



Siouxsie's Saga

After a drawn-out hearing, no quick judgment is to be expected in the case taken by academic and science communicator Siouxsie Wiles against her employer, the University of Auckland.

By Sasha Borissenko

“I know it’s been a marathon for everybody concerned from all sides, and I really acknowledge that,” Employment Court judge Joanna Holden warmly said in November.

Her calm, almost jovial words to a tired courtroom marked the end of a three-week hearing between microbiologist and 2021 New Zealander of the Year, associate professor Siouxsie Wiles, and her employer, the University of Auckland. With 20-odd witnesses – many of them distinguished experts in their respective fields – over 16 days, the hearing wasn’t short on nuance or detail. But perhaps University of Auckland defence counsel Philip Skelton KC put it best: “Given the amount of money at stake in this case and the time, effort and money that’s gone into a three-week trial, I find it extraordinary that this matter has gotten to this [point].”

At the heart of the case was Wiles herself: principled and resilient, she didn’t embody the traditional hallmarks of what an academic in a hierarchical institution should do, or look like. The more public attention she received for her communications during the pandemic, the more public abuse she received, questioning her motivations, work ethic and character. This much was beyond dispute.

From there, two fundamentally opposed narratives emerged. On the one hand, Wiles had exposed a system that was happy to profit from her and others’ work, when it suited. Her questioning of whether the university was fulfilling its side of the bargain to ensure academic freedom left her feeling hung out to dry to deal with a “tsunami” of vitriolic abuse, and she was punished in the process.

On the other hand, and this was the crux of the university’s response, here was an academic who wouldn’t stick to the employer-prescribed rules of the game. The university would claim it did everything within its power to fulfil its health and safety and contractual obligations. What employer should be responsible for keyboard warriors threatening society’s democratic institutions? And while academics were protected by academic freedom to speak freely, it was for the court to decide where those freedoms started and where they stopped.

Far from an ivory tower debate, the case came with broader implications. If Wiles were to set a precedent, what could this mean for employers that have traditionally turned a blind eye to trauma experienced as part of the job? Might the case lead to a floodgate of claims by doctors, nurses, teachers, or even journalists?

Setting the scene

In March 2020, the “team of five million” had started to come to terms with a new, simpler, and temporarily restricted form of living, thanks to the first Government-mandated COVID-19 lockdown.

Tensions among people opposed to the measures started to bubble under the surface, and a wave of conspiracy theories and misinformation found willing audiences online.

The media, here and abroad, sought academic experts to set the record straight. Wiles and her compeers first raised concerns about their safety to their employer in April 2020, a month shy of COVID-19 reaching the antipodes. Alleging the university had failed to address those concerns, personal grievances were filed in July 2021. Five months later, the Employment Relations Authority determined the claims should be heard in the Employment Court.

Wiles' fellow claimant, physics professor Shaun Hendy, resolved his dispute when he left the university in October last year. But Wiles – still employed at the university today – kicked on. And so it was.

Sitting in the dock in the Auckland Employment Court, Wiles addressed a room full of some of the best legal and academic minds in the country, as well as her employers. “Nothing could have prepared me for the public intensity and media inquiry that came with the COVID pandemic,” Wiles said, describing how she gave up to 30 interviews a day on top of her teaching and research requirements, beginning in January 2020. Although Wiles had a high profile as a communicator of science and research prior to COVID-19, she told the court she had never received anything like the harassment she received for her work on the pandemic.

Wiles told the court harassment included being linked to the Chinese Communist Party, causing miscarriages among pregnant women and being likened to Lucifer and Satan.

There were calls for her to be hanged, imprisoned, raped and executed by firing squad, and subject to a citizen's arrest for crimes against humanity, including murder and genocide, the court heard.

The list of abuse was as vast as it was deranged.

Unfortunately, abuse in general against university staff was not uncommon, said Vice- Chancellor Dawn Freshwater as she took the stand a week later, describing an example when she herself had been followed home.

