

Appendix P

**University Mediator's report of 8 March 2000
to the Vice Chancellor**

11/2/00

UNIVERSITY OF WAIKATO
Te Whare Wānanga o Waikato

**PRIVATE &
CONFIDENTIAL**

MEMORANDUM FOR: THE VICE-CHANCELLOR

FROM: BETHEA WEIR, MEDIATOR

DATE: 8 MARCH 2000

SUBJECT: H J KUPKA

Further to the advice we received from the Office of the Race Relations Conciliator on the 9.12.99 (Appendix 1), there remain a number of outstanding issues which require your intervention by way of a number of decisions without which the situation will remain on going for all parties.

Although I forwarded all material provided to me by Norman Franke and Professor Dov Bing to the Race Relations Conciliator last year, I continue to receive subsequent material allegedly published by Mr Kupka and opinions from a variety of individuals on the nature of this material. (Appendix 2)

I have no difficulty with the fact that Mr Kupka's views, as expressed on the Internet, are and will be subject to public scrutiny; indeed this is part of the point of engaging in such discussions. I would seek your guidance on the point at which the University ceases to have an interest in the views of a student when neither the University's name, nor its resources are involved.

I am mindful of the advice we have received from the Race Relations Conciliator that the views expressed by Mr Kupka "could constitute political opinion" and that the University's involvement in continuous monitoring could be considered a form of discrimination or victimisation. Equally, any undue actions on our part to prohibit publication, in the widest sense, could be considered as an attempt to limit Mr Kupka's freedom of expression, as provided for in the Bill of Rights.

It is my view that the University should cease having any further interest in Mr Kupka's Internet discussions. and that all parties should be advised of this. This does not preclude any individual maintaining a level of interest or in acting in an entirely private capacity in pursuing their concerns regarding the material to the appropriate statutory bodies. I have advised a number of individuals for some time of this avenue of recourse, and am aware that the NZ Police, Human Rights Commission and the United Nations have been contacted on such an individual basis. (Appendix 3)

An issue you may wish to consider is whether the University is comfortable with staff using University resources, name or reputation in such a private pursuit.

I am also seeking your view on how far any further investigation into Mr Kupka's enrolment as a Masters student, the grade awarded, and subsequent acceptance as a Doctoral student should go. A number of allegations have been made to the effect that Associate Professor Knufferman acted outside of normal University processes in accepting Mr Kupka as a

Masters student, and that he acted inappropriately in the awarding of a B grade for Mr Kupka's Masters. (Appendix 4)

I have spoken with Associate Professor Knufferman and Professor Hans Nieschmit regarding the allegations contained in the attached Appendix. Associate Professor Knufferman at no time altered Mr Kupka's grade from a B- to a B, and the recorded grade issued by Dr Stan Jones is in fact a B. Dr Jones is currently on an overseas exchange programme, and I have not been able to contact him regarding his view of this. Professor Nieschmit has assured me without any qualification that Mr Kupka was appropriately awarded a B grade. (Appendix 5)

Obviously such allegations have resulted in considerable concern and distress to a long serving senior academic of the University, and the fact that they have no substance whatsoever leaves me loathe to continue to investigate what at best are allegations based on misinformation, or at worse are vexatious. Given that Mr Kupka was awarded a B grade for his Masters, his enrolment as a Doctoral candidate was academically sound.

At the time that Mr Kupka's candidature was being considered by the then German Department, Norman Franke raised his concerns re the alleged political views of Mr Kupka. In response to these concerns Associate Professor Knufferman, Professor Oettli as the then Dean and the Higher Degrees Committee representative, met to consider the two/three pages of evidence produced by Mr Franke. These pages were also forwarded to the Race Relations Conciliator.

The view of this ad hoc group was that there was no barrier to the enrolment proceeding, a view on the content of the material provided was subsequently endorsed by the Race Relations Conciliator, and Mr Kupka was therefore enrolled as a Doctoral student. The only note made in the minutes of the Higher Degrees Committee meeting which considered Mr Kupka's application, is that the Doctorate will be written and presented in German.

Professor Bing and Norman Franke have written to the Postgraduate Studies Committee requesting that they review Mr Kupka's Doctoral proposal on the grounds of its "cultural safety". (Appendix 6)

I understand from Professor Bing that no response has been received from the Postgraduate Studies Committee, and this remains one of the outstanding matters which needs to be addressed.

