

**THE HIGH COURT  
JUDICIAL REVIEW**

**Record No. 2012/1060 JR**

**Between/**

**CIARA FOGARTY**

**Applicant**

**-and-**

**THE PROVOST, FELLOWS AND SCHOLARS OF THE UNIVERSITY OF DUBLIN, TRINITY COLLEGE**

**Respondent**

**Judgment of Ms. Justice Iseult O'Malley delivered the 26th August, 2014.**

1. The applicant in this case was, between 2005 and 2010, a student enrolled in a four year nursing degree course. If successful in her studies she would have obtained a BSc., which would have entitled her to be registered as and to practice as a nurse. She failed her final year twice and was refused a further opportunity to repeat. These proceedings relate to a refusal of the Academic Appeals Committee ("the Committee") of the respondent University ("Trinity") to hear her appeal from that decision. The Committee took the view at the time of the hearing that the applicant was no longer a student of the University and that accordingly, they lacked jurisdiction to embark upon the appeal. The reason for this was that the applicant had in fact accepted a B.A. and had been conferred with that degree in October, 2010.

2. The applicant seeks the following reliefs:

(a) A declaration that the decision of the Academic Appeals Committee of the University of Dublin, Trinity College dated 10th of October 2012, to the effect that it did not have jurisdiction to hear the appeal before it, is void and of no effect by reason of the Committee failing to provide any or any sufficient or adequate reason for the decision;

(b) A declaration that the decision is void and of no effect by reason of the Committee failing to consider adequately or at all, all relevant material put before it when making its decision;

(c) An order of *certiorari* quashing the decision; and

(d) A declaration that the Applicant is a student of the University of Dublin, Trinity College for the purposes of permitting her to bring an appeal against the decision of the Court of First Appeal of the University of Dublin, Trinity College to the Academic Appeals Committee of the University of Dublin, Trinity College.

3. The grounds for the reliefs sought are that the decision failed to give adequate, specific reasons and did not deal with issues of "legitimate expectation, estoppels and reliance" raised on behalf of the applicant at the hearing. It is claimed that the Committee acted unreasonably in that it failed to follow proper procedures.

4. Leave to seek an order of *mandamus*, directing the Committee to "reconsider and/or hear the applicant's appeal" was not granted.

**The B.Sc. degree**

5. In order to register as a nurse with An Bord Altranais, an applicant must hold the degree of B.Sc. in General Nursing.

6. The degree course offered by Trinity is a four year course which involves an integrated programme of practical and theoretical studies. Candidates must pass both aspects of the course. The practical component of this applicant's course involved a clinical placement in St James's Hospital.

7. The University regulations provide that

*"students of... nursing...who have been successful in their third year of study may be permitted to graduate with the ordinary B.A. degree if they choose not to complete the degree course. Students of ...nursing...who have been unsuccessful in the examinations of the Senior Sophister year of the B.Sc. degree may nevertheless be allowed the ordinary B.A. degree on their answering in the Senior Sophister examination, provided that a special recommendation to that effect is made by the court of examiners."*

8. The passage quoted goes on to make it clear that the ordinary B.A. does not lead to registration with An Bord Altranais.

**The applicant's appeal**

9. The applicant successfully completed the first three years of her course. However, she failed the practical component of her fourth year in 2009. Her view is that this was because she was the victim of bullying in the hospital during the placement. The applicant was permitted to repeat the clinical placement. However, she was informed in May 2010 that she had again failed it.

10. A further appeal to the Court of First Appeal was heard on 24th June 2010. The applicant, who attended the hearing and was represented by her tutor Dr Kathryn Muldoon, made the case that after the first failure she had experienced a negative attitude from staff in the hospital and that the college regulations had not been properly applied in the assessment of her performance. She sought an opportunity to complete a placement in a different hospital.

11. Dr. Muldoon has averred that before the hearing of the appeal she advised the applicant that, even if she was successful, there

was no possibility that she would be permitted to undertake the placement in a different hospital. She says that the applicant was adamant that she would not go back to St James's Hospital in any circumstances.

