



**AN CHÚIRT UACHTARACH
THE SUPREME COURT**

[Appeal No. 94/20]

**Clarke C.J.,
O'Donnell J.,
MacMenamin J.,
Dunne J.,
Charleton J.**

P McD

Plaintiff/Appellant

- AND -

The Governor of X Prison

Defendant/Respondent

Judgment of Ms. Justice Dunne delivered the 17th day of September 2021

The facts of the case have been fully set out in the judgment of MacMenamin J. and it is unnecessary to set them out here. As can be seen from the facts, the background of this case is unfortunate and led to the very difficult issues that had to be considered in the High Court in what came to be described as the “capacity proceedings”.

I write this judgment solely for the purpose of explaining my views in relation this matter. I have read in draft the judgments of MacMenamin J. and Charleton J. herein. I agree with their approach to the question of whether the Prison authorities owed a duty of care to Mr. McD. On the facts of this case, no duty of care arose towards him arising out of the manner in which the complaints procedures operated in the prison, although it is unfortunate,

to say the least, that for whatever reason, the complaints procedure did not function as intended.

Thus far, I agree with the judgment of MacMenamin J. However, I find myself departing from the approach taken by him when it comes to the question of a declaration. I simply cannot see the basis on which the grant of a declaration could be appropriate in this case. I have also read the judgment of O'Donnell J. which has set out his reasons explaining why a declaration in this case is not appropriate and his agreement with the judgment of Charleton J. in this regard. I agree with O'Donnell J. and Charleton J. that the appeal should be dismissed and that no declaration should be granted.