

**THE HIGH COURT
JUDICIAL REVIEW**

[2021] IEHC 794
[2020 No. 29 JR.]

BETWEEN

TERRY KANE

APPLICANT

AND

CRONA GALLAGHER

RESPONDENT

JUDGMENT of Mr. Justice Mark Heslin delivered on the 30th day of November, 2021

Introduction

1. The applicant in the present proceedings is the husband of a lady who, very tragically, took her own life in July 2019. The present proceedings arise from a ruling made by the respondent, as coroner, during an inquest into the death of the applicant's late wife, which inquest took place on 18 October 2019. The applicant contends that the respondent intervened so as to prevent the applicant's legal representative from cross-examining a witness and further contends that the respondent refused to hear a submission which that legal representative wished to make on the issue. The respondent asserts that there are no "*fair procedure*" grounds upon which to quash the decision of the respondent. It is accepted on behalf of the respondent that she should not have said that no cross-examination was allowed and it is also accepted on behalf of the respondent that she should have permitted the family's legal representative to make a submission on the matter. Notwithstanding this, the respondent argues, inter alia, that it would serve no useful purpose to quash the decision reached which, the respondent submits, was the one and only decision open to her. It is also submitted that, although the verdict is challenged on grounds that cross-examination was not allowed, and that legal submissions were not allowed, the true context to the present proceedings is the applicant's dissatisfaction with the verdict given by the respondent, not the procedure adopted. The respondent submits that the applicant, through its legal representative, was seeking to have the respondent link the suicide, both to addiction to pain medication and to the prescribing practices of doctors. The respondent submits that the only restrictions placed by her on the questioning by the family's legal representative, was where areas of civil and criminal responsibility were strayed into and the respondent submits that the legal representative did, in fact, conduct an extremely wide examination of many witnesses and was also allowed to make extensive submissions in respect of the verdict. It is stressed by the respondent that no other verdict would have been open to her and no useful purpose could be served by quashing it, as the same verdict would be entered following a fresh inquest. It is fair to say that the respondent's opposition to the applicant's case includes two related themes, firstly, that regardless of any breach of fair procedures, it made no difference and did not affect the outcome of the inquest and, secondly, the verdict which the respondent reached was the only one open to her. A motion brought by the applicant was returnable before the court on the hearing date, in which motion the applicant sought to add additional grounds, namely, that there was a breach of fair procedures arising from the respondent's reliance on reasons which were not communicated to the applicant. I am very grateful to Counsel for the applicant and respondent, respectively, who furnished

detailed written submissions which were of considerable assistance and who made oral submissions during the hearing with great skill and clarity, all of which I have carefully considered. Throughout this judgment, I will refer to the key submissions made and the key authorities relied upon.

The relief sought by the applicant

2. By order made on 16 January 2020, this Court (Meenan J.) granted leave to the applicant to apply by way of an application for judicial review for the relief set out in para. D of the relevant Statement, dated 13 January 2020, on the grounds set out at para. E of the said statement of grounds. The reliefs sought is as follows: -

- 1) *"An order of certiorari quashing the respondent's verdict in the Inquest into the death of Deirdre Ann Kane on the 18th October 2019.*
- 2) *An order remitting same for further decision.*
- 3) *A declaration that the Respondent erred in law in refusing to permit the applicant's solicitor to cross-examine witnesses during the proceedings.*
- 4) *A declaration that the respondent's refusal to permit the applicant's legal representative to cross-examine witnesses was unreasonable and/or breached the applicant's rights to fair procedures and natural and Constitutional justice.*
- 5) *A declaration that the respondent's refusal to hear legal submissions on behalf of the Applicant and to permit the applicant's legal representative to open authorities was unreasonable, and/or breached the applicant's rights to fair procedures and natural and Constitutional justice.*
- 6) *A declaration that the respondent's refusal and/or failure to seek and consider the medical records of certain medical witnesses was unreasonable and breaches the applicant's rights to fair procedures and natural and Constitutional justice.*
- 7) *Such further or other Order as this Honourable Court shall deem meet.*
- 8) *An Order providing for the costs of these proceedings".*

The grounds upon which relief is sought

3. Para. 1 of the statement of grounds refers to the circumstances in which the late Mrs. Kane was found on 3 July 2017 and kept on life support in Beaumont Hospital until she passed away on 7 July 2017. Para. 2 states that, before her death, she had a longstanding history of pain, depression and anxiety, with no obvious underlying physical cause found for her pain. Reference is made to the difficult delivery of her youngest child in 2004 and to the deceased experiencing severe back pain and post-natal depression which progressed to generalised anxiety disorder. It is stated that, at this time, Mrs. Kane was prescribed OxyContin, an opioid painkiller, by her GP, Dr. Naser, which was prescribed continuously to her until approximately 2015. At para. 3, it is pleaded that, in 2011, Dr. Naser referred Mrs. Kane to a pain specialist, Dr. Keaveny, who also prescribed opioids to the deceased over a period of time. At para. 4, it is pleaded that, following her

death, the deceased's family had serious concerns about her use of opioid painkillers over a prolonged period of time. It is pleaded that there was evidence of her life revolving around obtaining opioid drugs and taking precedence over other aspects of daily life. It is pleaded that there was evidence of Dr. Naser providing opioids to the deceased at her request in various forms, including by attending at her home to administer "top up" injections. At para. 5 it is pleaded that the applicant and other family members believe that the deceased was addicted to opioid painkillers and that this addiction was a factor which contributed to her decision to end her life. It is also pleaded that the applicant believed that addiction to opioid painkillers was contributed to by the way in which she was prescribed and provided with opioids over a prolonged period without adequate supervision or safeguards to prevent addiction. It is further pleaded that the applicant believes that these were part of the circumstances that contributed to her death and that these are circumstances which, if not drawn attention to and/or remedied might lead to further deaths.

4. Paras. 6 – 16 inclusive, of the statement of grounds comprise pleas with regard to what occurred during the inquest. Helpfully, this Court has been provided with a full transcript concerning the inquest into the circumstances of the death of the late Mrs. Kane and I will presently refer to certain passages from that transcript in some detail, in circumstances where I have carefully read the entire transcript comprising 302 pages. It is with reference to what occurred during the inquiry that the applicant goes on to specify grounds 1, 2 and 3 as the basis for the reliefs sought.

Ground 1

5. Ground 1 is put in the following terms: - "*The Respondent, in preventing the applicant's solicitor from cross-examining witnesses, erred in law and breached the applicant's rights to fair procedures and natural and constitutional justice*". Para. 17 goes on to plead that, during the course of the inquest, the applicant's solicitor, Mr. Damien Tansey, attempted to question Dr. Naser on his medical notes relating to the deceased but was prevented from doing so by the respondent for the stated reason that the solicitor for the applicant was not allowed to cross-examine witnesses. At para. 18, it is pleaded that this is wrong in law, with reliance placed on the Supreme Court's decision in *Ramseyer v. Mahon* [2006] 1 IR 216, at 225. Later in this judgment I will examine a number of relevant authorities including the *Ramseyer* decision. At para. 19, it is pleaded that the applicant was entitled to cross-examine witnesses and that the respondent's refusal to permit this, even when informed by the applicant's solicitor that the applicant was entitled to do so under the case law, mean that the respondent erred in law and breached the applicant's rights to fair procedures, natural and constitutional justice.

Ground 2

6. Ground 2 is pleaded as follows: - "*The Respondent, in refusing to allow the applicant's solicitor to open case law on the issue of cross-examination of witnesses, breached the applicant's rights to fair procedures and to natural and constitutional justice*". At para. 20, it is pleaded that the respondent also refused to permit the applicant's solicitor to make legal submissions and to open case law concerning the entitlement of persons represented at an Inquest to cross-examine witnesses. Para. 21 refers inter alia to the

fact that the respondent having repeatedly refused to hear legal submissions on this point from the applicant's solicitor and the respondent's refusal to allow him to open the case law. Among other things, it is pleaded that the applicant's solicitor pointed out to the respondent that she had made her ruling before hearing his submission on the issue, but was obliged to cease his line of enquiry. At para. 22, it is pleaded that the refusal to allow the applicant's solicitor to make legal submissions and to open authority on the issue of cross-examination prior to making her ruling amounted to a breach by the respondent of the applicant's rights to fair procedures and to natural and constitutional justice.

Ground 3

7. Ground 3 appears in the following terms: - "*The Respondent's failure to seek and review the entirety of the medical file maintained by Dr. Naser in respect of Mrs. Kane is irrational, unreasonable, and in breach of the applicant's lawful rights and interests*". At the outset of the hearing, counsel for the applicant made clear that the foregoing is not a central point being pursued by the applicant. Rather, the applicant asserts that the significance of Dr. Naser's medical file is that Mr. Tansey was not permitted by the respondent to cross-examine Dr. Naser with reference to the doctor's file/notes.
8. Later, I will refer to the applicant's motion which issued on 26 July 2021, seeking to add an additional ground arising from an alleged failure on the part of the respondent to communicate reasons.

Statement of opposition

9. It is fair to say that paras. 1 – 8 of the respondent's statement of opposition comprise a traverse of the applicant's claim. Among other things, it is asserted that the respondent has not acted unfairly, improperly or unlawfully. Paras. 9 – 16 of the statement of opposition contain a range of pleas to the effect that the respondent at all times acted fairly, properly and reasonably and with the appropriate measure of fairness of procedures. Among other things, it is asserted that, when the whole of the hearing is taken into account, it was conducted in accordance with fair procedures. It is fair to say that the statement of opposition does not explicitly address the ruling which has given rise to the present proceedings but it is clear that the respondent opposes the reliefs sought on the basis that the inquest was conducted fairly, the verdict was sound in law and fairly and reasonably arrived at, and the applicant is not entitled to any relief.

Affidavits

10. I have very carefully considered the entirety of the affidavit evidence before the court comprising the affidavit of Mr. Tansey sworn 13 January 2020; the affidavit of the respondent sworn 21 September 2020; the affidavit of Mr. Tansey sworn 7 August 2020; the affidavit of the respondent sworn 27 April 2021; the affidavit of Marie – Claire Burke sworn 27 July 2021; the affidavit of Mr. Tansey sworn 31 August 2021 and the affidavit sworn by the respondent on 27 September 2021. Where relevant, I will refer during the course of this judgment to extracts from the foregoing affidavits.

Relevant legislation

11. Before turning to the transcript of the inquest, it is helpful to refer to certain relevant legislation and to an authority which, it is not in dispute, explains the purpose for the

holding of an inquest and what an inquest may properly investigate and consider. As to relevant legislation, ss. 18 A, 30 and 31 of the Coroner's Act 1962, as amended, ("the 1962 Act") provide as follows.

Section 18 A of the 1962 Act

12. The purpose of an inquest is specified in the following terms: -

"18A. (1) The purpose of an inquest shall be to establish —

(a) the identity of the person in relation to whose death the inquest is being held,

(b) how, when and where the death occurred, and

(c) to the extent that the coroner holding the inquest considers it necessary, the circumstances in which the death occurred,

and to make findings in respect of those matters (in this Act referred to as 'findings') and return a verdict . . ."

Section 30 of the 1962 Act

13. Opposite the words "*Prohibition of consideration of civil and criminal liability*", s. 30 of the 1962 Act provides as follows: -

"Questions of civil or criminal liability shall not be considered or investigated at an inquest".

14. The foregoing represents the section in its current form. The previous version of s. 30 contained, after the word "*inquest*", the words "*and accordingly every inquest shall be confined to ascertaining the identity of the person in relation to whose death the inquest is being held and how, when, and where the death occurred*". It is uncontroversial to say that the Oireachtas deliberately removed the foregoing words from the previous version of s. 30. That being so, the remit of an inquest is not confined in the manner which the previous wording indicated. As to the interpretation of the scope of an inquiry, I will presently look at guidance given by the Supreme Court but, before doing so, it is appropriate to refer to s. 31 of the 1962 Act.

Section 31 of the 1962 Act

15. Opposite the words "*Prohibition of censure and exoneration*", s. 31 of the 1962 Act states as follows: -

"31. — (1) Neither the verdict nor any rider to the verdict at an inquest nor any findings made at an inquest, shall contain a censure or exoneration of any person.

(2) Notwithstanding anything contained in subsection (1) of this section, recommendations of a general character that are designed to prevent further fatalities or are considered necessary or desirable in the interests of public health or safety may be appended to the verdict at any inquest".

16. It is fair to say that s. 31 (2) comprises a wide power exercisable by a coroner to append recommendations to a verdict at an inquest in the manner the subsection provides. A coroner is not constrained in any way by subs. (1), should they consider it appropriate to make recommendations, be they of a general character designed to prevent further fatalities or considered by the coroner to be necessary or desirable in the interests of public health or safety. Having referred to statutory provisions, it is useful to note the guidance given by the Supreme Court with regard to the purpose and remit of an inquest as well as the analysis of s. 30 in its previous form

Eastern Health Board v. Farrell [2001] 4 IR 627

17. In *Eastern Health Board v. Farrell* [2001] 4 IR 627, Keane C.J. stated the following with regard to the purpose and remit of an inquest at 636: -

"In my judgment in Farrell -v- Attorney General [1998] 1 IR 203 at p. 223, I cited with approval the following description by Lane L.C.J. in R -v- South London Coroner, Ex Parte Thompson (The Times, 9th July 1982) of the nature of an inquest: -

" It should not be forgotten that an inquest is a fact finding exercise and not a method of apportioning guilt. The procedure and rules of evidence which are suitable for one are unsuitable for the other. In an inquest it should never be forgotten that there are no parties, there is no indictment, there is no prosecution, there is no defence, there is no trial, simply an attempt to establish facts. It is an inquisitorial process, a process of investigation quite unlike a criminal trial where the prosecutor accuses and the accused defends, the judge holding the balance or the ring which ever metaphor one chooses to use".

"Again, in that case, I referred to the public policy underlying the requirement for the holding of an inquest as they were explained in England in the report of the Broderick Committee, i.e.,

- i. to determine the medical cause of death;*
- ii. to allay rumours or suspicion;*
- iii. to draw attention to the existence of circumstances which, if unremedied, might lead to further deaths;*
- iv. to advance medical knowledge;*
- v. to preserve the legal interests of the deceased person's family, heirs or other interested parties'.*

Ultimately, however, the issue for resolution in the High Court and again in this Court is as to the proper construction to be given to the wording of s.30 of the 1962 Act, i.e.,

'Questions of civil or criminal liability shall not be considered or investigated at an inquest and accordingly every inquest shall be confined to ascertaining the identity of the person in relation to whose death the inquest is being held and how, when, and where the death occurred'.

While this provision undoubtedly lays stress on the limited nature of the inquiry to be conducted at an inquest, the prohibition on any adjudication as to criminal or civil liability should not be construed in a manner which would unduly inhibit the inquiry. That would not be in accord with the public policy considerations relevant to the holding of an inquest to which I have referred. It is clear that the inquest may properly investigate and consider the surrounding circumstances of the death, whether or not the facts explored may, in another forum, ultimately be relevant to issues of civil or criminal liability. The intention of the Oireachtas that the inquest should not simply take the form of a formal endorsement by the coroner or a jury of the pathologist's report on the post-mortem is also made clear by s.31 which, although prohibiting the inclusion in the verdict or any rider to it of any censure or exoneration of any person, goes on to provide in ss. 2 that -

'notwithstanding anything contained in s.s. (1) of this section, recommendations of a general character designed to prevent further fatalities may be appended to the verdict at any inquest' (emphasis added).

18. The analysis by the Supreme Court which I have underlined seems to me to represent a most important statement of principle of relevance to the present proceedings, all the more so in circumstances where the then – Chief Justice was commenting on the previous version of s. 30 of the 1962 Act which contained wording which was removed prior to the inquest of relevance to the present proceedings. It is clear that, although there is a prohibition on the making of findings as to civil or criminal liability, there is no prohibition on the admissibility of evidence which, in a different forum, may be relevant to issues of such liability. Thus, the inquest may properly investigate and consider the surrounding circumstances of the death, regardless of whether the facts explored may be relevant, elsewhere, to civil or criminal liability. It will also be noted that the wording in s. 31 (2) referred to by Keane C.J. was expanded to confer on a coroner even wider powers, namely, to make recommendations considered by the coroner to be “*necessary or desirable in the interests of public health or safety*”.

