Record Number 2006/07275

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 grounding that application.

3. At the Circuit Court on February 14, 2007 the barrister for the Defendant told Judge Jacqueline Linnane that the categories of documents specified in the application contain "sensitive" information and that the Defendant has "concerns" about the "use" to which this

"sensitive" information "will" be put if the Defendant is ordered to "deliver" copies of the specified categories of documents under Order 57A, Rule 6(6) of the Circuit Court Rules. He suggested to Judge Linnane that if I obtain copies of the categories of documents specified in the application I will "use" the "sensitive" information in those documents for purposes other than the appeal and that because I "will" do so my application should be refused.

4. Judge Linnane then promptly offered the Defendant a second opportunity to submit an affidavit on my application under Order 57A, Rule 6(6) of the Circuit Court Rules – notwithstanding the fact that the Defendant had not submitted an affidavit on my application. Solicitously, Judge Linnane asked the Defendant how much time it would "like" and the Defendant said that it would like 2 weeks to "prepare" an affidavit. It was so ordered.

5. I was not consulted; I was merely informed.

6. When I attempted to voice my opposition to the Defendant being given this *additional* opportunity and this *additional* deferment I was told that if I did not "behave" I would be ordered to "stand outside" the courtroom.

7. Judge Linnane deferred the application to March 7, 2007. Judge Linnane advised the Defendant that my copy of their affidavit should be "sent" by February 28, 2007. She emphasized (and repeated) the word "sent". The Defendant need only send me my copy by February 28, 2007. The Judge did not require that I should receive my copy of their affidavit by February 28, 2007; she only required that it be "sent" by that date. If the Defendant were to wait until the evening of February 28, 2007 before sending me my copy of their affidavit I will not actually receive that copy until Friday, March 2 or Monday, March 5. And we are supposed to return to the Circuit Court on March 7, 2007. Even if I have the time to write a replying affidavit the Defendant will march back into court complaining about not having had time to 'consider' my replying affidavit and will get another deferment – the fourth – of this application. Of course, the Defendant would obviously prefer if the request for another deferment of the application were to come from me.

8. The purpose of this affidavit is to respond to the claims made by the Defendant at the Circuit Court on February 14, 2007.

9. The Defendant has previously cited a variety of other "grounds" for opposing my application but, with one exception, I have addressed those other "grounds" in my affidavit dated January 4, 2007 and my affidavit dated November 6, 2007. Those other "grounds" were used by the Defendant with the County Registrar, Susan Ryan, on January 24, 2007.

10. The "ground" that is not addressed in my earlier affidavits is the Defendant's claim that the documents it destroyed in August 2006 were the documents relating to course applicants who "declined" the offer of a place on the postgraduate social work course in 2002. UCD has yet to provide any evidence to substantiate its claim that the documents it destroyed in August 2006 were the documents relating to course applicants who "declined" the offer of a place on the postgraduate social work course in 2002. In the absence of any evidence I do not believe that the documents destroyed in August 2006 were or were only the documents relating to course applicants who "declined" the offer of a place on the postgraduate social work course in 2002.

11. On January 24, 2007 the Defendant used its claim that the documents it destroyed in August 2006 were the documents relating to course applicants who "declined" the offer of a place on the postgraduate social work course in 2002 to argue that I should not be given copies of the remaining documents, i.e. the documents the Defendant has not yet destroyed. By its own admission the Defendant destroyed 47 percent of the documents in August 2006; 53 percent of the documents have not yet been destroyed. My application is for copies of the remaining 53 percent. On January 24, 2007 the Defendant brazenly argued that because it has already destroyed 47 percent of the documents there is "no point" giving me the other 53 percent: the documentation is "incomplete". The Defendant glossed over the fact that the documentation is "incomplete" because the Defendant decided to destroy 47 percent of the documentation in August 2006 (when it was notified by the Equality Tribunal that a hearing would "take place" in September 2006).

12. I return now to the claims made by the Defendant at the Circuit Court on February 14, 2007 and referred to at paragraph 3.

