Judge Petria McDonnell: Justice standeth afar off

Summary: The Plaintiffs in *Burkes v NUI Galway*, a religious discrimination case in Ireland, have serious concerns regarding the conduct of Circuit Court Judge Petria McDonnell. The Judge suggested that the Plaintiffs' claims were *"moot"* (irrelevant and unnecessary) at the outset of the Circuit Court hearing on 18 June 2019. Although the suggestion was false, the Judge persistently refused to retract her comment or to apologise for it. The Judge has refused to recuse herself from hearing the case.

The Plaintiffs are gravely concerned that their rights to a fair hearing under Irish and European law have been infringed by the conduct of Judge Petria McDonnell. They believe that the Judge may have sought to mislead them regarding the merits of their case. The Plaintiffs are concerned that she may have prejudged the matter, and may have shown disregard for the law. They also believe that Judge Petria McDonnell may have engaged in a form of judicial bullying.

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1. FACTUAL BACKGROUND

The legal proceedings

Burkes v NUI Galway involves four Plaintiffs (Isaac Burke, Kezia Burke, Enoch Burke and Ammi Burke) and consists of four appeals from the Workplace Relations Commission (WRC) to the Circuit Court under the Equal Status Acts ("the Acts"). The Plaintiffs were banned for life from all student societies at NUI Galway on Monday 10 November 2014. They were accused of improperly using €325 to pay for flyers. The Plaintiffs claim that the lifetime ban was motivated by the public expression of their Christian beliefs on abortion, same-sex marriage and other social issues. They claim that NUI Galway discriminated against them on the grounds of their religion, and victimised them[1].

The four siblings are believed to be the only students banned for life in the history of the University[2]. The sanction, which was handed down by the USCG (University Societies Coordination Group), was utterly disproportionate to the alleged misconduct. Evidence suggests that financial impropriety is rife among student societies at NUI Galway. Records from one student society suggest impropriety to the tune of more than €8,000 in unreceipted expenditure. However, no disciplinary action was taken in that case.[3]

The Plaintiffs were well known members of the University and had won honours for academic excellence and social engagement. The lifetime ban has had a profound and lasting effect on each of them. It consigned the Plaintiffs to a form of societal exile for the remainder of their time at the University. It damaged their good names within the University community and had a detrimental impact on their personal and professional lives. Both the sanction itself and the protracted legal proceedings that have ensued have taken a heavy toll on the Plaintiffs' health and wellbeing.

The University is fixated on controlling, limiting and even "*educating*" religious societies and students with "*strongly held beliefs*"

Official minutes from the University Societies Coordination Group (USCG) link the lifetime ban with the manifestation of the Plaintiffs' religious beliefs. These minutes, released under FOI, demonstrate that the University is fixated on controlling, limiting and even "*educating*" religious societies and students with "*strongly held beliefs*". Prior to the banning of the Plaintiffs, members of the USCG posted online content referring to the Plaintiffs' beliefs as "*bigotry*". The Chair of the USCG, a professor at NUI Galway, had in the past posted profane material on her public Facebook page making a mockery of Christianity and the Scriptures. Eight months before the sanction was handed down, the Plaintiffs had submitted a

[1] Further information is available at https://burkebroadcast.com/case-overview/

[2] USCG minutes and further information released under FOI show that the Plaintiffs are the only students banned for life from student societies during the period 2000 to the present. The University does not hold relevant written records dating before 2000.

[3] https://burkebroadcast.com/2017/12/29/double-standard-at-nui-galway-financial-details-revealed/

number of complaints to the USCG regarding the ripping down of Christian Union posters and harassment of Christian students on campus. The outcomes of these complaints were never forwarded to the Plaintiffs. These and many other factors constitute a large body of evidence strongly linking the lifetime sanction to the Plaintiffs' religious beliefs.

The Plaintiffs' claims are made under the Equal Status Acts. The Workplace Relations Commission (WRC) heard the claims in the first instance. The WRC ruling was handed down in November 2017. The WRC dismissed the claims without making a ruling on the substantive part, finding that the Plaintiffs had not complied with time limits and notification requirements for lodging claims.