Transcript of 18 October 2019 Inquest

19. I have read very carefully the entire 302 – page Transcript of the Inquest. I did so at the urging of counsel and I am satisfied that it was entirely appropriate that I read the entire transcript. That said, I want to emphasise that the present proceedings do not constitute a “merits-based” appeal or anything of the sort and it is not appropriate for this court to approach the respondent’s verdict from the perspective of what this court would have decided. This is important to underline in circumstances where, of necessity, I will be quoting extracts from the Transcript. Having made the foregoing clear, I think it is useful to replicate, at this point, the index which appears on page 3 of the Transcript and which

identifies those witnesses who gave evidence; the order in which they gave evidence; who put questions to them; and the relevant page numbers in the Transcript: -

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20. Dr. Crosby and Dr. Naser, both of whom are general practitioners, treated the deceased. Dr. Naser treated her between June 2000 and June 2015. Dr. Crosby treated the deceased from February 2016 onwards. Dr. Keavney is a pain specialist to whom Dr. Naser first referred the deceased in 2011. Dr. McHale, who is a Consultant Psychiatrist, first saw the deceased in December 2014 and provided care to her thereafter. Ms. Sally Kane is a daughter of the deceased. Ms. O'Driscoll BL acted as Dr. Naser's legal representative, instructed by Messrs. Hayes Solicitors. Mr. Tansey represented the family (the applicant in the present proceedings being the deceased's husband).
21. It is fair to say that the format in respect of each witness began with the reading of the deposition which that witness gave, following which the witness was asked questions by the coroner and, thereafter, by Mr. Tansey and/or Ms. O'Driscoll.
22. At the very outset, Mr. Tansey made the coroner aware of the existence of civil proceedings against certain of the doctors, noting at the same time that this had "*nothing to do*" with the inquest. Plainly, this was a comment which recognised the prohibition on the making of findings as to liability (see Transcript page 5, line 18 onwards).

"Circumstances that surround the cause of death and regardless of the timeline"

23. The applicant was the first witness and after the reading of his deposition (Transcript page 8, line 9 onwards) he was examined by the coroner (from Transcript page 9, line 8 onwards). Mr. Tansey then put questions to the applicant (see Transcript page 13, line 17 onwards). It is appropriate to quote, verbatim, the following extract from the Transcript which begins on p. 4, line 26 with a question (33) which was put by Mr. Tansey to the applicant and which gave rise to an interjection by Ms. O'Driscoll and an exchange between the coroner and Mr. Tansey:

"Q. Right. So can you tell madam coroner the pattern of the treatment that you know yourself she received from Dr. Naser almost from the very beginning of that relationship between your late wife and Dr. Naser in terms of the kind of medication, in terms of the impact of that medication on Deirdre?"

MS. O'DRISCOLL: *Inaudible – (microphone switched off) ... I beg your pardon. Clearly seeking to impugn or censure Dr. Naser in some way and that is not the appropriate forum here for that.*

MR. TANSEY: *With respect the function of this inquest is not only to determine the medical cause of death and if I might bring to your attention, madam coroner, a number of decisions on this very issue as to function of the inquest.*

CORONER: *I don't think that will be necessary. I am very well aware of the function of the inquest and it is not just to establish the proximate cause of death. I am within my rights to explore circumstances that surround the cause of death and regardless of the timeline so at the moment I appreciate your intervention but at the moment I think it is reasonable for Mr. Kane to give an overview of the treatment, not from a medical perspective, but to allow this line of questioning at the moment. You are well aware it is not the function of this Court, as I said, to blame nor to exonerate anyone but I think some general information about what the witness was present for is acceptable at this point." (emphasis added)*

24. In the foregoing exchange, the respondent very correctly acknowledges that the inquest may investigate and consider the surrounding circumstances of the death of Mrs. Kane. It is fair to say that the foregoing statement by the respondent is entirely consistent with the analysis by Keane CJ. In the *Eastern Health Board* decision.

Matters which might give rise to civil or criminal liability in another context

25. The exchange continued in the following manner, from p. 15, line 26 onwards:

MR. TANSEY: *I accept that, madam coroner, but I am sure you are going to facilitate me in just replying to the point she made, I won't be long.*

CORONER: *Go ahead.*

MR. TANSEY: *But I think it needs to be canvassed because it might set the scene for the remainder of the day and we are trying to get finished I presume today.*

CORONER: *Yes, go ahead.*

MR. TANSEY: *The function of the inquest was set out in the case of the Eastern Health Board v Farrell in 2001. The function was further elaborated and determined in the case of the Broderick Committee on death and causation. The grounds of public interest which a coroner's inquest should serve are:*

1. *To determine the medical cause of death.*
2. *To allay rumours or suspicions.*
3. *To draw attention to the existence of circumstances which if un-remedied might lead to further deaths.*
4. *To advance medical knowledge.*
5. *To preserve the legal interests of the deceased person's family, peers and other interested parties.*

Now, this is a legitimate line of inquiry and is certainly within the definition of the function of this inquiry. The family are very troubled about the background and they are concerned that this forum will afford them some opportunity to raise issues that are troubling them and that will continue to trouble them until they are addressed.

CORONER: *Yes. Ms. O'Driscoll do you have anything further to add?*

MS. O'DRISCOLL: *I don't believe I need to. It is the particular line of questioning and I accept the coroner's point.*

CORONER: *Again we will hear medical evidence from medical witnesses but I will allow a certain line of questioning in terms of just Mr. Kane's experience I suppose in attending those medical appointments and his impression of his wife's condition. But obviously the medical evidence will have to be heard from medical witnesses. So bearing in mind as I say of course as I mentioned at the outset that we don't consider issues of civil or criminal liability in this forum so we will be careful about that. Mr. Tansey, I would ask you to be careful about your line of questioning in that regard but I will allow you to continue with Mr. Kane for the moment in terms of his, I suppose when he attended the surgery and what his overall impression was as the husband of the deceased over that period of time. Go ahead, Mr. Tansey.*

MR. TANSEY: *And of course the Supreme Court in that case of Farrell also indicated that we were entitled to explore matters that fall into the realm of criminal and civil liability with the rider that clearly this Court cannot vindicate or blame.*

CORONER: *While certain facts that may appear in another court can be established but without blame or exoneration of any individual. So with that in mind you can continue.*

MR. TANSEY: *The Supreme Court actually said it has made it clear that, the Supreme Court have made it clear that this should not be construed, the prohibition that you speak about should not be construed as a prohibition on inquiring into matters which could rise to civil or criminal liability in another context.*

CORONER: *Yes."*

26. The line of questioning which Mr. Tansey wished to pursue was permitted in the manner the foregoing Transcript makes clear, consistent with the principles in *Eastern Health Board*. Mr. Tansey put questions to the applicant and his evidence finishes on p. 32 of the Transcript, at which point his daughter, Ms. Sally Kane was called. After her statement was read (from page 32, line 24 onwards), Ms. Kane was examined by the coroner (from page 33, line 12 onwards). Mr. Tansey then put questions to Ms. Kane (beginning page 36, line 5 of the Transcript). This included Mr. Tansey asking Ms. Kane whether she remembered Dr. Naser coming to the house and whether it was a frequent occurrence. Ms. Kane's evidence included to say that her mother would tell her the doctor is coming and that she was getting an injection.

"establishing if there were difficulties in terms of addiction to certain substances"

27. It is appropriate to quote verbatim the following exchange which begins on line 10 of page 39 with a question put by Mr. Tansey to Ms. Kane, which gave rise to an objection by counsel for Dr. Naser and an exchange between Mr. Tansey and the coroner:

"Q. Tell the coroner about your mother's behaviour or her general demeanour at the times when she came back from the doctor's surgery?"

A. It was kind of the same thing, straight to bed, or at times just I knew she was on medication, she would just come back a different person than she was before she left.

Q. How did she get to the doctor's surgery to your knowledge?"

A. Drove down.

MS. O'DRISCOLL: *I have to object here. This witness has been called to give specific evidence. There is a half a page deposition. It is obviously an extremely difficult situation for this witness to be in and Mr. Tansey is consistently trying to use this forum to put forward a viewpoint that he has about Dr. Naser's treatment, that is very clear. He has already done that with Mr. Kane and there will be medical witnesses here. I would say this line of questioning should not be allowed to continue as it is irrelevant at this point in time.*

MR. TANSEY: *Can I reply to that, madam coroner, before you make judgment.*

CORONER: *Yes.*

MR. TANSEY: *There were only two people giving evidence at this forum who lived with the deceased, Terry Kane, her husband and Sally Kane, her daughter. Now the environment in the house I would suggest with respect is extremely important from the point of view of the function that you have to discharge in determining where, when and how death arose. You have highlighted the fact that this inquest cannot exonerate or vindicate or attach blame to any of the parties involved in the background circumstances, and this is accepted. I have already highlighted the extent, the manner in which the purpose of this inquest has been, because it has been the subject of some debate and the subject of some dispute and for that reason it came before the Court. So there is a body of High Court and Supreme Court judgments that assist in that regard.*

CORONER: *Yes.*

MR. TANSEY: *I have already brought to your attention how in the Farrell case the decision of the Broderick Commission about the purpose and function of an inquest was adopted. The Supreme Court agreed that it cannot deal with civil and/or criminal--*

CORONER: *Can you just get to the point of what this line of questioning ...*

MR. TANSEY: *'while this provision undoubtedly lays stress on the limited nature of the inquiry conducted, the prohibition on any adjudication as to criminal or civil liability should*

not be construed in a manner which would unduly inhibit the inquiry.' This is a legitimate line of inquiry. The evidence on the basis of the investigation we have conducted indicates that the late Terry Kane.

CORONER: *Deirdre Kane.*

MR. TANSEY: *I beg your pardon, Deirdre Kane. The evidence indicates that Terry Kane was effectively a drug addict at the time of the tragedy.*

CORONER: *That is not the evidence we have in this court at the moment. We are establishing some of that evidence and again that term would not necessarily be a medical term in terms of calling somebody a drug addict or that would not be a medical term. We will leave that aside for a moment. We certainly will be establishing if there were difficulties in terms of addiction to certain substances or dependence on certain substances, but that is not for this witness. Now I will allow your line of questioning in a sense and I would ask you to move along a bit in the sense that her impression of her mum and that she lived in-house and she grew up and these problems were going back to a certain stage but I would accept Mr. Kane's evidence and Ms. Kane's evidence but perhaps you would move it along in terms of --" (emphasis added).*

28. It seems clear from the foregoing that the respondent regarded as relevant and as a legitimate line of inquiry the issue of whether the late Mrs. Kane had difficulties in terms of addiction to or dependence on what she referred to as "certain substances". It is equally clear that the deceased's family contended that she had, and that the substances were opioid pain medication. Whether or not the late Mrs. Kane was addicted to opioid pain medication and, if so, when and how this occurred and the facts concerning same might well fall outside the narrower questions of the identity of the deceased as well as how, when, and where her death occurred but the coroner plainly takes the attitude that the question of addiction is relevant in the context of the inquest's proper functions and this could hardly be disputed in light of the principles outlined in *Eastern Health Board*.
29. The coroner's views are underlined by comments made shortly afterwards as can be seen from p. 42, line 17 onwards when the coroner said the following in response to a submission by Ms. O'Driscoll:

"CORONER: *I think we have already heard from Mr. Kane in terms of the difficulties and they are complicated and complex difficulties but they persisted up to the time of the death of the late Mrs. Kane but that, you know, they start at a particular point. You know, to a point where it is difficult to say, you know, we can't just deal with the time proximate to when she passed away because a lot of these difficulties we are going to hear about, including difficulties with mental health, physical difficulties, they arose prior to that so it is somewhat artificial to focus on -- I mean what would that period of time be, a month, six months, a year? I think it is reasonable to explore some of the circumstances that arose throughout the time from when she first became unwell, both from a physical and mental health perspective. So again this witness would not be*

allowed to give medical evidence but she is allowed to give her impression of what she witnessed at that time in terms of the condition of her mother." (emphasis added)

30. A brief statement from a Mr. Stephen Carney of Swords Fire Station was read into evidence by the Coroner (transcript p.46, line 13 onwards). The Coroner then read the statement of Dr. James O'Rourke, a consultant in anaesthesia and intensive care medicine at Beaumont Hospital followed by a statement by Dr. Harewood, the deceased's admitting consultant at Beaumont Hospital. The Coroner then invited Dr. Catherine Ryan, who performed the post-mortem examination, to read her deposition into evidence (transcript p.51 from line 4 onwards). Dr. Ryan's deposition concluded with the following statement. "In summary the cause of death in this case was hypoxic-ischemic encephalopathy as a consequence of hanging" (transcript p.53 line 10). Dr. Ryan was then examined by the Coroner, following which Mr. Tansey put questions to Dr. Ryan.

31. After a short break, Dr. Tony Crosby read his statement in which he confirmed inter alia, that, from 26th February, 2016 until her passing, the late Mrs. Kane attended his clinic approximately fourteen times. He described the deceased as having suffered from chronic anxiety, stress, depression and with a past medical history of psychiatric problems. It is fair to say that Dr. Crosby's evidence was to the effect that he was aware that there had been a problem with pain medication abuse; that he did not prescribe opioid pain medication; and that he regarded it as important to take a cautious approach. This is illustrated by inter alia, the following exchange between the Coroner and Dr. Crosby: -

"Q. In terms of then, were there, throughout the time were there issues then in terms of prescribing issues? I note on this list this list there is no opiate based medication?"

A. Yeah.

Q. Were you aware that that had been an issue for her in terms of over the years difficulties with addiction?"

A. We gathered that in fact that there was a problem as far as pain relief and medication abuse so we kind of treaded with caution. On numerous occasions we did have with Deirdre and Terry most of the conversations, most of the consultations would be with Terry and Deirdre combined" (transcript p.65, line 176 onwards).

32. The following exchange also took place between the Coroner and Dr. Crosby:

"CORONER: You mentioned they would attend the consultations together.

A. We got there was a bit of a problem because with the level of the symptoms, the intense of the symptoms and also we kind of suspected there was a problem as far as medication misuse.

Q. Yes. Did you have any discussions with any of the other specialists, particularly the pain specialist, did you have a discussion that you wouldn't be prescribing across each other?"

A. *Again we didn't have correspondence from the pain specialists because we gathered that was 2014 and she wasn't attending the pain specialist when she was with us so there was no attendance, she had no follow-up or attendance at that particular time in 2016. But she did continue to complain of chronic pain which we felt with [sic] a little psychosomatic rather than true pathology. We were very wary in the dealings with prescribing medication, particularly analgesia and addictive medication. That involved, most consultations with Deirdre involved joint consultation with her and her husband Terry.*

Q. *Is that because of those issues?*

A. *Absolutely."*

33. After being questioned by the Coroner, Dr. Crosby was examined by Mr. Tansey and among the evidence given by Dr. Crosby was to explain that for the two years she was attending his practice *"She would have got some mild analgesia for back pain but again that would have been codeine based but again very short supply and for only for a limited period of time but not opiates"* (transcript p.74, line 1 onwards). Dr. Crosby also emphasised that this was for a short period only *"Because it is highly addictive, codeine is highly addictive"* (transcript p.74, line 21).
34. As can be seen from p.76 onwards of the transcript, Mr. Tansey made reference to notes which he had received directly from the doctor. Ms. O'Driscoll BL indicated that she had not received them and a short adjournment took place, following which Mr. Tansey asked a number of questions, including with regard to the doctor's notes from November 2016 and June 2017 regarding the late Mrs. Kane looking for a duplicate prescription. Dr. Crosby was then examined by Ms. O'Driscoll (from transcript p.82, line 8 onwards).
35. After the lunch adjournment, the next witness was Dr. Naser and he read his deposition into evidence, confirming *inter alia*, that the deceased was seen by him at his clinic between June 2000 and 22 June, 2015 (see transcript p.90, line 19 onwards). The Coroner then asked Dr. Naser a series of questions (beginning on transcript p.93, line 9). It is clear from Dr. Naser's evidence that he had concerns around the late Mrs. Kane's use of pain medication and the issue of addiction. This is illustrated from the following exchanges between the Coroner and Dr. Naser (transcript p.100, from line 25 onwards): -

Q. *You mentioned that she would ask for intravenous morphine. Would you regard that as a red flag or something worrying in terms of a patient asking for a specific substance to be delivered in a specific way; would that concern you?*

A. *Absolutely and I actually asked her why would you use, are you using any other you know hard substances and she denied that, you know, but she said I have the tolerance of an elephant pain wise, you know, nothing works for me. Solpadine is like smarties. Zydol is like smarties, Tylex I could take up to 12 and nothing happens, I feel they just constipate me but they do nothing. I often write Tylex, I give the prescription for two*

weeks to dispense in Adrian Dunne's Pharmacy. They ring me back, it has been modified to four weeks or the prescription had been.