“Not a day goes by where I do not get some form of abuse in my inbox.” Why was Wiles targeted to an extreme? Enter The Disinformation Project research fellow, Sanjana Hattotuwa, who said Wiles' pro-vaccination, pro-lockdown and pro-mandates messages prompted volumes of misinformation and disinformation.

Wiles was female, she had unique features as a public intellectual and science communicator, and she was visually identifiable in her appearance, making her one of the most targeted and harassed people online in New Zealand he said.

“She faces a huge amount of vituperative, vicious and violent harassment on virtually every online platform and on an almost daily basis.”

On top of having her home address broadcast online with associated threats to physically confront her at her home, Wiles was targeted by Billy Te Kahika, who developed a following for his views against the vaccine mandates. Te Kahika founded the short-lived AdvanceNZ party with former National MP Jami-Lee Ross, which garnered 28,429 votes in the 2020 election before quietly folding in 2021.

“Make sure you pay ... because you will pay,” Te Kahika heckled Wiles as she dined in a Wellington restaurant, in a video revealed to the court.

The safety measures

Wiles and her colleagues first raised concerns in April 2020 after a man sent dozens of harassing emails using a University of Auckland email address. The man, who wasn't listed in the university directory, was eventually blocked, but university security expressly said the man could simply use other accounts, she said.

What followed was 60 emails and various meetings with senior leadership, faculty management and human resources, that requested the university take Wiles' and her colleagues' safety concerns seriously.

Wiles' concerns “fell on deaf ears”, leaving her to feel “highly unsupported, reactive, haphazard, inadequate and retaliatory”.

The university's approach to health and safety added “enormously to my stress, and left me feeling frustrated, demoralised and unsafe”.

From Wiles' perspective, the “university failed at every turn” to show her and her colleagues any kind of meaningful support”. Instead, feeling abandoned and exposed, the onus fell on those bearing the brunt of the harassment to seek help from the police, Netsafe and Employee Assistance Program counselling services, Wiles told the court.

Speaking for the university, defence counsel Philip Skelton KC warned against hindsight bias. In his closing address, he said the court would no doubt have considerable sympathy for Wiles, who had been the innocent victim of a relentless campaign of vile hate and vitriol.

While no employee should be subjected to such abuse for doing their job, the court had to be mindful that it was looking at the issues with the benefit of hindsight. “It’s always easy to say with the benefit of hindsight that an employer could have done more or acted sooner than it did.

“I think it’s common ground amongst us that it is almost impossible, or at least very difficult, for the university to control social media platforms or to prevent people posting abusive stuff on those platforms.”

Skelton outlined measures the university had taken, including liaising with police, briefing campus security about potential threats, establishing a monitored inbox for harassment, organising security cameras to be set up in Wiles’ home, offering Wiles paid leave and seeking external expert advice.

Defence witness and human resources associate director Stefanie Boyer was appointed as a key liaison for Wiles in February 2021. She was tasked with ‘checking in’ on Wiles on a human level, she told the court.

With empathy in mind, she said, she really tried to do that through phone calls, texts and emails, as well as establishing a social media monitoring service at Wiles’ request.

“The relationship between us at the time seemed quite friendly — we had an exchange of suggestions, support and ideas.”

“Performative” health and safety measures

Earlier in the case, Wiles told the court virtually every single one of these efforts was spearheaded by her and her colleagues. The university’s approach was reactive and not proactive, she said.

The home security system, for example, could only be described as an absolute shambles, Wiles told the court. To start, the original university policy required Wiles to engage preferred suppliers if she wanted reimbursement.

The supplier assured Wiles developments would be made before Christmas 2021, yet university campus operations left for the Christmas break without ensuring any protections were in place, Wiles told the court.

“The university didn’t see me in any real danger.” Holding back tears, Wiles told the court she received a threat on Christmas Eve informing her she’d been added to the list of people accused of crimes against humanity on the website, Nuremberg.nz.