12. In rejecting the appeal the Court of First Appeal stated:

*"The Court finds no ground to allow this student's appeal. The School and linked Health Service provider expressed concern in relation to the student being a safe practitioner as documented in her competency documents. The Health Service Provider also indicated they would not take her back as she is an unsafe practitioner and a risk to patient safety."*

13. The Court's recommendation to the Senior Lecturer was expressed as follows:

*"ANNUAL – Fail; May apply for Ordinary B.A. See Tutor"*

14. The recommendation in relation to the B.A. clearly comes under the provision cited in paragraph above.

15. In her affidavits the applicant has made certain allegations amounting to claims of bias and reliance on irrelevant material by the persons who made the decision. However, no relief has been sought on this basis and the court does not therefore propose to consider such claims.

### **Events after the appeal**

16. The applicant's tutor, Dr Muldoon, was notified of the result of the appeal later on the day of the 24th June, 2010, and she in turn notified the applicant. She avers that she explained to the applicant that the only way to challenge the decision was to appeal to the Committee.

17. The applicant says that she informed Dr Muldoon of her intention to appeal to the Academic Appeals Committee immediately after she was informed that her appeal to the Court of First Appeal had failed. She refers to an email sent by her to Dr Muldoon later on the evening of the 24th. In it she thanked Dr Muldoon for her support at the hearing and then said

*"If you let me know a time that suits you to meet for the college appeal I'll be there."*

18. On the 25th June Dr Muldoon informed the applicant that any appeal would have to be lodged by the 27th of that month. (The regulations provide for an extended period of eighteen months for an appeal but this is at the discretion of the Committee.) She says that they discussed the possibility of an appeal, but that her understanding was that the applicant would consider both this possibility and the option of graduating with an ordinary B.A. She did not hear from her again until October.

19. The applicant says that Dr Muldoon told her that there was no point in appealing because she had been found to be "an unsafe practitioner". She further says that she was told that an appeal "would only bring further anguish".

20. The applicant made contact with the college Careers Advisory Service and had a meeting with Ms Sarah Ryan on the 30th June, 2010. She avers that she specifically communicated to Ms Ryan her desire to complete her BSc in Nursing". She says that she "was informed that it would be possible for [her] to repeat [her] fourth year in Nursing in another college and [her] fail would not act as a bar to finalising [her] nursing degree elsewhere". The applicant avers that

*"While awaiting my further appeal I therefore began to enquire into alternative college courses. At all material times it was my intention to qualify for a license."*

21. In advance of the meeting the applicant was required to fill out a standard Advisory Appointment Form with relevant information for use at the meeting. The form sets out a number of questions relating to the student's background, interests, careers which they would like to pursue and what they would like to discuss at the meeting.

22. Under the heading "What career/further study are you considering?" the applicant wrote

*"some type of social based work that very much helps people to develop or deal with situations".*

23. In response to the question of what work experience she was seeking, the applicant replied

*"Social work, occupational therapy? –don't really want to study for two [sic] much longer".*

24. In response to the question "What would you like to discuss at this meeting?" the applicant replied

*"What my options are as I am only being awarded a pass degree even though I completed the full four academic years. Also I would like to talk about the possibility of getting the full academic degree."*

25. The applicant says that these responses must be read in the light of the fact that she was very upset at the time.

26. At the conclusion of the form under the heading "for office use only" (with the date of the meeting beside it) Ms Ryan has written:

*"Ciara interested in building up to Hons. Degree —Open Uni*

*To explore social science/advice/jobs coach –helping people reach their potential*

*Look at OU degrees."*

27. Ms Sarah Ryan avers that

*"I would have explained to the Applicant at the meeting in general terms that the only manner in which the Applicant could have proceeded to get the full B.Sc. Degree in Nursing from Trinity would have been for her to pursue the appeals process as there was no other way of her obtaining the B.Sc. from the College. I believe the main thrust of the meeting would have dealt with the possibility of the Applicant graduating from Trinity with an Ordinary B.A. and then perhaps*

