

THE HIGH COURT

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 30,  
Affirm and say as follows:

1. I am the Plaintiff in the above entitled appeal under Part IV of the Courts of Justice Act 1936 and Order 61 of the Rules of the Superior Courts. 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 grounds my application to the Court for (a) an order setting aside the judgement delivered by Mr Justice McKechnie on July 31, 2008, on the ground that it was obtained by fraud or, alternatively, (b) any order the effect of which is the appliance of the substantive rule that a person who procures a judgement to be given in his or her favor by fraud ought not to be allowed to profit from the fraud.

3. I have applied<sup>1</sup>, under Order 57A, Rule 6(6) of the Circuit Court Rules, for copies of the following “documents”:
  - A. “...what the solicitor for the Defendant, Eugene O’Sullivan, has described as 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 described as the ‘retain[ed]’ applications for the Masters in Social Science (Social Work) Mode A in 2002”.
  - C. “...the 49 scoring sheets (known as ‘Selection Interview Guides’) relating to the 49 ‘retain[ed]’ applications for the Masters in Social Science (Social Work) Mode A in 2002”.
4. “There is abuse information” in those “documents”, Mr Justice McKechnie said in a judgement he delivered on July 31, 2008. He said that under “ national law” he has “discretion” to refuse my disclosure application and that if he had only to consider “the normal national rules” governing disclosure he would “exercise” his “discretion in favor of the other applicant’s right to confidentiality”, i.e. that he would refuse my disclosure application. This is because, he said, “[t]here is abuse information” in the “documents”.
5. The judgement Mr Justice McKechnie delivered on July 31, 2008, was a judgement obtained by perjury.
6. Exhibit PK-1 is a copy of the legal submission I filed at the Central Office on December 17, 2008.
7. A copy of the legal submission I filed at the Central Office on December 17, 2008, was e-mailed to both Mr Justice McKechnie’s “Judicial Fellow” (Christopher Martin) and Mr Justice McKechnie’s secretary (Margaret Kearns) at 6.20am on December 17, 2008. Exhibit PK-2 is a printout of that e-mail.

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<sup>1</sup> Book of Appeal, page 327-329. The Notion of Motion is dated January 4, 2007 and was filed at the Dublin Circuit Court Civil Office on January 4, 2007.

8. At 6.25am on December 17, 2008 I forwarded that e-mail – including the attached documents – to the solicitor for the Defendant, the President of UCD, and the UCD Corporate and Legal Affairs Office. Exhibit PK-3 is a printout of the e-mail sent at 6.25am on December 17, 2008.
9. At 6.27am on December 17, 2008 I forwarded to both the solicitor for the Notice Party and the Notice Party the e-mail and attached documents I had sent at 6.20am to Mr Justice McKechnie’s “Judicial Fellow” and Mr Justice McKechnie’s secretary. Exhibit PK-4 is a printout of the e-mail sent at 6.27am on December 17, 2008.
10. At the High Court on December 18, 2008, Mr Justice McKechnie claimed not to know anything about the legal submission I had filed at the Central Office on December 17, 2008.
11. In June 2008 I provided Mr Justice McKechnie – and the Defendant and Notice Party – with certified copies of the transcripts of the proceedings in the High Court on May 6, 2008, and May 7, 2008.
12. Mr Justice McKechnie’s finding that there is “abuse information” in the “documents” is based solely on paragraphs 6 and 7 of the affidavit sworn by Suzanne Quin “on behalf of the Defendant” on February 28, 2007<sup>2</sup>.
13. In her affidavit Susanne Quin swore, at paragraph 7:

“...the personal statements sought in the course of the aforementioned application process elicited in many cases the furnishing of private, confidential and intimate details about the personal circumstances and background of many of the prospective applicants to the course. In certain cases, such disclosures included personal revelations about individuals’ personal family and background experiences of such sensitive and personal issues as, for example, sexual abuse, suicide, incest, substance abuse and traumatic family breakdown. I say and believe that said occurrences of a deeply personal and intimate nature in many cases amounted to a catalyst for said candidates to pursue a career in social work *and hence to apply for a place on the course the subject of the within proceedings*” [emphasis added].

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<sup>2</sup> Book of Appeal, pages 866 and 867.

14. Exhibit SQ2 to her affidavit is a “Memorandum” in which, according to paragraph 6 of her affidavit, Suzanne Quin “detail[ed] the particular sections or aspects of the application materials which the Defendant believes should not properly be the subject of an order for disclosure of documents”. In the third section of her “Memorandum”<sup>3</sup> Suzanne Quin lists “*Examples of the personal and family events described*” in the “personal statements” [emphasis added]:
- A. “Beravements”;
  - B. “Suicide of family members or close friends”;
  - C. “Drug and alcohol addictions of family/friends or themselves”;
  - D. “Disabilities in immediate family”; and,
  - E. “Physical and sexual abuse”.
15. “*Therefore*”, she wrote, “the personal statements in total should not be made available to Mr Kelly” [emphasis added].
16. Suzanne Quin was cross-examined on May 6, 2008.
17. Suzanne Quin admitted, when cross-examined, that she had written the “Memorandum” and is “responsible for it” (page 60, line 5 of the transcript).
18. Suzanne Quin admitted, when cross-examined, that she “probably hadn’t read each one” of the applications made in 2002 (page 28, lines 8 and 9 of the transcript).
19. Suzanne Quin said, when cross-examined, that she “would not consider [herself] acquainted in any detail” with the applications made in 2002 (page 28, line 18 of the transcript).
20. Suzanne Quin said, when cross-examined, that my application had been “available” to her (page 28, line 9) but she had not “read it in any detail” (page 29, line 3).
21. Suzanne Quin admitted, when cross-examined, that she was not “familiar or acquainted with” the applications made in 2002 (page 29, line 15).
22. Suzanne Quin admitted, when cross-examined, that the “examples”<sup>4</sup> in paragraph 7 of her affidavit “are not specific examples of what came up that year...” (page 61, line 28).

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<sup>3</sup> Page 877 of the Book of Appeal.

<sup>4</sup> “...sexual abuse, suicide, incest, substance abuse and traumatic family breakdown”.

23. Suzanne Quin admitted, when cross-examined, that “the examples given weren’t necessarily from the 2002 documentation” (page 70, lines 29 and 30).
24. Suzanne Quin, admitted, when cross-examined, that she “couldn’t state definitively” that “any” of her “examples” (i.e. “...sexual abuse, suicide, incest, substance abuse and traumatic family breakdown”) are “in the 2002 applications” (page 71, line 22).
25. The judgement delivered by Mr Justice McKechnie on July 31, 2008, was a judgment obtained by perjury.
26. The Defendant has procured a judgement to be given in its favor by fraud.
27. In the circumstances I respectfully ask that the Court make the orders specified in the Notice of Motion.

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Patrick Kelly

AFFIRMED by the said Patrick Kelly

This                      day of January 2009

At

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

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PRACTICING SOLICITOR / COMMISSIONER  
FOR OATHS

Filed by and on behalf of the Plaintiff this \_\_\_\_\_ day of January 2009.

High Court Record Number 2007 52 CA

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