

## THE HIGH COURT

## JUDICIAL REVIEW

[2015 No. 576 J.R.]

BETWEEN

S.B.

APPLICANT

AND

THE CHILD AND FAMILY AGENCY

RESPONDENT

**JUDGMENT of Mr. Justice Eagar delivered on the 11th day of January, 2017****Chronology of Pleadings**

1. The applicant in this case seeks by way of a notice of motion an order pursuant to O. 84, r. 22(5) of the Rules of the Superior Courts. The following reliefs are sought:—

- i. An order pursuant to O. 84, r. 22(5) of the Rules of the Superior Courts or to the inherent jurisdiction of this Honourable Court striking out the statement of opposition filed on behalf of the respondent herein, dated 15th January, 2016, in circumstances where the respondent's statement of opposition fails to say precisely each ground of opposition, giving particulars where appropriate, to identify the facts of the matters relied upon and to support the matters contended for and deal specifically with each fact or matter relied upon in the statement grounding the application;
- ii. if necessary, an order striking out the statement of opposition as an abuse of process;
- iii. if necessary, a declaration that the statement of opposition filed on behalf of the respondent fails to conform with O. 84, r. 22(5) of the Rules of the Superior Courts;
- iv. or, in the alternative, an order directing the respondent to submit a statement of opposition in compliance with the provisions of O. 84, r. 22(5) of the Rules of the Superior Courts;
- v. all necessary and consequential orders and directions;
- vi. such further or other order as this Honourable Court might deem fit, including if appropriate an order pursuant to the provisions of O. 85 of the Rules of the Superior Courts directing the parties to consider ADR as a means of resolving the within proceedings after the delivery by the respondent of a statement of opposition in conformity with the Rules of the Superior Courts;
- vii. the Costs included, and incidental with, the within application.

2. On 19th October, 2015 the applicant sought leave to apply for judicial review based on the affidavit of the applicant and which grounded a statement to ground the application for judicial review. Leave to apply for judicial review was granted by Humphreys J. on that date.

3. These proceedings concern a notice of motion in which the applicant seeks an order pursuant to O. 84, r. 22(5) of the Rules of the Superior Courts to strike out the statement of opposition filed on behalf of the respondent, made in response to the plaintiff's application for judicial review. This statement sought *inter alia* the following reliefs:

- a. An order of prohibition or an injunction restraining the Respondent from proceeding with the investigation into the complaints respecting four children (E.M., M.M., A.C. and C.R) where it had been determined by a social worker that the complaints were within the remit of the Board of Management of "the school";
- b. a declaration that the investigation which the respondent is undertaking is one that is incapable of vindicating the constitutional rights of the applicant;
- c. an order of prohibition or injunction restraining the respondent from proceeding with the investigation in relation to the complaints made on behalf of R.F. and E.T., in circumstances where it has been intimated that the parents of each child are not prepared to have the children interviewed by the respondent's social worker, and where the respondent has intimated by letter of 7th September, 2015 that existing written materials created in the context of an earlier flawed investigation process would be considered by a newly nominated social worker;
- d. an order restraining the respondent from proceeding with an investigation into the complaint made on behalf of M.D. in circumstances where the respondent had determined that there were no ongoing child protection concerns;
- e. an order restraining the respondent from proceeding with any investigation in respect of the applicant without having first particularised specifically what allegations of fact are being made against the applicant, and how it is alleged that such allegations constitute allegations of child abuse for the purpose of the respondent's 'Policy and Procedures for Responding to Allegations of Child Abuse and Neglect' dated September 2014.

4. The statement of opposition was served on 13th January, 2016, and is verified by the affidavit of Carmel Martin sworn on 11th January, 2016.