*trying at the Open University to convert the degree into an honours degree in a discipline other than nursing, using the Open University's accreditation of prior learning route, and possible career paths other than nursing after that."*

28. After the meeting, Ms Ryan contacted the Open University. She emailed the applicant on the 14th July 2010 to convey the information which she had received, saying

*"I spoke with my colleague in the Open University. It is as we thought, you could claim credit up to a certain point for your studies so far to do a specific course – it would depend what the course was, how much credit you would get. You could also go for their Open degree – you would get more credit for your previous study, and you would end up with an honours degree "BSc Open".*

*I hope this helps."*

29. The applicant replied as follows:

*"Thank you for that Sarah*

*I have since been thinking about the nursing and I'm just wondering if you could also give me information on how to finish it off in England or Northern Ireland (which would be better).*

*I've noticed that they have a degree in nursing in England too, not just the Diploma."*

30. Ms Ryan responded

*"Ciara – you would need to apply individually to each nursing school giving information about your studies so far and also explaining that you had failed a placement and weren't being given the opportunity to repeat it. You would need to give some explanation of the failed placement and assurances that it was not likely to happen again. Basically you would have to make your 'case' to each School and see what they say – they may give you 1-2 years credit for your studies so far. You can get information on courses from the NHS careers website [www.nhscareers.gov.uk](http://www.nhscareers.gov.uk)."*

31. Ms Ryan has specifically averred as follows:

*"I have never told a student that a failed placement would not act as a bar to finishing a professional degree elsewhere. I am very clear that any communication in relation to the possibility of the applicant being able to proceed to an Honours degree in Nursing was concerned with the possibility of the applicant completing a degree of this nature at an institution other than Trinity College. This would clearly have been a matter for the institution concerned which would have treated such applications on a case by case basis. I specifically referred in my email to the need to apply to each individual nursing school seeking to make a "case" regarding her suitability including details of the failed placement to each school."*

32. The applicant says that in September 2010 she made enquiries with NUI Maynooth in relation to a Masters degree in Community and Youth Work. She believed that "this masters programme would complement [her] in any future nursing career". She says that she was informed that if she could obtain a copy of her transcript then she would be able to complete the course.

33. On the 13th October, 2010 the applicant contacted Dr Muldoon – the first such contact since June – with a view to obtaining her academic transcripts. Dr Muldoon says that she confirmed to the applicant that this would not be possible unless she applied for the B.A. She concluded

*"I will await to hear from you whether you want me to apply for the ordinary BA for you but you will not be able to get [the] transcript until you do this."*

34. On the 21st October 2010 the applicant replied to Ms Muldoon's email:

*"Can I top up to BSc later if I decided to go back else where and do the fourth year again? (careers section has already told me I can repeat the year elsewhere if accepted)."*

35. On the 22nd October 2010, Ms Muldoon replied informing the applicant that

*"if you get accepted to finish somewhere else to top up that would be up [to] the college/institution. I would imagine they would require the transcript for the JF-JS years in Trinity and you will only get this if I apply for you for the ordinary BA.*

*Let me know what you want me to do."*

36. On the 24th October 2010, the applicant responded as follows:

*"You can go ahead and apply for the BA. Thank you."*

37. It is the applicant's case that she was left with no option other than to accept the B.A. and that she did so based on the representations made by Ms Muldoon. She says that at no point was she informed that if she accepted the BA in nursing that she could not pursue her B.Sc. degree in Trinity.

38. Dr Muldoon says that she understood this email to be the final decision of the applicant on the choice between appealing and graduating. She states that she is satisfied from their discussions that the applicant was fully aware that appealing to the Committee was an alternative to graduating with an ordinary B.A. She says that the question as to the possibility of "topping up" the B.A. could only be understood to mean completion of the B.Sc. in an institution other than Trinity.

