[2017] IEHC 384

THE HIGH COURT

2015 No.637JR

BETWEEN:

JOSEPH MURTAGH

APPLICANT

– AND –

JUDGE KEVIN KILRANE,

COMMISSIONER OF AN GARDA SÍOCHÁNA,

IRELAND, AND THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Mr Justice Max Barrett delivered on 14th June, 2017.

I: Background

1. Mr Murtagh has commenced judicial review proceedings seeking:

> (1) a declaration that the first-named respondent wrongfully refused to recuse himself from dealing in any manner with the prosecutions arising from certain summonses;
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> (2) an order of certiorari quashing a particular decision of the first-named respondent to send the case to a different judge;
>
> (3) a declaration that the prosecutions in issue proceed before the judge who ordinarily would have heard the case following the date on which the first-named respondent ought (it is claimed) to have recused himself (whom Mr Murtagh in his amended statement of grounds styles the "natural judge") ;
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> (4) an order prohibiting the second-named respondent from prosecuting the cases featured in the summonses aforesaid except before the so-called natural judge or such other judge as the President of the District Court may designate; and
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> (5) certain ancillary reliefs.

2. The crux of matters so far as the grounds for recusal is concerned, at least per the statement of grounds, appears to be that "[Mr Murtagh] *is a former client of the 1st named Respondent* [from the latter's days as a practising solicitor] *and they parted on bad terms*." Objection also appears to be taken to the fact that, when recusing himself on 20th October, 2015, the learned District Judge stated that *"I have set a date for hearing before another Judge…on the 27th November".* Among Mr Murtagh's concerns, as the court understands them, is that the learned District Judge may himself have arranged who would sit as substitute judge and, per the statement of grounds "*he* [Mr Murtagh] *does not know what* [the learned District Judge]…*may have told him* [the substitute judge] *about the case or about his previous engagements with Mr Murtagh".*

3. The mainstay of the judicial review application will be heard at some future stage; the substantive matters at issue in that application are not a matter for this Court to adjudicate upon and it makes no comment or finding in relation to them. What is before the court at this time is an application that arises consequent upon the filing of the statement of opposition in the judicial review proceedings. That statement of opposition was filed on behalf of the respondents on 29th April, 2016, together with two affidavits, being (a) an affidavit sworn by the District Court Clerk who appears to have sat with the first-named respondent on the relevant dates, verifying the facts set out in the respondents' statement of opposition, and (b) an affidavit sworn by the secretary to the President of the District Court concerning the receipt of a telephone call from the Clerk referred to at (a), and swearing to the process whereby an alternative judge was assigned to hear the summonses concerning Mr Murtagh.

4. Following receipt of the documentation aforesaid, the solicitors for Mr Murtagh appear to have been concerned by what they continue to perceive to be the paucity of supporting documentation provided by the respondents. By letter of 26th May, 2016, Mr Murtagh's solicitors wrote to the Chief State Solicitor's Office (CSSO) seeking further documentation concerning the within proceedings. In order to better understand the motion now brought, it is useful to recite certain relevant extracts from that letter and the ensuing correspondence:

> (1) Letter of 26th May, 2016, from Mr Murtagh's solicitors to CSSO.
> *"We refer to the Statement of Opposition in the above proceedings….We would draw your attention to the obligation of full disclosure on Respondents in judicial reviews, as clarified in pp. 307 and 316, paras 21 and 49 of the Supreme Court's decision in* O'Neill v. Governor of Castlerea Prison *[2004] 1 I.R. 299.*
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> *We call on your client to supply the full particularity and exhibit all related documentary material concerning the opposition they have proffered".*
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> (2) Letter of 1st June, 2016, from CSSO to Mr Murtagh's solicitors.
> *"As you are aware two Affidavits have been delivered with the Statement of Opposition and we fail to see the relevance of the decision in O'Neill…in the circumstances of this case.*
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> *Unfortunately, it is not at all clear from your letter, what it is that the Applicant is seeking. Perhaps you would set out clearly and precisely what it is you are looking for and the basis upon which you are looking for the same so that we are at least in a position to consider your request and make a decision in relation thereto."*
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> (3) Letter of 14th June, 2016, from Mr Murtagh's solicitors to CSSO.
> *"We believe we have adequately identified the deficiency in your client's opposition papers by drawing your attention to what the Supreme Court holds is required of Respondents. There is a remarkable deficiency of documentary evidence supporting the broad assertions contained therein. Please remedy that deficiency, taking account of your client's full*

disclosure 'warts and all' obligation, so that it should not be necessary for our client to seek discovery or apply to have the case dealt with on oral evidence".

