gaps.

Background

Dr Siouxsie Wiles is an Associate Professor in the Faculty of Medical and Health Sciences at the University of Auckland. In early 2020 she was already well known as a science communicator, maintaining a popular blog in microbiology 'Infectious Thoughts' and holding several regular media commentary roles. As mentioned above, when news of a cluster of novel coronavirus infections in China broke, she quickly became one of the go to experts for the New Zealand media. As well as featuring heavily in mainstream media coverage, Dr Wiles was also prolific on social media, teaming up with cartoonist Toby Morris to design a series of animated graphics that were widely circulated in New Zealand and overseas (Wiles et al., 2023).

Harassment of scientists during the pandemic was a widespread problem, with scientists who are women or from minority backgrounds becoming particular targets for hate and harassment (Nogrady, 2021; Samer et al., 2021). Indeed, as the pandemic unfolded Dr Wiles was increasingly targeted for vitriol and abuse by members of the public opposed to the public health response (Isaac, 2023). This began with vexatious emails and social media comments, but escalated to threatening phone calls, the sharing of her home address and videos New Zealand Employment Court (2024). In one incident she was identified by two prominent COVID-19 protestors in a private hotel restaurant and harassed while being live-streamed. The abuse was intense and incessant, and would have been distressing for anyone. For an academic with few resources to counter or mitigate the threats it bordered on the intolerable (Isaac, 2023).

Dr Wiles turned to her employer, the University of Auckland, for assistance, but found the University's response slow, reactive, and ineffective (New Zealand Employment Court, 2024). Although the University put some protections in place, Dr Wiles said that these were often only enacted after lengthy delays or after incidents had taken place. At a June 2021 meeting, convened by the University to consider further steps, Dr Wiles and several other academic staff were advised that providing COVID-19 commentary did not form part of their jobs and that they should consider pulling back from such commentary (New Zealand Employment Court, 2024). Further, the University's legal counsel said that if a hazard could not be managed or eliminated, the only option in terms of the health and safety legal requirements was to say that it cannot be done, no matter the cost.[1] The University's preferred solution to managing the harassment seemed to be for Dr Wiles and her colleagues to reduce COVID-19 commentary.

In an attempt to challenge this view, Dr Wiles, myself, and another colleague filed personal grievances the following month (New Zealand Employment Court, 2024). Our position was that several of the University's obligations under the Education and Training Act 2020 required at least some academics to undertake public commentary and that it therefore must be part of our jobs (*Education and Training Act*, 2020). We also believed that the University had not taken reasonably practicable steps to manage or eliminate the effects of harassment before it asked us to pull back from public commentary. In other words, we believed the University needed to mount an effective health and safety response to harassment arising from public commentary that did not come at the expense of its obligations under the Education and Training Act.

After a failed mediation in October 2021, Dr Wiles and I filed proceedings at the Employment Authority, which subsequently allowed the removal of matters to the Employment Court (New Zealand Employment Relations Authority, 2021). I left the University in April 2022 to take up another role, but Dr Wiles persisted with these claims and filed in the Employment Court. Following the failed mediation, however, the University launched an investigation into Dr Wiles' outreach activities. Furthermore, an intervention by Dr Wiles' Dean, Professor John Fraser, in November 2021 prevented her from appearing as an expert witness at a Waitangi Tribunal inquiry in her professional capacity. Another failed mediation in 2022 was followed by an investigation into her social media activity by the Director of Human Resources, Andrew Phipps. The Court would later variously describe the correspondence associated with these investigations as "aggressive" and "focussed on matters that were not relevant" (New Zealand Employment Court, 2024).

In November 2023, after lengthy delays, the Court finally heard the matter in Auckland over a period of just over two weeks. The judgment of the Court, which was released July 2024, found in favour of Dr Wiles (New Zealand Employment Court, 2024). The Court upheld most of her claims, finding that the University had failed in its health and safety obligations, breached its statutory obligations to her as an employee, and failed to act as a "good employer", at times taking a combative rather than supportive approach. Dr Wiles was awarded $20,000 general damages and declarations of breach; the Court declined a penalty award because it considered the failings were not deliberate.