13. The Defendant has claimed that the categories of documents specified in the application contain "sensitive" information. The categories of documents specified in the applications are:

    A. What the solicitor for the Defendant, Eugene O'Sullivan, has termed the "retain[ed]" applications for the Masters in Social Science (Social Work) Mode A in 2002. There are 49 such applications; the other 43 applications were, according to Mr O'Sullivan, deliberately destroyed ("shredded") by the Defendant in August 2006;

    B. The documents appended to or included with what the solicitor for the Defendant, Eugene O'Sullivan, has termed the "retain[ed]" applications for the Masters in Social Science (Social Work) Mode A in 2002; and,

    C. The 49 scoring sheets relating to the 49 "retain[ed]" applications for the Masters in Social Science (Social Work) Mode A in 2002.

14. In the Concise Oxford English Dictionary (11th edition), the adjective "sensitive" has 4 core senses:

> "1. quick to detect, respond to, or be affected by slight changes, signals or influences".
> "2. having or showing a quick and delicate appreciation of the feelings of others".
> "3. easily offended or upset".
> "4. kept secret or with restrictions on disclosure to avoid endangering national security".

The Defendant, in describing the information as "sensitive", seems to be employing the word in the fourth core sense given in the Concise Oxford English Dictionary ("kept secret or with restrictions on disclosure to avoid endangering national security"). I do not quite see how disclosing the information contained in the categories of documents specified in the application would endanger "national security". I assume that the Defendant did not mean to assert that disclosing this information would endanger "national security". I assume that the Defendant meant that the information is confidential.

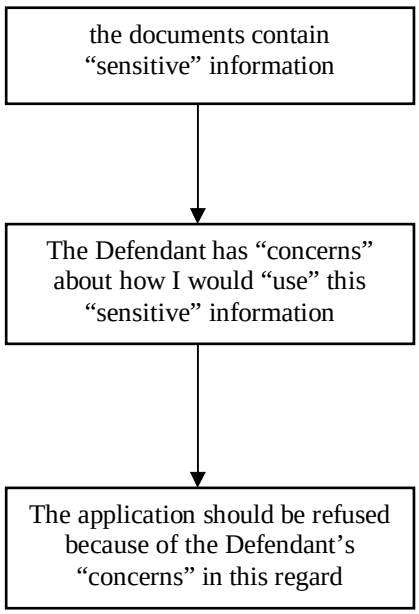
15. In O'Callaghan v. Mahon [2005] IESC 9 (March 9, 2005) the Supreme Court noted:

> "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".

16. I quoted this very passage from O'Callaghan v. Mahon [2005] IESC 9 (March 9, 2005) in my affidavit dated January 4, 2007 and even provided a copy of the judgement of the Supreme Court in O'Callaghan v. Mahon [2005] IESC 9 (March 9, 2005) as Exhibit PK10 to my affidavit dated January 4, 2007.

17. The Defendant nonetheless told Judge Linnane on February 14, 2007 that the documents contain "sensitive" information and that it has "concerns" about how I will "use" this "sensitive" information if the Defendant is ordered to "deliver" copies of the specified categories of documents under Order 57A, Rule 6(6) of the Circuit Court Rules. The Defendant suggested that I "will" "use" the "sensitive" information in those documents for purposes other than the appeal and that because I "will" do so my application should be refused.

18. The argument the Defendant is using is as follows:



19. I can, however, only "use" the information contained in the categories of the documents specified in the application in accordance with the relevant law.

20. If compulsory disclosure is made I will be bound by the implied obligation rule.

21. In Ambiorix Ltd v. Minister for the Environment [1991] IESC 3; [1992] IR 227 (23rd July, 1991), Finlay CJ, delivering the judgement of the Irish Supreme Court, said:

> "As a matter of general principle, of course, a party obtaining the production of documents by discovery in an action is prohibited by law from making any use of any description of such documents or the information contained in them otherwise than for the purpose of the action. To go outside that prohibition is to commit contempt of court" [emphasis added].

22. There is a "general principle" that the "information" contained in documents obtained through compulsory disclosure can only be used "for the purpose of the action".

23. There are, however, important limitations and exceptions to the "general principle".

24. A copy of Ambiorix Ltd v. Minister for the Environment [1991] IESC 3; [1992] IR 227 (23rd July, 1991) is provided as Exhibit PK1.

