

THE CIRCUIT COURT

DUBLIN CIRCUIT

COUNTY OF DUBLIN

IN THE MATTER OF SECTION 28 OF THE EQUAL STATUS ACT 2000

BETWEEN

PATRICK KELLY

PLAINTIFF

AND

NATIONAL UNIVERSITY OF IRELAND, DUBLIN
AKA UNIVERSITY COLLEGE DUBLIN (UCD)

DEFENDANT

AND

THE DIRECTOR OF THE EQUALITY TRIBUNAL

NOTICE PARTY

AFFIDAVIT OF PATRICK KELLY

I, Patrick Kelly, of 11 Deansrath Avenue, Clondalkin, Dublin 22, a qualified teacher aged 28,
Affirm and say as follows:

1. I am the appellant in the above entitled appeal under Section 28 of the Equal Status Act 2000 and I make this affidavit from facts within my own knowledge save where otherwise appears and, where so appearing, I believe the same to be true.
2. This affidavit relates to my application under Order 57A, Rule 6(6) of the Circuit Court Rules and supplements my affidavit dated January 4, 2007 and my affidavit dated February 27, 2007.
3. The purpose of this affidavit is to respond to the affidavit dated February 28, 2007 of Suzanne Quin "on behalf of the Defendant". According to her affidavit Professor Quin is "Head of the School of Applied Social Science, University College Dublin".
4. At paragraph 3 of her affidavit "on behalf of the Defendant" Suzanne Quin asserts that the documents that were "destroyed" by the Defendant were "in fact destroyed in or about March 2006". In his letter dated December 21, 2006 however, Eugene O'Sullivan, the solicitor for the Defendant, insisted that these documents were destroyed in "August 2006". In fact, until

Professor Quin's contrary assertion in her affidavit "on behalf of the Defendant" dated January 27, 2007 the Defendant continued to insist that the documents were destroyed in "August 2006". The Defendant has not offered or provided any evidence to confirm that the documents were "in fact destroyed in or about March 2006" and not in "August 2006" as was previously stated. We have only Professor Quin's assertion "on behalf of the Defendant" and her assertion is contradicted by the solicitor for the Defendant. A copy of Mr O'Sullivan's letter of December 21, 2006 was included as Exhibit PK5 to my affidavit of January 4, 2007.

5. Exhibit SQ1 to the affidavit of Suzanne Quin "on behalf of the Defendant" is, according to paragraph 3 of her affidavit, "a copy" of the "Records Retention Policy of the University". Professor Quin claims that the documents that were destroyed were "destroyed in or about March 2006" and "in accordance with [this] Records Retention Policy". As the Exhibit shows, however, this Policy is described as merely a set of "General Guidelines" [emphasis added]. These "General Guidelines" give a "default retention period" [emphasis added], which is described as "the suggested time period for which these records should be held" [emphasis added]. The "General Guidelines" state that "records of unsuccessful direct applicants for...postgraduate courses" should be retained for 2 years. According to the "Policy" that the Defendant claims to have being following, the "records of unsuccessful direct applicants" for the postgraduate social work course in 2002 should not have been retained for more than 2 years and should have been destroyed in 2004. And yet, according to Professor Quin, the documents were "destroyed in or about March 2006" and she claims this was done "in accordance with the Records Retention Policy". Whether the Defendant destroyed the documents in "August 2006" (as Mr O'Sullivan asserts) or "in or about March 2006" (as Professor Quin asserts) the documents were clearly not destroyed "in accordance with the Records Retention Policy". Furthermore, the Defendant has known since 2002 that these documents were relevant to my gender discrimination complaint to the Director of the Equality Tribunal in April 2002. The Defendant has also known, since 2002, that I regarded these documents as important to that complaint. It nonetheless proceeded to destroy these documents in 2006 – prior to the tribunal hearing. The Defendant destroyed these documents knowing their importance. The Defendant destroyed these documents because of their importance.
6. At paragraph 4 of her affidavit "on behalf of the Defendant" Suzanne Quin states that "there are a number of pressing concerns harbored by the Defendant" to which the Circuit Court "should have regard". Those "concerns" are spurious.
7. At paragraph 5 of her affidavit "on behalf of the Defendant" Suzanne Quin states that "the Defendant believes" that the "other applicants" to the course "submitted" to the "application procedure under a legitimate expectation of confidentiality and privacy". At paragraph 7 of her affidavit "on behalf of the Defendant" Suzanne Quin states that she (not the Defendant)

“believe[s]” that the “personal statements” that applicants were required to include with their application were “completed” by the applicants “with a legitimate expectation of privacy and confidentiality” and for that reason should not be disclosed.