There were significant procedural and legal shortcomings in the WRC investigation. The Plaintiffs submitted a report on these shortcomings to the Oireachtas Joint Committee on Justice and Equality in February 2018[4][5]. The Committee considered the report on 21 February 2018 and made note of the matters raised therein.

The cases are currently under appeal at Galway Circuit Court. The Plaintiffs won a preliminary ruling on time limits and notification in December 2018. The Court overturned a key portion of the WRC decision, allowing the Plaintiffs to proceed with their claims against the University in relation to the lifetime ban. A hearing was then scheduled for June 2019 to deal with the substantive claims of discrimination and victimisation.

The Plaintiffs are not legally represented in these proceedings.

The Circuit Court hearing in June 2019

The cases were listed for hearing from Tuesday 18 June to Thursday 20 June 2019 at Galway Circuit Court. Several days before the hearing, solicitors for NUI Galway notified the Plaintiffs by letter[6] dated 31 May 2019 that the University was "*lifting in full the societal ban imposed on each of the [Plaintiffs] … notwithstanding the fact that our client denies any discriminatory treatment or act of victimisation*". In the same letter NUI Galway made the following offer: *"In light of the lifting in full of the societal ban our client wishes to make an open offer herein that in the event that the Appellants agree to issue a Notice of Discontinuance in relation to the above proceedings our client would be agreeable to the striking out of these cases and would seek no Order as to costs against the Appellants."* The Plaintiffs rejected the offer.

In opening remarks on the morning of Tuesday 18 June 2019, Clíona Kimber SC for NUI Galway informed the Court of the offer that had been made to the

[4] https://burkebroadcast.com/wp-content/uploads/2018/02/Louise_Boyle_WRC.pdf

[5] https://www.irishtimes.com/news/social-affairs/students-claiming-religious-bias-urge-further-investigation-1.3391194

[6] https://www.irishtimes.com/news/education/siblings-banned-for-life-from-nuig-societies-refuse-college-s-offer-1.3928544

Plaintiffs and that the lifetime ban on each of the Plaintiffs had been lifted. Judge Petria McDonnell proceeded to question whether the Plaintiffs, *"as lay litigants"*, understood the offer made. The Judge stated that the offer made by the University was a generous or unusual one. When the Plaintiffs stated that they had rejected the offer, the Judge warned them that she would be taking this into account when awarding costs at the end of the case.

Judge Petria McDonnell then questioned or commented whether the lifting of the lifetime ban "*would render the whole thing moot*" i.e. render the whole proceedings moot.

The Plaintiffs immediately raised an objection to the Judge's comment. The Judge rose for five minutes to allow the Plaintiffs to consider the matter. Upon her return, the Plaintiffs asked the Judge to retract her comment regarding the proceedings being moot and to apologise for it. The Judge refused, saying: *"It was only a question"* and *"I don't know the answer [to it] myself"*. The Plaintiffs then stated that they had no confidence in the Judge's ability to judge the case impartially. They asked the Judge to recuse herself, to which she refused. The proceedings were then adjourned until 2pm.

Judge Petria McDonnell questioned or commented whether the lifting of the lifetime ban "*would render the whole thing moot*"

When the hearing resumed at 2pm, the Judge stated that she was entitled to ask questions and to test the scope of the claims before her. She also read out a definition of the term *"moot"*. The Plaintiffs again asked the Judge to retract her comment regarding the proceedings being moot and to apologise for it. The Judge again refused and instead doubled down on her remark, saying "*even if [the case is] moot, [it] doesn't mean it can't proceed*". She repeated her refusal to recuse herself. The hearing descended into chaos with the Judge alternatively stating, *"I will be here tomorrow morning", "happy to have it re-listed", "the case is ceased",* and *"the case will be adjourned generally … I can't do that…"* At one point, the Judge left and immediately re-entered the courtroom. She eventually left the courtroom leaving the Plaintiffs with no idea as to the status of the proceedings. A clerk then advised NUI Galway's legal team to return at 4pm. The Plaintiffs did not receive any instructions.