25. In EH and EPH v. the Information Commissioner [2001] (96 MCA/1999 & 107 MCA/1999) (April 4, 2001) the High Court stated:

> "Breach of the implied undertaking given in respect of discovered documents is a contempt of Court. Notwithstanding that the undertaking benefits solely the party making discovery, the undertaking is given to the Court and like all undertakings given to a Court, breach of it is a contempt of the Court" [emphasis added].

26. The implied undertaking is an undertaking "given to the Court". Significantly, it is not an undertaking given to "the party making discovery". If compulsory disclosure were to be made the implied undertaking would be considered to have been given to the Court rather than to the Defendant.

27. A copy of EH and EPH v. the Information Commissioner [2001] (96 MCA/1999 & 107 MCA/1999) (April 4, 2001) is provided as Exhibit PK2.

28. In Goodman v. Rossi (1995) 24 OR (3d) 359 (Ont. CA) (June 27, 1995) the Court of Appeal for Ontario decided that "the duration of the obligation under the implied undertaking rule…should be…limited" and that the implied undertaking "shall cease to apply" to a document once that document "has been read to or by the Court, or referred to, in open Court". The Court of Appeal for Ontario observed that in England the decision of the House of Lords in Home Office v. Harman [1982] 1 All ER 532 that the implied undertaking "continued after the documents in question had been read out in open court during the trial of an action in which the documents had been obtained on discovery…was overruled by rule 14A of Order 24 of the Rules of the Supreme Court which was added to the rules in 1987" and the Court of Appeal for Ontario quoted from the wording of rule 14A in limiting in Ontario "the duration of the obligation".

29. The duration of the obligation under the implied undertaking rule is limited and ceases to apply to a document once that document has been read to or by a court, or is referred to, in open court.

30. To hold otherwise would violate Article 10, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

31. A copy of Goodman v. Rossi (1995) 24 OR (3d) 359 (Ont. CA) (June 27, 1995) is provided as Exhibit PK3.

32. In SmithKline Beecham Biologicals SA v. Connaught Laboratories Inc [1999] EWCA Civ 1781 (July 7, 1999) the English Court of Appeal observed:

"The crucial issue in *Harman v Home Office* [1983] 1 AC 280 was whether this implied obligation continued to bind a party to whom compulsory disclosure had been made notwithstanding that the documents disclosed or material parts of them had been read aloud in open court. The judge, the Court of Appeal and a majority of the House of Lords held that it did and that disclosure of such documents amounted to a contempt of court. A minority of the House of Lords disagreed. It held that once documents had been read aloud in open court they were no longer confidential; that any duty of confidence ceased when material became public knowledge; and that maintenance of the rule favoured by the majority might well be contrary to Article 10 of the European Convention on Human Rights. With reference to *Scott v Scott* [1913] AC 417, and the principle that justice should be administered in public, Lord Scarman, speaking for the minority, said (at page 316D):

> 'Whether or not judicial virtue needs such a spur, there is also another important public interest involved in justice done openly, namely, that the evidence and argument should be publicly known, so that society may judge for itself the quality of justice administered in its name, and whether the law requires modification. When public policy in the administration of justice is considered, public knowledge of the evidence and arguments of the parties is certainly as important as expedition: and, if the price of expedition is to be the silent reading by the judge before or at trial of relevant documents, it is arguable that expedition will not always be consistent with justice being seen to be done'.

The law as established in *Harman v Home Office* was challenged before the European Commission of Human Rights, and the challenge was amicably settled on an undertaking by Her Majesty's Government to seek to change the law so that it would no longer be a contempt of court to make public material contained in documents compulsorily disclosed in civil proceedings once those documents had been read out in open court (see *Bibby Bulk Carriers Ltd v Cansulex Ltd* [1989] QB 155 at 159 per Hirst J). That undertaking was honoured by the introduction of what is now Order 24, rule 14A…".

33. A copy of SmithKline Beecham Biologicals SA v. Connaught Laboratories Inc [1999] EWCA Civ 1781 (July 7, 1999) is provided as Exhibit PK4.