Q. *Did that happen here in this case?*

A. *Yes, yes.*

Q. *So, sorry just in terms of you feel that Mrs. Kane might have adjusted prescriptions at times?*

A. *Yes.*

Q. *Is that because the chemist notified you?*

A. *Yes, yes.*

Q. *Again would that - -*

A. *Actually at times, and I am aware of the red flags with all respects your Honour, it is in the HSE Guidelines as far as dealing with people who have addictive potential like any alteration of the prescriptions, dropping the prescriptions, losing the prescriptions, you know, we are aware of all these things. I actually bring her back and I say Deirdre this was happening, this happened, and I don't want this to happen again, we are aware of it. This is where we actually tried to monitor her condition as much as I can.*

Q. *Did you at any stage consider referring her to any of the addiction services or suggesting to her - -*

A. *Well I mentioned that to Dr. Keaveney about the fact that she would need rehabilitation from that perspective.*

Q. *So at a certain point would you regard her as having been dependent on the prescription medication?*

A. *Yes, yes."*

36. It is apparent from the foregoing that the Coroner regarded as relevant, and as something which could properly be investigated and considered at the inquest, issues concerning the late Mrs. Kane's relationship to pain medication, including possible opioid addiction. This is perfectly clear from the questions asked by the Coroner up to this point (and is also entirely consistent with statements made earlier by the Coroner including "I am very well aware of the function of the inquest and it is not just to establish the proximate cause of death. I am within my rights to explore circumstances that surround the cause of death..." (transcript p.15, line 12) and "we certainly will be establishing if there were difficulties in terms of addiction to certain substances or dependence on certain substances..." (transcript p.41, line 22).

The ruling

37. Mr. Tansey's questioning of Dr. Naser begins at p.104 of the transcript and there is an immediate objection from Ms. Driscoll in the following terms: "*From the outset, Coroner, I can't see what relevance there is to the questioning of Dr. Naser about his deposition he has made. It has nothing to do with the reason why we are here today*" (transcript p.104, line 24 onwards). Exchanges take place thereafter as between Ms. O'Driscoll, the Coroner and Mr. Tansey, following which Mr. Tansey begins questioning Dr. Naser from p.110 onwards of the transcript. As can be seen from the bottom of p.110, the questions concern *inter alia*, the late Mrs. Kane's first attendance at Dr. Naser's practice in June 2000; the birth of her children; and her pain and depression.
38. Given its importance to the present proceedings, it is necessary to set out verbatim the following extract from the transcript (pp.118 to 124), beginning with a question put to Dr. Naser by Mr. Tansey (transcript p.118, line 28). As will be seen, the questions put by Mr. Tansey to Dr. Naser gave rise to an exchange between the Coroner and Mr. Tansey wherein the respondent makes clear that he is not permitted to cross-examine the witness:-

Q. *So did you actually make a diagnosis as to the cause of this pain that was everywhere?*

A. *Mr. Tansey, I didn't give a diagnosis, that is why I actually referred this good lady to my colleagues, to help me to find out a diagnosis as far as this cause of this excruciating pain.*

Q. *All right so you didn't yourself determine what was the underlying pathology, you instead you referred her to one of your colleagues, one of your consultant colleagues to make that determination; is that correct?*

A. *Not one, a number of them.*

Q. *One of them was a pain specialist, isn't that correct, Dr. Keaveney?*

A. *Correct.*

Q. *When did you refer Deirdre to Dr. Keaveney?*

A. *It would be around 2008.*

Q. *You have your chart in front of you?*

A. *I don't.*

Q. *You had a chart, I saw you looking through a chart, what have you? You have two bundles of files?*

A. *Well they are not the full files.*

CORONER: *Do you need to get some more documentation?*

MS. O'DRISCOLL: I think because, Coroner, Dr. Naser saw the deceased for over 15 years. If we are going to go through every entry in the chart we are going to be here for a very long time. I think if Mr. Tansey has a specific - -

CORONER: I am wondering for the ease of Dr. Naser if he wished to have his own notes he is welcome to do so.

MR. TANSEY: That is exactly the point.

CORONER: Having said that yes I don't propose to go through every visit between June 2000 and 22 June, 2015 but - -

MS. O'DRISCOLL: Sorry if Mr. Tansey thinks that the time of the referral is the wrong time why doesn't just put it to the doctor that possibly it could have been a later date.

CORONER: Is that an issue?

MR. TANSEY: With the greatest of respect, madam Coroner, this is a cross-examination.

CORONER: It is not a cross-examination.

MS. O'DRISCOLL: We are in the Coroner's Court.

CORONER: This is the Coroner's Court. The nature of these proceedings is inquisitorial and not adversarial, I need not remind you of that. It is not a cross-examination.

MR. TANSEY: Sorry, there is a decision on that very issue in the Supreme Court and I am asking you now for time to open that to you, I will open it in one moment, it is a cross-examination.

CORONER: Mr. Tansey, you are here to assist the court in making a determination and making findings and as an interested party or the representative of an interested party you are entitled to ask questions but you are not entitled to cross-examination a witness and that is the practice in this Court. So Dr. Naser do you wish to get your own notes to refer to them?

A. No.

CORONER: Are you happy to proceed on that basis?

MR. TANSEY: If you bear with me, Madam Coroner, in relation to that issue.

CORONER: I am not going to hear anything in relation to that, Mr. Tansey, can you please proceed with your questions.

MR. TANSEY: Sorry, you have made a ruling.

CORONER: Yes, I have made a ruling.

MR. TANSEY: *You have made a ruling, Madam Coroner, and I am concerned on behalf of the family that I represent to open to you some law on the nature of the exercise that I am engaged in at the moment. I am asking you for the facility of opening the law on that issue to you.*

CORONER: *I have made a ruling in relation to whether you are cross-examining a witness or not. We don't cross-examine in this Court. So if you wish to proceed with your questions, appropriate questions for this forum in order to establish factual information that might be of assistance to the Court I am happy to let you proceed. Do you wish to proceed with your questions?*

MR. TANSEY: *Sorry madam, you have made a judgment.*

CORONER: *Yes, I have.*

MR. TANSEY: *You have made a determination.*

CORONER: *Yes, I have.*

MR. TANSEY: *And I am anxious, I am asking you for the facility of opening to you a decision of the Supreme Court that describes the nature of the exercise that I am currently engaged in.*

CORONER: *This isn't an appeals proceeding, Mr. Tansey. So if you have a difficulty with the ruling that I have made you have other remedies but for the moment that is the ruling I have made, you have no cross-examining someone. If you wish to continue to put appropriate questions in an appropriate manner you may do so otherwise I will take it that you have finished with this witness and I will ask your colleague - -*

MR. TANSEY: *I am not finished with the witness.*

CORONER: *Then carry on please.*

MR. TANSEY: *Sorry, madam Coroner, with the greatest of respect this is an inquiry where the rules of evidence do apply. I have already opened to you some law that emanates from the highest court in the land in this country in order to persuade you that the function of this inquiry is a lot more than my friend indicated to you that it was.*

CORONER: *Yes.*

MR. TANSEY: *I am engaged in the cross-examination of this witness.*

CORONER: *You are engaged in the questioning of this witness.*

MR. TANSEY: *Sorry, sorry.*

CORONER: *Mr. Tansey, this discussion is over. Do you wish to proceed in questioning this witness or do you wish for that questioning to be terminated? I will take it that if you*

continue to argue with me that you are finished with the relevant questions for this witness.

MR. TANSEY: *I am not finished.*

CORONER: *Well then proceed.*

MR. TANSEY: *Sorry, I am not finished. I am asking you now just for the moment are you refusing to allow me to open some law to you?*

A.[Coroner]: *I have made a ruling in relation to what you regard as cross-examination and what the practice of this Court is which is that interested parties or their representatives may ask questions in order to assist the Court in ascertaining the facts surrounding this incident. I have made a ruling. Do you wish to proceed with questioning or do you wish me to rise so you can take instructions from your client?*

MR. TANSEY: *No, no I have taken instructions.*

CORONER: *As you are well aware I can proceed with some of this evidence on the basis of comprehensive reports that I have received. It is open to me to do that. So do you wish to continue questioning this witness with appropriate questions or do you wish to continue having this argument?*

MR. TANSEY: *Sorry, sorry, I am entitled to ask you--*

CORONER: *I have invited you several times to continue with your questions, do you wish to do so.*

MR. TANSEY: *Are you refusing to allow me to open some law to you?*

CORONER: *I have made a ruling on that particular issue.*

MR. TANSEY: *Without hearing, audi alteram partem with the greatest of respect. My friend made a submission to you and before you heard the other side you made a ruling. Now with the greatest of respect one of the cornerstones on which our system is based is that you must hear two sides before you make a judgment, audi alteram partem, it is pretty fundamental basically and you are refusing to allow me--*

CORONER: *You are not cross-examining.*

MR. TANSEY: *You are making a judgment.*

CORONER: *I have made a ruling.*

MR. TANSEY: *Without hearing the other side. That is a matter for you madam--*

CORONER: *I have made a ruling in relation to the nature of your questioning. Do you wish to proceed with questioning--*

MR. TANSEY: *I actually am not finished with this witness.*

CORONER: *Please carry on with your questions as you have been invited to do so.*

MR. TANSEY: *Could you rise for a moment. It has knocked me off, would you rise for a moment, please.*

CORONER: *For what purpose?*

MR. TANSEY: *Because of the fact that this exchange between the bench and myself has knocked me out of sync but if you insist on proceeding I will proceed.*

CORONER: *Are there any submissions in from anybody else in relation to this brief--*

MR. TANSEY: *Let's proceed Madam Coroner with the greatest of respect. If you have to hear the other side about a simple application for to rise for a moment made by one of the practising--*

CORONER: *Perhaps if we would proceed. I think we had better proceed, thank you."*

Certain comments in relation to the respondent's ruling

39. The foregoing comprises the ruling which is at the heart of the present proceedings and a number of comments can fairly be made in relation to it, as follows. The respondent has ruled that the family's legal representative is not entitled to cross-examine the relevant witness. The respondent states as much on no less than 6 occasions:-

- *"It is not a cross-examination" (transcript, p. 120, 98);*
- *"The nature of these proceedings is inquisitorial and not adversarial, I need not remind you of that. It is not a cross-examination." (transcript, p. 120, lines 10-13);*
- *"...you are entitled to ask questions but you are not entitled to cross-examine a witness and that is the practice in this Court." (transcript, p. 120, lines 21-23);*
- *"we don't cross-examine in this Court." (transcript, p. 121, lines 12-13);*
- *"...if you have a difficulty with the ruling I have made you have other remedies but for the moment that is the ruling I have made, you have not cross-examining someone." (transcript, p. 121, lines 28 and 29; p. 122, lines 1 and 2); and*
- *"You are not cross-examining." (transcript, p. 124, line 3).*

40. Although it is true to say that the relevant exchange and the respondent's ruling takes place shortly after Mr. Tansey put questions to Dr. Naser with reference to the doctor's chart, it is perfectly clear from the respondent's ruling that it is of general effect. In other words, the respondent does not indicate that the ruling was confined to a particular question or issue or, for that matter, to that particular witness. Rather, it is perfectly clear that the respondent takes the view that it is wholly impermissible for someone in Mr. Tansey's position to cross-examine a witness on behalf of the deceased's family.

The only reasons given for the ruling

41. It is also fair to say that the respondent is clear as to the reasons for her ruling. They are as follows:-

- *"The nature of these proceedings is inquisitorial and not adversarial." (transcript, p. 120, lines 10 and 11);*
- *"you are here to assist the court in making a determination and making findings and as an interested party or the representative of an interested party you are entitled to ask questions but you are not entitled to cross-examine a witness and that is the practice in this Court." (transcript, p. 20, lines 18-23); and*
- *"We don't cross-examine in this Court." (transcript, p. 121, lines 12-13).*

The relevance of a line of questioning

42. No reasons other than the foregoing are given for the respondent's ruling. The respondent certainly does not say to Mr. Tansey that the reason for her ruling is because she regards any line of questioning which he was pursuing, or wished to pursue, as irrelevant. As can be seen from the transcript, the exchange and the ruling arose shortly after Mr. Tansey raised with Dr. Naser the question as to when the late Mrs. Kane was referred to a pain specialist to assist with diagnosis. At no stage in her ruling did the Coroner suggest that this was not a relevant issue to explore. It is also fair to say that it would have been curious for the Coroner to suggest that such a line of inquiry was irrelevant, given the Coroner's earlier remarks about the proper scope of the inquest, such as: *"I think it is reasonable to explore some of the circumstances that arose throughout the time from when she first became unwell, both from a physical and mental health perspective"* (being a statement made by the Coroner in response to an interjection by Ms. O'Driscoll - see transcript, p. 42, line 29 onwards).

Civil or criminal liability

43. Nowhere in her ruling does the respondent say that the reason for it is because she regarded Mr. Tansey as having asked (or being about to ask) questions which it was impermissible to allow, having regard to the provisions of s. 30 of the 1962 Act. It will, of course, be recalled that, as interpreted by the Supreme Court in *Eastern Health Board*, s. 30 of the 1962 Act does not prohibit questions being put or facts elicited and, as Keane C.J. put it: *"it is clear that the inquest may properly investigate and consider the surrounding circumstances of the death, whether or not the facts explored may, in another forum, ultimately be welcomed to issues of civil or criminal liability"*. Notwithstanding the proper interpretation of s. 30, if the reason for the respondent's ruling was a fear that Mr. Tansey's lines of inquiry would offend s. 30, this is certainly not something the respondent said at the time of her ruling. No hint of this reason can be found anywhere in the ruling given.

Certain prior statements by the respondent

44. It is also fair to say that if one reads the transcript up to p. 117 (i.e. prior to the ruling), it is perfectly clear that Mr. Tansey, on behalf of the deceased's family contended that the evidence indicated that the deceased *"was effectively a drug addict at the time of the*

tragedy" (see transcript, p. 41, line 11, where Mr. Tansey makes this clear). It was also perfectly clear, prior to the respondent's ruling that, given what the deceased's family contended, Mr. Tansey wished to pursue lines of inquiry related to the applicant's belief that his late wife was addicted to opioid pain medication and that such an addiction was a crucial element as regards the surrounding circumstances of her death. It is also perfectly clear that the respondent regarded such lines of inquiry as being, not only relevant, but issues, the exploration of which did not offend s. 30 of the 1962 Act. This seems to me to be clear from statements made by the respondent long before her ruling, such as: "*We certainly will be establishing if there were difficulties in terms of addiction to certain substances or dependents on certain substances...*" (a statement made by the Coroner during Mr. Tansey's examination of the deceased's daughter). The point made by the respondent at that time was not that there was anything to prevent the establishing of facts concerning "*addiction*" or "*dependence*". Rather, the respondent indicated that this was not an issue for the deceased's daughter to address. The context was, of course, that qualified medical professionals would be giving evidence and questions could be put to them. Against this backdrop, it would have been surprising if the respondent had given, as reason for her ruling regarding the impermissibility of cross-examination, her view that an exploration of possible addiction to pain medication, and the role such addiction may have played in the respondent's death, offended against s. 30 of the 1962 Act, in circumstances where she previously indicated that addiction and dependence were issues within the scope of the inquest.

45. Viewed objectively, nothing in the ruling complained of suggests that the reasons for it concerned, (a) the relevance of the issues which Mr. Tansey wished to pursue or (b) the respondent's view that s. 30 of the 1962 Act prohibited Mr. Tansey from exploring a particular issue or issues, and the respondent identified none as being "out of bounds". I am fortified in the foregoing view by the words which the respondent actually used when she made her ruling.

The nature of questioning

46. When repeatedly informing Mr. Tansey that she had made a ruling, it was not the relevance of any topic or the potential infringement of s. 30 of the 1962 Act which exercised the respondent. Rather, it was (as the respondent informed Mr. Tansey): "*...a ruling in relation to the nature of your questioning.*" The nature of questioning relates to the manner in which questions are put to a witness (ruling out, for example, the putting of contrary propositions in order to test the evidence given by the witness). The respondent made crystal-clear her view that cross-examination by Mr. Tansey was impermissible because it was not allowed at a coroner's inquiry (not that specific lines of inquiry were irrelevant or that they were impermissible because they would infringe a statutory provision).

Cross-examination

47. It seems uncontroversial to say that cross-examination has, as a very legitimate aim, the testing of evidence given by a witness. Thus, it can include the putting of propositions and the challenging of testimony given and a legitimate purpose of same may well include the diminishing of the effect of evidence given. It is plain from the ruling given by the

respondent that she regarded questioning of this "nature" as impermissible and something that Mr. Tansey could not legitimately engage in.

Repeated requests to open Supreme Court authority

48. Any fair reading of the relevant passage from the transcript reveals that Mr. Tansey repeatedly made the request to make a submission to the respondent and to open Supreme Court authority relevant to the issue. This was something the respondent refused to allow. Without meaning any disrespect to the respondent, it is entirely clear that she was not only steadfast in her refusal to permit legal authority to be opened to her, but conscious that, if the family's legal representative was unhappy with the ruling, they had an entitlement to ventilate the issue, but only in another forum. It will be recalled that the respondent stated, *inter alia*, "...if you have a difficulty with the ruling that I have made you have other remedies but for the moment that is the ruling I have made..." (transcript, p. 121, line 28 onwards). Even if the respondent did not specifically refer to judicial review, the present proceedings fall within the category of "other remedies".