At 4pm, Judge McDonnell re-entered the courtroom. The Plaintiffs again asked her to recuse herself. The Judge stated that she was *"placing a stay on the proceedings pending the outcome of the Plaintiffs' recusal application".* She left the courtroom giving no indication as to when the parties would be notified of the outcome of the Plaintiff's recusal application. The Judge did not subsequently return to the courtroom on the same date. Although the Plaintiffs were present on 19 and 20 June 2019, the hearing did not proceed as had been scheduled.

On 24 June 2019 the Plaintiffs received copy certified Circuit Court Orders by post, backdated to 18 June 2019, stating, *"The application for recusal is refused. The Court directed that this Appeal be stayed pending a determination concerning the aforesaid refusal"*. On 28 June 2019 the Plaintiffs lodged appeals in the High

Court from the Circuit Court Orders received on 24 June 2019. They are requesting the High Court to overturn Judge Petria McDonnell's refusal to recuse herself. The Plaintiffs' Equal Status proceedings are currently stayed pending the outcome of the High Court application.

The Plaintiffs have serious concerns in relation to Judge Petria McDonnell's characterisation of their Equal Status claims as *"moot"*. Some of these concerns are briefly set out in the next section. The focus of this document is largely on the *"moot"* comments and related conduct of the Judge upon which the recusal application of 18 June 2019 was grounded. However the Plaintiffs have other concerns in relation to the conduct of the Judge on 18 June 2019, including:

1. In opening remarks on 18 June 2019, Judge McDonnell stated that she had only read the first two pages of the Plaintiffs' 57-page submission to the Court. She took exception to certain key parts of the Plaintiffs' submission to the Court. She refused to permit the Plaintiffs to open their case by setting out the basic legal principles in relation to an Equal Status claim.

2. Judge McDonnell was slow to receive up a copy of the Plaintiffs' Book of Authorities and Book of Core Documentation/Evidence and only begrudgingly accepted them in Court.

3. Judge McDonnell questioned the need for the Plaintiffs to present the section of their submissions that related to their religious beliefs. Critically, in opening remarks the Judge did not make any reference to the religion ground or religious dimension of the claims before her.

4. Judge McDonnell sought to place restrictions on the Plaintiffs' right to argue their case. She suggested in opening remarks that the Plaintiffs would be required to present their case from the witness box. She seemed to indicate that the Plaintiffs would not be allowed to make submissions and arguments at the counsel table.

5. The certified Circuit Court Orders received by the Plaintiffs on 24 June 2019 were backdated to 18 June 2019. The content of these orders (see above) does not correspond to what was actually pronounced in open Court at the close of the hearing on 18 June 2019. The Judge did not in fact rule conclusively on the recusal request that afternoon but rather left the proceedings in a state of limbo *"pending the outcome of the Plaintiffs' recusal application".* The question therefore arises as to whether these orders are proper and correct orders of the Circuit Court.

2. PLAINTIFFS' CONCERNS REGARDING JUDGE PETRIA MCDONNELL

What is the meaning of 'moot'?

Courts apply the doctrine of 'mootness' to ensure that judicial resources are used properly. The word 'moot' suggests that a controversy no longer exists, and that a court cannot grant any effectual relief (or render an opinion) affecting a matter.

The word is used in the phrase "*moot court*" meaning a "*mock judicial proceeding set up to examine a hypothetical case as an academic exercise*". Legal proceedings are 'moot' where there is no longer any legal dispute between the parties[7]. Such proceedings are considered to have "*little or no practical relevance*" and to be generally unworthy of consideration or discussion. In practical terms, 'moot' means there is nothing more to said or done by a Judge (or the Court) regarding a matter.