Ultimately, in Wiles’ view, meaningful actions — such as commissioning an independent safety and security audit — weren’t completed until after she commenced legal action in June 2021.

Representing Wiles, barrister Catherine Stewart said it was only days before the hearing began in October 2023, that the university finally announced it had completed the recommendations made by the 2021 safety and security audit. “Your honour, this court hearing is the length that Associate Professor Wiles has had to go to in order for the university to start taking her concerns seriously.” All reactive health and safety measures were nothing short of performative, Stewart said.

Silencing academic freedom

In an attempt to limit harassment, the university’s management and human resources staff advised Wiles and her peers to be “less visible”.

However, suggesting they should reduce their public commentary indirectly implied that Wiles and her colleagues were responsible for the onslaught of harm, Wiles told the court.

“This is victim-blaming, and does not recognise the highly gendered way in which me and my female colleagues are targeted when our male colleagues are not.” Two interrelated principles consistently appeared across the three-week hearing. Academic freedom, which can be both personal and institutional; and the university’s statutory role as ‘critic and conscience’ of society, which presumably requires individual staff to speak up as needed.

The university argued while its ‘critic and conscience’ role meant staff were encouraged to provide commentary if it was in the public interest, this was not a mandatory requirement on anyone. It would mean Wiles’ public commentary was optional.

The Vice-Chancellor told the court that an August 2021 email that referenced her public and social media commentary while a security assessment was carried out was not an attempt to silence her.

“At no stage have I or the university said that the applicants should not be exercising their academic freedom.”

While it was not the university’s position that health and safety trumped academic freedom, she said, it needed to balance competing obligations to staff.

Defence counsel Skelton said limiting commentary was simply a recommendation, not an instruction.

Judge Holden pushed back, saying that when an “employer urges you to do something, it’s something more than advice. It may not be a direction, but an urging by your employer, most people would take it reasonably seriously”.

In any event, Wiles told the court she had very strong values, and public commentary stemmed from wanting to reduce the number of people dying during the pandemic. “The public health measures weren’t going to work if people didn’t follow them, and that really involved understanding the science, and that was what we were doing as part of our job,” she said.

“It would be a bit of a tragedy if no one spoke about it. I have very strong values and I didn’t want lots of people dying during the pandemic.”

In marvellously true John Campbell fashion, the broadcaster appeared for the plaintiff, telling the court that Wiles was “invaluable” to New Zealand in combating the spread of COVID-19 misinformation.

Referring to Wiles 43 appearances on 1News alone, Campbell said, “I can’t begin to explain how universities would have let us down if [the university’s suggestion that academics limit their public commentary] had been consistent and universal policy during 2020 and 2021”.

The university held to the line that public commentary necessarily came with limits, arguing academic freedom mustn’t override other responsibilities of the job.

In 2022, human resources director Andrew Phipps sent a letter to Wiles, alleging a number of her tweets were inappropriate, inaccurate, and disloyal to the university, Wiles told the court.

The letter went on to allege tweets that were in breach of the university’s code of conduct, staff collective agreement and media statements policy, could not be justified by academic freedom.

Vice Chancellor Dawn Freshwater told the court, “I’m absolutely confident that I, and other members of the staff, had no intention to retaliate against Associate Professor Wiles in any way.”

In her closing address, Wiles’ lawyer Catherine Stewart said it was “implausible to suggest that these tweets just turned up in [human resources’] shambolic inbox”.

Instead, she suggested, this was a case of the university trawling through Wiles’ social media to find ammunition to use against her.

For the defence, Skelton concluded the university was justified in discussing Wiles' social media statements. Yet again, Judge Holden intercepted, saying, "but it feels like inquiry was increased because she was ... on the radar".

In another email addressed to Wiles in October 2021, the Dean of the Faculty of Medical and Health Sciences, Professor John Fraser, questioned whether Wiles had been granted permission for her "outside activities", suggesting they mightn't be in line with university policies.