As noted earlier, the Court suggested that Dr Wiles' academic freedom had only been tangentially engaged by the case. Although she was advised several times to step back or reduce her commentary by University managers, the Court argued that this did not "engage" her academic freedom because the intent was not to suppress her views. In making this argument, the Court may have been trying to distinguish between academic freedom as held by individual employees of a university as opposed to the obligations it

[1] I was not present at this meeting, but I later listened to an audio recording.

holds for the institution itself.

Indeed, the Court relied on similar reasoning in rejecting a separate claim that the University had breached its obligations under Te Tiriti o Waitangi in preventing her from appearing at the Waitangi Tribunal in her professional capacity. Dr Wiles sought to appeal on the Court's commentary on academic freedom, with her lawyers arguing that the Employment Court had not fully considered academic freedom in its judgment, but the Court of Appeal declined to hear this, noting that academic freedom had in fact been central to the finding that public commentary was part of her job (New Zealand Court of Appeal, 2025). In May 2025, the employment Court awarded her more than $200,000 in costs, citing the University's unwillingness to settle out of court in assigning the costs (New Zealand Employment Court, 2025).

Academic Freedom in the Education and Training Act

The governing legislation for universities in New Zealand is the Education and Training Act 2020 (*Education and Training Act*, 2020). Section 267 of the Act enshrines academic freedom as a statutory right for academic staff and students at New Zealand universities. This Section sets out scope of this freedom for staff and students in four dimensions:

- the freedom of academic staff and students, within the law, to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions;
- the freedom of academic staff and students to engage in research;
- the freedom of the institution and its staff to regulate the subject matter of courses taught at the institution;
- the freedom of the institution and its staff to teach and assess students in the manner that they consider best promotes learning.

Staff, students, and institutions are entitled to exercise the corresponding freedoms without external interference, although it is important to note that some of these rights sit with staff and students alone, while others are shared with the institution.

Section 267 also notes that academic freedom comes with obligations. The Act states that in exercising their academic freedom, institutions must maintain "the highest ethical standards". Further, the Act makes clear that institutions must act in such a way that academic freedom is "preserved and enhanced" (Section 267 Part 1). This creates obligations for university councils and management to support, protect, and foster an environment where academic freedom can be exercised ethically.

The next section of the Act, section 268, provides a statutory definition of what it means to be a university in New Zealand, setting the scope for their mission and identity:

- they (the universities) are primarily concerned with more advanced learning, the principal aim being to develop intellectual independence;
- their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge;
- they meet international standards of research and teaching;
- they are a repository of knowledge and expertise;
- they accept a role as critic and conscience of society;

and that:

- a university is characterised by a wide diversity of teaching and research, especially at a higher level, that maintains, advances, disseminates, and assists the application of knowledge, develops intellectual independence, and promotes community learning.

Sections 267 and 268 establish the framework of individual and institutional rights and obligations within which New Zealand academics may undertake in public commentary. Such commentary engages the freedom "to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions", but also helps fulfil the institutional obligations to act as critic and conscience of society, disseminate research, and promote community learning. Universities discharge these obligations in a variety of other ways, but public commentary by staff is generally accepted as one of these means, even if there is no expectation that all staff must undertake it. Nevertheless, as noted above, the Act requires universities to preserve and enhance academic freedom, which might involve actively encouraging staff to engage in commentary and offering support to those who face a backlash from it.

The freedom academics enjoy to engage in public commentary is not unfettered. The Act notes that academic freedom should be exercised "within the law" (statements should not be defamatory, for example) and institutions must maintain high ethical standards. In practice, this means that universities maintain policies and guidelines for academics who undertake public commentary. The University of Auckland Academic Staff Collective Agreement specifies that academic staff have the right to enter into public debate and dialogue on matters relevant to their "professional expertise and experience", for instance (UoA/TEU, 2024). Presumably, the intent of this is to ensure that any commentary undertaken by academics in their professional capacity is grounded in the relevant expertise and experience.