5. The notice of motion referred to in para. 1 was returnable for 9th May, 2016 and was supported by the affidavit of S.B., sworn on 21st April, 2016. The applicant sought:

- a. An order pursuant to O. 84, r. 22(5) of the Rules of the Superior Courts seeking to strike out the statement of opposition filed on behalf of the respondent dated 15th January, 2016 in circumstances where the respondent's statement of opposition fails to state precisely each ground of opposition, giving particulars, where appropriate, to identify the facts relied on and to support the matters contended for and deal specifically with each fact or matter relied upon in the statement grounding the application;
- b. if necessary an order striking out the statement of opposition as an abuse of process;
- c. if necessary a declaration that the statement of opposition filed on behalf of the respondents fails to conform with O. 84, r. 22(5) of the Rules of the Superior Courts;
- d. in the alternative, an order directing the respondent to submit a statement of opposition in compliance with the provisions of O. 84, r. 22(5) of the Rules of the Superior Courts;
- e. all necessary and consequential orders and directions.
- f. such further or other order as this Honourable Court might deem fit including, if appropriate, an order pursuant to the provisions of O. 85A of the Rules of the Superior Courts directing the parties to consider ADR as a means of resolving the within proceedings after delivery by the respondent of the statement of opposition in conformity with the Rules of the Superior Courts;
- g. the costs of and incidental to the within application.

6. This motion was supported by the affidavit of S.B. sworn on 21st April, 2016.

7. The replying affidavit of Tara Downes, solicitor for the Child and Family Agency, was sworn on 9th May, 2016.

8. A replying affidavit of S.B. was sworn on 16th November, 2016 and a further affidavit of Tara Downes dated 9th June, 2016 grounding a notice of motion dated 8th June, 2016 was then sworn wherein the respondent sought:

- a. Directions regarding the mode of trial of the proceedings herein, in particular in relation to the trial of certain issues in advance of all the other issues:
  - i. The entitlement of the applicant to seek relief in circumstances where the relief sought is moot; and,
  - ii. The entitlement of the applicant to seek relief in respect of a proposed *de novo* assessment of certain information received and allegations made against the applicant where the relief sought is premature.
- b. Such further or other Order as the Court deems fit.
- c. The costs of this application.

9. This application was not heard by this Court, but some reliance was placed on the affidavit sworn by Tara Downes on the 9th June, 2016 in these proceedings. The affidavit set out the following at para. 5:

"The Applicant seeks in these proceedings to restrain the conduct of an investigation into certain information received and allegations made against him. A previous investigation into these matters was discontinued after certain issues were raised on behalf of the Applicant by his legal representatives. By letter dated September 7th, 2015, the Respondent indicated that it noted the Applicant's concerns regarding alleged breaches of natural justice and fair procedures and proposed to commence a fresh assessment of any outstanding allegations. A copy of detailed procedures which would govern the proposed assessment was enclosed. The letter also confirmed that any concluded assessments would not form part of the fresh assessment. No response was received from the Applicant prior to the making of an application for leave in these proceedings on October 21st, 2015. No further steps have been taken in respect of the proposed investigation following the initiation of these proceedings."

## **Background Facts**

10. The background facts of this case are found in the statement of grounds.

11. In September, 2007 a father (P.C.) of a pupil (A.C.) in the applicant's class complained about the applicant. This was followed by a letter from four male parents, including P.C., dated 8th October, 2007 to the parent representatives on the Board of Management complaining about the applicant.

12. The board of management investigated the matter, the Chairman of the Board of Management wrote to P.C. by letter dated 10th March, 2008 confirming the matter was being addressed and dealt with. No further issue arose in relation to this complaint, after it had been investigated and determined.

13. Just under seven years later, on 29th January, 2014, (unbeknownst to the applicant) Margo Fenton, a social work team leader with Tusla, the Child and Family Agency (herein "the CFA") wrote to the school principal, stating that the CFA had recently received a number of referrals in relation to the applicant, concerning his treatment of children during the working day. She stated that she, Margo Fenton, and the principal social worker, Carmel Martin, would like to meet the Principal to discuss the contents of these referrals.

14. On 13th March, 2014 the applicant was called into the office by the Principal and was advised of the CFA investigation. The Principal gave the applicant a letter dated 13th March, 2014 stating that he was "obliged to inform you that I have now today received a visit from social workers with Tusla who inform me that they are currently involved in an ongoing investigation into significant emotional abuse allegations against you." He was informed that the allegations would be referred to the Gardaí. This Court notes that this was how the applicant became aware of the investigation, he was not contacted by the CFA.