34. In Harman v. United Kingdom (1984) 7 EHRR 146 (Application 10038/82) (May 11, 1984), a decision of the European Commission of Human Rights, the Commission declared admissible an application to the European Court of Human Rights involving Article 10 and Article 14 of the Convention. The European Commission of Human Rights quoted extensively the dissenting speech of Lord Scarman at the House of Lords in Home Office v. Harman [1983] 1 AC 280 in which, as the Commission described:

"…it was accepted that the duty of a recipient of discovered documents to keep them confidential and to use them only for the purposes of the action terminated when the documents were used in an open trial. Referring to Article 10 of the Convention, Lord Scarman stated 'that it could hardly be argued that there was a pressing social need to exclude the litigant and his solicitor from the freedom enjoyed by everyone else to treat such documents as public knowledge'. In their view both the nature and duration of the obligation to maintain confidentiality could not be determined merely by referring to the requirements of the law relating to discovery of documents in civil litigation . Regard was also to be had to the requirements of the general law protecting freedom of communication. In this regard, Lord Scarman stated that '…A balance has to be struck between two interests of the law, on the one hand the protection of a litigant's private right to keep his documents to himself notwithstanding his duty to disclose them to the other side in the litigation and on the other the protection of the right, which the law recognises, subject to certain exceptions, as the right of everyone, to speak freely, and to impart information and ideas, on matters of public knowledge. In our view, a just balance is struck if the obligation endures only so long as the documents themselves are private and confidential. Once the litigant's private right to keep his documents to himself has been overtaken by their becoming public knowledge, we can see no reason *why* the undertaking given when they were confidential should continue to apply to them' ".

35. According to the decision of the European Commission of Human Rights, in her submissions to the European Court of Human Rights the applicant, Ms Harman, asserted:

"…that the decisions of the English courts concerning the applicant constituted an interference with her freedom of expression and freedom to impart information [which is a violation of Article 10, paragraph 1 of the Convention]. The applicant submits that the restriction of her rights under Article 10 could not be justified under the second paragraph with reference to a pressing social need and in the atternative was disproportionate to the interest which was being protected. Once the documents had been used at a public hearing they lost their confidentiality. Anyone present at the trial might have taken a shorthand note of what was said. Any person might have purchased a transcript of the proceedings either from the official shorthand writer or from anyone who had arranged to have their own transcript prepared. The information so obtained might have been freely imparted and received. The applicant accepts that the documents in question were initially received by her in confidence. However, she submits that such a justification only applies if the information continues to be confidential at the time when it is imparted. For the restriction to continue after the information has been made public makes it

unjustifiable and disproportionate. Nor can it be submitted that the restriction is justified as necessary for the protection of the rights of the Home Office. Their right of confidentiality terminated once the documents had been used in open court. The restriction cannot be justified as necessary for the protection of the rights of future litigants. While they may find that their opponents are reluctant to make full discovery because of the risk of publicity, this is a risk which has always existed".

36. The Applicant also invoked Article 14 of the Convention in conjunction with Article 10. As the decision of the European Commission of Human Rights explains:

> "It is claimed in this context that the restriction was discriminatory for the following reasons:
>
> 1. That at least one member of the majority in the House of Lords (Lord Diplock) stated that if she had shown the documents to a law reporter or to any other reporter for the sole purpose of producing an accurate report of what was actually said in court, she would at most have been guilty of a technical contempt, meriting neither punishment nor an adverse order as to costs.
> 2. That the restriction only applied to her, her client and to other legal advisers. Anyone else in court could have imparted the same information to Mr Leigh. Indeed, she herself could have imparted the same information from a transcript of the hearing rather than the discovered documents themselves.
> 3. The restriction was only applied to her because the information she imparted was used to write an article critical of the policies of the Home Office. It is inconceivable that had she shown the documents to a journalist who had used them to write a laudatory feature article, proceedings would have been brought against her".