II: Reliefs Now Sought

5. Arising from the foregoing, Mr Murtagh has issued a notice of motion seeking the following reliefs:

> (1) an order, it seems (there appear to be certain words missing from the notice of motion), requiring that the CSSO take such actions as are required to comply with the decision of the Supreme Court in *O'Neill*, which order would include but not be limited to requiring that the respondents file supplementary affidavits that properly exhibit all documents in their power, possession or procurement that they, by their officers, servants and/or agents have relied upon to ground the assertions in the statement of opposition, including but not limited to (I) the supporting documentation that justifies the assertions of the legal and/or factual circumstances and consequences as deposed to by the secretary to the President of the District Court; (II) the supporting documentation that justifies the assertions of the legal and/or factual circumstances and consequences as deposed to by the District Court Clerk who sat with the learned District Court judge on the relevant dates;
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> (2) an order pursuant to O.84, r.22(4)[1] of the Rules of the Superior Courts 1986, as amended (the 'RSC'), that results in compliance with the said rule, which order would include but not be limited to requiring that the respondents file the supplementary affidavits referred to at (1);
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> (3) an order pursuant to O.40, r.4[2] of the RSC that results in compliance with the said rule, which order would include but not be limited to requiring that the respondents file the supplementary affidavits referred to at (1);
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> (4) an order striking out the statement of opposition as filed by the respondents for non-compliance with the jurisprudence of the Supreme Court, including but not limited to the decision in *O'Neill*, as well as O.84, r.22(4) and O.40, r.4 of the RSC;
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> (5) such further or other orders and/or consequential directions that seem meet and just to the court; and
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> (6) certain ancillary relief.
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> [1] Order 84 is headed "*Judicial Review and Orders Affecting Personal Liability".* Order 84, rule 22(4) provides as follows:
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> > *"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 on 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 a prescribed form]…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 if the respondent's solicitor (if any)."*
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> [2] Order 40 is headed "*Affidavits*". Order 40, rule 4 provides as follows:
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> > *"Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, and shall state his means of knowledge thereof, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of any affidavit which shall unnecessarily set forth matters of hearsay or argumentative matter, or copies of or extracts from documents, shall not be allowed."*

6. At the hearing of the within application, there was not much mention of the rules of court on which reliance is placed. Rather, without resiling in any way from the reliefs sought pursuant to the RSC, counsel for Mr Murtagh concentrated on the alleged non-compliance by the respondents with (a) the decision of the Supreme Court in *O'Neill* and (b) what was referred to by counsel for Mr Murtagh as the 'duty of candour' to which, *inter alia*, the respondents in the within proceedings are subject.

III. The Decision in *O'Neill*

7. *O'Neill v. Governor of Castlerea Prison* [2004] 1 I.R. 298 concerned a failed application by two onetime IRA members seeking early release from prison pursuant to certain early-release arrangements put in place by the Oireachtas consequent upon the agreement of a treaty between Ireland and the United Kingdom as part of the Northern Ireland peace process. In the course of a failed appeal to the Supreme Court against a finding by the High Court that the applicants were not (as they needed to be if early release under the relevant legislation was to be granted) "*qualifying prisoners*", it was submitted by counsel for the applicants, *inter alia*, per Keane C.J. (giving judgment for the Supreme Court), at 307:

> *"…that the second respondent [the Minister for Justice, Equality and Law Reform], in failing to disclose at any stage the materials on which he had acted in declining to specify the applicants as being qualified prisoners, had not discharged his obligations in responding to an application for judicial review to make full disclosure of all relevant materials or information in his possession, citing Fordham, Judicial Review Handbook (3rd ed.) 2001 at pp. 31 to 33. He said that in other cases such as* Doherty v. Governor of Portlaoise Prison *[2002] IESC 8…the second respondent had recognised that he was under such a duty by filing an affidavit setting out the reasons for his determination."*

8. Keane C.J. later agreed with this submission as a proposition, though without elaborating at any length on the nature or specifics of the duty arising. Thus, per Keane C.J., at 316:

> *"The argument on behalf of the applicants, that in judicial review proceedings a respondent should disclose to the court all the materials in its possession which were relevant to the decision sought to be impugned, is well-founded, although it would doubtless not require the respondents to disclose material in respect of which in a discovery process they would be entitled to claim privilege."*

IV. The Duty of Candour

(i) The observations in Fordham.

