Neutral Citation Number: [2009] IEHC 163

THE HIGH COURT

2007 418 JR

BETWEEN:

TIMOTHY O'DONOVAN

APPLICANT

AND

THE BOARD OF MANAGEMENT OF DE LA SALLE COLLEGE WICKLOW AND JOHN MURPHY, ANNE LODGE AND BRENDAN DOODY AS MEMBERS OF THE APPEAL COMMITTEE APPOINTED PURSUANT TO SECTION 29 OF THE EDUCATION ACT 1998

RESPONDENTS

Judgment of Mr. Justice Hedigan, delivered on the 3rd day of April, 2009

1. The applicant is a third level student from Wicklow Town. At the commencement of these proceedings, he was a minor suing by his mother and next friend, Carla O'Donovan.

2. The first named respondent is the governing body responsible for the management of De La Salle College Wicklow.

3. The second, third and fourth named respondents ('the appeals committee') are the members of the statutory body, appointed under section 29 of the Education Act 1998 ('the 1998 Act') which had responsibility for determining the appeal of the applicant in the present case.

4. The applicant seeks the following relief:

(i) A declaration that the first named respondent's decision to expel the applicant, effective as of the 30th of January 2007, was in breach of his constitutional and statutory rights;

(ii) A declaration that the decision of the appeals committee made on the 26th of January 2008 to uphold the said decision of the first named respondent was in breach of the applicant's constitutional and statutory rights;

(iii) An order of *certiorari* quashing the decision of the first named respondent to expel the applicant;

(iv) An order of *certiorari* quashing the decision of the second named respondent to uphold the said decision of the first named respondent;

(v) An order of *mandamus* directing the first named respondent to perform its legal obligation in accordance with the decision of this Court; and

(vi) An order of *mandamus* directing the appeals committee to perform their legal obligation in accordance with the decision of this Court.

I. Factual and Procedural Background

5. When the applicant was twelve years of age, he enrolled as a secondary student at De La Salle Secondary College in Wicklow ('the College') which he attended happily and without any significant pattern of misbehaviour up until the incident which ultimately forms the basis of these proceedings.

6. On the 28th of November 2006, the applicant and a number of his fellow students participated in a charity football match during regular school hours. Each student made a donation of 2 euro to charity and the teams were joined by two younger members of the teaching staff, one of whom was BG. The match culminated in a penalty shootout and the applicant featured as goalkeeper for his team. In this capacity, he succeeded in saving the final penalty which was taken by BG. This resulted in victory for his side.

7. Having saved the winning penalty, the applicant ran up behind BG and proceeded to pull the teacher's shorts downwards. The shorts descended several inches causing part of BG's backside to be exposed to onlookers. There is some dispute as to the reaction to this incident of the parties involved. The applicant maintains that he was at once remorseful and that he apologised to BG, who did not seem overly perturbed and subsequently joked about the incident with the applicant in the communal changing rooms following the game. The respondents contend that that the applicant was not quite so contrite, and that he revelled to some extent in the commotion that was caused by his actions. The respondents also contest any suggestion to the effect that BG did not take the incident seriously from the outset.

8. On the 29th of November 2006, the applicant was absent from school owing to an injury which he had sustained during a rugby training session which took place following the incident. On that day, the principal of the school, Ms. Maria O'Carroll, received a formal complaint from BG in relation to what had occurred. Ms. O'Carroll telephoned the applicant's mother to inform her that the applicant was being suspended from school until the next meeting of the first named respondent on account of his behaviour during the charity football match. However, later that afternoon, the applicant's mother received another call to inform her that a fellow student and friend of the applicant's had been killed in a road traffic accident. Owing to these exceptional circumstances, the applicant's suspension was lifted to allow him to grieve with his peers.