15. On 19th March, 2014, Ms. Fenton of the CFA wrote to the Principal. She confirmed details of the children who had made the

referrals. There were three named children: A.C., whose father had complained in 2007; C.R.; and E.M.; and a fourth child whose parents had sought anonymity. Ms. Fenton referred to these four children giving "what we deem credible accounts of intimidation and emotional abuse". Some, it was stated, were still very traumatised by the events. On 2nd April, 2014, Ms. Fenton wrote to the applicant, inviting him to meet her and proposing a date.

16. On 7th April, Deirdre O'Connor of the Irish National Teachers Organisation (herein "INTO") wrote to Louise Coniry, the duty social worker, on 7th April, stating:—

"We wish to assure you that Mr. B is anxious to co-operate with Tusla and to meet at a mutually agreeable time but requires full information and documentation in advance of any meeting with Tusla."

Margo Fenton on 8th April, 2014, advised that the CFA would not correspond with the INTO representative and stated that they would only correspond with Mr. B directly on the matter. This Court opines that the INTO representative, Deirdre O'Connor, would be someone well-versed in the duties of teachers and the role of the CFA, and no explanation has been given for Louise Coniry's refusal to deal with INTO.

On the same day, 8th April, 2014, Margo Fenton wrote to the applicant stating a representative from INTO had contacted her office informing her that he would not be attending any meeting with the CFA. Some of the allegations were disclosed in summary form in this letter to the applicant; however, this was done without identifying any of the pupils who had made the allegations.

17. Deirdre O'Connor wrote again on 22nd April, saying that she had been unsuccessful at her attempts to contact Ms. Fenton by telephone, referred to the relevant legal authorities and reiterated the requirement for particulars and documentation.

18. On 6th May, 2014, the Chairperson of the Board of Management of "the school" wrote to the applicant referring to the complaints set forth in the letter from the CFA of 19th March, 2014. Two further referrals had been made by the Principal in relation to M.D. and R.F. The Board invited the applicant to attend a board meeting on 13th May, 2014. On 7th May, the Principal gave the applicant copies of the enclosures, together with a letter from the Chairman, mainly the letter of 19th March (redacted), and the redacted standard report form in respect of S.D. and R.F. Eventually the applicant received unredacted versions of the enclosures from the Principal.

19. The applicant met with the Board of Management on the 13th May, 2014. The purpose of the meeting was to consider whether he should be put on administrative leave. He was subsequently informed that he would not be placed on administrative leave.

20. On 23rd May, 2014 the Principal wrote to Margo Fenton seeking an urgent update as to the current status of the CFA investigation. He pointed out that Tusla had refused to provide an opinion to the Board regarding administrative leave, and that ultimately the Board had decided not to place the applicant on administrative leave. He stated that the Board could propose to investigate the complaints that they were currently on notice of relating to current students (C.R., R.F. and S.D.) and asked whether Tusla/CFA wanted the Board of Management to defer its investigation pending the outcome of the Tusla/CFA investigation. He requested an 'urgent update' regarding the current status of their investigations.

21. On 27th May, 2014 Margo Fenton wrote to the Chairman stating, "We are obliged to share our information with Mr. B to allow him a response, however to date he has refused to meet with us. He has been furnished with information in writing." She stated it would also be her intention at this point to discuss any support service that may be of help for him, and referred to discussions with the Principal of the availability of anger management courses for the applicant.

22. The Principal wrote on 4th June, 2014 to the applicant advising that he had received written confirmation that the investigation regarding the current students at the school, namely C.R., R.F. and S.D., was concluded for now. It goes on to state:—

"We have been advised by Tusla that the two named former students of the school were referred by their parents to Tusla, namely E.M. and A.C. It is clear from their letter of 27 May that Tusla has also concluded its investigation into those referrals."

The Board of Management had asked the parents concerned whether they had complaints that they wished to be investigated by the school. The principal stated that the allegations were serious and needed to be investigated.

23. On 12th June, 2014 the applicant presented a written response addressed to the Chairman and the members of the Board of Management to the complaints made by the parents of C.R., S.D. and R.F.