9. Since the decision in *O'Neill*, Mr Fordham's learned text (a British textbook, but one still very useful to the Irish reader) has gone through a further three editions. Under the sub-heading "*Defendant/interested party's duty of candour*", Fordham (6th ed.) makes, *inter alia,* the following observations, at para. 10.4:

> *"A defendant public authority and its lawyers owe a vital duty to make full and fair disclosure of relevant material. That should include (1) due diligence in investigating what material is available; (2) disclosure which is relevant or assists the claimant, including on some as yet un-pleaded ground; and (3) disclosure at the permission stage if permission is resisted….A main reason why disclosure is not ordered in judicial review is because Courts trust public authorities to discharge this self-policing duty, which is why such anxious concern is expressed where it transpires that they have not done so."*

(ii) O'Neill and the Duty of Candour.

10. The first sentence of the last-quoted text appears to be but an alternative way of stating what Keane C.J. stated in *O'Neill,* at 316, viz. *"that in judicial review proceedings a respondent should disclose to the court all the materials in its possession which were relevant to the decision sought to be impugned*". But do all of items (1)–(3) in the above-quoted text come within the embrace of the just-quoted observation of the Chief Justice?

11. Item (3) is not relevant to the within application and the court makes no observation regarding same.

12. Item (1), it seems to the court, comes within the ambit of the Chief Justice's observation in *O'Neill*. That this is so seems easily tested. Could a public entity truthfully assert that it had disclosed to a court all the materials in its possession which are relevant to an impugned decision if it had not previously investigated what material was available? The answer to this question is 'no'. It follows, therefore, that the obligation referred to at item (1) must be satisfied if the State is to act in accordance with the Chief Justice's observation in *O'Neill.*

13. What about item (2)? Applying the same test as was just applied in respect of item (1), the court has no hesitation in concluding that the obligation identified by the Chief Justice extends to making disclosure which is relevant or assists an applicant. But what about disclosure to an applicant concerning, to borrow from the wording of Fordham, *"some as yet un-pleaded ground"*? If Mr Murtagh means to contend (and the court understands him to contend) that an obligation to make disclosure which is relevant or assists the claimant "*including on some as yet un-pleaded ground*" can arise as part of a duty on public bodies, for example, (a) to ensure that the court has before it all materials which are reasonably required for it to arrive at an accurate decision in particular proceedings and/or (b) to assist the court in providing full and accurate explanations of all the facts relevant to the issues that the court must decide, then there is a relative abundance of authorities in the neighbouring jurisdiction which are not merely consistent with but well within the ambit of the decision in O'Neill and which support propositions (a) and (b). The court turns now to consider various of these authorities.

(iii) A Brief Aside on Some Foreign Case-Law of Relevance.

a. *Graham v. Police Service Commission*

[2011] UKPC 46

14. In *Graham,* a case referred to by Fordham, the appellant was a career police officer whose complaint, in essence, was that his promotion from Assistant Superintendent to Superintendent should have been back-dated so as to take effect on the same date as the promotion to Superintendent of other officers who were junior to him. Mr Graham's claim was successful before the trial judge, he unsuccessfully appealed the level of damages awarded to him, and his further appeal to the Privy Council was likewise unsuccessful. In the course of giving judgment for the Judicial Committee, Sir John Laws, in assessing where the burden of adducing evidence of pecuniary loss lay, observed*, inter alia*, as follows, at para. 18:

> *"It is well established that a public authority, impleaded as respondent in judicial review proceedings, owes a duty of candour to disclose materials which are reasonably required for the court to arrive at an accurate decision. In* R v Lancashire CC *ex p. Huddleston [1986] 2 AER 941…Lord Donaldson MR stated at 945c that the modern development of judicial review had created*
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> > *'a new relationship between the courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration'."[1]*
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> > [1] Court Note: Later in the same judgment, Lord Donaldson MR, again at 945, addressed the submission that it was not for a public authority to make out the applicant's case for him, deploying a memorable and often quoted phrase in the process, stating that "*This* [submission], *in my judgment, is only partially correct. Certainly it is for the applicant to satisfy the court of his entitlement to judicial review and it is for the respondent to resist his application, if it considers it to be unjustified. But it is a process which falls to be conducted with all the cards face upwards on the table and the vast majority of the cards will start in the authority's hands."*