9. On the 30th of November 2006, the applicant returned to school and in an unprompted gesture brought a letter of apology for BG. This was delivered to the teacher by another member of staff. BG discussed the letter with Ms. O'Carroll and it seems that he was unhappy with the overly familiar tone which was adopted in its contents. Ms. O'Carroll, who had been surprised in the first place to learn that the applicant had returned to school, telephoned the applicant's mother that evening to discuss matters. There is some dispute as to what was said during this phone call but it is common case that Ms. O'Carroll informed the applicant's mother that the intention had been that his suspension should be lifted for one day only. She also stated that the applicant should remain out of school until the first named respondent met to consider the matter on the 7th of December 2006. At all times, she maintained that the matter was a very serious one and advised the applicant's mother that she could not predict the sanction that would be imposed.

10. It should be noted that the school's code of conduct was not precisely complied with at all times throughout the dealings between the parties. For instance, Clause D of the school's Code of Conduct quite clearly envisages the parents should be advised in writing where serious sanctions are being considered and that they should be invited, also in writing, to discuss the situation with the school principal. The respondents maintain that any departure from the regular protocol arose from the distraction caused by the tragic death of the applicant's fellow student. They further assert that the applicant was not deprived of any material advantage by virtue of the means of communication used in contacting his parents.

11. A meeting of the first named respondent to consider the complaint took place on the 7th of December 2006. BG, who is a member of the first named respondent absented himself. Ms. O'Carroll gave a report on the incident and the applicant's behavioural history to the first named respondent which, following some consideration, recommended that an emergency meeting should be held on the 18th of December 2006. It was also advised that counselling should be offered to BG and that he should be invited to make a submission to the first named respondent for the purposes of the emergency meeting.

12. By letter dated the 8th of December 2006, Ms. O'Carroll invited the applicant and his parents to attend the meeting on the 18th of December 2006. Alternatively, they were invited to make a written submission to the first named respondent. The meeting went ahead as planned and was attended by the applicant and both of his parents. Once again, BG absented himself. At the meeting, the first named respondent was presented with a number of reports and testimonials, relating both to the incident and to the character of the applicant himself. A vigorous discussion took place, during which the applicant's father expressed the view that the matter had been blown out of all proportion and confirmed that the applicant thoroughly regretted the incident. The applicant himself also made certain submissions, requesting that BG should be produced to answer questions on the incident.

13. At the conclusion of the meeting, Ms. O'Carroll, the applicant and his parents all withdrew to allow the first named respondent to consider the submissions and the evidence. It concluded that the incident was a very serious one which had caused considerable distress for BG. On this basis, the first named respondent concluded that the applicant should be permanently excluded from the school.

14. By letter dated the 19th of December 2006, the applicant's parents were informed of the decision of the first named respondent. The letter also provided details of the right of appeal to the appeals committee under section 29 of the Education Act 1998 ('the 1998 Act') as well as instructions as to how to exercise such a right of appeal. Such an appeal was instituted on the applicant's behalf on the 20th of December 2006.

15. On the 26th of January 2007, the appeals committee conducted a hearing of the applicant's appeal, at which representations were made on his behalf. The evidence which had been before the first named respondent was also reviewed. By decision dated the 15th of February 2007, the appeals committee informed the applicant's parents that their appeal had been unsuccessful. The written decision noted that although the applicant's conduct could be construed as falling within the realm of a prank, the impact of the incident on the teacher in question was such as to merit the most serious sanction available to the first named respondent. The decision also detailed the factors which had been taken into account by the appeals committee, *inter alia* the Equality Authority's Code of Practice on Sexual Harassment and Harassment at Work and the fact that the applicant had since enrolled in another school. The decision concluded by noting that the school had not fully complied with its normal procedures and published policies in relation to initial suspension of the student but accepted that mitigating circumstances had pertained at the relevant time. All parties were then thanked for their co-operation with the appeal hearing.