The manner/style in which to put questions

49. It seems to me entirely obvious that the respondent's ruling constrained the family's legal representative with regard to his questioning of witnesses, in particular, Dr. Naser. This is also confirmed by a careful reading of the remainder of the transcript. On a number of occasions, the respondent made comments directed to Mr. Tansey as to what she regarded as the appropriate manner in which to put questions to a witness, the following being examples:-

- "...I would ask you to confine I suppose your questions to factual questions asking this witness what he did not what he didn't do but the factual account of what his care was." (transcript, p. 39, line 26 onwards);
- "Can you just confine the questions to actual factual questions and try I suppose allow the witness to answer questions of a factual nature as opposed to making statements about matters, just to be more direct in the interests of assisting the court, I would appreciate that." (transcript, p. 140, line 14 onwards);
- "Again, it would be of great assistance to the Court again just to keep the style of your questions, as I say, more direct rather than making statements. If you could possibly do that that would be extremely helpful." (transcript, p. 149, line 25 onwards);
- "You're allowed to ask specific questions in terms of his particular actions in relation to this patient and those questions must be of a after neutral style, in terms of factual information, and not a broader exploration of his practice." (transcript, p. 152, line 20 onwards);
- "So, again, I would just ask you to confine the questions to direct questions of a factual nature with regard to the care and treatment of the late Mrs. Kane." (transcript, p. 153, line 14 onwards); and

- *"So the questions need to be limited to asking the witness: are these the drugs in fact he did prescribe; if so, what were the reasons for prescribing those drug, etc."* (transcript, p. 166, line 2 onwards).

The foregoing comprise comments by the respondent made to Mr. Tansey during his questioning of Dr. Naser. I do not for a moment suggest that they constitute a representative sample of the entirety of the comments made by the respondent who, no doubt, approached her important task *bona fide* and with consummate professionalism. It is fair, however, to say that a consideration of the contents of the transcript entitle to me to hold that the respondent was of the view that the role of the family's legal representative did not include a *testing* of evidence given by a witness, by, for example, putting propositions to the witness. I am entitled to hold that the respondent regarded as appropriate the putting of *open* questions of a straightforward manner. This is not to say that Mr. Tansey did not engage in cross-examination at any point. Any fair consideration of the balance of the transcript reveals that on numerous occasions he did. It is also fair to say that he put a range of questions related to the existence of and nature of the addiction to opiate pain medication which the deceased's family believe may have contributed to her death, as well as questions concerning the manner in which opioid pain killers were prescribed. That is not, however, the end of the analysis. This is because, regardless of what questions Mr. Tansey was permitted to ask, and irrespective of what evidence was given in response to those questions, it is beyond doubt that the ruling constrained the family's legal representative insofar as questioning witnesses was concerned, resulting in questions which were not put and, therefore, evidence which was not given. It is equally clear that, consistent with her ruling, the respondent regarded cross-examination as impermissible and, well after making her ruling the respondent repeatedly informed Mr Tansey that he should not put "*statements about matters*" to the witness (something at the core of cross-examination).

What the ruling prevented the applicant's legal representative from doing

50. The adverse effect of the ruling can be seen from the contents of para. 10-14 of Mr. Tansey's affidavit sworn 07 August, 2020 wherein he specifies the matters and materials which he wished to, but was prevented from, cross-examining Dr. Naser on:-

"10. I say that my previous affidavit has already identified the matters and materials which I wish to cross-examine Dr. Naser on; but which the respondent prevented me from doing. However, given that the respondent appears not to have engaged with this at all in the replying affidavit, I repeat for the sake of clarity that I intended to cross-examine Dr. Naser on his medical notes and records from the period 2000 to 2015 on the basis of instructions from the Applicant that he wished to have pursued a line of enquiry into the surrounding circumstances of his wife's death. The Applicant believes that his wife's opioid addiction was a critical element of the surrounding circumstances of her death; and that issues in relation to how she came to develop that addiction and, in particular, how it was sustained and deepened until she was, at the time of her death, chronically addicted ought to be explored as part of the Coroner's investigation of these surrounding circumstances.

I say that the Applicant believed that Dr. Naser's prescription practices contributed to this and the absence of appropriate guidance or supervision of doctors for same is a matter of public concern given that it could, if unremedied, result in further deaths.

11. *The Applicant's belief was that this was a legitimate line of enquiry in respect of the Coroner's function to investigate and consider the surrounding circumstances of her death; and to the Coroner's function to draw attention to the existence of circumstances which, if unremedied, might lead to further deaths.*
 12. *I say that I intended to cross-examine Dr. Naser in respect of his notes from the period from when she was first prescribed opioids, through her development of an addiction to opioids and including the continued and very regular prescription to her of the same opioids to which she was already addicted.*
 13. *I say that I intended to direct Dr. Naser to aspects of the medical notes which, in the Applicant's view, demonstrate a failure to consider the emerging addiction; a failure to consider alternatives when it was clear that the deceased was becoming and/or had become chronically addicted; and an apparent omission to record any reason on many occasions in the period up to 2015 for the prescription of opioids. I say that the Applicant instructed me to pursue these lines of enquiry on the basis of his belief that these were relevant to the issue of how his wife, the deceased, was at the time of her death chronically addicted to opioids; an addiction which he believed to have caused her death.*
 14. *I say that the respondent's ruling prevented me from cross-examining the witness on any of these matters and/or of examining the witness on the basis of the notes in question."*
51. The foregoing comprise specific averments as to the negative effect of the respondent's ruling with regard to the cross-examination which Mr. Tansey intended to conduct, but was prevented from conducting, on behalf of the deceased's family. As the applicant's counsel fairly points out, no notice to cross-examine Mr. Tansey was served in the context of the present proceedings and, having regard to the foregoing averments, I am entitled to hold that the respondent's ruling did, in fact, adversely affect the questioning by the family's legal representative of witnesses, in particular, Dr. Naser.

Leeway

52. In a replying affidavit sworn by the respondent on 27th April, 2021, she avers as follows at para. 5:-

"5. *Mr. Tansey has repeatedly emphasised my refusal to allow him to cross-examine witnesses at the Inquest. As is clear from my Replying Affidavit, I have accepted that myself and Mr. Tansey joined issue on this particular topic. However, it is also clear that I allowed him to ask all relevant questions at the Inquest, and that in*

substance he was given a very substantial amount of leeway in the range, and type of questions he asked."

53. That does not appear to me to take away from the fact, as averred by Mr. Tansey, the respondent's ruling prevented him from cross-examining the witness in question in respect of matters to which he refers, in the manner he has averred. I say this because, regardless of what "leeway" Mr. Tansey was shown, a consideration of the evidence reveals the fact that the ruling prevented Mr. Tansey from asking certain questions and, therefore, it is unknown what evidence might have been given in response to the questions which Mr. Tansey was unable to ask. That being so, the consequences for the verdict are unknown. In making this point, I want to stress, again, that no criticism whatsoever is made in respect of the respondent's *bona fides* or professionalism with regard to the conduct of the inquest. It also seems to me that the respondent strove to ensure that the inquest was conducted not only with efficiency, but with fairness. Unfortunately, however, the respondent fell into error and the evidence demonstrates that this error had a material effect. At this juncture, it is appropriate to turn to certain authorities.

Ramseyer v. Mahon [2006] 1 IR 216

54. The decision of the Supreme Court (Fennelly J.) in *Ramseyer v. Mahon* [2006] 1 IR 216 makes clear that cross-examination is permissible at an inquest. During the hearing, counsel for the respondent made clear that the respondent should not have said that no cross-examination was allowed. He did not go so far, however, as to state explicitly that there was an error of law on the part of the respondent, but I am entirely satisfied that this is what occurred. Earlier in this judgment, I looked closely at the ruling made by the respondent and it is clear that, at the time the ruling was made, the fundamental reason proffered by the respondent for refusing to allow Mr. Tansey to continue with his questions was that cross-examination is not permitted in the Coroner's Court. This is wrong in law.
55. The applicant in *Ramseyer* was the sister and next-of-kin of the deceased. She claimed that the Acting Coroner for County Offaly, by denying her access to certain documents, proposed to conduct the relevant inquest in a manner unfair to her interests. The applicant had sought copies of all statements or draft depositions made by potential witnesses in order to enable her to participate fully in the inquest as a properly interested party. The respondent submitted that the draft depositions remained unsworn until the inquest and, therefore, had no probative value. The respondent also submitted that an inquest was an inquisitorial proceeding which the applicant was seeking to render adversarial. The High Court (Murphy J.) refused the relief sought and the applicant brought an appeal to the Supreme Court. It is useful to quote at some length from the decision of Fennelly J. After discussing the decision of Keane J. (as he then was) in *Farrell v. Attorney General* [1998] 1 I.R. 203 and the decision of the same judge, as Chief Justice, in the subsequent *Eastern Health Board* judgment, Fennelly J. stated as follows:-

"[24] Neither of these judgments was directly concerned with the question which arises on the present appeal, namely the extent of the right of a person in the position of

the Appellant to access, in advance of the inquest, to information in the possession of the Coroner. On this issue, I believe the judgment of Kelly J in the High Court in Northern Area Health Board v Geraghty [2001] 3 I.R. 321 is more pertinent. That case concerned an inquest into the death of a patient in the care of the plaintiff Board. The Board became concerned that the inquest was going beyond the bounds of the 1962 Act, though it had participated actively in the proceedings. In his judgment on the Board's application for Judicial Review of the inquest proceedings and, in particular, a declaration that the inquest as conducted was ultra vires the Act, Kelly J made at p. 335, the following statement which was cited by the learned trial judge in the present case:-

"In essence the applicant contends that the rules of natural justice require that the statements of witnesses to be given at a coroner's inquest ought to be furnished in advance of the hearing to the interested parties. There was no case cited in support of this contention. Rather reference was made to general principles dealing with the rules of natural justice. But it is well settled that these rules do not apply in a vacuum. The necessity to disclose material prior to a hearing and the extent of such disclosure will very much depend upon the nature of such a hearing."

Having cited the dictum from Lord Lane L.C.J., cited above, Kelly J went on the say:-

"I would be slow to hold that an inquisitorial procedure whose verdict cannot impose civil or criminal liability of any sort on any person requires the full panoply of natural justice requirements of disclosure in advance of the hearing to be applied to it as would be the case, for example, in a criminal trial."

[25] He also went on, however, to state that he did not have to decide that issue in the case before him. He rejected the applicant's claim on the basis that that it was not entitled, in any event, to the exercise of the discretion of the court in its favour. The dictum of Kelly J is, nonetheless, a useful guide and I agree with it."

56. Before continuing to look at the extract from *Ramseyer*, it is appropriate to note that counsel for the respondent refers to the foregoing principles as rendering it important to look at the transcript in its entirety, the thrust of the submission being that the making of a mistake does not inexorably result in a decision being quashed. It seems appropriate to say that what was under discussion in the above cited passage concerned the question of disclosure of material prior to a Coroner's inquest. That is a very different factual situation than presents in these proceedings, where a ruling made by the respondent has, in fact, had an adverse effect on the questioning of witnesses by the family's legal representative. Furthermore, Kelly J. (as he then was) did not state (in *Northern Area Health Board v Geraghty*) that he would be slow to hold that a Coroner's inquest requires "the full panoply of natural justice requirements.", but "*the full panoply of natural justice*

requirements of disclosure in advance of the hearing..." (emphasis added). No such issue arises in the present case. Fennelly J.'s decision in *Ramseyer* continued as follows:-

"[26] *The guiding criteria for the decision on this appeal can now be considered. It is necessary to consider, firstly, the nature of an inquest and the role of the Coroner. Secondly, it is necessary to consider the status and rights of a person such as the Applicant.*

[27] *I must repeat that the inquest is an inquisitorial proceeding. There is neither prosecutor nor defendant; neither plaintiff nor defendant. There is neither indictment nor statement of claim. There are no parties and nobody is obliged to take a position or give notice of a position as to the "how, when and where" of the death. Furthermore, the inquest is confined to finding facts and is precluded from expressing any views in verdict or rider about innocence or guilt of any person. It is, on the other hand, necessary to bear in mind the qualification of Keane C.J. at p. 637 of Eastern Health Board v. Farrell [2001] 4 I.R. 627, quoted above:-*

"...that the inquest may properly investigate and consider the surrounding circumstances of the death, whether or not the facts explored may, in another forum, ultimately be relevant to issues of civil or criminal liability."

[28] *Facts themselves are not entirely neutral. They are often pregnant with implications. A pathologist's report, while entirely scientific in its approach, may give strong pointers either in favour of accident or in the direction of crime, depending on the medical findings.*

[29] *It is in no way inconsistent with the inquisitorial character of an inquest that persons with a legitimate interest should propound a version of the facts which accords with those interests. One may wish to seek to establish facts tending to deflect blame; one may wish to pursue a version which tends to suggest that the death occurred other than due to mere accident or natural causes; one may simply wish to have a verdict which is neutral as regards any such considerations. All of these respective considerations are legitimate.*

[30] *It follows that persons represented at an inquest are entitled to an appropriate level of fair procedures. They are entitled to be present, to call witnesses and to cross-examine. But all of this is subject to the overriding consideration that they are assisting in an inquiry into the facts and are not either responding to or making a charge. They are subject to the directions of the Coroner, who is entitled to conduct the hearing in his discretion, while respecting the legitimate interest of interested persons to pursue lines of inquiry."*

Cross-examination is permissible at a coroner's inquest

57. As the Supreme Court has made clear, a range of lines of inquiry may legitimately be pursued at an inquest and there is no doubt that, on behalf of the deceased's family, Mr. Tansey was propounding a version and seeking to establish facts consistent with the

family's contention in that regard. That is not impermissible having regard to *Ramseyer*. It is clear that, on behalf of the family, Mr. Tansey was an interested person with a legitimate interest in pursuing lines of inquiry and it is clear that cross-examination at an inquest is permissible.

58. Counsel for the respondent draws particular attention to the third sentence at para. 30 of Fennelly J.'s decision which referenced the overriding consideration that the party cross-examining "...are assisting in an inquiry into the facts and are not either responding to or making a charge". The thrust of the submission made on behalf of the respondent is that any restriction placed on Mr. Tansey neither impacted on the manner in which he questioned the witness or amounted to unfairness and it is also submitted that the respondent's ruling had no effect on the ultimate verdict. Regardless of the skill with which these submissions are made, it is beyond doubt that the view taken by the respondent was that there was no right to cross-examine enjoyed by Mr. Tansey. This was something she repeatedly stated. The reason given was that the nature of the proceedings was inquisitorial and not adversarial and that no cross-examination was permitted in the Coroner's Court. This was no doubt an innocent mistake on the part of the respondent but it was, nonetheless, a decision which was unquestionably wrong in law. Given the wording used in para. 30 of Fennelly J.'s decision in *Ramseyer*, it should also be said that the respondent did not for a moment suggest that the reason for her ruling was because she took the view that Mr. Tansey was not assisting in an inquiry into the facts or that he was either responding to or making a charge.
59. It is clear from the passages in *Ramseyer* to which I have referred that the inquisitorial nature of an inquest does not mean that an interested party is precluded from cross-examining a witness. Thus, I am entirely satisfied that the respondent's decision, however well-meaning, was erroneous in law and constituted a breach of fair procedures, natural and constitutional justice.
60. Fennelly J.'s decision in *Ramseyer* continued by focusing on the specific issue of access to materials in advance of an inquest, stating the following:-

"[31] The extent to which persons are entitled to access to materials in advance depends on the circumstances of the case. As Kelly J stated, the right to fair procedures does not exist in a vacuum. The Coroner has a wide discretion as to how to conduct an inquest, a discretion which extends to the provision of material in advance. The governing criterion is whether the party seeking the material can show that he or she will be prejudiced in participation in the inquest in its absence. A party such as the Applicant is emphatically not entitled to an order for general discovery as in civil litigation or as in Nolan v Irish Land Commission [1981] IR 23. To quote Costello J in that case, at p. 30:-

"Domestic and administrative tribunals take many forms and determine many different kinds of issues; no hard and fast rules can be laid down as to what the requirements of natural justice will be in every matter before the many different types of tribunal."

At a later point, at p. 33, he said:-

"In the absence of discovery and inspection, will the plaintiff have an adequate opportunity to answer the case made against him at the hearing before the lay commissioners? I have come to the conclusion that he will not."

The extent of the obligation of compliance with the rules of natural justice will depend, firstly, on the nature of the judicial or administrative function being performed and the facts and circumstances of the individual case. A Coroner's inquest does not involve the preferment of any charge or the making of any claim. I agree with Kelly J that it does not call for the application of "the full panoply of natural justice requirements." I consider that it is necessary to consider the particular case according to its own circumstances."