*"If she accepted her BA degree, that might permit her to use it as a stepping stone to obtaining a fuller degree elsewhere but [...] there was no question of her being conferred with a BA degree now and then, at some indeterminate point in the future and on some undefined basis, obtaining another degree from Trinity College based in part on the three years study which had allowed her to be conferred with the BA degree."*

39. Dr Muldoon has also referred to the fact that

*"...the Applicant knew that if she was to remain in Trinity College in the Nursing Faculty, she would have to have successfully appealed from the Court of First Appeal to the Academic Appeals Committee, and that a successful appeal would have led to her returning to St James's Hospital, something which she was quite unwilling to contemplate."*

40. The applicant's main response to Dr Muldoon's affidavit is to accuse her of failing in her duty to her in relation to the bullying complaints made during the first failed placement. (Dr Muldoon says that she had no role in that regard and that she explained this to the applicant.) She accepts that she was told that there would be no other option but to return to St James's, and adds that Dr Muldoon advised her not to mention the bullying at the appeal hearing because it would be seen as a failure to take responsibility. She continues to maintain that "at all material times" she indicated that she wished to complete her nursing degree and therefore to pursue her right to appeal. She says that the reference to "topping up" the B.A. was an enquiry made "to ensure that it would not block or prevent me in any way from getting a B.Sc." The only reason she accepted the B.A. was to have access to her transcripts.

41. The applicant was conferred with the B.A. degree during the Winter Commencements in December 2010. Originally she had been told that her application was too late and that she would have to wait until the following April. She informed the office responsible for Commencements that her mother would not be in the country in April and said that

*"It has been my dream for years to stand in Trinity with my mother watching me graduate".*

#### **Solicitor's correspondence**

42. On the 2nd June of 2011, almost a year after the unsuccessful appeal to the Court of First Appeal, the applicant's solicitor wrote to the college making various complaints about the applicant's experience on the clinical placement and about the composition of the Court which heard the appeal in June 2010. Requests were made for various documents.

43. It was claimed on the applicant's behalf that she had not been furnished with the written decision on the appeal and that

*"Instead, her tutor, an employee of the faculty of Nursing, advised her of the outcome and further, without affording our client any details in respect of the decision, or the ramifications of same, advised her not to invoke any further appeal. At that time, Ms Fogarty was suffering from work related stress as a result of the lack of information afforded to her and further in view of her psychological state as a result of workplace bullying was not in a position to make an informed decision. In this regard, our client will be in a position to furnish you with a Medical Report."*

44. The letter went on to inquire

*"...if there is a further appeal available to our client in respect of the failure..."*

45. On this latter issue, the college's response was that the applicant was still in time to appeal to the Committee if she so wished.

46. Correspondence between the applicant's solicitor and the college's solicitor continued over the following months. Much of it deals with the topics raised in the first letter. However certain points are worth noting.

47. By letter dated the 23rd August 2011 the college's solicitor forwarded the applicant's academic transcript. Under the heading "Degree obtained" it says "Eligible for the award of Allowed B.A." The "date of conferral" is stated as "To Be Confirmed".

48. In a letter dated the 20th October, 2011 the applicant's solicitor made the following statement:

*"Our client informs us that she has a good student/tutor relationship with Dr Muldoon. It is acknowledged that Dr Muldoon advised our client of her options regarding the appeal. However, Dr Muldoon advised our client emphatically not to follow that course."*

49. The request made on behalf of the applicant at this point was for a reconstituted Court of First Appeal to rehear the original appeal. The response was that if she believed that the decision was incorrect she should appeal it. The eighteen-month time limit was extended, twice, to permit this to be done. The applicant's solicitor confirmed on the 12th March, 2012 that she wished to appeal.

50. It is a remarkable feature of the correspondence that neither solicitor appears to have been aware that the applicant had been commenced with the B.A. degree. On the college's side, this is explained by reference to the fact that the individual schools do not deal with commencements. There is no explanation as to why the applicant did not tell her own legal advisors.