37. The Applicant, Ms Harman, sought "a decision or judgement" from the European Court of Human Rights that her rights under Article 10 and Article 14 had been violated by "the decision of the English courts" and that the law in England "as stated by the House of Lords" violated Article 10 and Article 14 of the Convention. Ms Harman also sought "just satisfaction under Article 50 [of the Convention], "including compensation for violation of her rights under the Convention and reimbursement of her legal costs".

38. The European Commission of Human Rights, having "made a preliminary examination of the parties' submissions", said that it considered "that the application raises important and complex issues under the Convention which should be determined in an examination of the

merits of the case" and concluded "that the application is, as a whole, admissible without prejudice to the merits".

39. A copy of Harman v. United Kingdom (1984) 7 EHRR 146 (Application 10038/82) (May 11, 1984) is provided as Exhibit PK5.

40. The Report of the European Commission of Human Rights adopted on May 15, 1986 on Application 10038/83 – i.e. Ms Harman's application – noted, at paragraph 16, that on November 26, 1985 the British Government communicated "proposals" for "a friendly settlement" to the Applicant, Ms Harman. The "proposals" were as follows:

> "The [British] Government are prepared to undertake to seek to change the law so that it will no longer be a contempt of court to make public material contained in documents compulsorily disclosed in civil proceedings, once those documents have been read out in open court. The substance of the change would be that where a document or part of a document so disclosed to a party in civil proceedings has been read out in open court, the implied undertaking given by the person to whom such disclosure has been made not to use the document for any purpose other than the proper conduct of his own case should not prevent his using that document for the purpose of his making the contents of the document, or that part of it, as the case may be, known to any person. This change would not apply in the case of a document, or part of a document, which was the subject of an order of the court preventing its disclosure otherwise than to the parties to the action".

41. At paragraph 17 of its Report the European Commission of Human Rights said that Ms Harman informed the Commission on May 11, 1986 that "the terms of the friendly settlement" were "satisfactory".

42. A copy of the Report of the European Commission of Human Rights adopted on May 15, 1986 on Application 10038/83 is provided as Exhibit PK6.

43. Section 4 of the European Convention on Human Rights Act 2003 states:

> "Judicial notice shall be taken of the Convention provisions and of –
> (a) any declaration, decision, advisory opinion or judgment of the European Court of Human Rights established under the Convention on any question in respect of which that Court has jurisdiction,
> (b) any decision or opinion of the European Commission of Human Rights so established on any question in respect of which it had jurisdiction,

(c) any decision of the Committee of Ministers established under the Statute of the Council of Europe on any question in respect of which it has jurisdiction, and a court shall, when interpreting and applying the Convention provisions, take due account of the principles laid down by those declarations, decisions, advisory opinions, opinions and judgments".

44. A copy of the European Convention on Human Rights Act 2003 is provided as Exhibit PK7.

45. Judicial notice must be taken of Article 10, paragraph 1 and of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

46. Article 10, paragraph 1 of the Convention for the Protection of Human Rights and Fundamental Freedoms states:

> "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises".

47. Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms states:

> "The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

48. A copy of the Convention for the Protection of Human Rights and Fundamental Freedoms is provided as Exhibit PK8.

49. Judicial notice must also be taken of the decision of the European Commission of Human Rights in Harman v. United Kingdom (1984) 7 EHRR 146 (Application 10038/82) (May 11, 1984).

50. Section 2(1) of the European Convention on Human Rights Act 2003 requires the following:

> "In interpreting and applying any statutory provision or rule of law, a court shall, in so far as is possible, subject to the rules of law relating to such interpretation and application, do so in a manner compatible with the State's obligations under the Convention provisions".

51. The phrase "rule of law" is defined in Section 1(1) of the European Convention on Human Rights Act 2003 as including "common law".

52. The implied undertaking rule must be interpreted and applied "in a manner compatible with the State's obligations under the Convention provisions".