24. On 16th June, 2014, the Principal wrote to the applicant in relation to the Board's investigations. He stated that at the Board of Management meeting to afford parents the opportunity to present their complaint, additional documentation was submitted by P.C. "who attended as a friend of both the D and R families". Copies of the documentation were enclosed to the applicant.

25. This documentation included a typescript document headed "Parents' Group to BOM" dated 10th June, 2014 and set out allegations of actions on the part of the applicant that were alleged to constitute emotional abuse, physical abuse and sexual abuse and grooming.

26. On 18th June, 2014, Deirdre O'Connor of INTO wrote expressing extreme concerns at the content of this document, and the role of P.C.

27. On 22nd July, 2014, P.C. wrote two letters to the Principal headed "Additional incidents regarding the abuse of children at "the school". The second letter identified the children involved as R.F. and A.H.

28. On 25th July, 2014, the Chairman wrote to Margo Fenton stating that he had been informed that the applicant had not refused to meet with the CFA. He advised that meetings would be held with the parents of C.R. and S.D. in respect of complaints against the applicant. The Chairman had sought urgent clarification from the parents as to whether they were alleging their children were subject to sexual abuse, as this was not set out in previous written complaints to the Board. He also referred to letters from P.C. to the school principal, alleging that images of naked men were shown to a pupil, C.B., by the applicant.

29. On 31st July, 2014, the D parents wrote stating that at no stage had they ever suggested that S.D. had been sexually abused, groomed, physically abused or neglected in school: she had however been both psychologically and emotionally affected by the applicants behaviour. The R failed to provide a clear answer to the letter of the Chairman.

30. By letter of 7th August, 2014, Margo Fenton wrote to the applicant stating that a further three children had made complaints to the CFA. The letter stated that the parents of E.T. and R.F. have declined to have their children interviewed, and that the concerns came to light through the children's parents. The complaints of the three children, E.T., R.F., and S.D. were summarised. Margo Fenton then advised the applicant to respond in person or in writing, and that if she did not hear directly from him, the CFA would conclude their assessment without his input and advise the Board of Management, the parents, and the Gardai accordingly.

31. On 15th August, Deirdre O'Connor of INTO wrote expressing the applicant's denial of the allegations of mistreatment, and reiterated the request for information and documentation. She queried the basis upon which complaints were being reopened by the CFA.

32. On 22nd August, 2014, the Chairman wrote to the applicant enclosing letters from parents.

33. On 4th September, 2014, the B parents wrote that their son, C had no recollection of the incident raised.

34. On 12th September, 2014, Hayes Solicitors wrote to the CFA on behalf of the applicant. The letter noted that the CFA had not afforded the applicant with an opportunity to know what was being alleged against him and to respond. The letter made the same request for information as had been made by Deirdre O'Connor on the 15th August, 2014.

35. Carmel Martin, social worker wrote to the applicant on the 4th March 2015. While enclosing some documentation, the letter did not specify any allegations made against the applicant, nor state how such allegations had come to light, or how they were capable of amounting to child abuse.

36. On 4th March, 2015, Hayes solicitors wrote to Binchy solicitors, solicitors for the CFA, stating that none of the matters referred to in their previous letter of the 12th September, 2014, had been addressed or responded to, and that it was not good enough for the CFA to respond in such a dismissive way. Hayes repeated their request, that the CFA '*outline what is going on*'. They stated that the applicant was entitled to fair procedures, and to know the allegations. He should not '*be expected to wade through four folders or documents to extrapolate them. What exactly is being investigated by your client?*' The letter also objected to the involvement of Ms. Fenton, given that she had already reached conclusions on the matter.