#### **The hearing before the Academic Appeals Committee**

51. The hearing by the Academic Appeals Committee was scheduled to take place on the 7th September 2012. On the morning of this meeting it came to light that the applicant had in fact been conferred with a degree in December 2010.

52. The School of Nursing and Midwifery then took the position that the Academic Appeals Committee did not have jurisdiction to embark upon the hearing in circumstances where the applicant had graduated from the University and was therefore no longer a student. It was also argued that the appeal was moot, on the basis that there was "no extant dispute" between the applicant and the university and the appeal could not give rise to any outcome which could have practical significance for her.

53. The hearing was adjourned to facilitate the exchange of written submissions on the jurisdictional issue and on the issue of mootness.

54. The submission by the School on the issue of jurisdiction was based primarily on the college regulations.

55. The Academic Appeal Committee derives its jurisdiction from the General Regulations of the College, College Calendar H 11-12, Regulation 49:

*The Academic Appeals Committee meets to consider appeals arising out of examinations or other academic circumstances where a student case (i) is not adequately covered by the ordinary regulations of the College, or (ii) is based on a claim that the regulations of the College were not properly applied in the applicant's case, or (iii) represents an ad misericordiam appeal.*

*An appeal other than an ad misericordiam appeal, cannot be made against the normal application of College academic regulations approved by the University Council. The Academic Appeals Committee will consider appeals concerning events occurring more than eighteen months previously only in the most exceptional circumstances. Appellants must have exhausted the appropriate appeals mechanism in the first instance through the relevant Court of First Appeal prior to coming before the Academic Appeals Committee. Appeals should be made in writing by a student's tutor or, if the tutor is unwilling or unable to act, by the Senior Tutor or his/her nominee who shall be another tutor. Students may request a representative of the Students' Union to represent them as an alternative to their tutor or the Senior Tutor. Tutors or Students' Union representatives who are filing an appeal must use the procedural form, must indicate the precise grounds upon which the appeal is being made and what the appeal is attempting to achieve on the student's behalf, e.g. permission to repeat the year, special examination etc.*

*The Senior Tutor acts as secretary to the Academic Appeals Committee and attends the committee as a non-voting member. The Senior Lecturer attends for the presentation of the case and may provide comment if required. In cases concerning clinical placements (and in particular where the student is considered to be an employee of the institution providing the placement) the committee will be joined by an appropriate professional, nominated by the chair of the Academic Appeals Committee, who shall be drawn from the discipline of the student.*

*Any student who has an appeal underway that could have implications for their degree result is advised not to proceed with degree conferral until the outcome of the appeal has been confirmed."*

56. The School argued that, having regard to this regulation, the Committee had power to determine only appeals brought by students and could not consider issues raised by persons other than students. For the definition of "student", it referred to the 2010 Consolidated Statutes of the university.

57. Section 1 of the chapter on students provides as follows:

*"1. (1) Students are*

*a) those who are defined as students in the Act of 1997 [i.e. the Universities Act, 1997]*

*b) such others as Board on the advise of Council may from time to time include.*

*(2) References to students elsewhere in the Statutes are references to students as defined in this section."*

58. The relevant section of the Universities Act, 1997 defines a "student" as a person registered as a student by the university.

59. Further on in the Consolidated Statutes, the relevant parts of s. 5 read as follows:

*"5. (1) Persons who are not currently registered as students, but who are mentioned in subsection 2 of this section, shall be regarded as students for the purposes of the definition of the Community, and may participate in the life and activities of the Community on such conditions as may be specified by Board, Council, an appropriate Officer, the Librarian, a relevant Service, or the Chapel Committee, as the case may be.*

*(2) The persons to whom subsection 1 of this section applies are those who*

*(a) have not graduated from a course on which they were formerly registered, but who have indicated a wish to return to such a course in accordance with academic regulations,*

*(b) have been given permission to interrupt their academic progress either to intermit Scholarship or to contribute to the Community,*

*(c) are enrolled on courses or programmes provided in College for a general audience, or*

*(d) are otherwise included in this category by Board."*

60. The School contended that, since the conferral of the B.A. degree on the applicant, she had not been a registered student of the college and did not come within any part of the extended definition. Having regard to the rules relating to the B.Sc. degree (quoted above) it was argued that the applicant had elected to be conferred with a B.A. and that in so doing she had accepted that she could not complete the B.Sc.