8. In O’Callaghan v. Mahon [2005] IESC 9 (March 9, 2005) the Supreme Court observed:

“It is well recognised that confidentiality is not by itself a ground of immunity from disclosure of information or documents in the course of litigation”.

9. At paragraph 6 of her affidavit “on behalf of the Defendant” Suzanne Quin states that “the Defendant believes” that “particular sections or aspects of the application materials...should not properly be the subject of an order for disclosure of documents”. The “precise aspects of the application materials” that “the Defendant believes...pose a concern or concerns” are “laid out” by Professor Quin in a “Memorandum” included with her affidavit as Exhibit SQ2.
10. At paragraph 10 of her affidavit “on behalf of the Defendant” Suzaane Quin “pray[s]” the Circuit Court, “in the event of its acceding” to my application, to “permit” the Defendant to edit the documents according to her “Memorandum” (Exhibit SQ2).
11. Professor Quin’s “Memorandum” constitutes Exhibit SQ2 to her affidavit. It lists the information that the Defendant wants to be “permit[ted]” to “expunge” from the documents if the Circuit Court “accede[s]” to my application. The list is formidable:
- A. The names of the “other applicants”;
 - B. The dates of birth of the “other applicants”;
 - C. “All addresses” of the “other applicants”;
 - D. The names of the “referees” of the “other applicants”;
 - E. “All information pertaining to special training or fieldwork undertaken as part of a degree/diploma course”;
 - F. The names of the agencies in which “voluntary experience/practice placement experience/employment” was “acquired” by the “other applicants”;
 - G. The “job title[s]” and “any identifying information on job description[s]” of the “other applicants” in their “voluntary experience/practice placement experience/employment”;
 - H. The birth certificates of the “other applicants”;
 - I. The “transcripts” of the applicants who were not “UCD graduates”;
 - J. The “personal statements” of the “other applicants”;
 - K. The “references” for the “other applicants”;
 - L. Any “reference[s]” to the “personal statements” of the other “applicants”;
 - M. “Any other information” that “could [not does] identify an individual applicant” [emphasis added].

12. In other words, the Defendant wants the Court's permission to "expunge" everything that could possibly assist me in advancing my case.
13. At paragraph 5 of her affidavit "on behalf of the Defendant" Suzanne Quin states that "the Defendant believes" that the "information" that can be "gleaned from the application forms of other applicants...ought not to be disclosed" because it has "a real concern" that "particular individuals" (presumably "other applicants") "would" be identified.
14. At paragraph 8 of her affidavit "on behalf of the Defendant" Suzanne Quin states that she (not the Defendant) "believe[s]" that "the accounts of past work experience" in the applications "could permit the identification of particular applicants" and for that reason should not be disclosed.
15. I do not particularly want to identify the applicants but I need to identify the applications. I cannot identify the applications without identifying information. This is precisely the information the Defendant wants to be "permit[ted]" to "expunge".
16. I have always argued that I was more qualified than at least the least qualified female applicant who was offered a place on the postgraduate social work course in March 2002. This therefore requires that my qualifications should be assessed relative to the qualifications of the applicants who were offered a place on the course in March 2002. Only that can determine whether or not I was in fact more qualified than at least the least qualified female applicant who was offered a place on the course in March 2002.
17. At paragraph 10 of her affidavit "on behalf of the Defendant" Suzanne Quin states that she (not the Defendant) "believe[s]" that I have "previously failed to comply with directions of this Honorable Court" and was sent to prison for contempt on June 19, 2006. She states that she (not the Defendant) "believe[s]" that "in the circumstances it would not be appropriate" to give me "the documentation sought". She is, of course, implying that I will not "comply with" any "directions" of the Circuit Court, that I am an unreliable and disreputable individual. The direction with which I "failed to comply" was not a direction of the Circuit Court, as Professor Quin asserts. The direction to which she refers, the direction with which I "failed to comply", was a direction to "remain silent"; it was a direction given by Mr Justice John Quirke, who is a High Court Judge. My failure to "comply" with a direction to "remain silent" in a courtroom in mid-2006 does not indicate or demonstrate that I cannot now or ever be trusted to "comply" with "directions" of the Circuit Court (which is what Suzanne Quin is implying) and does not and could not be used to justify refusing my application under Order 57A, Rule 6(6) of the Circuit Court Rules.