The May 2024 judgment

The first issue before the Court was whether Dr Wiles' high-profile COVID-19 commentary was part of her job. If the commentary lay outside her duties as an employee, the University's health-and-safety and "good-employer"

obligations would have been less onerous. At the 2023 hearing, the University conceded that COVID-19 commentary did form part of Dr Wiles' duties. The Judge noted that this view had "evolved" (New Zealand Employment Court, 2024). Indeed, drawing on the University's own policies and the academic collective agreement, which reference the key principles of academic freedom, the Court agreed that Dr Wiles' COVID-19 commentary formed part of her role. The approach of the University in the June 2021 meeting where Dr Wiles and her colleagues were told the contrary was described by the Court as "unfortunate". Importantly, the Court found that there was an urgent need for Dr Wiles' commentary from 2020 through to 2022, so requests by the University to reduce or limit it were not reasonable in the absence of an effective health and safety plan.

In fact Dr Wiles was "entitled to expect the University to have put together a plan to keep her safe as she went about her work and to have supported her as she did so." The Judge also observed that the types of threats faced by Dr Wiles were not new to the University, even if they were worse than typically encountered by academics. Therefore, the Court concluded, the University should have acted quickly to put a plan in place, obtaining outside advice if necessary.

While there are different methodologies that could have been used in developing a plan, one would expect any steps taken to have been consistent with the government's protective security guidelines (New Zealand Government, 2025). In these circumstances a critical step should have involved an individual risk assessment for affected staff, including an assessment of the security of their home environment. An individual risk assessment would not be provided to Dr Wiles until mid-2022, more than two years after the University had first been alerted to the harassment, something that the Court described as "insufficient" (New Zealand Employment Court, 2024).

The Court also considered whether the University had taken all reasonably practicable steps to protect her from online and physical harassment. Under the Health and Safety at Work Act 2015 and the "good-employer" clause in Section 597 of the Education and Training Act 2020, employers must manage foreseeable risks to mental as well as physical safety (*Heath and Safety at Work Act*, 2015). The Court found that the University's response to preserving her safety was too slow and too passive: "in some cases measures that were not deemed reasonably practical before events occurred became reasonably practicable afterwards." Furthermore, the University seemed to rely heavily on security advice from Dr Wiles herself: "As Associate Professor Wiles and her colleagues said, they are not experts in security or public relations responses; it was not for them to determine what actions were appropriate" (New Zealand Employment Court, 2024).

The Court also found that some of the University's actions made the situation worse. The Judge noted that the "view that seemed to permeate the University's approach to the issues was that a good deal of the abuse Associate Professor Wiles was receiving arose from outside activities on social media that were not her work." The Judge was critical of two senior managers, Dr Wiles's Dean, Professor John Fraser, and the head of Human Resources at the University, Andrew Phipps, who both failed to convince the Court that the scrutiny that Dr Wiles had been put under in late 2021 and 2022 was justified (New Zealand Employment Court, 2024).

Nevertheless, as discussed above, the Court did remark in its judgment that academic freedom was "only tangentially engaged" by the case (New Zealand Employment Court, 2024). In doing so, the Court noted that the actions of the University in asking her to reduce public commentary were an attempt to reduce Dr Wiles' public profile rather than a bid to suppress her views. As her views were mainstream and available elsewhere, the Court argued that this did not directly engage academic freedom. The Court also observed that Dr Wiles had continued her commentary despite the University's suggestions that she restrict it.

In awarding $20,000 of general damages to Dr Wiles, the Court noted that she was still employed at the University and so had not lost income as a result of the breaches, and that the main drivers for her in pursuing the case were matters of principle and the potential for non-financial remedies. Although Dr Wiles won the judgment, the Court reserved its decision on the award of costs (New Zealand Employment Court, 2024).