61. Acknowledging entirely that, when citing Kelly J. (as he then was) in *Northern Area Health Board*, Fennelly J. omitted the words "of disclosure in advance of the hearing..." and made the wider point that the requirements of natural justice must respond to the particular circumstances of the case, the evidence in the present proceedings is that Mr. Tansey was, in fact, constrained with regard to questioning witnesses, in particular Dr. Naser, due to a ruling which constituted an error of law. This meant that Mr. Tansey was prevented from putting certain questions as a direct consequence of the erroneous ruling and, that being so, the respondent did not have the benefit of considering such evidence as would have been given in response to those questions. In my view, this creates an obvious unfairness and constitutes a breach of natural justice which had a prejudicial effect, the root cause of which was an error of law.

Lawlor v. Geraghty [2011] 4 IR 486

62. At this juncture, it is appropriate to refer to a further authority which was the subject of submissions from both sides. *Lawlor v. Geraghty* [2011] 4 IR 486 concerned the applicants' son who died whilst undergoing elective cosmetic surgery in Colombia. At the inquest into his death, the State Pathologist gave evidence that she was unable to give a definitive opinion as to the circumstances surrounding his death without sight of the notes taken during the surgery. The respondent refused the request by the deceased's parents for an adjournment in order to obtain these notes and proceeded with the inquest, recording an open verdict in respect of the death and stating that he was doing so due to "the absence of information" having apparently concluded that the notes from the surgery could not be obtained. The deceased's parents subsequently succeeded in procuring the surgery notes and applied for an order of *certiorari* quashing the respondent's decision to refuse their application for an adjournment and the High Court granted the relief sought.

Coroners' duties – 8 general principles

63. During the course of his judgment in *Lawlor*, Kearns P. set out with clarity principles concerning Coroners' duties, making it clear, *inter alia*, that a decision of a Coroner is liable to be quashed where it is wrong in law and/or arrived in breach of fair procedures. It is appropriate to quote as follows from that decision:-

"[52] From a review of the authorities helpfully set out in submissions, it appears that Coroners are under a number of different obligations in the discharge of their statutory functions. It is also apparent from those authorities that a Coroner has a certain level of discretion in the performance of those duties. The general principles relevant to Coroners duties may be thus summed up as follows:-

- (1) a coroner has a discretion to grant or refuse an adjournment;
- (2) that discretion must be exercised judicially within constitutional parameters. He or she must observe fair procedures and notably must afford interested parties an opportunity to be heard and to make their point;
- (3) the courts on review must be cautious when it comes to interfering with a decision of a coroner to grant or refuse an adjournment;
- (4) the courts will nevertheless intervene and set aside a decision to refuse an adjournment and any consequent substantive result or verdict where they are satisfied that the coroner has not acted judicially or has failed to employ fair procedures or where there is a real manifest or potential prejudice to an applicant;
- (5) the next of kin of a deceased have an entitlement to participate at an inquest and pursue any legitimate lines of inquiry they may wish to raise, that is to say any line of inquiry that is relevant to the medical cause of death and the circumstances surrounding the cause of death, provided such line of inquiry does not cross the line by seeking to blame or exonerate any individual in terms of either civil or criminal liability;
- (6) a coroner, while having control over the proceedings, must act fairly and judicially and must consider and deliberate upon any applications as may be made to him in the course of the proceedings;
- (7) a coroner is required to have as full and sufficient an inquiry into an individual death as is warranted in the circumstances of the case. This is perhaps one of the most important principles to be gleaned from the authorities helpfully presented to the court on this application. Any inquiry which may be regarded as insufficient or not sufficiently thorough in its approach to the question of death may be open to a successful judicial review;
- (8) a coroner who, without good and satisfactory explanation or reason, closes off a legitimate line of inquiry by refusing to adjourn the proceedings so as to allow the possibility of further and potentially relevant and admissible evidence is potentially open to a successful judicial review." (emphasis added)

64. Principle (4) has as articulated by Kearns P. makes clear that this Court will intervene and set aside a verdict where the court is satisfied that the coroner has not acted judicially or has failed to employ fair procedures or where there is a real manifest or potential prejudice to an applicant. Although doubtless resulting from an innocent error, I feel compelled on the evidence to hold that the respondent, in fact, failed to employ fair procedures.

A second test?

65. It does not seem to me that the *ratio* of the decision in *Lawlor* is that where a departure from fair procedures has been established, a second test involving proof of *prejudice* is required to be met before a court can intervene. That, however, is the submission made on behalf of the respondent. On this topic, counsel for the respondent relies, *inter alia*, on the following passage from the English text "*Jervis on the Office and Duties of Coroners*" (14th Ed., Sweet & Maxwell):-

"Judicial review is a discretionary remedy.

19-35 *Even though defects may be shown to have existed in the decision-making process, nonetheless the court retains a discretion as to whether it should grant the relief sought. This is because judicial review is a discretionary remedy: it does not follow that an order will be made merely because some error of law has been committed [R v. Greater Manchester Coroner Exp. Tal [1985] Q.B. 67 at 83; R v. Inner North London Coroner Exp. Linnane (No. 2) [1990] 155 J.B. 343, DC] apart from other considerations, the court will generally only interfere if the decision of verdict under review might realistically be different if the decision were to be taken or the inquest held afresh. [Re Davis [1968] 1 Q.B. 72; Re Williams, The Times 10 December 1968, DC; R. v. Portsmouth Coroner Exp. Keane (1989) 153 J.B. 658, DC] if the outcome would be the same, the error has not caused injustice, and there is no need to make any order [R v. Wolverhampton Coroner Exp McCurbin [1990] 1 W.L.R. 719, CA; Re Potter's Applications, 24 January 1997, Harrison J; R v. Inner South London Coroner Exp. Douglas-Williams [1998] 1 All E.R. 344, CA; R (Anderson) v. Inner North London Coroner [2004] EWHC 2729 (Admin); R (Bennett) v. Inner South London Coroner [2006] EWHC 196 (Admin) at [61]; R (P) v. Avon Coroner [2009] EWCA Civ. 1367; R (Tainton) v. Preston & West Lancashire Senior Coroner [2016] 4 W.L.R. 157]"*

66. None of the various English authorities referred to by the learned authors at para. 19-35 in *Jervis* were opened during the course of the hearing of the present proceedings. It does not appear to me, however, that the *ratio* in *Lawlor* endorses the view expressed in the English text. In other words, it seems to me that the decision in *Lawlor* is authority for the proposition that where an error of law has occurred and there has been a breach of fair procedures (both of which have arisen in the present case), the court can set the verdict aside without the applicant having to meet a second test of establishing prejudice.

67. Even if I am entirely wrong in this interpretation, I am satisfied that the respondent's erroneous ruling has, in fact, created real prejudice, not only to the applicant, but to the

inquest itself. It is utterly unknown what answers would have been given to questions by the family's legal representative which were *not* asked as a consequence of the erroneous ruling. The applicant was undoubtedly prejudiced, in that his legal representative was impeded, due to the ruling, in pursuing lines of inquiry which the respondent had previously made clear were legitimate areas of inquiry.

68. It is plain from a reading of the entirety of the transcript that Mr. Tansey, on instructions from the family of the deceased, wished to pursue lines of questioning directed towards the family's concerns regarding the deceased's use of prescription medication and this was for two reasons. Firstly, the family believed and believes that the deceased developed an addiction to opioid medication which may have contributed to the circumstances of her death. Secondly, the family were, and remain, of the view that these constituted issues in respect of which the respondent might wish to exercise her powers pursuant to s. 31(2) of the 1962 Act, as amended, to make "*...recommendations of a general character that are designed to prevent further fatalities or are considered necessary or desirable in the interests of public health or safety...*". As a direct consequence of the respondent's ruling, the applicant's legal representative was impeded and constrained with regard to questioning witnesses, in particular Dr. Naser. Mr. Tansey has made what are, in effect, uncontroverted averments to the effect that he was denied the opportunity to put factual information based on the doctor's records to him in the manner which he intended to. It is beyond doubt that the ruling had a material effect, and one adverse to the applicant, with regard to Mr. Tansey's questioning of a witness. Thus, the potential to elicit further information in respect of both of the reasons underpinning the line of questioning was compromised to a material extent. In short, the ruling could not but have had an adverse impact on the applicant's right to have his interests represented in the manner and to the extent to which he was legally entitled. Moreover, the effect of the ruling caused, in my view, tangible prejudice to the inquest in that the domino effect of same deprived the Coroner of the opportunity to consider evidence which would have been elicited but for her erroneous ruling.

Different verdict

69. To say the foregoing is not to offer the view that the verdict would have been different had the ruling not been made. Nor is it to offer the view that the respondent would have felt it appropriate to add a rider pursuant to s. 31(2) of the type contended for by the deceased's family, had the erroneous ruling not been made. On the contrary, the foregoing is entirely unknown, and that is the point. What is known is that (i) an error of law was made; (ii) it had a material effect; (iii) it constrained the family's legal representative with regard to questioning a witness; and (iv) this caused real or potential prejudice; (v) this prejudice was both to the applicant and to the process itself. Thus, even if para. 19-35 from *Jervis* represented an authoritative statement of the relevant legal position in this jurisdiction, and I am not at all satisfied that it does, I cannot fairly adopt the view that the verdict could not "*realistically be different*" if the inquest were held afresh. I cannot do so because of what is unknown and, frankly, unknowable, given the facts and circumstances in the present case.

No effect

70. It is fair to say that a key theme in the respondent's submissions is that the ruling had no effect on the ultimate verdict and that there is an inevitability about the self-same verdict resulting, and thus, it is argued, the verdict should not be quashed. I feel I need to emphasise that it is no function of this Court to examine, *qua* decision-maker, the evidence which was before the respondent as recorded in the transcript and to take a view that, regardless of what evidence was not given and what further or other evidence might have been given, but for the ruling, the self-same verdict was and remains an inevitability. This does not seem to me to be an exercise which is proper for this Court to conduct.
71. Another submission made on behalf of the respondent is to urge the court to look at the totality of the transcript (apart from the ruling) and to invite the court to conclude that the process was fair irrespective of the ruling. I do not believe that I can fairly 'surgically excise' the ruling and look at the totality of the transcript as if the ruling never occurred. For the reasons already given, the evidence demonstrates that the ruling had a material effect by way of constraining the family's legal representative insofar as questioning witnesses, in particular Dr. Naser. That fact cannot be ignored, regardless of what were undoubtedly efforts made by the respondent throughout the process which were directed to ensuring fairness. In other words, regardless of how many examples of fairness which counsel for the respondent pointed to when making submissions with reference to what is in the transcript, the central point seems to me to concern what is not in the transcript. What is not in the transcript is the evidence tendered in response to questions which were not put as a direct consequence of a ruling by the respondent which was a manifest error of law.

Refusal to hear submissions

72. The applicant's second ground of challenge relates to the refusal by the respondent of the request made by the family's legal representative to open relevant legal authority and to make submissions with respect to same on the issue of the right to cross-examine during an inquest. Earlier, I looked closely at the relevant exchange between Mr. Tansey and the respondent and the latter's ruling. It is entirely apparent that the respondent was informed that there was Supreme Court authority on the issue which Mr. Tansey wished to open. The following are certain extracts, in sequence, from the transcript which illustrate the repeated efforts made by the applicant's legal representative to make submissions with reference to Supreme Court authority and the attitude adopted by the respondent:-
- **Mr. Tansey** "*Sorry, there is a decision on that very issue in the Supreme Court and I am asking you now for time to open that to you...*" (transcript, p. 120, line 14 onwards);
 - **Coroner** "*I am not going to hear anything in relation to that, Mr. Tansey...*" (transcript, p. 120, line 29 & p. 121, line 1);
 - **Mr. Tansey** "*You have a ruling, Madam Coroner, and I am concerned on behalf of the family that I represent to open to you some law on the nature of the exercise that I am*

engaged in at the moment. I am asking you for the facility of opening the law on that issue to you.” (transcript, p. 121, line 5 onwards);

- **Coroner** *“I have made a ruling in relation to whether you are cross-examining a witness or not. We don’t cross-examine in this Court.” (transcript, p. 121, line 11 onwards);*
- **Mr. Tansey** *“And I am anxious, I am asking you for the facility of opening to you a decision of the Supreme Court that describes the nature of the exercise that I am currently engaged in.” (transcript, p. 121, line 23 onwards);*
- **Coroner** *“...if you have a difficulty with the ruling that I have made you have other remedies but for the moment that is the ruling I have made...” (transcript, p. 121, line 27 onwards);*
- **Mr. Tansey** *“Sorry, Madam Coroner, with the greatest of respect this is an inquiry where the rules of evidence do apply” (transcript, p. 122, line 8 onwards);*
- **Coroner** *“Mr. Tansey, this discussion is over.” (transcript, p. 122, line 21);*
- **Mr. Tansey** *“I am asking you now just for the moment are you refusing to allow me to open some law to you?” (transcript, p. 122, line 28 onwards);*
- **Coroner** *“I have made a ruling in relation to what you regard as cross-examination and what the practice of this Court is...” (transcript, p. 123, line 2 onwards);*
- **Mr. Tansey** *“Are you refusing to allow me to open some law to you?” (transcript, p. 123, line 20);*
- **Coroner** *“I have made a ruling on that particular issue.” (transcript, p. 123, line 22);*
- **Mr. Tansey** *“With the greatest of respect one of the cornerstones on which our system is based is that you must hear two sides before you make a judgment, audi alteram partem...” (transcript, p. 123, line 27 onwards);*
- **Coroner** *“I have made a ruling.” (transcript, p. 124, line 5);*
- **Mr. Tansey** *“Without hearing the other side. That is a matter for you madam...” (transcript, p. 124, line 6);*
- **Coroner** *“I have made a ruling in relation to the nature of your questioning.” (transcript, p. 124, line 8).*

Supreme Court authority

73. As the transcript makes clear, the family’s legal representative repeatedly drew to the attention of the respondent that there was Supreme Court authority on the very issue under consideration, but the respondent refused to hear it. Mr. Tansey pressed the point and repeatedly sought an opportunity to be heard, which was denied to him. The transcript evidences that Mr. Tansey renewed the request to open the law on the issue to

the respondent on 5 separate occasions in an obvious attempt to ensure that the respondent was fully informed as to the correct legal position. Those attempts were in vain.

74. It may well have been the case that the respondent refused Mr. Tansey's attempts to be heard because of a genuinely-held conviction that she was correct in her ruling and that it was unnecessary to hear from the applicant's legal representative, regardless of what legal authority he wished to open and irrespective of what submission he wished to make regarding it. There is no suggestion that the respondent was other than sincere, but was sincerely wrong. It is fair to say that every reasonable effort was made by the applicant's legal representative to persuade the respondent to hear him.

Audi alteram partem

75. Not only was it repeatedly explained that there was relevant Supreme Court authority on the topic of cross-examination, Mr. Tansey also made explicit reference to the *audi alteram partem* principle which, as he rightly stated in his attempt to be heard, is one of the "cornerstones" upon which valid decision-making is constructed. As counsel for the applicant submits, the principle is so well established and of long standing as to be axiomatic. A following brief statement from the learned authors of "*Administrative Law in Ireland*" suffices: "*A basic principle is that the decision-maker must be made aware of, and really entertain, the applicant's arguments so that they are fully and fairly considered.*" (Hogan, Morgan & Daly, 5th Ed., 15-62)
76. It is entirely uncontroversial to say that no judicial or quasi-judicial decision may be taken without the affected party having been given an opportunity to be heard. *Audi alteram partem* is a fundamental principle of procedural fairness and its breach offends both natural and constitutional justice. Such a breach undoubtedly occurred in the present case.

The applicant's 26 July 2021 motion – additional relief

77. In addition to the relief sought by the applicant in the 23rd January 2020 notice of motion, the applicant issued a second motion, dated 26th July 2021, seeking an order pursuant to O. 84, r. 23 permitting an amendment to the statement of grounds to include the following additional relief:-

"A declaration that the Respondent acted in breach of the Applicant's rights to fair procedures and natural and constitutional justice insofar as the Respondent's refusal to permit the Applicant's solicitor to cross-examine witnesses was based on reasons which the Respondent failed to communicate."

78. It will be recalled that, earlier in this judgment, I set out verbatim and in full the relevant extract from the transcript (pp. 118-124) which comprise the exchanges between the Coroner and Mr. Tansey and the ruling which was made in error. The respondent's refusal to hear the applicant's legal representative on the issue constituted a second breach of the applicant's entitlement to fair procedures.