Wiles told the court she was accountable to two departments, with one contract explicitly allowing up to a fifth of her time for work outside of research and teaching to include science communication. Permission hadn't been highlighted as a prerequisite, she said.

She added that she never let her teaching or research work suffer during this period. "What's been worse than the harassment has been dealing with the university. I fear for my employment," Wiles told the court.

For the defence, Skelton said the dean was "quite entitled" to ascertain whether Wiles was undertaking secondary employment.

Once more, Judge Holden interposed, noting the tone of the letters troubled her. "I agree that the university and the Dean was entitled to know what was going on, but they were quite aggressive letters, I thought."

In further communications, Wiles told the court Fraser expressed concerns about Wiles' "celebrity" status, describing her as a "freelance celebrity", and commonly referred to as "Brand Siouxsie".

Wiles wasn't having it. Any claims made by the defence throughout the hearing to highlight non-COVID-19 work was a "red herring", she told the court.

The university's attempts to highlight appearing on the popular TV show, Give Us a Clue, or enlisting the help of a talent agent were part of wider efforts to embarrass her, Wiles said.

Arguments questioning her motivations were irrelevant and disappointing, Wiles told the court, explaining that she had discussed being approached by a talent agent in 2016 with her head of department at the time, and had donated all proceeds of paid work back to the Medical Sciences Foundation to support her research.

Wiles' lawyer, Catherine Stewart, told the court that outwardly the university enjoyed the prestige of employing an eminent academic, and had referenced Wiles' achievements in numerous official publications.

Stewart pointed out the university cited Wiles' public science communications in its 2020 annual report as evidence the organisation "had achieved their objective as a university as disseminating high-quality research that has the greatest possible impact on and value for New Zealand and the world".

Yet, ironically, said Stewart, at the same time, the university was urging Wiles not to engage in this work.

But how much harm is enough?

"Wiles is something of a trailblazer in our country," her lawyer said in her closing statement.

Rather than support her for her incredible contributions, Stewart said, the university chose to actively change the narrative, and deflect responsibility by cutting her down in many ways.

Stewart said the university unreasonably restricted Wiles' academic freedom and failed to support her health and safety in the face of risks arising from university work, leading to psychological harm. Hurt and humiliation resulting from unfair disadvantage, and breaches of contractual and good faith requirements should be compensated for to the ballpark figure of \$350,000, Stewart said.

In his reply, the university's lawyer, Skelton, acknowledged Wiles had been an "innocent victim" of "vile" hate and vitriol by outside parties, but said that the university shouldn't be held liable for stress caused by third parties.

Whether the University did enough was a matter for the court to decide, said Skelton, but he strongly rejected the idea that the Vice Chancellor was motivated by anything other than wanting to try and keep Wiles safe.

The university wasn't the enemy, he said.

Pointing to other cases where victims had been dismissed from their employment, or had suffered PTSD symptoms, Skelton noted that no medical evidence had been presented during the hearing to support Wiles' claims of emotional harm, which would normally be presented in cases involving "large sums of money".

As she remained employed by the university, Skelton said Wiles suffered no financial loss and referenced Wiles' evidence where she described herself as "quite stoic". Judge Holden responded by saying evidence of psychological harm was almost certain.

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In addressing the absence of a medical report to illustrate the ongoing impact, Wiles' lawyer Catherine Stewart said, "we have someone who has tried to carry on, stoically, as best as she can — that should not be held against her".

Judge Holden pushed on, saying, "there's no criticism of Associate Professor Wiles for being a strong person able to carry on, but the point is that when you're looking at assessing damages for humiliation, loss of dignity, and injury to feelings, the impact on a person [is relevant]."

After 16 days of submissions, there was "an awful lot to think about", Holden said, insisting her final judgement would not be coming rapidly.

The pimple had burst, sighs of relief were had, and the remaining lawyers, academic experts and the media stragglers who lasted the distance sluggishly left the courtroom.