16. Throughout the disciplinary process, the applicant's mother made efforts to contact the relevant educational welfare officer, Mr. Brendan Devereux. Mr. Devereux did not receive notification of the first named respondent's decision to expel the applicant until the 19th of December 2006. The applicant remained out of school from the 1st of December 2006 until a date in late January 2007, when he enrolled at Abbey Community College following the efforts of his mother to secure a place for him. As a consequence of his changing schools, the applicant was forced to take up a new subject for his Leaving Certificate owing to limitations in the new school's curriculum.

17. On the 23rd of April 2007, leave to apply by way of judicial review was granted by Peart J. in the High Court, on foot of which the applicant now seeks to challenge the decisions of the respondents.

II. The Submissions of the Parties

(a) Good Faith

18. The respondents submit, by way of a preliminary objection to the applicant's case, that he ought not to be afforded the relief which he seeks because he failed to observe the well-established requirement that an application for leave to apply by way of judicial review should be made in the utmost good faith. Specifically, the respondents contend that the affidavit of the applicant's mother, on which the application for leave was grounded, fails to disclose the material fact that on the 18th of December 2006 the first named respondent invited the applicant and his parents to attend an emergency meeting of the first named respondent. The respondents further emphasise that Ms. O'Donovan makes no mention of the fact that the applicant and his parents did in fact attend such a meeting, which considered a range of issues pertaining to the applicant's position in the school and at which extensive submissions were made by all parties. On this basis, the respondents submit that the applicant has not complied with the *ubberima fides* requirement and that his application should be refused on discretionary grounds.

19. The applicant responds to this argument by contending that the grounding affidavit of his mother cannot be read, on

any interpretation, to suggest that he and his parents did not attend the meeting with the first named respondent. He therefore submits that any putative deficiency in the content of the affidavit is immaterial to the real issues in these proceedings.

(b) Delay
20. The respondents also object to the applicant's case on the basis that he failed to comply with the requirements of Order 84 rule 21 of the Rules of the Superior Courts ('the Rules'). They submit that despite the fact that the decision to expel the applicant was communicated on the 19th of December 2006, he did not seek leave to apply by way of judicial review until the 23rd of April 2007. They argue that this delay of some four months and four days amounts to an unacceptable delay on the applicant's part, on the basis of which the relief sought ought to be refused.

21. The applicant contends that the submissions of the respondent on the issue of delay are predicated on an incorrect assessment of when time began to run for the purposes of the present proceedings. He argues that the operative date is either the 15th of February 2007, on which the official notification was received of the appeals committee's decision or, at the earliest, the 26th of January 2007 when the appeals hearing took place. On this basis the applicant suggests that he acted well within the time limits prescribed by the Rules.

(c) Mootness
22. The applicant has by now finished his secondary education at an alternative school and has enrolled in a third level institution. The respondents submit on this basis that it would be a meaningless exercise to grant the relief sought as it will afford no practical benefit to the applicant. They contend that, in the interests of justice, this Court should not entertain requests to engage in such a futile exercise.

23. The applicant maintains that, on the contrary, the outcome of the present application is of great significance to him. He has expressed an interest in becoming a member of An Gárda Síochána and fears that his efforts to do so will be hampered considerably unless his expulsion from the school is expunged from his record. The applicant further argues that the determinations of the respondents have caused him significant and ongoing personal anguish which can only truly be lifted by the erasure of the penalties imposed.

(d) Breach of Statutory Duty
24. The applicant argues that the failure of the first named respondent to notify the educational welfare officer of the situation until after the decision to expel him had in fact been made was a clear breach of its statutory duty under sections 21(4) and 24(4) of the Education (Welfare) Act 2000 ('the 2000 Act'). Those sections prescribe the circumstances in which a school's board of management is obliged to contact the relevant educational welfare officer, as well as the limitations on the board's powers arising from a failure to do so. The applicant contends that the actions of the first named respondent in expelling him were irreparably coloured by their failure to adhere to these provisions and, as such, were *ultra vires*. To this end, the applicant argues that the clear purpose of the sections in question is to allow the educational welfare officer to act in a mediatory capacity and prevent a school's authorities from summarily excluding a student.

