

APPROVED



**AN ARD-CHÚIRT
THE HIGH COURT**

[2024] IEHC 664

[Record No. HP2024/3929P]

BETWEEN

M.M.

PLAINTIFF

AND

A UNIVERSITY

DEFENDANT

Judgment delivered on 12 November 2024 in Court 10, Four Courts, Dublin 7 by Mr.

Justice Tony O'Connor

1. The Court acknowledges the highly sensitive and private nature of the factual matrix in these proceedings. Not only is the Court concerned with the wish expressed on behalf of the plaintiff for confidentiality, it is also alert to the effect of a particular allegation of the plaintiff on other students in the plaintiff's year, faculty and university. Those students include the student against who the plaintiff has made a serious allegation of wrongdoing. That student who is in the year below the plaintiff has not been informed of the allegation because the plaintiff only disclosed the alleged fact during and limited to the process which is the subject of these proceedings. The allegation if publicized according to the evidence before

the Court will affect a cohort of students who have not been alerted to the allegation. The student without notice of the allegation and a significant cohort of students are entitled to have their reputations, careers and studies protected and vindicated by this Court. In short the challenge or task for this Court is to weigh on the one side: (i) the right to privacy of the plaintiff; (ii) the rights of the said unidentified student; (iii) the rights of a cohort of students who will according to the evidence before the Court and what the Court recognises of its own accord to be free of any unnecessary implication or speculation about having committed a serious criminal offence against on the other side, the fundamental right to freedom of information.

2. I continue to research and read about the approach of the Court of Justice and courts in other EU states relating to anonymisation and what has been termed “pseudonymisation”. The former completely obscures personal information in an irreversible manner so that there is no chance of recovering while pseudonymisation partially identifies a personal datum with a possibility of tracing it back to its original form. Pseudonymisation is the current practice among many EU member states.

3. *Gilchrist & Rogers v Sunday Newspapers* [2017] IESC 18 and [2017] 2 IR 284 is at the forefront of my mind. The core issues for determination according to the plaintiff’s issue paper received by the Court today and not commented upon by the defendant yet, could when determined have effects on the current and future application of the academic regulations of the University and particularly the relevant faculty. The Court has considered whether to direct that the proceedings be heard in camera or to be the subject of pseudonymisation as I have defined that term.

4. The Court is not aware of a demand, pressing or otherwise, for release of details in the factual matrix. However, it cannot anticipate what may emerge not only in these proceedings but in circumstances which may align with the principles and regulations involved. In other

words, casting a blanket over these proceedings by directing that all future hearings be heard in camera flies in the face of Article 34.1 of the Constitution. The Court is not satisfied to apply such a measure at this stage, but it will leave open the potential for parts of the evidence and submissions to be heard in camera as the proceedings progress. This accords with the necessity to “apply a strict construction and sceptical perspective to the claim of exceptionality to the principle of trial in public” – that is a quote from para. 16 of Bradley J’s judgment in *C v. P* delivered on 31 January 2024 [2024] IEHC 54.

5. The Court in exercising its jurisdiction as sought has identified earlier in this judgment, the interests which require a departure from the rule of administration of justice in public.

6. A cohort of students will be identifiable if names of lecturers, examiners or administrators are referred to in evidence. It appears to the Court having listened attentively to counsel who are now in agreement that this order ought now be made, that this part of the order can be varied on an application by any party, whether the plaintiff or another person. It is open, for example, to the plaintiff to aver on affidavit at a future hearing for example a reason to identify a lecturer in public. At this point the Court is not aware of a perspective which counteracts the apparent consensus to protect particularly the cohort of students in the plaintiff’s year and faculty.

7. So what I will do then is repeat the order which was proposed by the Court earlier this morning for the parties to consider with a few slight amendments to take account of the submissions made by counsel; that is the Court today makes the following “order pursuant to the inherent jurisdiction of the Court in the interests of protecting the reputations and privacy of students who are not represented in these proceedings while recognising the fundamental right to freedom of information:-

(1) Direct that these proceeding will henceforth be entitled “M.M. v A University”;

- (2) That the publication on courts.ie, the world wide web and public media fora concerning these proceedings be restricted from:-
- a) Identifying the specific faculty, year or university for which the plaintiff is currently enrolled and studying.
 - b) Referring to the allegation [redacted] made by the plaintiff in these proceedings save that reference may be made to an allegation of assault by an unidentified student with consequences for the plaintiff's studies and exams.
 - c) Mentioning that the plaintiff availed of medical services for [redacted] save that reference may be made to the plaintiff availing of medical services following the alleged assault.
 - d) Identifying the names of lecturers, examiners and/or administrators in the defendant university who will be referred to in these proceedings.
- (3) Liberty to any party to apply to this Court with seven days' notice in writing to the solicitors for each of the parties after applying *ex parte* to this Court on foot of an affidavit by the applicant to get a date for hearing an application to vary this order.
- (4) Liberty to the trial judge on own initiative or on an application by any party to vary this order.
- (5) By consent adjourn these proceedings for mention only to 10:30a.m. this day week (19 November 2024) to consider the recent request of the plaintiff to apply by way of motion directing mediation in the proceedings
- (6) Costs of all applications to date and the motion before the Court be reserved to 19^h November 2024."

Counsel for the plaintiff: Ciaran Craven S.C. and Michael Devitt B.L.

Solicitors for the plaintiff: Stokes & Co.

Counsel for the defendant: Feichin McDonagh S.C. and Barra Faughnan B.L.

Solicitors for the defendant: Mason Hayes & Curran Solicitors.