Averments by the respondent

79. To understand the applicant's assertion that a third breach of fair procedures arose, it is necessary to look at averments made by the respondent in her affidavit sworn on 27 April 2021. It is appropriate to quote, verbatim and in full, paras. 5 to 7 from same, as follows:-

5. *Mr. Tansey has repeatedly emphasised my refusal to allow him to cross-examine witnesses at the Inquest. As is clear from my Replying Affidavit, I have accepted that myself and Mr. Tansey joined issue on this particular topic. However, it is also clear that I allowed him to ask all relevant questions at the inquest, and that in substance he was given a very substantial amount of leeway in the range, and type of questions he asked.*
6. *I emphasise that the intention and/or purpose in making the particular ruling on questioning in this particular case was to inform Mr. Tansey that I was not going to allow him ask questions which were not relevant to the purpose of the Inquest which I was charged with conducting and/or questions which would not, having regard to the nature of an Inquest, have been proper questions. Mr. Tansey, at paragraph 13 of his Replying Affidavit, has instanced the kind of questions which he intended to ask Dr. Naser and would have done so were it not for what he has characterised as my unlawfully preventing him from cross-examining this particular witness. At paragraph 13 of his Replying Affidavit, Mr. Tansey intended to question Dr. Naser on what was, in Mr. Tansey's view, Dr. Naser's failure to consider emerging addictions and/or what was, in Mr. Tansey's view, Dr. Naser's failure to consider alternative treatment and/or what was, in Mr. Tansey's view, Dr. Naser's failure to properly document and/or record his prescription of opiates. I say that the questions which Mr. Tansey intended to ask and as evidenced in paragraph 13 of his said affidavit, are questions which I respectfully suggest impute that Dr. Naser, when treating the Deceased, had failed in his duty to her in that he had failed to consider what had been referred to as an emergent [addiction] and/or had and as the treating physician, failed to consider alternative methods of treatment and/or had failed to properly maintain a record of medicines as prescribed by him.*
7. *I pray this Honourable Court to accept that I, as Coroner, could not in law have allowed Mr. Tansey to ask such questions of this particular witness. I say that the provisions of section 30 of the Coroner's Act, 1962 clearly and expressly precludes consideration and/or investigation into questions of civil and/or criminal liability. The questions which Mr. Tansey had intended to ask Dr. Naser and as averred to in his Replying Affidavit, are and with respect, questions asked for the purpose of considering and/or investigating the standard of care and/or treatment provided by Dr. Naser to his patient, the Deceased and as such are not, I respectfully suggest, proper questions by which I mean questions which can or should be asked of this particular witness at the Inquest into the death of the Deceased."*

80. Earlier in this judgment, I made reference to Mr. Tansey's 7th August, 2020 affidavit but, for the sake of convenience, I now set out again the averments he made at para. 13 to which the respondent refers at para. 6 of her 27th April, 2021 affidavit:-

"13. I say that I intended to direct Dr. Naser to aspects of the medical notes which, in the Applicant's view, demonstrate a failure to consider the emerging addiction; a failure to consider alternatives when it was clear that the deceased was becoming and/or had become chronically addicted; and an apparent omission to record any reason on many occasions in the period up to 2015 for the prescription of opioids. I say that the Applicant instructed me to pursue these lines of enquiry on the basis of his belief that these were relevant to the issue of how his wife, the deceased, was at the time of her death chronically addicted to opioids; an addiction which he believed to have caused her death."

81. It will be recalled that Mr. Tansey went on, at para. 14 of his affidavit, to aver that the respondent's ruling prevented him from cross-examining Dr. Naser on the aforesaid matters and/or examining him on the basis of the doctor's notes.

Confirmation by the respondent that the ruling prevented questions

82. The first observation to make with regard to the respondent's averments at paras. 6 and 7 of her 27th April, 2021 affidavit is to note that the respondent makes plain that her ruling, as a matter of fact, prevented Mr. Tansey from asking questions which he had intended to put to Dr. Naser. Not only that, the respondent asks that this Court accept that, in her role as Coroner, she "...could not in law have allowed Mr. Tansey to ask such questions of this particular witness". The respondent makes clear that the reason she regarded such questions as impermissible is because of the provisions of s. 30 of the 1962 Act.

Evidence of the adverse effect of the ruling – 3 sources

83. Before proceeding further, it seems appropriate to note that the Court now has before it evidence from a trinity of sources, that the respondent's ruling, as a matter of fact, prevented the applicant's legal representative from putting questions which he had intended. These three sources comprise: (1) averments by the respondent; (2) averments by the applicant and (3) the contents of the transcript in the wake of the ruling. It is convenient to comment as follows as regards what emerges from these three sources.

Source 1 - The contents of the transcript after the ruling

84. By way of a general observation, it seems fair to say that, regardless of their skill and experience, few would not be 'put off their stride' by the steadfast refusal of a decision-maker to permit them to open Supreme Court authority of fundamental relevance to the very issue the decision-maker had made an erroneous ruling on, particularly when that ruling went to the very heart of the exercise she or he was engaging in. In the present case, the exercise involved putting questions to witnesses and a ruling by the respondent that Mr. Tansey had no entitlement to cross-examine could not but have prejudiced the conduct of that exercise.

85. It is clear that the respondent's erroneous ruling, and her breach of the *audi alteram partem* principle (despite it having been drawn to her particular attention), had an immediate adverse effect, as the transcript . As Mr. Tansey put it at the time: "*It has knocked me off... this exchange between the bench and myself has knocked me out of sync...*" (transcript page 124, line 19). It is also plain from a reading of the transcript that momentary inconvenience for the applicant's legal representative was by no means the only adverse effect of the ruling. It is true to say that the transcript contains examples of the applicant's legal representative being given what the respondent calls "*leeway in the range and type of questions he asked*". But is also true that the respondent adopted a particular attitude in relation to the nature of permissible questioning and, on a number of occasions, drew to Mr. Tansey's attention the manner in which she felt questions should and should not be asked and the style of permissible questions. Earlier in this judgment (see para. 46) I referred to several examples where the respondent made clear the style of questioning which she regarded as appropriate and, reflecting her ruling, what she regarded as impermissible, such as putting statements to the witness in the context of asking questions (something at the heart of cross-examination).
86. A consideration of the transcript in the wake of the ruling reveals that the respondent held to the view that cross-examination was impermissible and that appropriate questions were "*direct questions of a factual nature*" (transcript, p. 153, line 15). Other examples were given at para. 46 of this judgment, such as "*Can you just confine the questions to actual factual questions and try I suppose allow the witness to answer questions of a factual nature as opposed to making statements about matters, just to be more direct in the interests of assisting the court, I would appreciate that.*" (transcript, p. 140, line 14 onwards); and "*Again, it would be of great assistance to the Court again just to keep the style of your questions, as I say, more direct rather than making statements. If you could possibly do that that would be extremely helpful.*" (transcript, p. 149, line 25 onwards);
87. Legal representatives are required to take on board rulings made by the decision-maker in respect of the relevant process they are participating, and a careful reading of the transcript entitles me to hold that there was, in fact, a negative effect on Mr. Tansey's questioning of Dr. Naser in the aftermath of the ruling in that he was prevented from cross-examining the witness, notwithstanding his lawful entitlement to cross-examine. Thus, real prejudice to the position of the applicant is revealed from looking at the contents of the transcript, which is the first of the three sources to which I have referred.

Source 2 - Averments by Mr Tansey

88. Even if the foregoing were not so, a second source comprises the averments made by Mr. Tansey himself. There are averments made by Mr. Tansey as regards a range of issues which he intended to cross-examine Dr. Naser about, as well as the manner in which he intended to cross-examine the witness, and an uncontested averment by Mr. Tansey that the respondent's ruling prevented him from cross-examining the witness on the matters and in the manner he intended to. These comprise paras. 10 to 14, inclusive, of Mr. Tansey's affidavit, sworn 07 August 2020, wherein he specifies the matters and materials which he wished to (but was prevented from) cross-examining Dr. Naser on. At para. 47

of this judgment, these averments are set out verbatim and they demonstrate that, as a matter of fact, the ruling resulted in prejudice to the applicant insofar as the legitimate cross-examination of a witness was concerned.

Source 3 – Averments by the Respondent

89. The third source of evidence comprises the averments made by the respondent herself to the effect that she did, in fact, prevent Mr. Tansey from putting questions he wished to put to the witness as well as the proffering by her of a reason why the respondent says she could not in law have allowed Mr. Tansey to ask such questions of Dr. Naser, i.e. the respondent's averments comprising paras. 6 and 7 of the respondent's 27 April 2021 affidavit (which are set out at para.73 above).
90. Evidence from these three sources speaks to the same issue, namely, actual prejudice to the applicant which, in fact, arose in the present case. It arose as a consequence of the erroneous ruling (with a clear breach of the *audi alteram partem* principle compounding the breach of fair procedures). As I indicated earlier, I do not believe that the applicant in the present proceedings faces the burden of having to prove actual prejudice in order for this Court to intervene, such were the breaches of fair procedures and natural and constitutional justice. However, lest I be wrong in that view, I am entirely satisfied that a consideration of the evidence – as I say from three sources – proves that very real prejudice was caused to the applicant's position. It seems to me that the foregoing constitutes a clear and sufficient basis for the grant of the relief sought at paras. (d) 1-5 of the applicant's statement of grounds.
91. It is appropriate to proceed to deal with the additional relief sought by way of the applicant's 26th July 2021 motion and this brings me back to paras. 5-7 of the respondent's 27th April, 2021 affidavit (which are set out at para. 73 of this judgment).

The only reasons given for the ruling at the time it was made

92. It is perfectly clear that the averments made by the respondent at paras. 5 to 7 of her 27 April 2021 affidavit related to her erroneous ruling that cross-examination was impermissible (being one and the same ruling which, at para. 6 of her 27 April 2020 affidavit, the respondent calls "*the particular ruling in questioning*"). This is, of course, the ruling which appears between pp. 118-124 of the transcript and which I have set out in full earlier in this judgment (see para.36). It will be recalled that I looked closely at the reasons which were given by the respondent when she made this ruling (see paras. 39 – 43 of this judgment). It is not necessary to repeat my analysis as to what reasons were given and what reasons were not given for the respondent's ruling. Suffice to say that the reasons and the only reasons which were given at the time comprised the following:-
- "*This is the Coroner's Court.*" (transcript, p. 120, line 10);
 - "*The nature of these proceedings is inquisitorial and not adversarial...*" (transcript, p. 120, line 11);
 - "*...you are not entitled to cross-examination a witness and that is the practice in this Court.*" (transcript, p. 120, line 21);

- *"We don't cross-examine in this Court." (transcript, p. 121, line 12).*
93. The respondent did not state or suggest or intimate that there were any other reasons than the foregoing. In particular, she made no reference to the relevance of the line of questioning, nor did she state that the reason for her ruling was because she apprehended that Mr. Tansey's questions had breached or risked breaching s. 30 of the 1962 Act as she saw it. The foregoing simply cannot be divined from the reasons which were in fact given by the respondent at the time she made her ruling.
94. It is also entirely fair to say that the respondent had every opportunity to give to Mr. Tansey such reasons for her ruling as she had. I say this because of the length of the exchange and the repeated efforts by the family's legal representative to persuade the respondent to hear legal authority on the topic. It is fair to say that each of the 5 efforts made by Mr. Tansey in this regard amounted to a fresh opportunity for the respondent to explain the basis for her ruling if it was the case that there were other reasons which she wished to articulate.
95. I should also say that, having carefully read the entirety of the transcript, it is a matter of fact that at no stage subsequent to the erroneous ruling did the respondent state that there were additional or different reasons for the ruling she had made on 18th October 2019.

The true reasons for the ruling

96. Against the foregoing backdrop, and bearing in mind that the leave application was granted on 16th January 2020 and the applicant's motion issued on 23rd January 2020, the respondent swore an affidavit 15 months later in which the true reasons for her erroneous ruling were set out in the following terms in her 27th April 2021 affidavit:-
- *"...the intention and/or purpose in making the particular ruling on questioning... was to inform Mr. Tansey that I was not going to allow him ask questions which were not relevant to the purpose of the Inquest..." (para. 6);*
 - *"...I, as Coroner, could not in law have allowed Mr. Tansey to ask such questions of this particular witness. I say that the provisions of section 30 of the Coroner's Act, 1962 clearly and expressly precludes consideration and/or investigation into questions of civil and/or criminal liability." (para. 7).*
97. I entirely accept, as I must, the sworn evidence of the respondent as to the true reasons for her erroneous ruling. It is entirely fair to say that neither of the foregoing reasons were communicated by the respondent when she made the ruling in question. Nor were these reasons referred to in the respondent's statement of opposition of 11th May, 2020. Furthermore, in the respondent's first affidavit, sworn 21st September, 2020, the respondent does not state that the true reasons for her ruling were the foregoing. Leaving that aside, I am entirely satisfied that the respondent failed to communicate, at the time of her ruling, the true reasons for it (confining the reasons which she disclosed to the applicant's legal representative to the proposition that cross-examination was neither

permissible, nor the practice in the Coroner's court). This deprived the applicant's legal representative of the opportunity to know what the true reasons were for the ruling, to consider same, and to make submissions to the respondent with regard to the true reasons.

Relevance

98. The present proceedings do not constitute an appeal, nor is this Court's approach merits-based. However, insofar as one of the true reasons for the ruling concerned the relevance of any questions or lines of questioning, Mr. Tansey was deprived of opportunity to make submissions as to relevance (the factual backdrop being prior statements by the respondent that "*we certainly will be establishing if there were difficulties in terms of addiction to certain substances or dependents on certain substances...*" - transcript, p. 41, line 22 onwards).

S. 30 of the 1962 Act

99. Insofar as one of the true reasons related to s. 30 of the 1962 Act, Mr. Tansey was deprived of the opportunity to make submissions on this issue and to provide reassurance to the respondent (against a backdrop which included previous statements made by Mr. Tansey such as "*...of course the Supreme Court in that case of Farrell also indicated that we were entitled to explore matters that fall into the realm of criminal and civil liability with the rider that clearly this Court cannot vindicate or blame*" - transcript, p. 17, line 18).

100. In light of the averments made by the respondent in her April, 2021 affidavit, I am forced to the conclusion that the respondent gave reasons for her ruling, at the time it was given, which were materially incomplete and, thus, materially inaccurate and which denied the applicant's legal representative any opportunity to consider and respond to the true reasons for her ruling at the time it was given. This created prejudice both for the applicant and the inquest itself.

101. The prejudice to the applicant is obvious but a further consequence of the failure to articulate the true reasons is that the respondent was denied the benefit of considering the submissions by the applicant's legal representative and, thus, denied the opportunity to receive comfort on the true issues of concern to the respondent, with the knock-on consequence of the inquest not hearing and, thus, not having the opportunity to consider, such evidence as was not given as a result of questions which the respondent prevented, due to reasons not articulated at the time.

A third breach of fair procedures

102. I am entirely satisfied that this was a third breach of fair procedures sufficient, of itself, for the granting of the relief sought. It also must be said that, in circumstances where it was not until April 2021 that the true reasons for the respondent's ruling were articulated, the applicant was denied the opportunity to assess those reasons and the lawfulness of same prior to instituting the present proceedings. It is in the foregoing context that the applicant's 26th July, 2021 motion was issued. I am entirely satisfied that it is appropriate to grant the relief sought in that motion, as regards the addition relief on the grounds referred to therein.

Duty to give reasons

103. The duty to give reasons is very well established but, in the context of a decision by a coroner, counsel for the applicant draws the court's attention to the case of *Loughlin v. Coroner for Counties Sligo and Leitrim* [2019] IEHC 273; [2020] 2 IR 385, the facts of which concerned the tragic death of the applicants' son as a result of a violent assault by a third party. In that case, the respondent Coroner had declined a request by the deceased's family (that the Coroner should obtain medical records of the third party - who was charged with murder and awaiting trial - concerning his treatment for mental illness). The respondent took the view that this would contravene the prohibition on making findings of criminal or civil liability under s. 30 of the 1962 Act. This Court (Noonan J.) held that the Coroner's decision was "*plainly erroneous*" where the Irish case law had consistently held that s. 30 does not preclude a coroner from considering issues which may, in other contexts, be relevant to questions of criminal or civil liability. With regard to attempts by the relevant Coroner to justify his decision on a number of other grounds, Noonan J. stated, *inter alia*, the following :-

"[24] ...in his statement of opposition and written and oral argument, the Coroner sought to advance new reasons why the court should refuse relief. The first of these was that the application is premature in the light of the pending criminal trial. Even if that were correct, the Coroner never gave that as a reason for refusing the request at any time prior to the institution of these proceedings. Accordingly, it cannot avail him now and indeed, if that was the Coroner's true reason for refusing the request, his failure to give it as such reason amounts to a clear denial of fair procedures."

104. The same can be said in the present case in that there was a failure on the respondent's part to give the true reasons for her ruling and this amounts to a clear denial of fair procedures. It will be recalled that the respondent places considerable emphasis on the following passage from Fennelly J's decision in *Ramseyer*: "*The extent of the obligation of compliance with the rules of natural justice will depend, firstly, on the nature of the judicial or administrative function being performed and the facts and circumstances of the individual case. A coroner's inquest does not involve the preferment of any charge or the making of any claim. I agree with Kelly J. [in Northern Area Health Board v. Geraghty [2001] 3 I.R. 321, at p. 335] that it does not call for the application of "the full panoply of natural justice requirements."* I consider that it is necessary to consider the particular case according to its own circumstances."