53. After reviewing English law regarding the implied undertaking rule the Court of Appeal for England, in SmithKline Beecham Biologicals SA v. Connaught Laboratories Inc [1999] EWCA Civ 1781 (July 7, 1999), held:

> "When…documents or the material parts of them are read aloud in open court it is plain that the implied obligation binding on the party to whom compulsory disclosure had been made comes to an end, in the absence of any contrary order by the court. The same result must follow if counsel in open court draws the attention of the judge to a document which the judge then reads to himself. These are the simplest cases. The present appeal obliges the court to consider the application of the rule in less obvious cases, and in doing so to take account of changing forensic practice. For reasons which are very familiar, it is no longer the practice for counsel to read documents aloud in open court or to lead the judge, document by document, through the evidence. The practice is, instead, to invite the judge to familiarise himself with material out of court to which, in open court, economical reference, falling far short of verbatim citation, is made".

54. The implied undertaking thus "comes to an end" if:

> A. The document or the "material" part of the document is "read aloud in open court"; or,
> B. The document is referred to "in open court".

55. After mentioning "the…important value that justice is administered in public and is the subject of proper public scrutiny" the Court of Appeal continued:

> "*Derby v Weldon (No 2)* establishes that Order 24, rule 14A applies even though a document is not read in open court if it is pre-read by the court and referred to by counsel in a skeleton argument which is incorporated in submissions in open court, or if the document is referred to (even though not read aloud) by counsel or by the court. We have no doubt this is a correct approach. If counsel did not summarise their submissions in a skeleton argument, and if the judge did not pre-read material before coming into court, it would be necessary for counsel in open court to make his full

submissions orally and to read aloud to the judge or refer him to each page of the material relied on. In this way everything read or referred to would fall within Order 24, rule 14A and would be treated as having entered the public domain. To apply Order 24, rule 14A to such material does not derogate from the private rights of the litigant and preserves the rights of the public in a changed environment of practice".

56. The Court of Appeal held that a document does not have to be "read aloud" in open court to bring to an end the implied undertaking. "Everything" that is "referred to" in open court is "treated as having entered the public domain" [emphasis added].

57. In Lilly Icos v. Pfizer [2002] EWCA Civ 2 (January 23, 2001) the English Court of Appeal noted, at paragraph 7:

> "Although the principle of the orality of the English trial remains untouched, practice has moved greatly in the direction of the presentation of evidence and arguments in writing; the use of documents by reference to them in those writings rather than by their being read out in open court; and the consideration by the judge of a large part of that material before the trial opens, so that it is not necessary to make specific reference to it during the trial itself".

58. At paragraph 9 of Lilly Icos v. Pfizer [2002] EWCA Civ 2 (January 23, 2001) the English Court of Appeal said:

> "The central theme of these rules is the importance of the principle that justice is to be done in public, and within that principle the importance of those attending a public court understanding the case. They cannot do that if the contents of documents used in that process are concealed from them: hence the release of confidence once the document has been read or used in court".

59. The party to whom compulsory disclosure is made is "release[d]" from the implied undertaking "once the document has been read or used in court".

60. The English Court of Appeal, at paragraph 25 of Lilly Icos v. Pfizer [2002] EWCA Civ 2 (January 23, 2001), noted:

> "The court should start from the principle that very good reasons are required for departing from the normal rule of publicity. That is the normal rule because, as Lord Diplock put it in *Home Office v Harman* [1983] AC 280 at p303C, citing both Jeremy Bentham and Lord Shaw of Dunfermline in *Scott v Scott*,

> ‘Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial’.
>
> The already very strong English jurisprudence to this effect has only been reinforced by the addition to it of this country’s obligations under articles 6 and 10 of the European Convention”.

61. A copy of Lilly Icos v. Pfizer [2002] EWCA Civ 2 (January 23, 2001) is provided as Exhibit PK9.

62. The Defendant told Judge Linnane on February 14, 2007 that it has “concerns” about how I will use any documents obtained through compulsory disclosure.

63. If I obtain copies of the categories of documents specified in the application through compulsory disclosure I will “use” the information in those documents “for the purpose of” the appeal while the implied undertaking applies and unless or until the implies undertaking ceases to apply. If the implied undertaking ceases to apply to a document Article 10, paragraph 1 of the Convention then applies to that document.

_____

PATRICK KELLY

AFFIRMED by the said Patrick Kelly
This day of February 2007
At

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

_____

PRACTISING SOLICITOR / COMMISSIONER FOR OATHS

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