**Neutral Citation no. [2007] NIQB 74** | *Ref:* **GILF5937**

*Judgment: approved by the Court for handing down* | *Delivered:* **04/10/07**
*(subject to editorial corrections)**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

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**IN THE MATTER OF AN APPLICATION BY X (BY HIS NEXT FRIEND) FOR JUDICIAL REVIEW OF A DECISION OF A SCHOOL AND THE NORTH EASTERN EDUCATION AND LIBRARY BOARD**

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**GILLEN J**

[1] In order to protect the identity of the young person who is the applicant in this case I have anonymised all references to either him or his school. The applicant seeks an order of certiorari to quash the decisions of the principal of the school at which he was attending and the North Eastern Education and Library Board excluding him from that school. He further seeks a declaration that the decisions were unlawful and an order of mandamus compelling the principal of the school to allow him to return.

[2] The background to this matter is that the applicant has been suspended from the school in February 2007. The principal of the school described the circumstances in which the suspension took place in an affidavit of 7 June 2007. In the course of that affidavit, the following extracts are relevant to this application:

> "3. On Wednesday 31 January 2007 I was approached in the school corridor by two pupils in the school. One of them was visibly very distressed. I took the girls into a room to discuss the problem and I was informed that one of them was terrified by the applicant. This pupil made clear to me that she did not wish to make any formal complaint against (sic) and that she did not wish me to tell him what she had reported as she was in fear of him. I do not now wish to say or do anything which may betray the confidence of this pupil or which may assist in

identifying her. Accordingly I do not feel it is appropriate to provide details of the information which I was given. I confirm the report was made to me of conduct on the part of the applicant both inside and outside school which was causing her deep distress. I thanked and reassured the girls for approaching me and I assured them that I would help them whatever I could. Later that day, the friend of the girl who was distressed came to me a second time. This time she was alone. She informed me that the other girl was suffering from deep distress, and that she had extremely low self-esteem, that her own needs were being turned against her and that her friend was 'thinking of ending it all'. She also gave me further details of the nature of the applicant's behaviour, within school, which had been causing so much distress. She indicated that this behaviour was of a subtle and covert nature and that she herself had witnessed it. I regarded the report which was being made to me as both sincere and genuine. I also regard it as extremely serious. At this time, the applicant was absent from school on work experience but was due to return on 6 February 2007. The girl informed me that her friend was extremely distressed and fearful at the prospect of the Applicant's return to school the following week.

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7. On 2 February 2007, the (Vice Principal) informed me of the content of (a multi-disciplinary case conference) the previous day and of some of the very serious allegations which were being made in respect of the applicant. I made contact with Mrs O'Hare (*child protection officer for the Board*) immediately and sought advice as to how the matter should be progressed. She recommended that a risk assessment meeting take place within the school and that both Social Services and PSNI should be invited to attend. I was also advised by Mrs O'Hare to continue to manage the situation within the school in a manner which I had already commenced.

8. The risk assessment meeting took place at the school on Tuesday 6 February 2007. Minutes of that meeting are exhibited hereto at pages 7 and 8 of the

aforementioned bundle of exhibits. It was attended by me, a representative of Social Services, PSNI, Juvenile Liaison Officer and Mrs Patricia O'Hare. I was informed by PSNI of the ongoing investigations into the applicant and detailed discussions took place about the incidents which had occurred inside school. As a result of that meeting it was agreed that information relating to the complaint made by the pupil should not be divulged to the applicant in order to protect her identity and also to prevent any further deterioration in her mental health. It was also determined that immediate steps should be taken to manage the risk posed by the applicant to pupils within the school.

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24. On 4 May 2007 a meeting was arranged at the school in order to discuss the applicant's situation with his mother and grandparents. In attendance at the meeting were the applicant's mother, grandparents, Mrs O'Hare (Board's Child Protection Officer), me and an elected representative on behalf of the applicant. This was a meeting which had been anticipated between the parents and the Board and which was referred to in the letter of suspension together with the following extension letters. The meeting was arranged following receipt of the minutes of the strategy meeting and assessment carried out by Social Services. I am advised that efforts were made to arrange this meeting in the previous week but that the applicant's mother had been unable to attend due to work commitments. Copies of the minutes of this meeting are exhibited hereto at pages 48 and 49 in the bundle of exhibits. As appears from those minutes the applicant's family and their representatives stress that the allegations being made against (the boy) outside of school were false and that they were attempting to gather evidence to that effect. It was pointed out by me that it was not appropriate for the school to get involved in those allegations and that the suspension had been based upon an allegation and potential risk within the school, not the allegations about his conduct out of the school. I believe that this meeting was a progressive meeting. We discussed some of the risks

> which were posed to the applicant himself if he returned to school. In particular I expressed my fear that some other pupils in the school may seek retribution against the applicant and that this posed a real risk."

**The current application**

[3] Responsibly the parties have entered into correspondence on the issue of disclosure. The only outstanding matter now before me arises out of the request by the applicant for details of the assessment carried out by Social Services and referred to in paragraph 24 of the affidavit of the principal set out above by me.