15. Notable in the foregoing, and consistent with the observation of Keane C.J. in *O'Neill* that "[I]*n judicial review proceedings a respondent should disclose to the court all the materials in its possession which were relevant to the decision sought to be impugned*" is the emphasis placed by the English authorities on the fact that the duty of candour that arises for public bodies is a duty owed to the court, which in the context of judicial review proceedings is acting in partnership with those public bodies to ensure the highest standards of public administration. An applicant clearly benefits from the proper discharge by a public body of the duty of candour arising. However, the duty arising is one owed to the court, and breach of that duty yields an affront to the court that, at the very least, would appear logically to yield the result that it may be appropriate to draw inferences against the public body upon any points which remain obscure thanks to any (if any) breach of the duty of candour arising in any one instance.

b. R (Quark Fishing Ltd) v. Secretary of State for Foreign and Commonwealth Affairs

16. In *Quark*, a case referred to by Fordham and concerning the refusal of a lucrative fishing licence, which refusal was quashed by the High Court (with an ensuing appeal proving unsuccessful), the Court of Appeal of England and Wales was confronted with what appears to have been a want of frank disclosure, Laws L.J., at para. 50, observed as follows in respect of the duty of candour:

> *"[Counsel for the Secretary of State] submits, correctly, that there is no duty of general disclosure in judicial review proceedings. However there is – of course – a very high duty on public authority respondents, not least central government, to assist the court with full and accurate explanations of all the facts relevant to the issue the court must decide."*

c. Secretary of State for the Home Department v.

The Special Immigration Appeals Commission, AHK and ors

[2015] EWHC 681 (Admin)

17. The court has been referred to two further cases of the courts of England and Wales which post-date the current edition of Fordham but which contain additional helpful commentary for any court asked to consider (as this court is required to consider) the full ambit and effect of that duty touched upon by Keane C.J. in O'Neill. Thus in *AHK (2015),* the High Court had to consider the extent to which the Secretary of State was required to disclose to special advocates appointed to represent interested parties certain secret information relied upon by the Secretary of State when, for example, making a direction to exclude a non-EEA national from the United Kingdom (usually, it seems, on grounds of national security).

18. In the course of giving judgment for a divisional court, Leveson P., at paras. 11–12, quoted the above-quoted extract from the judgment of Lord Donaldson M.R. in *Huddleston* and then continued as follows:

> "*The principle is expressed in the Treasury Solicitor's* Guidance on Discharging the Duty of Candour and Disclosure in Judicial Review Proceedings (2010), as being *'not to win the litigation at all costs but to assist the court in reaching the correct result and thereby to improve standards in public administration'. The nature and extent of the duty is also expressed in* R (Al Sweady) v. The Secretary of State for Defence *[2010] HRLR 12, per Scott Baker LJ, following Laws LJ in [Quark]".*

d. R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No 2)

[2016] UKSC 35

19. The decision of the United Kingdom Supreme Court last year in *Bancoult* (No. 2) neatly caps the court's consideration of, *inter alia, Fordham, Graham*, and *Quark* because it relies upon and effectively affirms certain elaborations of principle in those earlier cases, which elaborations of principle this Court has sought to demonstrate in the within judgment are not merely consistent with, but come squarely within the ambit of, the above-quoted observations of Keane C.J. in *O'Neill*, and thus are applicable also as a matter of Irish law.

20. *Bancoult (No. 2)* was a case in which the UK Supreme Court had to decide whether the majority decision in *R (Bancoult) v. Secretary of State for Foreign and Commonwealth Affairs (No. 2)* [2008] UKHL 61 ought to be set aside, *inter alia*, on the ground that the Secretary of State failed (and the Secretary did fail) in breach of his duty of candour in public law proceedings, to disclose documents containing information which it was said would have been likely to have affected the factual basis on which the House proceeded.