I have spoken with Professor Sue Middleton in her capacity as Chairperson of the Postgraduate Studies Committee. Professor Middleton advises me that a sub-group of the Committee have considered Professor Bing's letter and referred the matter to Jeremy Callaghan, Assistant Vice-Chancellor.

Professor Middleton further advised me that the usual processes for a Doctorate proposal to be accepted, being the Supervisor's and School representative's approval, were followed in Mr Kupka's submission, and that the subsequent Progress Report received by the Committee has been accepted.

It is, however, apparent that at no stage during the submission process was the Committee made aware of the issues now being raised, and one of the difficulties is whether the Committee can or should now consider the Doctoral topic some eighteen months into its progress.

The Faculty of Arts and Social Sciences Ethics Committee have suspended Mr Kupka's studies until such time as he has satisfied the Committee's procedures regarding human

research. I understand from Dr Green, Chairperson of the Committee, that they were meeting to further consider this matter last week, but as of today I have not been advised of the outcome. Until this process is completed, Mr Kupka's studies remain suspended, although his enrolment is current.

I do have a sense of unease that should Mr Kupka's Doctorate be subject to a test of "cultural safety" which is based on the views he has expressed on the Internet, we may well be entering the arena of discriminating against him on the basis of his political opinion. I have no such concern regarding the Ethics Committee deliberations since every student is subject to meeting the requirements of ethical conduct in their research.

The issue of the supervision of Mr Kupka, should his studies resume, have also been raised. Associate Professor Knufferman leaves the employment of the University mid year. Our regulations require that the Chief Supervisor of a student is in the continuous employment of the University. Who would be able and willing to fulfil this role will need to be addressed in the near future.

Until late last year Dr Ray Harlowe was Mr Kupka's second supervisor. Dr Harlowe has advised me that he has withdrawn from this role as he is on sabbatical this year. Whilst it is quite proper for Dr Harlowe to have taken this step due to his unavailability, he was visited by Professor Bing, who advised him of Mr Kupka's alleged views. If, as a result of the controversy surrounding this issue, the University is unable to provide supervision for Mr Kupka, I would be concerned that this could be construed as a form of discrimination due to Mr Kupka's political opinion.

Our records show the current supervision panel as consisting of Associate Professor Knuffermann, Chief Supervisor, Dr Ray Harlow - who has not yet had his name removed, and Professor Von Nielhaus, who is employed in a University in Germany. It is a requirement of the Postgraduate Studies Committee that two members of the supervision are based at the University of Waikato.

It is abundantly clear that there is no resolution to this matter. Professor Bing has stated his grounds for resolution to be that Mr Kupka be disciplined by the University for his insult to the Jewish members of our community, and further, that the University should stop Mr Kupka from pursuing his Doctoral topic. (Appendix 7) Professor Bing further seeks that Mr Kupka is disciplined for a comment he made on the Internet relating to the complaint received against him. Since neither party can claim that they have adhered to the principle of confidentiality throughout this process, I am reluctant to consider any such action. Mr Kupka for his part seeks as a resolution that he be able to continue his studies free from any further harassment. (Appendix 8)

The Discipline Regulations permit for a student to be disciplined if their conduct has brought the University into disrepute. Mr Kupka has expressed his views in an entirely individual capacity, and I have been provided with no evidence that he has used the name or resources of the University to give validity or support for his views. Mr Kupka has acknowledged that on two occasions to the best of his recollection, and in direct response to questions on the Internet, he has stated that he is a student at the University. These in my view are simple statements of fact.

I have no doubt, based on unequivocal statements made to me, that we will receive media attention on this matter. I also have no doubt that the actions of the University will receive further scrutiny from external agencies, nationally and perhaps internationally.

One further matter, somewhat ancillary to the subject at hand, is the advice contained in the letter we received from the Race Relations Conciliator regarding their view that materials posted on the Net are subject to the Human Rights Act. In accepting this view, I consider it necessary that we advise all University staff, by way of the Staff Circular, of this likelihood.

I cannot complete my part of this process without acknowledging the deep feelings of grief and insult felt and expressed by our Jewish staff whilst this issue remains.

Betha Weir

Betha Weir

Mediator