61. On the question of mootness, the School referred to the decision of the Supreme Court in *Goold v Collins* [2004] IESC 38 and in particular to the passage from the judgment of Hardiman J where he refers to the possibility that

*"time and events may render the issues in proceedings, or some of them, moot. If that occurs, the eventual decision would be of no practical significance to the parties."*

62. It was submitted that the applicant's appeal was moot, since it was not now possible for her to progress to completion of the B.Sc. degree.

63. On behalf of the applicant, it was submitted to the Committee that she was, both at the time of her appeal to the Court of First Appeal and currently, a student within the meaning of s.5(1) and (2) of the chapter on students. This was on the basis that, as provided for in s.5(2)(a), she was a person who had not graduated from the course in which she was formerly registered but who had indicated a wish to return to such course in accordance with academic regulations.

64. It was submitted that the language of the regulation dealing with students who choose not to complete the degree course and opt instead to graduate with the ordinary B.A. did not prohibit a student from also obtaining a B.Sc., but was "merely facilitative in respect of the conferring of the B.A. degree."

65. The submission set out the contact had by the applicant with her tutor and with Ms Sarah Ryan. It was claimed that she had

taken the B.A. only in order to get copies of her transcripts and that she had never been told that if she accepted it, she could not also pursue the B.Sc. She relied upon what she was told by Dr Muldoon and Ms Ryan and believed that she would be prevented from acting to her detriment.

66. It was alleged that the applicant was never made aware of the recommendation of the Court of First Appeal when she got a copy of its written decision in September 2011. Before that, she had not been aware that her actions in accepting the B.A. could be construed as accepting that recommendation. In this regard it is said that she had reserved her right to appeal until she saw the decision in writing.

67. It was submitted that the School, through its actions in preparing for the appeal, had created a legitimate expectation that the applicant's appeal would be heard and that it was now too late for it to raise the issue of mootness. It was also argued that the School was now estopped from denying that the applicant was a student of the college.

68. On the 27th September, the Committee met again to consider the submissions which had been filed by both parties. The minutes of that meeting, which were sent to the applicant by way of letter on the 10th October 2010, state as follows:

*"Having carefully considered the submissions advanced on behalf of the School of Nursing and Midwifery and on behalf of the appellant, the Academic Appeal Committee is satisfied that it does not enjoy jurisdiction to hear this appeal having regard to section 5.2 (a) (chapter on students of the 2010 Consolidated Statutes of Trinity College Dublin and the University of Dublin) and having regard to the University calendar (H11/120). Accordingly the Committee cannot proceed to hear this appeal."*

### **Submissions**

69. Mr Tuite S.C on behalf of the applicant submits that at all material times the applicant was and is a student of the College. He relies in particular on section 5 of the chapter on students in the 2010 Consolidated Statutes of Trinity College Dublin and the University of Dublin.

70. With reference to the final paragraph of the regulation dealing with appeals before the Committee, it is submitted that this can only be interpreted as applying where the appeal relates to the same degree as that sought to be conferred. Mr Tuite says that in this instance the degree conferred was the B.A. while the appeal related to the B.Sc.

71. It is said that the applicant was enrolled on a course which could lead in two directions and that she had graduated from one but not the other, not having "concluded" her B.Sc. course.