[4] Inter alia, the respondent refuses to disclose this document. In correspondence of 18 July 2007 the reasons were set out as follows:

> "This document contains personal information which is private to the girl complainant. The respondent does not accept that it is relevant to the issues in the case and/or that disclosure of it is necessary to deal with the issue of the lawfulness of the applicant's suspension from school. In addition, disclosure will have the result of revealing the identity of this girl, which is not appropriate in the circumstances."

**Legal principles**

[5] Discovery in judicial review cases, still governed by Order 53 Rule 8 which includes applications for discovery pursuant to Order 24, has recently been reconsidered in Tweed v Parades Commission for Northern Ireland (2006) UKHL 53. Lord Carswell, in paragraph 32 of his speech, said as follows:

> "I do consider, however, that it would now be desirable to substitute for the rules hitherto applied a more flexible and less prescriptive principle, which judges the need for disclosure in accordance with the requirements of the individual case, taking into account the facts and circumstances. It will not arise in most applications for judicial review, for they generally raise legal issues which do not call for the disclosure of documents. For this reason the courts are correct in not ordering disclosure in the same routine manner as it is given in actions commenced

> by writ. Even in cases involving issues of proportionality disclosure should be carefully limited to the issues which require it in the interests of justice. The subject will be assisted if parties seeking disclosure continue to follow the practice where possible of specifying the particular documents or classes of documents they require, as was done in the case before the House, rather than asking for an order of general disclosure."

[6] Lord Carswell continued at paragraph 33:

> "A party whose affidavits contain a reference to documents should therefore exhibit them in the absence of a sufficient reason (which may include the length or volume of the documents, confidentiality or public interest immunity). If he raises objection to production of any document, the judge in a Northern Ireland case can decide on the hearing of a summons under Rule 12 to order production bearing in mind the provision of Rule 15(1) that no such order is to be made unless the court is of the opinion that the order is necessary either for disposing fairly of the cause or matter or for saving costs."

[7] Lord Brown of Eaton-Under-Heywood said at paragraph 56:

> "In my judgment disclosure orders are likely to remain exceptional in judicial review proceedings, even in proportionality cases, and the courts should continue to guard against what appear to be merely 'fishing expeditions' for advantageous further grounds of challenge. It is not helpful, and is often both expensive and time consuming, to flood the court with needless paper."

**Conclusion**

[8] I have come to the conclusion in this case that the application must be dismissed for the following reasons:

[9] First the document now sought was drawn up after the applicant was suspended. It was not available to the Board until May 2007. The purpose was to assist in risk management and potential child protection matters. On that ground alone I consider that disclosure is not necessary to dispose fairly of the matter or to save costs. I do not consider it is relevant to the decision

which is under challenge, having been drawn up some weeks after that decision was made. It therefore could have had no influence on the decision to suspend.

[10] Ms Quinlivan, who appeared on behalf of the applicant, has asserted that the applicant is suffering a breach of Article 6 of the European Convention on Human Rights and Fundamental Freedoms because to date he is unaware of the identity of his accuser or the precise nature of the accusation. Counsel submits that the report which is sought from Social Services may include an assessment of the girl's veracity, the date when the complaint was made and an account of the nature of the accusation. I do not consider these suppositions to be adequate justification for disclosure. Any such assessment of the veracity of the child who has made the accusation was not before the decision-maker and therefore is not relevant to the impugned decision.

[11] Confidentiality is a factor to be taken into account in considering disclosure. In this case, both parties are children ie. accused and accuser. In the instance of the female child who has made the complaint, I must recognise that this is not a case under the Children Order (Northern Ireland) 1995 where the interests of the child would be paramount. Nonetheless I consider that even if this document had been relevant, which I have ruled it is not, it would have been appropriate to take into account the damaging effects which the revelation of this girl's identity would have had upon her health as evidenced in the affidavit of the principal. A social service report will conventionally contain in any event a number of personal and intimate details about this girl which would be wholly irrelevant and which could serve to identify her. I appreciate that a process of redaction of irrelevant material could address some of the concerns. However it is the view of the principal that the information sought namely her identity, the nature of the accusation and any assessment of her could all have served to clearly identify this child to the applicant in circumstances where he is concerned that this could present significant dangers to her. In my view the principal and the Board have adopted a reasoned and fact sensitive approach to this matter. I have concluded that his decision to withhold disclosure of that document is measured, proportionate and compelling.

[12] Had this been the only ground upon which I was withholding an order for disclosure, it would have appropriate for the court to weigh that consideration, and its strength in the circumstances of the case, against the interests of the applicant in having an opportunity to see and respond to the material. The court would have been entitled to inspect that part of the report which refers to the parties concerned and to consider whether disclosure of the material, suitably redacted, would have involved a real possibility of significant harm to the female child. Since I have concluded in any event that

the document sought is not relevant, it has been unnecessary for me to consider this step.

[13] I therefore dismiss this application.