The full panoply of natural justice requirements

105. The entitlement of the applicant to know the true reasons for what was an erroneous ruling was a basic and fundamental requirement of natural justice. In my view, irrespective of how wide, or how narrow, the range of natural justice principles can be said to apply to a coroner's inquest, the entitlement to the true reasons for a coroner's decision cannot be excluded. In other words, to the extent that certain of the "*full panoply of natural justice requirements*" can legitimately be dispensed with, depending on the nature of the function at issue and the particular facts and circumstances in a given case, the entitlement to know the true reasons for a decision is not, in my view, a disposable 'add-on'. Nor, for that matter, is the *audi alteram partem* principle. Rather,

these are at the core of procedural fairness and cannot be dispensed with. Even if, as a matter of principle, I am wrong in the foregoing view, I am satisfied that, in light of the particular facts and circumstances of this case, the respondent's failure to give the true reasons for her ruling (until a year and a half after it was made and long after the present proceedings were commenced), compounded by her refusal, at the time the ruling was given, to listen to any submissions as to the relevant legal position and to permit the applicant's legal representative to open Supreme Court authority on the very point at issue, undoubtedly constituted clear breaches of fair procedures, which had a prejudicial effect on the applicant, entitling the applicant to the relief sought.

Reasons to enable the assessment of the lawfulness of a decision

106. The obligation to give reasons was also analysed by the Supreme Court in *EMI Records (Ireland) Ltd & ors v. The Data Protection Commissioner* [2013] IESC 34; [2013] 2 IR 669 and it is useful to quote from the decision of Clarke J. (as he then was). After making the point that the relevant legislation required the respondent to provide reasons, the learned judge set out the following analysis with regard to the type of reasons which must be given and the rationale for same:-

"[64] So far as the question as to the type of reasons which need to be given is concerned, this Court has had occasion to consider such issues in a number of cases. One of the earlier cases, The State (Sweeney) v. Minister for the Environment [1979] 1 I.L.R.M. 35, concerned, amongst other things, the requirement of a planning authority to give reasons for a refusal of an application for planning permission. At p. 37, Finlay P. stated:-

"... it is clear that having regard to the provisions of s. 26 of the Local Government Planning and Development Act, 1963 and the other provisions of that Act that the purpose of the obligation which rests upon a planning authority to set out, in their notification of a refusal, reasons which have led to the decision to refuse a particular application for permission must be as follows. It is to give the applicant such information as may be necessary and appropriate for him, firstly, to consider whether he has got a reasonable chance of succeeding in appealing against the decision of the planning authority and secondly to enable him to arm himself for the hearing of such an appeal. The reasons set out therefore in the Schedule to a decision of refusal under the Planning Act, 1963 need not in my view be set out with the precision of a court order nor need they necessarily contain any particular words of a technical nature nor refer in any formal way to any of the provisions of the Act."

[65] More recently, in Meadows v. Minister for Justice [2010] IESC 3, [2010] 2 I.R. 701, Murray C.J. said as follows at p. 732:-

"[93] An administrative decision affecting the rights and obligations of persons should at least disclose the essential rationale on foot of which the decision is

taken. That rationale should be patent from the terms of the decision or capable of being inferred from its terms and its context.

[94] Unless that is so then the constitutional right of access to the courts to have the legality of an administrative decision judicially reviewed could be rendered either pointless or so circumscribed as to be unacceptably ineffective."

[66] At para. 6.8 of my judgment in Rawson v. Minister for Defence [2012] IESC 26, (Unreported, Supreme Court, 1st May, 2012), 1 also addressed the rationale for a requirement to provide reasons, when I said, at p. 13:-

"While the primary focus of a number of the judgments cited, and indeed aspects of the decision in Meadows v. Minister for Justice [2010] IESC 3, [2010] 2 I.R. 701 itself were on the need to give reasons as such, there is, perhaps, an even more general principle involved. As pointed out by Murray C.J. in Meadows v. Minister for Justice [2010] IESC 3 a right of judicial review is pointless unless the party has access to sufficient information to enable that party to assess whether the decision sought to be questioned is lawful and unless the courts, in the event of a challenge, have sufficient information to determine that lawfulness. How that general principle may impact on the facts of an individual case can be dependent on a whole range of factors, not least the type of decision under question, but also, in the context of the issues with which this Court is concerned on this appeal, the particular basis of challenge."

[67] It follows that a party is entitled to sufficient information to enable it to assess whether the decision is lawful and, if there be a right of appeal, to enable it to assess the chances of success and to adequately present its case on the appeal. The reasons given must be sufficient to meet those ends."

107. It is fair to say that it was rendered impossible for the applicant and his legal representatives to assess whether the respondent's ruling (based on the reasons that a line of questioning was irrelevant and/or contrary to s. 30 of the 1962 Act) was lawful, because those reasons were never communicated until eighteen months after the ruling in question.

Certain uncontested averments by the applicant's legal representative

108. It is also appropriate to point out that this Court has before it sworn averments by Mr. Tansey to the effect that, if the true reasons for the ruling had been given at the time, he would have made submissions regarding those true reasons if he had been afforded the opportunity to do so. In that regard, it is appropriate to quote verbatim the following uncontested averments which appear in the affidavit sworn by Mr. Tansey on 31st August, 2021:-

- "8. ...I would have made submissions on the Respondent's new reasoning if I had had (sic) been afforded an opportunity do so.
9. First of all, I say that the Respondent's view that the questions I would have asked (which, by definition, she cannot know the particulars of given that I was not permitted to ask them) were directed to questions of civil or criminal liability is not accurate. I say and reiterate that the purpose of the intended questioning was to pursue a line of enquiry which I had been instructed to pursue by the next-of-kin of the deceased on the basis of his belief that these were relevant to the circumstances of his wife's death.
10. Secondly, I say also that the view expressed by the Respondent in her new affidavit that these questions were precluded by section 30 of the Coroner's Act, 1962 are ones in respect of which it would have been appropriate to make legal submissions. It is not clear precisely what the basis for this view is at this point. If the reasoning had been communicated at the time, I say that I would have sought to clarify the precise basis for the respondent's assertion in this regard.
11. However, it appears from paragraph 6 and 7 of her affidavit that this view is based on the assessment that the answers to the questions could "impute that Dr. Naser... had failed in his duty to her"; and that on this basis they are precluded by section 30 of the Coroner's Act, 1962. In this regard, I say that I would have made submissions to the Respondent that the fact that evidence may be relevant to issues of civil or criminal liability in another forum does not mean that it is precluded by section 30; and that I would have opened to her the relevant authorities on the construction of section 30, with which I am very familiar."
109. It will be recalled that at paragraph 7 of the respondent's affidavit (to which Mr Tansey refers in paragraph 11 of his) the respondent asserts that, as a matter of law, she could not have permitted Mr Tansey to ask certain questions which he proposed to ask of Dr Naser, by reason of section 30 of the 1962 Act; and she averred, *inter alia*, that these were not "*proper questions*" and that they did not comprise "*questions which can or should be asked of this particular witness at the Inquest into the death of the Deceased.*" For present purposes it is unnecessary (and, in my view, inappropriate) to decide whether or not the view expressed at para. 7 of the respondent's April 2021 affidavit is correct. The point is that it comprises a reason which was not given at the time of the relevant ruling and, thus, a reason which was impossible for the applicant, through his legal representative, to consider or engage with. Thus, an erroneous ruling was made in respect of which the respondent refused to hear submissions, whilst also failing to articulate the true reasons for that ruling.

Surrounding circumstances / establishing if there were difficulties in terms of addiction to certain substances / the time from when she first became unwell

110. It can also be said that the respondent's view, articulated in her April 2021 affidavit, that questions concerning Dr. Naser's engagement with the late Mrs. Kane around her use of prescription medication and opiates and emerging addiction were (a) not relevant and/or

(b) precluded by s. 30 of the 1962 Act, certainly appears to be inconsistent with the respondent's approach to the same issues during the inquest on 18 October 2019, prior to her erroneous ruling. This is illustrated by comments such as the following: -

- *"I am very well aware of the function of the inquest and it is not just to establish the proximate cause of death. I am within my rights to explore circumstances that surround the cause of death and regardless of the timeline . . ." (Transcript p. 15, line 13 onwards)*
- *"We certainly will be establishing if there were difficulties in terms of addiction to certain substances or dependence on certain substances . . ." (Transcript p. 41, line 22)*
- *". . . we can't just deal with the time proximate to when she passed away because a lot of these difficulties we are going to hear about, including difficulties with mental health, physical difficulties, they arose prior to that. . . I think it is reasonable to explore some of the circumstances that arose throughout the time from when she first became unwell, both from a physical and mental health perspective". (Transcript p. 42, line 22 onwards & p. 53, line 1 onwards).*

a relevant line of inquiry / legitimate concerns / a red flag

111. Furthermore, in para. 15 of the respondent's first affidavit, sworn on 21 September 2020, she referred to an objection by Dr. Naser's counsel in response to which the coroner made clear, in the following terms, that she was going to permit Mr. Tansey to continue with his line of questioning: -

"Further, I made it clear that I had viewed the deceased's taking of prescribed medication as a relevant line of inquiry. I viewed it as potentially leading to an understanding of, broadly speaking, the circumstances surrounding the death of the Deceased".

112. In the same affidavit, the respondent avers as follows at para. 35 (i): -

"The family, through Mr. Tansey, had their concerns. I accepted that those concerns were genuinely held and were legitimate".

113. Moreover, the relevance, and compatibility with s. 30 of the 1962 Act, of questions to Dr. Naser concerning the deceased's relationship to painkillers and the consideration of emerging addiction appears to be implicit in the following question which the respondent, herself, put to Dr. Naser prior to the respondent's erroneous ruling: -

"Coroner: You mentioned that she would ask for intravenous morphine. Would you regard that as a red flag or something worrying in terms of a patient asking for a specific substance to be delivered in a specific way; would that concern you?" (transcript page 100, line 25)

114. It is unclear what part, if any, the respondent's earlier views (to the effect that the foregoing issues constituted relevant and legitimate lines of inquiry) might have played in submissions concerning her ruling (had Mr Tansey been given the true reasons for her ruling and permitted to make submissions in respect of). What is clear is the respondent's failure to give, at the time of her ruling, the true reasons for it, which denied the applicant any opportunity, through his solicitor, to make submissions in respect of those reasons, constitutes a further breach of procedural fairness.

The applicant's motivation

115. Among the submissions made by counsel for the respondent was to emphasise that the 'true motivation' of the applicant was and remains to obtain a different verdict and he refers to extracts from the transcript and to correspondence from Mr. Tansey's office in that regard. It seems to me, however, that the fact the applicant contends for a different verdict is not determinative of any question which arises in the present proceedings. Any objective reading of the entirety of the transcript demonstrates that, at all material times, Mr. Tansey was aware of and fully acknowledged that the applicant was neither entitled to have a verdict which comprised a finding of civil or criminal liability, nor could the respondent include any rider to the verdict which would censure any person. A careful consideration of the evidence compels me to reject the submission made on behalf of the respondent that what was 'really going on' at the inquest constituted an attempt by the applicant, through his legal representative, to persuade the respondent to censure a doctor or doctors or to make a finding of liability. On the contrary, very early in the proceedings, Mr. Tansey makes perfectly clear, with reference to the *Farrell* decision that there could be no question of the inquest vindicating or blaming anyone (see transcript, p. 17, lines 18 – 22). Shortly thereafter, Mr. Tansey again makes clear that he understands and accepts the proper function of the inquest stating, *inter alia*: ". . . *this inquest cannot exonerate or vindicate or attach blame to any of the parties involved in the background circumstances, and that is accepted*". (Transcript p. 40, lines 12 – 15)

Letter dated 22 October 2019

116. Counsel for the respondent also urges this Court see the entire case through the prism of the applicant contending for a verdict which the law does not allow and seeking an impermissible censure of doctors. In this regard, particular emphasis was laid, *inter alia*, on a letter sent to the respondent by Mr. Tansey's firm, dated 22 October 2019, the first paragraph of which reads: -

"The family have instructed us to write to you and to express their profound regret that, in the face of compelling evidence that the late Deirdre Kane was a drug addict at the time of her death which drug addiction was a function of the over prescription of different potent analgesics over a considerable period of time without any apparent reason for the polypharmacy by in particular two members of the medical profession including Dr. Naser and Dr. Joseph Keaveny, no recognition of that fact whatsoever was incorporated in the verdict ultimately arrived at by you. Each of the medical witnesses who gave evidence during the inquest (they were all doctors) admitted that they had at different times expressed concerns about the misuse of drugs by the deceased, Deirdre Ann Kane. Indeed, when presented with

their notes, each of the witnesses confirmed the expression in their notes of the said concern.

The family are firmly of the view that Deirdre's drug addiction was a material contributor to her decision to end her own life".

117. It is plain that the foregoing reflects a view held by the applicant. To have articulated that view in correspondence or, for that matter, during the inquest itself, does not allow me to hold that the applicant was, or is, contending for a verdict which would breach s. 30 or 31 of the 1962 Act, be that the main verdict or any 'rider' which the respondent might feel it appropriate to add. A careful reading of the entirety of the transcript demonstrates that, at all material times, the applicant's legal representative was well aware of, and explicitly acknowledged, what was and what was not permissible as regards a verdict under the 1962 Act.
118. With regard to the respondent's reliance on the 22 October 2019 letter from Mr. Tansey's office, it should also be said that the paragraphs quoted above were immediately followed by an expression of dissatisfaction in relation to the respondent's ruling and her refusal to permit submissions regarding same. Thus, even on the face of the letter of 22 October 2019, the applicant's concerns are linked to the manner in which the inquest was conducted. Indeed, pages 2, 3 and 4 of the said letter are devoted entirely to the respondent's refusal to permit cross-examination, and the adverse effect this had on the applicant's interests, insofar as questioning Dr. Naser. In my view the letter, read in context, does not evidence any belief on the part of the applicant that a finding of civil or criminal liability or a censuring of any person is open to the respondent to make or that any of the foregoing was or is contended for.
119. It is also submitted on behalf of the respondent that all of the issues which the applicant's legal representative wished to explore were in fact explored, including whether Dr. Naser was concerned in relation to the deceased's relationship with pain medication; whether she was addicted to opiates; what Dr. Naser did, including whether those concerns were mentioned to Dr. Keaveny; the extent to which notes were made and whether there was engagement with a pharmacist. This submission, regardless of how skilfully made, ignores the evidence from the three sources (i.e. the transcript; averments by Mr. Tansey; and averments by the respondent) which demonstrate that the ruling, as a matter of fact, constrained the applicant's legal representative with regard to the questioning of Dr. Naser and caused real prejudice.
120. A careful consideration of the evidence entitles me, indeed compels me, to conclude that the applicant's legal representative was - as a direct consequence of an erroneous ruling in respect of which the respondent refused to hear submissions and failed to give the true reasons - prevented from asking questions which, on instructions from the applicant, he intended to ask and the evidence also demonstrates that the ruling adversely affected the questioning of a witness both in terms of the manner of style of questions and the subject matter, resulting in real prejudice. Thus, what questions were put and what evidence was given in response does not address the prejudice which resulted from the fact that

questions were prevented and, thus, certain evidence was not given (as is clear from the three sources I have referred to in this judgment).

121. In other words, it is no answer to the prejudice which in fact arose foregoing for the respondent to submit that a wide range of questions were asked (they undoubtedly were) or to stress that, for the most part, the respondent allowed the questioning by Mr. Tansey to proceed (and that is also true). Nor is it a sufficient answer to submit that, for the most part, Mr. Tansey accepted the restrictions placed upon him. As to the latter point, one could fairly ask what choice he had, other than to accept each and every ruling made by the respondent and to conduct himself accordingly? It is important, however, to note that even towards the end of the inquest and long after the ruling, Mr. Tansey's unhappiness with the respondent's earlier ruling was still very apparent, as was the coroner's stance: -

"CORONER: *So also we had a discussion earlier on, it is not a cross-examination.*

MR. TANSEY: *Well, well - -*

CORONER: *You are an interested party.*

MR. TANSEY: *- - you wouldn't allow me to open - -*

CORONER: *No, and I'm not allowing you either.*

MR. TANSEY: *Well, that will be dealt with at another forum on another day because this Court is not beyond review and you know that.*

CORONER: *As I said to you earlier, you have your remedies elsewhere".
(Transcript, p. 285, lines 18 - 28).*

Considering fairness with the disputed ruling 'put to one side'

122. Counsel for the respondent submits that one way, and an appropriate way, of approaching matters is to look at the whole of the transcript and for the court to ask itself (with the disputed passage put to one side) whether the *balance* of the transcript demonstrates unfairness to the applicant's position. On behalf of the respondent it is suggested that the balance of the transcript (i.e. if one ignores pp. 118 - 124) evidences Mr. Tansey's engagement with all of the issues which the families wished to raise and shows that, in the main, Mr. Tansey was permitted to put such questions as he wished (the gravamen of the submission being that, looked at in the round and with the passage concerning the disputed ruling excluded or put to one side, the court can and should conclude that there was no breach of fair procedures).
123. I have several fundamental difficulties with the foregoing submission. Firstly, and for the reasons already explained, pp. 118 - 124 of the transcript cannot be surgically removed as if it never occurred and the balance considered in the manner the respondent's counsel urges. It seems to me to be flawed, both in logic and in law, for the court to be invited to put to one side a passage which evidences an error of law and a breach of fair procedures and, only having done that, to proceed to assess the question of fairness. At its heart, it

seems to be an invitation to consider fairness after *removing* unfairness. Such an approach also ignores the adverse consequences which the ruling had as a matter of fact.