21. In his dissenting judgment, though he appears to be stating but trite English law in this regard, Lord Kerr observes as follows regarding the duty of candour:

> *"183. A respondent's duty of candour in judicial review proceedings is summarised at p 125 of Fordham's* Judicial Review Handbook *6th ed. (2012):*
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> > 'A defendant public authority and its lawyers owe a vital duty to make full and fair disclosure of relevant material. That should include (1) due diligence in investigating what material is available; (2) disclosure which is relevant or assists the claimant, including on some as yet un-pleaded ground; and (3) disclosure at the permission stage if permission is resisted. … A main reason why disclosure is not ordered in judicial review is because courts trust public authorities to discharge this self-policing duty, which is why such anxious concern is expressed where it transpires that they have not done so.'
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> *184. In* R (Quark Fishing Ltd) *v* Secretary of State for Foreign and Commonwealth Affairs *[2002] EWCA Civ 1409 at [50] Laws LJ said*, 'there is a...very high duty on public authority respondents, not least central government, to assist the court with full and accurate explanations of all the facts relevant to the issue which the court must decide.' *The duty extends to disclosure of* 'materials which are reasonably required for the court to arrive at an accurate decision': Graham *v.* Police Service Commission *[2011] UKPC 46 at [18]. The purpose of disclosure is to* 'explain the full facts and reasoning underlying the decision challenged, and to disclose relevant documents, unless, in the particular circumstances of the case, other factors, including those which may fall short of public interest immunity, may exclude their disclosure: R (AHK) *v* Secretary of State for Home Department (No 2) *[2012] EWHC 1117 (Admin) at [22]."[1]*
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> [[1] Court Note: This is not the same *AHK* case as has been referred to by the court previously above, though it does appear that the same individual may have been involved. In the 2012 case, AHK sought the quashing of a decision and the provision of sufficient information on which to respond to the Home Secretary's refusal to grant him naturalisation].

e. Belize Alliance of Conservation Non-Governmental

22. One final case worth mentioning, if only because it attracted some attention at the hearing of the within application, is the judgment of the Privy Council in *Belize Alliance*. Lord Walker, in a dissenting judgment in that case, quoted the segments of the judgment of Lord Donaldson MR, to which the court has made reference previously above, and then continued as follows:

> *"86. Similar observations* [to those made by Lord Donaldson MR] *have been made in many later cases, including several decisions of the House of Lords. It is now clear that proceedings for judicial review should not be conducted in the same manner as hard-fought commercial litigation. A respondent authority owes a duty to the court to cooperate and to make candid disclosure, by way of affidavit, of the relevant facts and (so far as they are not apparent from contemporaneous documents which have been disclosed) the reasoning behind the decision challenged in the judicial review proceedings."*

23. At the hearing of the within application, counsel for the respondents sought to diminish the reliance placed by counsel for Mr Murtagh on Fordham by noting that the fact that the judgment of Lord Walker was a dissenting judgment is not noted in the relevant segment of Fordham (albeit that it may be noted elsewhere in what is a lengthy and learned treatise). Be that as it may (and it seems in any event a point that is less critical when one approaches an authority that is in any event merely persuasive, as opposed to binding), it is clear, with respect, that Lord Walker considered himself in the above-quoted text to be, and in this Court's respectful opinion was, by the time of the decision in *Belize Alliance*, but stating already settled principles of law expounded upon and validated in the deciding judgments in an abundance of cases in our neighbouring jurisdiction, only some of the more prominent of which have been considered in the within judgment.

24. One possibly notable aspect of the judgment of Lord Walker is that it appears to move beyond the observation of Keane C.J. in *O'Neill,* at 316, that "[I]*n judicial review proceedings a respondent should disclose to the court all the materials in its possession which were relevant to the decision sought to be impugned, is well-founded"* by asserting that a respondent authority not only "*owes a duty to the court to cooperate and to make candid disclosure, by way of affidavit, of the relevant facts*" but also "*so far as they are not apparent from contemporaneous documents which have been disclosed*" to make candid disclosure, again by way of affidavit, of "*the reasoning behind the decision challenged in the judicial review proceedings*." However, given the extent to which the need for reasoned decision-making is now a feature of Irish administrative law, it seems likely that any divergence arising in this regard is more apparent than real; in truth, the observations of Lord Walker, though rendered, it seems, oblivious of the observations of the Chief Justice in *O'Neill,* appear to be but a logical corollary of the latter.