25. The first named respondent concedes that the notification requirements under sections 21(4) and 24(4) were not complied with. However, it submits that this fact was of little consequence in the circumstances of the case and should not be sufficient to warrant the invalidation of the expulsion itself. In this regard, the first named respondent contends that the mediatory role of the educational welfare officer which is suggested by the applicant has no basis in the wording or intention of the 2000 Act.

(e) Error of Law
26. The applicant submits that the respondents fell into serious error of law in a number of respects while adjudicating on the incident of the 28th of November 2006. Specifically, it is asserted by the applicant that the appeals committee were guilty of manifest error of law in basing their decision to uphold the expulsion on considerations which were not relevant to the issues before them. In particular, the applicant argues that the issue of sexual harassment, as well as the fact that the applicant had obtained an alternative placement in another school were not relevant to the appeal which the appeals committee were required to consider. He suggests that, in taking such factors into account, the appeals committee deprived themselves of jurisdiction to affirm the decision of the first named respondent.

27. The respondents reject any suggestion that they were guilty of any material error of law in their adjudication on the disciplinary issues which lay before them. The appeals committee maintain that the references made to the Equality Authority's 'Code of Conduct on Sexual Harassment and Harassment at Work' and to the educational status of the applicant in their decision amount to nothing more than evidence that they took account of all the matters which were put before them during the appeal hearing. In the circumstances, they submit that their decision to affirm the expulsion was premised on entirely valid considerations.

(f) Fair Procedures
28. The applicant argues that the decisions of the respondents were made in breach of the principles of natural and constitutional justice and that they should be set aside on this basis. In particular, the applicant contends that the decision not to allow him or his parents to make representations at the meeting of the first named respondent on the 7th of December 2006 was a plain violation of the principle of *audi alteram partem*. This default in procedure was not remedied, in his submission, by the subsequent audience with the first named respondent on the 18th of December 2006, by which point a decision on his case had already been made. The applicant thus submits that he ought to have been permitted to explain his behaviour at the earliest opportunity, before the first named respondent had embarked on a consideration of such serious sanctions as expulsion. He submits that such an opportunity to make one's case is required by Clause B of the school's Code of Behaviour, drafted pursuant to section 23 of the 2000 Act. The applicant also alleges a number of other breaches of the school's Code of Behaviour, such as a failure to notify his parents in writing of the proposed sanctions to be imposed on foot of his behaviour.

29. It is also the applicant's case that the appeals committee were complicit in the breaches of natural justice by virtue of their failure to remedy such violations at the appeal stage. The applicant contends that despite express acknowledgement on their part of the defects in the first named respondent's procedures, they nonetheless proceeded to uphold the decision of the first named respondent to expel him.

30. The first named respondent submits that there was nothing untoward about the manner in which it chose to

investigate and adjudicate upon the complaint made against the applicant. It contends that the applicant was given more than sufficient opportunity to make representations and to explain his behaviour. It also emphasises that at all times it was careful to ensure that the applicant's parents were kept informed of every step in the disciplinary process.

31. The appeals committee dismiss any suggestion that they chose to overlook any breaches of fair procedures. Rather, they contend that they assessed the applicant's grievances concerning the manner in which the case had been considered and reached the conclusion that any oversights which did occur were insufficient to warrant the setting aside of the first named respondent's decision. Furthermore, the appeals committee submit that default of procedure was a ground of appeal on which they were specifically required to adjudicate, therefore their decision on the issue would only be reviewable if it were unreasonable within the meaning of that term as prescribed in *State (Keegan) v. Stardust Victims' Compensation Tribunal* [1986] IR 642 and *O'Keeffe v. An Bord Pleanála* [1993] 1 IR 39.