Leave to appeal not granted

Despite her win, Dr Wiles sought leave to appeal on several issues, including the Employment Court's treatment of academic freedom. Indeed, the explicit treatment of this issue in the judgment is relatively brief (New Zealand Employment Court, 2024). As noted above, in finding that academic freedom was only tangentially engaged, the Court seemed to rely on the fact that the University had not sought to suppress "new ideas, or controversial or unpopular opinions". This test seems to respond to section 267 of the Education and Training Act 2020, which grants staff and students the freedom "to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions" (*Education and Training Act*, 2020).

In applying this test, the Employment Court noted that Dr Wiles' commentary was mainstream and available to the public in other forms and from other sources, seemingly concluding that it did not comprise "new ideas, or controversial or unpopular opinions". This is somewhat undercut by the Court's finding that Dr Wiles was able to reach audiences that would otherwise not have had access to this information. Furthermore, it is also arguable that Dr Wiles' commentary was unpopular with some audiences, at least, and that it contained new ideas, as it pertained to the rapidly developing understanding of COVID-19.

Nevertheless, the Court of Appeal declined to hear Dr Wiles' appeal on this point (New Zealand Court of Appeal, 2025). In its judgment, however, it noted that a breach of that freedom had not been advanced as a claim in its own right even though academic freedom had, in fact,

underpinned Dr Wiles' claims. The right to academic freedom had been manifested through the duties of the employment relationship, the Court observed, something that the University had been found to have breached. With the result in Dr Wiles favour and no specific claim to contest, the Court of Appeal found that she did not have grounds to appeal the 'particular formulation' of the Employment Court's reasoning. In summation, the Court of Appeal wrote: "Associate Professor Wiles succeeded with her claims, including because the University did not respond appropriately in protecting her right of academic freedom, and associated freedom of expression."

Costs awarded to Dr Wiles

Costs were reserved in the May 2024 judgment, but in June 2025, the Employment Court awarded costs of just over $205,000 to Dr Wiles as the successful party. In making the award, the Court agreed to set aside a Calderbank offer from the University - a without prejudice settlement offer made to protect a party's position on costs - noting that the offer did not include any non-financial remedies or recognition of matters that ultimately the University did not contest. In other words the Court deemed that it had been reasonable for Dr Wiles to decline the offer and continue her litigation. Dr Wiles' legal costs were in excess of $350,000, while the University of Auckland costs exceeded $1,400,000, not including the damages and costs that were awarded against it (New Zealand Employment Court, 2025).

Discussion

The case has strengthened academic freedom in New Zealand in several ways. Firstly, the Employment Court's judgment makes it clear that public commentary by academics is part of their jobs, including when, during emergencies, demands for commentary become very high. This is consistent with the rights and obligations of academics and universities as stated in the Education and Training Act 2020: staff have the right to engage in public commentary and universities have an obligation to support them in this in order to "preserve and enhance" academic freedom and to promote community learning and to act as critic and conscience of society.

The University of Auckland's counsel did not contest this in court but this does not mean this position was universally accepted by university management (New Zealand Employment Court, 2024). I was present in Court for the testimony of Dr Wiles's Dean, and he remained adamant that her public commentary fell outside the expectations of her role. Despite Dr Wiles having a fractional appointment in the University's Faculty of Science for science communication and being involved in several externally funded contracts that involved science communication, Fraser was steadfast in his view that her efforts in providing public commentary were outside the scope of her role. The Court suggested that it was Fraser's view that Dr Wiles "was making herself a target for abuse because she was undertaking public discourse outside her work for the University and in ways that were not in accordance with "normal academic discourse"." The Court concluded that this view was wrong: her public commentary was, as the university counsel conceded, part of her job.

It follows that academic staff undertaking public commentary are entitled to an effective, timely health and safety response should that commentary attract violent threats. This might include individual risk assessments for threatened staff and, in some circumstances, investigation or monitoring of particular threats. A university will not always be in a position to prevent violent threats being made to its staff, but it can and should put protections in place that reduce the likelihood of such threats being carried out, reducing the risk of physical harm, and thereby mitigating corresponding psychosocial harm. The judgment sets an important precedent for all employers with public-facing staff and, as such, is now widely cited by New Zealand health and safety practitioners (Lane-Naeve, 2024).