37. Carmel Martin, social worker wrote a letter to the applicant on 21st May, 2015, outlining the 'provisional conclusion of the Social Work Assessment' carried out by the CFA into the allegations made against the applicant. The letter stated:

*"The purpose of this letter is to outline to you the provisional conclusion that has been reached by the Agency in relation to the allegations made against you. The allegations were fully outlined to you in the letter of 2nd April, 2014 and you have received the relevant documentation taken into account by us in our assessment. [...]"*

*A.C., outcome. Emotional Abuse – founded.*

*C.R. – outcome. Physical Abuse – founded.*

*C.R. – outcome – Emotional Abuse – founded.*

*E.M. – outcome – Emotional Abuse – founded.*

*M.M. – outcome – Emotional Abuse – founded.*

*M.D. – outcome – Emotional Abuse – founded.*

*R.F. – outcome – unfounded.*

*E.T. – outcome – unfounded.*

*[...]*

*If you do not respond to the provisional conclusion, the Child and Family Agency will proceed to reach its final determination in relation to the allegations in the absence of any further input from you."*

38. By letter of 27th May, 2015, marked 'Extremely Urgent', to Binchys, Hayes solicitors referred to the 'utter failure on the part of your office to respond to our correspondence' and required the immediate withdrawal of the letter of Carmel Martin of the 21st May, 2015.

39. Binchy solicitors on 12th June, 2015 responded to Hayes and advised that the letter of 21st May, 2015 would be withdrawn and that Ms. Martin would step down from any further involvement.

40. Hayes solicitors wrote on 25th June, 2015, repeating their requests for the CFA to identify allegations.

41. On 8th July, 2015, the respondent wrote to the applicant directly, the letter signed by Louise Coniry, social worker, and Sean Scanlon, social worker. The letter set out allegations of emotion and physical abuse which had been perpetrated by the applicant against seven pupils in his class. Under the heading 'Documentation', it is stated that attached to the letter by way of disclosure are the documents the CFA will rely upon in their assessment. She proposed dates to meet with the applicant. She then stated she would reach a provisional conclusion as to whether these allegations were founded or unfounded. There would be a further opportunity to respond and an appeal process.

42. On 10th July, Binchy solicitors wrote to Hayes stating that the matter now rested with the Tusla office of legal services, and would be dealt with by Tara Downes, solicitor.

43. On the 7th September, 2015, Tusla Legal Service Office wrote to Hayes stating that the CFA propose to commence a '*fresh assessment*' of any outstanding allegations made against the applicant.

### **Statement of Opposition**

44. The statement of opposition sets out that the respondent opposes the application for judicial review on, *inter alia*, the following

grounds:

" (i) [...] The Applicant is not entitled to the reliefs sought [...] in circumstances where the Respondent is proposing [...] to conduct a de novo assessment of certain allegations and information received in respect of the applicant."

At para (viii) and (ix) of the Statement of Opposition, this Court considers the following to be of particular relevance:

" (viii) It is denied that the Respondent has failed to adequately particularise the allegations of fact made against the Applicant. It is further denied that the Respondent has failed to adequately particularise the basis for the conduct of an assessment, as alleged. The Applicant has been provided with all the documentation received by the Respondent liable to form part of the assessment and has also been provided on several occasions (including by letters dated April 8th, 2014, August 7th, 2014, undated letter of March 2015, and July 9th, 2015, as well as various correspondence from the Board of Management of "the school") with a summary of the allegations received. The Applicant has received sufficient information to understand the basis of the proposed assessment and/or to seek legal advice in respect of it.

(ix) The relief sought at point 6 of the Applicant's Statement to Ground the Application for Judicial Review is premature and/or moot. The Applicant has been provided with sufficient information and documentation to understand the basis for the proposed assessment. Furthermore, the Applicant is fully entitled to make representation as part of the proposed assessment."

This Court notes that none of these letters referred to in the Statement of Opposition have been exhibited.

#### **Relevant Orders of the Rules of the Superior Courts**

45. The relevant orders of the Rules of the Superior Courts (Judicial Review), 2011 are contained in Regulation 22(4) and (5). Regulation 22(4) and (5) state:-

"(4) Any respondent who intends to oppose the application for judicial review by way of motion on notice shall within three weeks of service of the notice on the respondent concerned or such other period as the Court may direct file in the Central Office a statement setting out the grounds for such opposition and, if any facts are relied on therein, an affidavit, in Form No. 14 in Appendix T, verifying such facts, and serve a copy of that statement and affidavit (if any) on all parties. The statement shall include the name and registered place of business of the respondent's solicitor (if any).