(g) Unreasonableness
32. The applicant contends that the decision of the appeals committee to uphold the expulsion imposed by the first named respondent ought to be struck down by this Court as void for unreasonableness. In the applicant's submission, the appeals committee could not logically have reached the determination which they did while also specifically expressing the view that the applicant's conduct "could ostensibly be viewed as falling into the realm of a prank". He asserts that to arrive at such a conclusion, while also recognising that the first named respondent failed to ensure full compliance with its normal procedures, flies in the face of fundamental reason and common sense. The applicant submits that the actions of the appeals committee, in further considering the case as one potentially amounting to sexual harassment, serves only to bolster the conclusion that they were acting illogically.

33. The appeals committee argue that their conclusion was a reasonable one, having regard to the considerable amount of evidence which was before them. In respect of the issue of sexual harassment, the appeals committee emphasise that in such cases the intention of the perpetrator is irrelevant. Therefore, while they concede that it may be unlikely that the applicant's conduct could be classified as such, they were obliged to be vigilant, particularly in light of a previous complaint which had been made against the school in this regard.

III. The Decision of the Court

(a) Good Faith
34. The importance of the principle that *ex parte* applications to the High Court, including those for leave to apply by way of judicial review, must be made in the utmost good faith, has received considerable judicial attention. In *State (Vozza) v. O'Floinn* [1957] IR 227, the Supreme Court emphasised the importance that an applicant for *certiorari* should behave with the utmost candour in respect of each of the reliefs which he seeks. However, I note that in that case, which has been more recently cited with approval in *de Róiste v. Minister for Defence* [2001] 1 IR 190, the Supreme Court further held that a want of disclosure in respect of one ground of challenge would not necessarily disqualify an applicant from pursuing others. In particular, Lavery J. stated at page 244:

> "I am unable to share the view… that a want of candour in regard to one of the grounds upon which application for *certiorari* was made disentitles the prosecutor to an order where, as here, he has established a ground which from the first was clearly stated and which in the manner in which it was dealt with in the affidavits is unaffected by any want of good faith."

35. The consequences for the applicant of the respondents' decisions in the present case are severe and pertain to him in his personal capacity. This is something which I am obliged to take into account when considering the appropriate exercise of the Court's discretion. It seems to me that the omission made in the grounding affidavit of Ms. O'Donovan is, to some extent at least, a significant one. The importance of absolute disclosure on applications for leave cannot be overemphasised; it is a principle without which this unique and special remedy could not operate. However, I cannot accept that the deficiencies in the affidavit in the present case have an equal bearing on the various grounds of challenge being advanced by the applicant.

36. The fact that the applicant and his parents were invited to a meeting with the first named respondent, and that they did in fact attend such a meeting, is of material relevance to the fair procedures argument alone. The fact that the applicant was afforded a right to make representations before the first named respondent at such an early stage in proceedings ought to have been clearly revealed during the ex parte application. I will not therefore grant any order based on a want of fair procedures. I am however willing, following the principle laid down in *Vozza*, to consider the applicant's case on the basis of the other grounds advanced.

(b) Delay
37. In the present case, I am of the opinion that the operative date for the purposes of any time limits ought to be the 26th of January 2007, the date on which the appeals procedure reached its conclusion. To hold otherwise would, in my opinion, be to unjustifiably penalise the applicant for availing of a discreet procedure provided herein. It falls for consideration, therefore, whether the resulting delay of some 2 months and 28 days ought to have a prohibitory effect on the applicant's case.

38. Order 84 rule 21 of the Rules provides as follows:

> "(1) An application for leave to apply for judicial review shall be made promptly and in any event within three months from the date when grounds for the application first arose, or six months where the relief sought is *certiorari*, unless the Court considers that there is good reason for extending the period within which the application shall be made.
>
> (2) Where the relief sought is an order of *certiorari* in respect of any judgment, order, conviction or other proceeding, the date when grounds for the application first arose shall be taken to be the date of that judgment, order, conviction or proceeding.(3) The preceding paragraphs are without prejudice to any statutory provision which has the effect of limiting the time within which an application for judicial review may be made."