Burkes v NUI Galway is not moot

Burkes v NUI Galway is a set of religious discrimination and victimisation claims under the Equal Status Acts. The claims relate to a lifetime ban imposed on four Christian students on 10 November 2014, which has had profound and lasting effects on each of them. The lifting of the lifetime ban on 31 May 2019 (1663 days later) in no way whatsoever diminishes or alters the Plaintiffs' Equal Status claims. The central thrust of *Burkes v NUI Galway* is that of equality and equal treatment. In taking their cases, the Plaintiffs were not merely seeking an injunction lifting the lifetime ban.

The controversy between the Plaintiffs and the University is entirely and absolutely unresolved

The Plaintiffs' Equal Status claims are fully live. The controversy between the Plaintiffs and the University is entirely and absolutely unresolved. In their letter of 31 May 2019 to the Plaintiffs, the University were at pains to point out that although they were lifting the lifetime ban, they were doing so "*notwithstanding the fact that our client denies any discriminatory treatment or act of victimisation".* The paltry offer made by the University in the same letter did not address the controversy between the parties and was rejected by the Plaintiffs. The Court was fully aware of all of this on 18 June 2019.

The key question before the Court in these proceedings is whether or not the lifetime banning of the Plaintiffs in 2014 constituted an act of discrimination on the ground of religion and/or victimisation. That question is as yet entirely and absolutely unanswered by the Court. The Court has a bounden duty to answer the question by way of investigation and decision. In the circumstances it was entirely and utterly incorrect for the Judge Petria McDonnell to characterise the Plaintiffs' claims as moot.

What is an Equal Status claim?

The title of the Equal Status Acts (the "Acts") reads: *"an act to promote equality and prohibit types of discrimination ... to provide for investigating and remedying certain discrimination and other unlawful activities"*.

Section 21 of the Acts indicates that every claim under the Acts is recourse for *"seeking redress"*. Section 27 of the Acts states that a decision in favour of a Plaintiff will provide for compensation for the acts of discrimination and

[7] https://www.pila.ie/download/pdf/faq_on_mootness.pdf

victimisation that occurred and/or an order that a person or persons take a specified course of action. In terms of compensation, the maximum amount that could be awarded (to each of the Plaintiffs) is the amount of the District Court limit in civil cases in contract i.e. €15,000 per Sections 27(1) and 27(2) of the Acts. Orders made under the Acts are with a view to minimising the possibility of any type of re-occurrence of the prohibited conduct by the Defendant i.e. aiming at ensuring that similar discrimination does not happen again.

The spirit and purpose of the Equal Status Acts is to call out discriminatory behaviour in society, to made amends for wrong done, and to punish the wrongdoer. Legal precedent has clearly established that those who breach the Acts are to be penalised in a way that is proportionate, effective and dissuasive.

The Court has a bounden duty under the Acts. Section 25 of the Acts provides that claims referred under the Acts shall be investigated and that *"a decision shall be made on each of the claims"*. Furthermore, if the decision is in favour of the Plaintiff, it *"shall provide for redress in accordance with section 27"*.

In practice a decision in favour of a Plaintiff will include both compensation and an order that the Defendant takes a specified action. For example, in *A Separated Father v A Community School* DEC-S2010-049 [2010][8] a secondary school had refused to supply to a separated father copies of his children's school reports. The Equality Tribunal found that the father had been discriminated against on the marital status ground. It ordered that the school *"pay [the father] the sum of €5,000 for the hurt and upset caused"* and that *"the school revise its existing guidelines for parents to include a commitment that the school will communicate and correspond with all parents in a fair and equitable manner with regard to their children's progress at school, irrespective of their marital status"*.

In *Lidia Adam v Angelo Bridal* DEC-S2016-057 [2016][9] a member of the Roma community was denied entry to a Bridal Shop in Dublin. The Workplace Relations Commission found that the complainant had been harassed and discriminated against on the race ground. It ordered that the shop pay the complainant €5,000 in respect of the findings of discrimination and harassment and that the shop *"review its policy and undertake training and/or training of its staff to ensure that they are aware of their legal obligations under the Equality Acts with particular reference to the race ground"*.