(5) It shall not be sufficient for a respondent in his statement of opposition to deny generally the grounds alleged by the statement grounding the application, but the respondent should state precisely each ground of opposition, giving particulars where appropriate, identify in respect of each such ground the facts or matters relied upon as supporting that ground, and deal specifically with each fact or matter relied upon in the statement grounding the application of which he does not admit the truth (except damages, where claimed)."

46. These rules were introduced in 2011 by amendment to the Rules of the Superior Courts. The Rules were amended specifically to require a party filing a statement of opposition (and thereby indicating its intention to defend the application) to identify the issues in the case, and to identify in respect of each ground, the facts or matters relied upon as supporting that ground, and to deal specifically with each fact or matter relied upon in the statement grounding the application of which he does not admit the truth.

#### **Mootness/Prematurity of Proceedings**

47. The replying affidavit of Tara Downes, solicitor of the CFA, sworn on the 9th May, 2016 details the respondent's claim, that the applicant's case is one that is either premature, or moot.

48. She sets out that a large portion of the applicant's statement of grounds concerns "a previous investigation which was not finalised following concerns raised on behalf of the applicant. These matters are clearly moot in circumstances where a de novo investigation has been proposed. That is particularly so where the applicant has not identified any prejudice to the proposed investigation arising from the fact or conduct of a previous investigation."

49. At para. 10 of her affidavit of the 9th June, 2016, Miss Downes sets out that "With regard to the plea of prematurity, I say that the various assertions made in respect of the proposed investigation cannot be sustained when nothing has yet occurred. I say and am advised that it is a long-standing principle that there is a presumption that investigations will be conducted in accordance with fair procedures and natural and constitutional justice. I further say and am advised that this has particular force where the Applicant has been provided with detailed procedures as to how the investigation will be conducted. I say that it is relevant in this regard that the Applicant has not identified a specific prejudice arising from any aspect of the proposed procedures but has simply omitted to refer to them in any detail in the allegations made or the correspondence exchanged."

#### **Relevant Correspondence**

50. In a letter dated 23rd July, 2015, Carol Fawsitt of Hayes Solicitors wrote to Gordon Jeyes, Chief Executive of the CFA on behalf of the plaintiff. The letter set out the applicant's objections to the involvement of Miss Coniry, social worker, in any investigation. Miss Coniry had been involved in (what is termed) the 'previous' investigation process concerning allegations made against the plaintiff, wherein a report of a concluded investigation was furnished to the plaintiff by Miss Coniry, he having not been afforded any opportunity to meet with the social workers before they came to their conclusions.

51. This is contrary to the CFA's internal policy opened before the Court, which sets out that a person against whom complaints are made must be consulted prior to the completion of any report.

52. Further, this letter set out that the plaintiff had received a letter from Miss Coniry dated the 8th July, 2015 informing the plaintiff that seven cases were being brought against him. The letter states that four of these cases are concluded, and questions why they are being reopened now, and pursued by the CFA. The social workers had communicated to the school's Board of Management that these four cases should be dealt with by the Board, by letter dated the 13th March, 2014.

53. The letter requests that the CFA identify what allegations the applicant is being asked to address.

54. In a letter dated the 7th September, 2015, in response to the letter written on behalf of the applicant dated the 23rd July, 2015, Tusla wrote to Hayes solicitors. The following was set out:

"We note the concerns raised in your letters wherein you assert your client's rights to natural justice and fair procedures

have been breached.

The Child and Family Agency now propose to commence a fresh assessment of any outstanding allegations against your client pursuant to the *Agency's Policy and Procedures for Responding to Allegations of Child Abuse* dated September 2014 ("*Policy and Procedures*") and enclose a copy for your attention. All concluded assessments will not form part of the fresh assessment.

We request that you encourage your client to engage with this new assessment in order that this matter can be concluded as expeditiously as possible.

However, we would not propose to re-interview the children with whom we have already met and taken detailed accounts of the incidents complained of, as this would not be in the children's best interests and in line with social work best practice."