72. He further submits that the Committee's decision does not give adequate reasons for the decision, given the issues that had been raised in the written submissions to the Committee. Such issues were legitimate expectation, estoppels, reliance, textual analysis of the Consolidated Statutes and mootness. It is contended that the likelihood is that the Committee formed a view on the jurisdictional issue and went no further, whereas it should have construed the Consolidated Statutes in the context of circumstances giving rise to the other issues. Specifically, it has been argued that the jurisdiction should not have been decided without regard to the facts that the applicant had been awaiting a decision for a year; that she had not been aware of the consequences of accepting the B.A. and that she had always intended to appeal.

73. The applicant relies on the case of *Meadows v Minister for Justice* [2010] 2 IR 701 where Murray CJ said at [93]-[94]:

*"An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context."*

*"Unless that is so then the constitutional right of access to the courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective."*

74. Estoppel is said to arise on the basis that the Committee extended the time for lodging the appeal, thereby accepting that she was a student for the purposes of the appeal.

75. Mr McDonagh S.C on behalf of the respondent submits that the only real issue here is the jurisdictional issue. He submits that the decision was one which was correct in law.

76. The applicant is said to have graduated from the course on which she was registered. It was a course which entitled her in certain circumstances to graduate with a B.A. degree and that is what happened.

77. Section 5 does not, it is submitted, assist the applicant's case. Even if she is correct in asserting that she did not graduate from the course on which she was registered, her right to be regarded as a student under the section can only arise where provision to that effect has been made by the bodies or officers specified therein. No such provision has been made that could be considered relevant to the applicant's entitlement to pursue an academic appeal.

78. There was, it is argued, no obligation on the Committee to give detailed reasons for rejecting grounds advanced before it where those grounds depended for their validity on the Committee having substantive jurisdiction to entertain the Appeal in the first place.

### **Discussion and conclusions**

79. I agree with the respondent that the central issue is that of jurisdiction. The jurisdiction of the Committee derives from the college statutes, which make it apparent that the person appealing must be a student.

80. Since the applicant was not, at the relevant time, a registered student, the question is whether she qualifies under any available extension of the definition. The applicant relies for this purpose on s.5(2)(a), which relates to

*"persons who have not graduated from a course on which they were formerly registered, but who have indicated a wish to return to such a course in accordance with academic regulations."*

81. Persons coming within this category may be regarded as students "for the purpose of the definition of the Community" and participate in the life and activities of the Community on such conditions as may be stipulated by authorised bodies and officers of the

college. No reference has been made to any provision made under this section that would cover the position of the applicant.

82. In my view it is abundantly clear that the applicant graduated from the course on which she was registered. To graduate is, to put it simply, to finish one's undergraduate studies with the attainment of a degree. It is true that the applicant did not get the degree she wanted, because she did not pass her final year. Her B.Sc. course came to an end at that point, in the absence of a successful appeal. In accordance with the rules relating to the General Nursing degree, the B.A. was available to her as an alternative because of the recommendation of the Court of First Appeal.

83. I am further of the view, based on the emails and the solicitors' correspondence that the applicant fully understood the implications of accepting the B.A. The suggestion that she was not fit to make the decision at the time has not been borne out by any medical evidence. It is clear that she spent some time considering her options, and that all the advice given to her related either to appealing to the Committee or to making use of a B.A. for the purpose of gaining admission to another institution. I do not accept that she saw it simply as a means to get her academic transcripts, which would have no effect on her college career. The language used by her in her application to be conferred in December 2010 makes it clear that she, in common with any third level student, understood the significance of a graduation.

84. The hearing date for the appeal to the Committee was fixed because the relevant personnel were unaware of the graduation, not because they considered it immaterial. In these circumstances no question of legitimate expectation or estoppel can arise.

85. The decision of the Committee clearly deals with the issue of jurisdiction only. Once the Committee had decided that the applicant was not a student within the meaning of the Consolidated Statutes, there was really nothing more to be said. There was no obligation to go further than to refer to the relevant provisions and hold that she did not come within the definition.

86. In these circumstances I refuse the reliefs sought.