39. It is clear that an application for judicial review may be refused even in circumstances where the applicant has failed to move promptly, albeit doing so within the specified time limits. However, the test for promptness is subjective and depends upon the circumstances of the particular case. In the Supreme Court decision of *Dekra Éireann Teoranta v. Minister for Environment and Local Government* [2003] 2 IR 270, Fennelly J. considered the promptness requirement and stated at page 302:-

> "[A] claim cannot normally be defeated for delay if it is commenced within the relevant period. There would need to be some special factor such as prejudice to third parties…"

Fennelly J. re-iterated this approach while speaking for the majority of the Supreme Court in *O'Brien v. Moriarty* [2006] 2 IR 221 where he stated at page 237 that:-

> "[M]atters have not reached the stage where an application made within time can be defeated in the absence of some special factor."

40. Applying this principle to the present case, no suggestion has been made on behalf of the respondents that they have been unduly prejudiced in any way. Therefore, taking into account the conduct of the applicant, the position of the other parties and the general circumstances of this case, it seems clear to me that the applicant should not be prevented from bringing his application for judicial review on this basis.

(c) Mootness

41. On an application for judicial review, the High Court will not exercise its supervisory jurisdiction in vain. This much is clear from decisions such as *Minister for Labour v. Grace* [1993] 2 IR 53 and *Barry v. Fitzpatrick* [1996] 1 ILRM 512. In the latter decision, the Supreme Court upheld the finding of Keane J. to the effect that "an order of *certiorari*, once it ceases to have any effect, is a pointless exercise and one which no court should undertake."

42. It seems to me, however, that there are in fact consequences which will inevitably flow from the decision of this Court. The fact that the applicant in the present proceedings succeeded to a considerable extent in mitigating the effect of the respondents' decision to expel him should not be allowed to weigh against him in the Court's consideration of his case. The presence of such a serious disciplinary sanction on the record of a young man in the applicant's position will inevitably have consequences for his reputation and self-esteem. This contrasts with the situation in *Barry* for example, in which the applicant sought to impugn a series of spent remand orders based on technical flaws therein. I find myself unable, therefore, to agree with the respondents' contention that the issues in this case are effectively moot.

(d) Breach of Statutory Duty

43. Section 21(4) of the 2000 Act imposes certain requirements on the board of management of a school, in circumstances where a student's attendance has been restricted in some way. It provides *inter alia*:

> "Where:-
>
> (a) a student is suspended from a recognised school for a period of not less than 6 days…
>
> the principal of the school concerned shall forthwith so inform, by notice in writing, an educational welfare officer."

44. Section 21(5) describes the duties and functions of the educational welfare officer in such cases. It provides:

> "On receiving a notice under subsection (4), an educational welfare officer shall:-
>
> (a) consult with the student concerned, his or her parents, the principal and such other persons as he or she considers appropriate, and
>
> (b) make all reasonable efforts to ensure that provision is made for the continued education of the child and his or her full participation in school."

45. Section 24 of the 2000 Act deals with the expulsion of students. It provides as follows:

> "(1) Where the board of management of a recognised school or a person acting on its behalf is of the opinion that a student should be expelled from that school it shall, before so expelling the student, notify the educational welfare officer to whom functions under this Act have been assigned, in writing, of its opinion and the reasons therefor.
>
> (2) The educational welfare officer concerned shall, as soon as may be after receiving a notification under subsection (1), make all reasonable efforts to ensure that provision is made for the continued education of the student to whom the notification relates.
>
> (3) For the purposes of subsection (2), the educational welfare officer concerned shall, as soon as may be after receiving the said notification:-
>
> > (a) make all reasonable efforts to consult with the principal of the school concerned or a person nominated by him or her, the student concerned and his or her parents, and such other persons as the educational welfare officer considers appropriate, and
> >
> > (b) convene a meeting attended by him or her of such of those persons as agree to attend such meeting.
>
> (4) A student shall not be expelled from a school before the passing of 20 school days following the receipt of a

notification under this section by an educational welfare officer.