In *A Customer v A Shop* ADJ-00003303 [2016][10] a member of the travelling community was wrongly accused of theft of a box of teabags from a store. CCTV did not indicate any theft, but the store did not apologise to her. The Workplace Relations Commission found that the woman had been discriminated against on the ground of membership of the travelling community. It ordered that the shop

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[8] https://www.workplacerelations.ie/en/cases/2010/november/dec-s2010-049-full-case-report.html

[9] https://www.workplacerelations.ie/en/cases/2016/september/dec-s2016-057.html

[10] https://www.workplacerelations.ie/en/cases/2016/december/adj-00003303.html

pay the customer compensation in the sum of €10,000 within 7 weeks of the date of the decision.

More recently, in *A Syrian Refugee v A Bank* ADJ-00013897 [2019][11] a Syrian refugee's application to open a bank account was refused. The Workplace Relations Commission found that the refugee had been discriminated against on the race ground. It ordered that the bank *"pay [the refugee] compensation in the sum of €4,000"* and that the bank *"engage directly with … the Irish Human Rights and Equality Commission, to explore areas of potential collaboration in order to minimise the possibility of any type of re-occurrence of the type of incident experienced in this case"*.

These examples illustrate the practical operation of the Equal Status Acts. In each case the claims were thoroughly investigated and penalties meted out as appropriate. Resolution of the controversy for the Syrian refugee did not simply consist of permission from the offending bank to open a bank account. For the separated father the controversy did not end when he eventually received copies of his children's school reports. The member of the travelling community did not withdraw her claim when it was established that she had not in fact stolen the teabags. Lidia Adam's case did not suddenly become moot when she was eventually allowed back into the bridal shop. Justice in each case involved an investigation and a determination of the claims of discrimination, harassment or victimisation. Justice involved amends for the wrong done and penalties for the wrongdoer.

Justice in each case involved an investigation and a determination of the claims of discrimination, harassment or victimisation

Equally, the lifting of the lifetime ban on the Plaintiffs, 1663 days after it was imposed, in no way whatsoever diminishes or alters the Plaintiffs' Equal Status claims, or reduces the duty of the Court in respect of those claims. The mere lifting of the ban is by no means a delivery of justice for the Plaintiffs.

Judge Petria McDonnell may have sought to mislead the Plaintiffs

Burkes v NUI Galway is not moot. Why then did Judge Petria McDonnell suggest that it was moot on the morning of Tuesday 18 June 2019? Why did she thereafter refuse, on numerous occasions, to retract her comment regarding the proceedings being moot and to apologise for it? She had at least two hours over lunch during which she no doubt reflected on her comment and the Plaintiffs' serious objection to it. She had two hours to realise that it was entirely and utterly incorrect to characterise the Plaintiffs' claims as moot. When she returned to the courtroom after lunch, she had another opportunity to retract her comment and to apologise for it. Instead, in an extraordinary turn of events, she doubled down on her comment; saying "*even if [the case is] moot, [it] doesn't mean it can't proceed*".

[11] https://www.workplacerelations.ie/en/cases/2019/march/adj-00013897.html

Judge Petria McDonnell has been described by the media as *"a leading Judge"*[12]. She was admitted to the roll of solicitors in 1974. Before her appointment as a Circuit Court Judge in 2007, she was a partner in McCann Fitzgerald's commercial litigation department[13]. She is a founding member of the Association of Judges of Ireland, established in 2011[14]. She must be aware of the provisions and scope of the Equal Status Acts. She must also be familiar with the legal doctrine of mootness and its applications.

Judge Petria McDonnell is familiar with the nature and extent of the proceedings in *Burkes v NUI Galway*. On 31 October 2018, she presided over a preliminary hearing in *Burkes v NUI Galway* that lasted for a full day at Galway Circuit Court. In her judgement issuing from that hearing, she made reference to *"the timing, the severity and the duration of [the lifetime ban] and its significant impact on the complainant[s]"*.

The only logical conclusion that can be drawn from the facts is that Judge Petria McDonnell may have sought to mislead the Plaintiffs, an unrepresented party, regarding the merits and scope of their case. This is extremely serious. That a member of the judiciary, sworn to administer justice *"without fear or favour"*, may have sought to exploit the ignorance of an unrepresented party is unacceptable and contrary to all accepted standards of judicial conduct.