V. Applicable Principles

25. It appears to the court that the following principles can be gleaned from the foregoing analysis:

> (1) In judicial review proceedings a respondent should disclose to the court all the materials in its possession which are relevant to the decision sought to be impugned; this duty does not require the respondents to disclose material in respect of which in a discovery process they would be entitled to claim privilege. *(O'Neill).*
>
> (2) Save as referred to in *O'Neill,* there is no duty of general disclosure in judicial review proceedings. There is, however, a very high duty on public authority respondents to assist the court with full and accurate explanations of all the facts relevant to the issue/s the court must decide. *(Quark).*
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> (3) The said duty (often referred to as a 'duty of candour') springs in part from the fact that the modern development of judicial review has created a new relationship between the courts and public bodies, being one of partnership based on the common aim of maintaining the highest standards of public administration. *(Huddleston).*
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> (4) The object of a public body in judicial review proceedings is not to win litigation at all costs but to assist the court in reaching the correct result and thereby to improve standards in public administration. *(AHK (2015)).*
>
> (5) Proceedings for judicial review should not be conducted in the same manner as hard-fought commercial litigation. A respondent authority owes a duty to the court to cooperate and to make candid disclosure, by way of affidavit, of the relevant facts and (so far as they are not apparent from contemporaneous documents which have been disclosed) the reasoning behind the decision challenged in the judicial review proceedings. *(Belize Alliance).*
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> (6) The notion that it is not for a public body to make out an applicant's case for him is only partially correct. It is for the applicant to satisfy the court of his entitlement to judicial review and it is for the respondent to resist his application, if it considers it unjustified. But it is a process which falls to be conducted with all the cards face upwards on the table and the vast majority of the cards will start in the public body's hands. *(Huddleston).*
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> (7) Put shortly, the duty of candour which rests on a respondent in judicial review proceedings to make full and fair disclosure of relevant material embraces (1) due diligence in investigating what material is available, (2) disclosure which is relevant or assists the claimant, including on some as yet un-pleaded ground, and (possibly) (3) disclosure at the permission stage if permission is resisted ('possibly' because point (3) is not at issue in the within application) (Fordham).
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> (8) The purpose of disclosure is to explain the full facts and reasoning underlying the decision challenged, and to disclose relevant documents, unless, in the particular circumstances of the case, other factors, including those which may fall short of public interest immunity, may exclude their disclosure *(Bancoult, AHK (2012)).*
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> (9) The duty of candour is largely self-policing (which is why, in the neighbouring jurisdiction, anxious concern is understandably expressed if and when it transpires that public bodies have failed properly to discharge the duty arising). (Fordham).

VI. The Within Application

26. The particular difficulty that Mr Murtagh faces in the within application is that he has not pointed to evidence which suggests that the respondents are in any way in breach of the law as identified above. Repeatedly asking a public entity to comply with its

duties at law and then complaining that the public entity has not complied with the law is a course of action that will only result in success in an application such as that now presenting where there is some evidence by reference to which the court can reach the conclusion, on the balance of probabilities, that there has indeed been a breach by that public entity of its obligations at law. Such evidence is lacking in the within application. With every respect, Mr Murtagh's complaint comprises nothing more than a generalised complaint that some unspecified documentation which he thinks might exist, but of which there is no evidence as to its existence, has not been exhibited. Undoubtedly, there is an inherent problem with a self-policing duty such as the duty of candour in that breaches of such a duty may often escape detection for the simple reason that only public entities know in the first instance whether they are doing as is required of them by law. That is one reason why consequences such as the drawing of inferences against a public body and/or in terms of costs ordered and/or otherwise may well follow where a breach of the duty of candour can be identified on the basis of the evidence before a court. However, no such breach can be so identified in the within application, at least on the facts as presented. That this is so suffices to justify a refusal of the reliefs sought by Mr Murtagh by reference to the decision in *O'Neill.*

27. As for the reliefs sought by Mr Murtagh by reference to O.40, r.4 and O.84, r.22(4) of the Rules of the Superior Courts, the respondents appear to have fully complied with their obligations under those rules: the requisite affidavits have been filed and conform with the rules aforesaid.

VII: Conclusion

28. Having regard to all of the foregoing, the court is coerced as a matter law into respectfully refusing all of the reliefs now sought of it by and for Mr Murtagh.