18. At paragraph 10 of her affidavit “on behalf of the Defendant” Suzaane Quin “pray[s]” the Circuit Court, should it “be so minded to accede” to my application or to “a part” of my application, to “direct in the most strenuous terms” that “the documentation...shall not be...disclosed or exposed in any...way to third parties having no involvement” in the appeal. I would refer the Circuit Court and the Defendant to my affidavit dated February 27, 2007.
19. At paragraph 9 of her affidavit “on behalf of the Defendant” Suzanne Quin refers to “a website” that I “operate and maintain”.
The address of that website is www.trinitycollegevisitors.0catch.com
20. At paragraph 9 of her affidavit “on behalf of the Defendant” Suzanne Quin states that she (not the Defendant) “believe[s]” that there is a “pressing and live concern” that I “could” publish “sensitive personal documentation” on that website (www.trinitycollegevisitors.0catch.com) if my application under Order 57A, Rule 6(6) of the Circuit Court Rules is granted and “in the absence of a court order expressly prohibiting” me from “displaying...sensitive personal documentation” on the website. Again, I would refer the Circuit Court and the Defendant to my affidavit dated February 27, 2007.
21. At paragraph 10 of her affidavit “on behalf of the Defendant” Suzaane Quin “pray[s]” the Circuit Court for any “other order or orders” that the Circuit Court “may deem fit” for the purpose of “safeguard[ing] and vindicat[ing] the legitimate confidence, privacy and confidentiality” of the “other applicants”. This is vague to the point of ridiculousness and meaninglessness.
22. Article 10, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms is what must be “safeguard[ed]” and “vindicat[ed]”.
23. Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms is what must be “safeguard[ed]” and “vindicat[ed]”.
24. Article 18 of the Convention for the Protection of Human Rights and Fundamental Freedoms is what must be “safeguard[ed]” and “vindicat[ed]”.
25. Article 6, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms is what must be “safeguard[ed]” and “vindicat[ed]”.
26. Article 40, section 1 of the Irish Constitution is what must be “safeguard[ed]” and “vindicat[ed]”.

27. I note that, as predicted, the Defendant waited until February 28, 2007 before sending me a copy of its affidavit. It waited until the last possible day to file the affidavit and send me a copy. To be specific, according to the postmark on the envelope containing the affidavit, the Defendant waited until 12.20pm on February 28, 2007. I received my copy of Professor Quin's affidavit, thanks only to the efficiency of the postal service, on March 1, 2007. The letter was sent by registered mail – which of course means that there was no guarantee of delivery the next day. I doubt the Defendant was overly troubled by that fact, however. This replying affidavit is being filed on March 2, 2007. I was able to write this affidavit in less than a day but the Defendant took an entire 2 weeks to write its affidavit and waited until the very last moment to send me that affidavit, knowing that we must return to the Circuit Court on March 7, 2007 and that there is a weekend between now and March 7, 2007 (further limiting the time and opportunity for me to write this replying affidavit, get it affirmed, file it at the Circuit Court and send copies to the Defendant and the Notice Party before March 7, 2007). I would not be at all surprised if the Defendant were now to ask for another deferment of the application (to 'consider' this replying affidavit, naturally). The Defendant knows full well that I am representing myself and that I am not a lawyer.
28. My application under Order 57A, Rule 6(6) of the Circuit Court Rules should be granted in its entirety.
29. The conditions and restrictions the Defendant wishes the Circuit Court to impose are unlawful and unnecessary.

PATRICK KELLY

AFFIRMED by the said Patrick Kelly

This day of March 2007

At

Before me a Practicing Solicitor / Commissioner
for Oaths and I know the deponent

PRACTICING SOLICITOR / COMMISSIONER
FOR OATHS

Filed by and on behalf of the appellant, Patrick Kelly, this _____ day of March 2007.