(5) Subsection (4) is without prejudice to the right of a board of management to take such other reasonable measures as it considers appropriate to ensure that good order and discipline are maintained in the school concerned and that the safety of students is secured."

46. It is clear from both section 21(5)(b) and section 24(2) of the 2000 Act that the primary function of the educational welfare officer is to ensure the continuing education of the student, in situations of both extended suspension and expulsion respectively. Sections 21(5)(a) and 24(3) of the 2000 Act prescribe the methods to be employed in performing this function. I cannot accept the applicant's submission, in the absence of clear statutory provision to such effect, that the role of the officer is akin to that of a professional mediator, ensuring that emotions have cooled before any potentially rash and irreversible decisions are made. Nothing in the statutory framework accords him such a role.

47. However, it is clear nonetheless that the educational welfare officer plays an extremely important role in the disciplinary process. The officer's job is to ensure that the student's educational future is not jeopardised, by either arranging for his return to the disciplining school or obtaining alternative placement elsewhere. The value of a mechanism which ensures that the minimum disruption is occasioned to a student's education should not be underestimated, especially in the case of an individual in the Leaving Certificate cycle. This is reflected in the language of the 2000 Act, which is mandatory in its terms and states variously that measures should be taken "forthwith" and "as soon as may be". Of particular importance is the clear prohibition in section 24(4) against the expulsion of a student, without allowing a period of twenty days for the educational welfare officer to perform his or her function. The continuity of the child's education is clearly at the forefront of the statutory provisions.

48. In the present case, the applicant spent a considerable number of weeks out of school, spanning almost the entire duration of the disciplinary process. Due almost exclusively to the efforts of his mother, he managed to obtain an alternative placement. The applicant was, however, forced to take on a new subject in the middle of his Leaving Certificate studies and to sacrifice one for which he had a great affinity. The statutory procedures relating to the educational welfare officer were plainly ignored by the first named respondent. I cannot accept the submission that this default of procedure was inconsequential. While the educational welfare officer might not have been able to reinstate the applicant in the original school, it is highly probable that he would have been disposed to obtain an alternative placement with greater speed, or in a school with a more apposite curriculum.

49. I am unable to accept any argument to the effect that the circumstances of the case were such as to engage the exception contained in section 24(5) of the 2000 Act. Following the incident of the 28th of November 2008, there is nothing to indicate that the applicant posed a continuing threat to order and discipline within the school, nor is their evidence to suggest that any issue of student safety was involved. The applicant's expulsion was therefore achieved in plain violation of statutory procedure, from which it is clear that his continuing education was unduly hampered. This is something which should not have been ignored by the appeals committee and it amounts to a breach of duty which the Court cannot overlook.

(e) Error of Law

50. Where a decision-making body reaches its determination under some fundamental misconstruction of the law, the High Court may set the decision aside on judicial review. However, the jurisdiction to rectify such errors is not without limit. In *Anisminic Ltd. v. Foreign Compensation Tribunal* [1969] 2 AC 147, Lord Reid delineated the circumstances which would amount to an error of law of sufficient gravity to warrant an order of *certiorari*. He stated at page 171:-

"There are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the requirements of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly."

This statement was expressly endorsed in this jurisdiction by Keane J. in *Killeen v. Director of Public Prosecutions* [1997] 3 IR 218 at pages 227-228.