Judge Petria McDonnell may have prejudged the matter

To prejudge is to reach a decision before knowing the relevant facts. Judge Petria McDonnell's conduct on Tuesday 18 June 2019 suggests that she had prejudged the matter. Her comments regarding the proceedings being moot, and her persistent refusal to retract or apologise for same, strongly indicate that she saw no discrimination or victimisation before her and therefore no need of redress for the Plaintiffs.

The Judge effectively questioned whether the proceedings were necessary at all, given the University had lifted the lifetime ban

The decision-maker in an Equal Status claim must, in the event of a successful claim, calculate redress that would be proportionate, effective and dissuasive having regard to all the circumstances.

The Judge had effectively questioned at the outset whether the proceedings were necessary at all, given that the University had lifted the lifetime ban. That the Plaintiffs had spent 1663 days of their lives under the shadow of this lifetime ban did not appear to register with her on the morning of Tuesday 18 June 2019. Her conduct suggested that she disregarded the effect of the lifetime ban on the Plaintiffs.

[12] https://evoke.ie/2016/10/17/news/irish-news/judge-pleads-with-families-to-stop-dragging-children-through-court

[13] https://www.lawsociety.ie/globalassets/documents/gazette/gazette-pdfs/gazette-2007/june2007.pdf [pp. 8-9]

[14] https://aji.ie/our-constitution/

It is likely that the Judge may not have entertained the possibility of providing redress to the Plaintiffs and ultimately may have intended to find in favour of the University regardless.

Judge Petria McDonnell may have shown disregard for the law

The website of the Association of Judges of Ireland states[15]: *"judges are expected, in their personal lives, to avoid words, actions or situations that might make them appear to be biased or disrespectful of the laws they are sworn to uphold. They must treat lawyers, clients and witnesses with respect and must refrain from comments that suggest they have made up their minds in advance."*

Judge Petria McDonnell is sworn to uphold the Equal Status Acts. On Tuesday 18 June 2019, the Judge had a solemn duty to investigate the matter put before her and to decide whether the lifetime ban of the Plaintiffs was in any way connected to the expression of their religious beliefs, or whether the ban constituted victimisation. Instead of doing so, however, the Judge seemed to evade her duty by commenting or questioning whether the Plaintiffs' claims were moot. Her conduct throughout the day seemed to show disregard for the provisions of the Equal Status Acts.

It is noteworthy that the Judge questioned the need for the Plaintiffs to present the section of their submissions that related to their religious beliefs. Critically, in her opening remarks the Judge did not make any reference to the religion ground or religious dimension of the claims before her. One would have to wonder whether Judge Petria McDonnell's conduct on Tuesday 18 June 2019 would have been manifestly different if the claims had related to gender, race, sexual orientation or a protected ground other than religious belief.

Critically, in her opening remarks the Judge did not make any reference to the religion ground or religious dimension of the claims before her

Judge Petria McDonnell's conduct may be a form of bullying

Judge Petria McDonnell's conduct on Tuesday 18 June 2019 could be viewed as a form of judicial bullying. The Plaintiffs are not legally represented in these proceedings. The Plaintiffs felt that they were being punished because they chose to represent themselves. Far from affording the Plaintiffs latitude or flexibility in presenting their case, as might be expected when dealing with an unrepresented party, the Judge from the very beginning was unhelpful and even antagonistic.

Even before her comments on mootness, the Judge sought to place unreasonable restrictions on the Plaintiffs' right to argue their case. She suggested that they would have to present their case from the witness box. She seemed to indicate that they would not be allowed to make submissions or arguments at the counsel table. She took exception to certain key components of the Plaintiffs' submission to the Court.