After the May 2024 judgment was released, the University's public statement asserted that there had been "no breach of academic freedom" (University of Auckland, 2024). Yet the University's advice "to keep public commentary to a minimum", the Court of Appeal noted, breached employment obligations that would not have existed in the absence of academic freedom. A claim that there was "no breach of academic freedom" therefore misrepresents the Employment Court's judgment. Furthermore, it seems to me that preventing Dr Wiles appearing at the Waitangi Tribunal as an expert witness was a breach of her academic freedom, but unfortunately this was not tested by either Court, both of which were instead asked to consider this as a breach of the University's Te Tiriti o Waitangi obligations.

Nevertheless, the Employment Court's commentary on academic freedom is difficult to reconcile with the Act. I suggest that the Employment Court applied the wrong test in considering whether academic freedom had been 'engaged' by the University's actions. The Education and Training Act 2020 grants the right "to question and test received wisdom, to put forward new ideas, and to state controversial or unpopular opinions" to individual academic staff and students, not to institutions (see section 3). Furthermore, there is no sense in the Act that just because ideas, views, or opinions are available to the public through other means that the right of individual academics to express them are in any way diminished, as might be the case if this right was held by institutions.

The Employment Court's commentary on this point may stem from the way that the Act divides the rights and obligations associated with academic freedom between individuals and institutions. An institution might not fail to fulfil its role as 'critic and conscience of society', for example, if it were to prevent an academic from expressing views that were mainstream or available elsewhere, but this would clearly interfere with that academic's right to express these views and, therefore, their academic freedom. It might be more correct to say, then, that the University's obligations as 'critic and conscience of society' were only tangentially engaged by the case. Nevertheless, as noted by the Court of Appeal, revisiting the Employment Court's reasoning

on this point would not have changed the outcome of the judgment.

Finally, the Education and Training Act 2020 says that when exercising academic freedom, universities must maintain the highest ethical standards, be accountable, and properly use resources allocated to them (*Education and Training Act*, 2020). As with the responsibility to preserve and enhance academic freedom, these are institutional obligations, and so the responsibility for ensuring these are met falls to university councils and management. It is questionable in this case whether the actions and inactions of the University of Auckland management met these standards. Indeed, the Court was critical of the actions of some senior managers, going as far as saying that the views of her Dean "were affected by Associate Professor Wiles's popularity." The cost to the taxpayer was also high, with University of Auckland expenditure in excess of $1.6 million dollars. The University of Auckland has refused to comment on how it came to spend so much when it was not willing to defend some of its senior managers' positions in court, but this should be a matter of great concern to the University Council, as well as its staff, students, and other stakeholders (Borissenko, 2025).

A recent international survey of scientists found that 40% of those surveyed had been subject to intimidation and harassment (French et al., 2025). The majority of these respondents reported that this was perpetrated by senior colleagues or managers. Indeed, the Employment Court found that "rather than assisting Associate Professor Wiles to deal with the situation she was in", the communications she received from senior managers "exacerbated her distress" (Isaac, 2023). Perhaps the most important lesson from this case is that a university cannot preserve and enhance academic freedom without a senior leadership team that is willing to stand behind, rather than on top of, its staff.

Conclusion

The judgment in Wiles v the University of Auckland has confirmed that public commentary is part of an academic role in New Zealand. Providing an environment where academic staff can undertake such commentary safely is a part of a university's responsibility to protect and enhance academic freedom, as is required by the Education and Training Act 2020, and a failure to do so can constitute a breach of a university's employment obligations. Meeting these obligations requires more than just appropriate policies and guidelines: as this case shows, senior managers must also be supportive. Given the costs that employees and taxpayers face in resolving these issues through the courts, it is up to university councils to ensure that their senior leadership teams are held to account on this.

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