51. The crucial question therefore, is whether the error made by the tribunal of fact is such as to deprive it of jurisdiction to determine the issue. In the present case, I cannot accept that the appeals committee lacked jurisdiction to even consider the educational status of the applicant or the issue of sexual harassment; there might well be cases where these issues would lie at the very heart of the determination to be made by them. While the references to these points were both unnecessary and unfortunate in the circumstances of the case, they were not sufficiently grave to deprive the appeals committee of jurisdiction entirely. It seems to me that their decision was predicated on an assessment of the totality of the evidence as opposed to a single erroneous interpretation of the question which they were required to address.

(f) Fair Procedures

52. For the reasons outlined above, I have taken the view that the applicant should not be permitted to maintain his challenge on this ground. It is clear that there was certain non-disclosure at the leave stage of facts which were of considerable importance to any argument that the applicant had been denied natural justice.

(g) Unreasonableness

53. It is well-established as a matter of law that the High Court is not entitled, on an application for judicial review, to simply substitute its own view for that of the decision-maker. The unilateral assumption of such an appellate jurisdiction would be inconsistent with the purely supervisory role which the Court is required to perform. In *O'Keeffe v. An Bord Pleanála* [1993] 1 IR 40, Finlay C.J. described the parameters of the Court's function on judicial review in a passage which

has become one of the touchstones of the Court's jurisdiction to grant this unique and special remedy. He stated at page 71:

> "It is clear from these quotations that the circumstances under which the court can intervene on the basis of irrationality with the decision-maker involved in an administrative function are limited and rare. It is of importance and, I would think, of assistance to consider not only as was done by Henchy J. in *The State (Keegan) v. Stardust Compensation Tribuna*l [1986] I.R. 642 the circumstances under which the court can and should intervene, but also in brief terms and not necessarily comprehensively, to consider the circumstances under which the court cannot intervene. The court cannot interfere with the decision of an administrative decision-making authority merely on the grounds that (a) it is satisfied that on the facts as found it would have raised different inferences and conclusions, or (b) it is satisfied that the case against the decision made by the authority was much stronger than the case for it."

54. The task which befalls the Court, therefore, is not to re-evaluate the evidence in favour of and against the decision made by the appeals committee but rather to examine whether there was any basis upon which they could reasonably have reached the conclusions which they did. It seems to me, in the present case, that the sanction imposed on the applicant may not have been entirely proportionate to the conduct which gave rise to it. However, there were undoubtedly concerns of a valid and pressing nature which led the appeals committee to uphold the imposition of the most serious penalty available.

55. The references made to the issue of sexual harassment, which I do not think had any meaningful application to the present case, were unfortunate. In my view, the incident did not amount to sexual harassment. It was no more than an incident of highly inappropriate horseplay in the course of a school football match. However, there were several other important considerations which supported the substantive conclusions of the appeals committee. I am therefore of the opinion that their decision does not fall to be condemned on the basis of irrationality.

IV. Conclusion

56. In light of the foregoing, it seems clear to me that the determinations of the first named respondent and the appeals committee were not reached in violation of the ordinary requirements of reasonableness or in manifest error of law. However, there was nonetheless a plain and unambiguous violation of the requirement under sections 21(4) and 24(1) of the 2000 Act to engage with the educational welfare officer. The role of the educational welfare officer is a vital one. It is to ensure that there is no untoward break in the continuous education of a child where disciplinary procedures such as expulsion or a long period of suspension are in contemplation. In this case, the applicant was studying for his Leaving Certificate. The change of school alone was likely to have a serious effect on his performance at this crucial time. The absence from school for an extended period at Christmas of his Leaving Certificate year was most undesirable and in my view exactly what the statutory framework seeks to avoid. I am of the opinion that the expulsion process was tainted by this error on the part of the school.

57. I will therefore grant a declaration that the decisions of the first named respondent and the appeals committee herein to expel the applicant were made in breach of his statutory rights and I will also grant orders of *certiorari* quashing the applicant's expulsion on the basis of the breach of that statutory duty. I will refuse the orders of *mandamus* as it is clear that there is nothing to be gained from remitting these matters for further consideration by the first named respondent.