[15] https://aji.ie/the-judiciary/the-judicial-role/impartiality/

Why did Judge Petria McDonnell introduce the idea of mootness at the outset of the hearing, knowing, as she must have, that the proceedings were far from being moot? It is important to note *when* the Judge spoke as she did. The Judge made her initial comment about the proceedings being moot at precisely the point when counsel for the University informed the Court that the lifetime ban had been lifted, and that the University had made an offer not to seek its costs if the Plaintiffs would consent to striking out the cases. The Judge may have sought to mislead the Plaintiffs at this point as to the merits of their case, so as to bully them into accepting the paltry offer made by the University. Counsel for the University stated that the University had no wish to continue with the proceedings, and it would appear that the Judge might have felt the same way.

The Judge may have sought to mislead the Plaintiffs ... so as to bully them into accepting the paltry offer made by the University

Before introducing the idea of mootness, the Judge had also questioned whether the Plaintiffs, *"as lay litigants"*, understood the offer made. This was humiliating for the Plaintiffs. They understood very well the offer made and had rejected it forthwith. The offer contained no admission of discrimination or victimisation. It contained no redress for the Plaintiffs, even though they had spent 1663 days of their lives under the shadow of an unjust lifetime sanction.

The Plaintiffs were made to feel troublesome by the Court for not accepting the University's offer. The Judge stated that the offer made by the University was a generous or unusual one. When the Plaintiffs stated that they had rejected the offer, the Judge warned them that she would be taking this into account when awarding costs at the end of the case. The Plaintiffs felt threatened and intimidated by the Judge to accept the offer. The Judge's comments also strongly indicated prejudgement. The suggestion was that if the Plaintiff's were to reject the University's offer and proceed with their case, the Judge intended to find in favour of the University.

Rather than decide conclusively on the recusal request that ensued, Judge Petria McDonnell left the proceedings in a state of limbo throughout the day, returning to the courtroom to resume proceedings several times. She persistently refused to retract or apologise for her comment but instead doubled down on it after lunch, saying "*even if [the case is] moot, [it] doesn't mean it can't proceed*".

It is extraordinary that the Judge would have spoken in this way. What sort of a suggestion was that? Why would the Judge leave a false apprehension hanging over the proceedings? What effect would her comments have had on four unrepresented Plaintiffs as they sought to argue their case? What reasonable person would proceed with a three-day hearing in such circumstances, not knowing but that the judge has made up her mind from the outset that the proceedings are moot i.e. of no practical relevance? No reasonable person would have confidence or trust in such a judge in the circumstances. To proceed would be to submit to a mockery of due process and fair procedure.

3. CONCLUSION

The Plaintiffs have a constitutional right to fair procedures under Article 40 of Bunreacht na hÉireann. They have a right to a fair hearing under Article 6 of the European Convention on Human Rights. The Plaintiffs are gravely concerned that these rights were not vindicated at Galway Circuit Court. They have lodged appeals in the High Court against Judge Petria McDonnell's refusal to recuse herself. Their Equal Status proceedings are currently stayed pending the outcome of this High Court application.

The aims and objectives of the Association of Judges of Ireland include the following: *"to maintain and promote the highest standards in the administration of justice"* and *"to promote the highest standards of judicial conduct amongst its members"*. Where conduct of a member of the judiciary falls short of these *"highest standards"*, it ought not to go unchecked and unreported, but ought to be brought to the attention of the relevant authorities, and to the attention of the public themselves. The purpose of this submission is to do that. If the judiciary is compromised in any way, then the ultimate sufferers will be the people.

The image of the blindfolded Lady Justice is symbolic of the true administration of justice. The blindfold represents the impartiality that is at the heart of the rule of law. As the old adage goes, justice must not only be done, it must also be seen to be done[16].

"And judgment is turned away backward, and justice standeth afar off" (Isaiah 59:14).

Lady Justice, it seems, is no longer blind.

ISAAC BURKE
KEZIA BURKE
ENOCH BURKE
AMMI BURKE

08 July 2019

The Plaintiffs in *Burkes v NUI Galway*

Word Count: 5,195

[16] *R v Sussex Justices*, ex parte McCarthy ([1924] 1 KB 256, [1923] All ER Rep 233)