#### **'Fresh Assessment'**

55. This Court does not accord with the respondent's position, as to the mootness/prematurity of these proceedings. To assert that "nothing has yet occurred", as set out in the affidavit of Tara Downes, contradicts the position of the CFA as set out in the letter dated the 7th September, 2015, wherein the CFA stated they did not propose to re-interview children, as this would be contrary to the children's best interests and in line with social work best practice.

56. It appears from the *correspondence*, and not the affidavit evidence, that the de novo assessment will include reference to interviews obtained in what the CFA have themselves conceded was a flawed process. Nowhere is this plainly set out on affidavit.

57. If these interviews obtained in the previous investigation are to be the subject of the de novo assessment, this should be set out clearly by the respondent on affidavit.

58. Myriad letters were opened before the Court in an attempt to ascertain the respondent's position. Parties to actions must set out plainly their position in pleadings, for reasons explored below.

#### **The Purpose of Pleadings**

59. As Finnegan P. set out in *Law Society of Ireland v. Walker* [2006] IEHC 387, pleadings are the mechanism by which parties may arrive at the true issues in a dispute. This statement of opposition fails to identify salient issues in this case, *inter alia*, what went wrong in the previous investigation and what the respondent proposes to do differently in the 'de novo assessment'. If material from the previous, flawed investigation is to be utilised, this should be set out clearly on affidavit. Only then will the applicant know the case he has to answer, and effectively challenge the respondent's position. As Kelly J. stated in *PJ Carroll & Co v Minister for Health and Children* [2005] 1 IR 294:

"The whole function of pleadings is to identify the factual matter which is truly in issue between the parties."

60. Constitutional fairness requires precision in pleadings, in that a person is entitled to know the case against him. As held by Clarke J. in *Atlantean Ltd v Minister for Communications and Natural Resources & Ors.* [2007] IEHC 233:

"That any party who is entitled to the benefit of procedures complying with the rules of constitutional justice is entitled to know the case against him cannot be doubted."

Regulation 22 (5) of the Rules of the Superior Courts (Judicial Review), 2011 represents one measure by which to guard against generality in statements of opposition. In this case, the applicant is entitled to know the allegations being made against him. This information, is crucial to the plaintiff's case, and it has not been set out on affidavit by the respondent.

61. It is not just for the respondent to assert in their statement of opposition that the applicant has been provided with all the documentation the respondent intends to rely upon in their de novo assessment. The respondent asserts that this material was provided in letters dated April 8th, 2014, August 7th, 2014, in an undated letter of March 2015, and a letter dated July 9th, 2015, as well as various correspondence from the Board of Management of "the school". None of these letters were exhibited with this statement of opposition.

62. The onus is not on the plaintiff or the Court to look to myriad letters in an attempt to ascertain what the Respondent's position is. It is the respondent's duty to set out the information they seek to rely on in the 'fresh' assessment with clarity and precision. As referred to in counsel for the plaintiff's written submissions to the Court, in *Ashmore v Corporation of Lloyd's* [1992] 1 W.L.R. 446, precision in pleadings may be seen as part of the duty of the respondent to co-operate with the Court:

"The parties and particularly their legal advisers in any litigation are under a duty to co-operate with the court by chronological, brief and consistent pleadings which define the issues... It is the duty of counsel to assist the judge by simplification and concentration and not to advance a multitude of ingenious arguments in the hope that out of 10 bad points the judge will be capable of fashioning a winner."

63. The current framing of the statement of opposition has led to unnecessary prolonging of proceedings, where the Court has had to engage in a review of lengthy correspondence, often contradictory and confusing. This is an inappropriate task for the Court, and a waste of time and resources. The respondent's position should be stated clearly on affidavit evidence.

64. This Court therefore will accede to this application. This Court will strike out the respondent's statement of opposition by order pursuant to O. 84, r. 22(5) of the Rules of the Superior Courts in circumstances where the respondent's statement of opposition fails to state precisely each ground of opposition, giving particulars, where appropriate, to identify the facts relied on and to support the matters contended for and deal specifically with each fact or matter relied upon in the statement grounding the application.

65. This Court will also order that the respondent submit a statement of opposition in compliance with the provisions of O. 84, r. 22(5) of the Rules of the Superior Courts.