124. The *effect* of the ruling was material and was undoubtedly adverse to the applicant's position as the evidence demonstrates. The respondent's submission also ignores the reality that, although the court can see from the Transcript what evidence was given in response to the questions which the applicant's solicitor asked, the court cannot know what evidence would have been elicited had the offending ruling not been made.
125. It seems to me that what is being urged on the court is to view the hearing which took place on 18 October 2019 as the curate viewed his egg. In saying this, I mean no disrespect whatsoever. There is an extremely serious point at issue. However, just as with the "bad egg", it is no answer to breaches of procedural fairness and natural justice resulting in prejudice, to say of a process that "parts are excellent".

Fell into error

126. It seems to me from a careful consideration of the evidence that the respondent intended to conduct the process with scrupulous fairness and simply fell into error due to genuinely-held but mistaken views. One could have nothing but sympathy for the respondent and no blame, in a personal sense, could ever attach to her in circumstances where, with obvious diligence and sensitivity, she conducted the inquest in question. Notwithstanding the foregoing, it is no answer to the applicant's case to suggest that, if one puts the offending ruling to one side, the balance of the process can and should be considered to be procedurally fair. The evidence wholly undermines this and, as I say, such an argument fails to deal with the reality that the verdict flowed from the evidence which was, in fact, adduced. Self-evidently, the verdict took no account of evidence which was *not* adduced as a direct consequence of the erroneous ruling.
127. This, it seems to me, is the fundamental flaw in the respondent's submission to the effect that the ruling changed nothing, whether as regards Mr. Tansey's questioning of a witness, or what evidence might have resulted but for the ruling or, for that matter, the ultimate verdict. With regard to the questioning of a witness, the evidence demonstrates that the ruling had a real and prejudicial effect. As regards the ultimate verdict, this Court simply cannot conclude that the erroneous application of the law and the breaches of fair procedure had no effect on the verdict and that, were the matter remitted for further decision by the respondent, the self-same verdict is inevitable.
128. The principle underpinning the foregoing submission is that, if one takes out the part where the law was not properly applied and where there were breaches of fair procedures and natural justice resulting in prejudice, one can hold that the procedure was fair, and, moreover, that the very same verdict was and remains inevitable even if the law was to be properly applied and there were no breaches of fair procedures. As well as being satisfied that I must reject that approach based on a first-principles analysis, the evidence proves that there were matters which the ruling prevented the applicant's legal representative from exploring with the witness in question. Thus, what additional

evidence Dr. Naser might have given is entirely unknown and, that being so, I simply cannot take the view that it could not conceivably affect the verdict.

Dr. McHale's evidence

129. In submissions, counsel for the respondent stressed that the evidence relied on for the verdict was that given by Dr. McHale who first saw the respondent in December 2014. During her evidence, Dr. McHale indicated that, over the course of seeing the late Mrs. Kane, Dr. McHale did not have any concerns that there was an ongoing dependent use of opioids (see transcript p. 207, line 25). Counsel for the respondent also laid particular emphasis on a series of questions by the coroner and answers by Dr. McHale in respect of the topic of 'risk factors' and how there is no way of predicting suicide (transcript, p. 213, line 27 to p. 216, line 9). The following is an extract from the transcript (beginning at p. 214; ending p. 215, line 29).

"CORONER: Yes. In terms of going back to the time that we've heard about the severe pain she was in and the medication she was given, including opioids over that time between 20 – well suppose 2014/2015 and then your impression that that particular difficulty had become less important in terms of her overall diagnosis, would that be a risk factor? Obviously, you have said chronic pain is a risk factor, is, you know, difficulties with prescription medication, including opioids, is that a risk factor then in itself, or is it the underlying condition that is the risk factor?"

***Dr. McHale:** So it would be both chronic pain in itself and then substance abuse, substance dependence?*

***CORONER:** Yes. But at the time she passed away the impression was that at that time was more related to the cannabis at the time very proximate to when she died but in the past may have been related to opiates. Is that correct?*

***Dr. McHale:** That was my impression.*

***CORONER:** At that time. Can it be predicted on an individual basis, you know, other than assessing risk factors and trying to deal with those, can it be predicted on an individual basis, other than adding the risk factors together, who will actually go on to complete this act, or is it very unpredictable generally, or how is that?*

***Dr. McHale:** We have no way of predicting suicide . . ."*

Dr Naser gave evidence before Dr McHale

130. With regard to the submission that nothing Dr. Naser might have said in evidence could possibly have made any difference to the ultimate verdict, Dr. McHale gave evidence after Dr. Naser (and earlier in this judgment, I quoted the transcript index which sets out the 'running order' of witnesses as it occurred on the day of the inquest). It is entirely unknown what Dr. Naser might have said in evidence, but for the erroneous ruling. As counsel for the applicant submits, it is conceivable that Dr. Naser could have accepted under cross-examination (had it been permitted) that the deceased was addicted to opioids when under his care and that this was of relevance to the late Mrs. Kane's

psychiatric problems and her tragic death. Had that evidence been given, the respondent plainly would have had to put this evidence into the balance when coming to a verdict. Furthermore, and as counsel for the applicant points out, given the fact that Dr. Naser gave evidence before Dr. McHale, it is entirely fair to say that such evidence as might have been given by Dr. Naser (but for the erroneous ruling) could have been put to Dr. McHale who treated the deceased from December 2014 onwards, Dr. Naser having treated her for fifteen years (between June 2000 and June 2015).

A 'rider'

131. As well as not being at all satisfied that the appropriate approach for this court to take in the present circumstances is to consider whether the verdict would or would not be the same (i.e. irrespective of the breaches of fair procedures and prejudice), I simply cannot, on the evidence, take the view that the verdict would inevitably have been the same, had the erroneous ruling not been made. Furthermore, as counsel for the applicant submits, even if Dr. Naser did not give evidence which persuaded the respondent that addiction to opioid pain medication played a role in the cause of death, Dr. Naser might (but for the erroneous ruling) have given other evidence of relevance to a verdict. In other words, even if the respondent did not accept that opioids or opioid addiction played a part in her tragic death, s. 30 of the 1962 Act in no way prohibits the respondent, should she feel it appropriate, to include a 'rider' e.g. drawing attention to the addictive nature of opioids or to the risks of opioids being prescribed over a protracted period of time. I agree with the submission made on behalf of the applicant that it would have been perfectly permissible, if the respondent was persuaded by the evidence, to add a 'rider' of such type and that doing so would not have fallen foul of any provision in the 1962 Act. This is clear from s. 31 (2) and the use of the words "*notwithstanding anything contained in subsection (1) of this section . . .*". In other words, while there is no dispute about the fact that the respondent could not make a finding of liability or censure/exonerate any person, it would have been entirely permissible for the respondent to add a rider pursuant to s. 31(2) if she formed the view (i.e. based on the evidence she might have had, but for the ruling) that this was appropriate. Unfortunately, however, the effect of the respondent's erroneous ruling is inevitably that she was deprived of evidence which would have been available for her consideration, but for that erroneous ruling. What that evidence would have been is unknown. What weight the respondent would have attached to it is unknown. The extent to which such evidence might affect the verdict reached or might persuade the respondent as to the appropriateness of adding a rider pursuant to s. 31 (2) is also unknown. Thus, this Court cannot safely take the view that the ruling made no difference to the verdict and that remitting the matter for further decision would be a pointless exercise. For this reason, I am entirely satisfied that reliance by the respondent on certain passages from the decision in *Lawlor v. Geraghty* cannot avail them and it is to those passages I now turn.

Lawlor v. Geraghty and "an additional two principles"

132. Earlier in this judgment, I quoted para. 52 from the decision of Kearns P. in *Lawlor v. Geraghty* where, it will be recalled, the learned judge set out 8 principles relevant to coroners' duties, the fourth of which made clear that the courts will intervene and set

aside a verdict where “. . . satisfied that the coroner has not acted judicially or has failed to employ fair procedures or where there is a real manifest or potential prejudice to an applicant”. For the reasons detailed in this judgment, I am satisfied that the foregoing is the position here. In circumstances where Counsel for the respondent placed particular reliance on them, I now set out paras. 53 and 61 from the same decision:-

“[53]. In addition to the above principles, it was submitted on behalf of the respondent that an additional two principles flow from the case law on the review of coroners’ decisions which are particularly relevant to the facts of the instant case. These are as follows:

(1) The question of whether the verdict would as a matter of probability have been different had an adjournment been acceded to if potentially relevant evidence had been put before the Jury should be considered by the reviewing court in exercise of its discretion.

(2) Arguably, even if the merits of the complaint are made out on a judicial review, the reliefs sought should nevertheless be refused where a Court is not satisfied that as a matter of probability the outcome of the verdict would have been any different had the reportedly relevant and admissible material been available to and considered by the decision maker.”

133. It should be noted that the facts giving rise to the decision in *Lawlor* are strikingly different to those in the present case. In the present case, it is unknown and unknowable what potentially relevant evidence might have been given in response to cross-examination had it been permitted in the manner and in respect of the subjects which the applicant’s legal representative intended to question witnesses, specifically Dr Naser, upon, but was prevented from doing. For this reason, it is utterly impossible for this court to know whether the verdict would as a matter of probability have been the same if potentially relevant but unknown evidence had been adduced in a theoretical scenario where the erroneous ruling was never made and the resultant breach of fair procedures and prejudice to the applicant had never occurred. In other words, and wholly unlike the situation in *Lawlor*, the present case is not one where the court knows or can know what evidence was *excluded*. It may be that, in an entirely different scenario, identifiable documents the contents of which are known could potentially be considered by a court if it were to engage in the type of exercise which was urged by the respondent in the *Lawlor* case. That is not the scenario here.

134. However, with considerable reluctance and only lest I be wrong not to do so, I have considered the additional two principles which were urged on the court in the *Lawlor* decision, hampered in so doing by the facts and circumstances of the present case (ie what evidence the respondent was denied the opportunity to hear and consider being wholly unknown). Having engaged insofar as possible with those principles, I cannot be satisfied that as a matter of probability the outcome of the verdict would not have been different had the erroneous ruling and breaches of fair procedures not occurred. This is for the very simple reason that it is wholly unknown what relevant evidence might have

been given, but for the erroneous ruling, and what effect such evidence might have had on the outcome.

135. I also want to emphasise that I engaged with those additional two principles at all, only out of an abundance of caution and not out of any conviction that the *ratio* of the decision in *Lawlor* was to incorporate those two principles as relevant and being of general applicability insofar as coroners' duties are concerned. I say this in circumstances where, at para. 53 of his decision, Kearns P. does no more than notes what was submitted on behalf of the respondent in that case and, at para. 61 of his judgment, he goes no further than to make clear that he is "*mindful*" of the respondent's submissions. It is appropriate to quote para. 61 in full: -

"[61] It goes almost without saying that judicial review is a discretionary remedy and I am particularly mindful in this context of the submissions advanced on behalf of the respondent that it would serve no useful purpose to quash the verdict if I took a certain view in relation to the medical commentary on the hospital records furnished on behalf of the applicants in making this application".

No useful purpose

136. As can be seen from para. [61], the mindfulness, on the Court's part, of the respondent's submissions in *Lawlor* is explicitly linked to the very particular facts which pertained in that case, i.e. what was specific medical commentary on known hospital records. There is nothing in the foregoing paragraph which seems to me to amount to an explicit acceptance of the respondent's submissions in the *Lawlor* case as to the two additional principles being of general application. However, even if I am wrong in that view, I cannot, in light of the particular facts in the present case, be satisfied that it would *serve no useful purpose* to quash the verdict.
137. In saying this, I want to make very clear that I am not at all convinced that, in the present case, it would be at all proper for this Court to embark on an analysis as to what the verdict might have been, had fair procedures been observed throughout. That was certainly the approach urged on the court on behalf of the respondent, who contended that the results of such an analysis would reveal the overall fairness of the process and the inevitability of the verdict. For the reasons given in this judgment I cannot agree, but, more fundamentally, I need to signal my very considerable misgivings about the appropriateness of such an approach at all, given the facts in the present case.
138. Having made clear that I am not at all satisfied that Kearns P. adopted, as an additional two principles of general application, those urged on the court by the respondent in *Lawlor* (namely the principles articulated at (1) and (2) of para. 53) it seems to me that, for any court to be satisfied that it would "*serve no useful purpose to quash the verdict*", that court would need to be satisfied in the very clearest of terms that the result would be the same. To be satisfied that quashing a verdict would serve no useful purpose is also a materially different 'test' than to take the view that the verdict would as a matter of probability be the same. There is an obvious tension between those two approaches and this tension is not resolved in *Lawlor*, which seems to have been decided very much on its

own facts and in accordance with the 8 enumerated principles of general application (detailed at para. [52] thereof), fortifying me in the view that neither of the two additional principles urged by the respondent in *Lawlor* comprises the ratio of that decision. In other words, although, in *Lawlor*, the then President decision was “mindful” of the aforesaid additional two principles, it does not seem to me that Kearns P. suggested that the general approach for a court to take where a coroner is found to have breached fair procedures is as follows: - *to ask whether the verdict would as a matter of probability have been different, had the breach of fair procedures not occurred, and if the court is satisfied that the verdict would, as a matter of probability, be the same, notwithstanding the breach of fair procedures established, the court should not intervene.* Nor did Kearns P. apply a probability ‘test’ which, as I have noted, seems to be materially different to a ‘no useful purpose’ test. Furthermore, and even if I am entirely wrong to take the view that the foregoing approach is not part of the *ratio* in *Lawlor*, the facts in the present case not only reveal clear breaches of fair procedures and natural justice, they reveal very real prejudice. Thus, even if the two additional principles urged by the respondent in *Lawlor* do represent the proper approach, the fact of established prejudice means there can be no question of this court being in a position to take the view either that the verdict would, as a matter of probability have been the same, had the breaches of fair procedures and the prejudice not occurred, nor could this court hold that no useful purpose be served by quashing the verdict.

139. I am, however, very satisfied that the Court in *Lawlor* laid down 8 general principles relevant to coroners’ duties. Principle (4) articulated at para. [52] in *Lawlor* makes clear that once this Court finds that there has been a failure on the part of a coroner to employ fair procedures, this Court *can* intervene. In my view, such an intervention is undoubtedly required in the present case, having regard to the facts which emerge from a careful consideration of the evidence, and that view seems to me to be entirely consonant with the *ratio* in *Lawlor*.

Medical expertise

140. Before leaving para. [61] of the *Lawlor* decision, on which the respondent places so much reliance, it is appropriate to note that para. [62] of the judgment by Kearns P. went on to state the following: -

“[62] However, the respondent has not sought to engage with the facts in relation to the medical records or on the commentary thereon by experts retained on behalf of the applicants. Such a joinder could have been effected by providing even a minimal amount of evidence from one or more medical experts on behalf of the respondent. That did not happen in this case, and I do not feel that the Court can constitute itself as a medical expert in these circumstances. A mere assertion that the outcome of the inquest would have been no different does not provide anything like a sufficient basis for me to adopt a course which I might otherwise have followed had that opportunity been taken up.

[63] In the circumstances I will therefore grant the relief sought and direct that a further inquest be held in this case”.

The 'correct' verdict

141. The foregoing highlights the very different factual context in which *Lawlor* was decided. Entirely unlike the position which pertains in the present case, *Lawlor* involved *known* medical records upon which medical experts retained by the applicant had commented. Here, what is at issue is unknown evidence, which the erroneous ruling prevented from being adduced. It is also apparent from the decision in *Lawlor* that Kearns P. made very clear that in the circumstances the court could not "*constitute itself as a medical expert*". In the present case, a key submission made on behalf of the applicant is that the verdict of the inquest was "correct" and that, even if this Court were to direct a further inquest be held, the verdict of that inquest would be the same, irrespective of what further evidence was given, and that second verdict would also be correct. It seems to me that this Court could not possibly adopt such a view because doing so would inevitably involve this Court impermissibly constituting itself as a medical expert. In other words, it seems to me that it would require medical expertise for this Court to take a view that the existing verdict was the correct one and that a future verdict, irrespective of future evidence, would be the self-same verdict and also "correct".

"anything like a sufficient basis"

142. The foregoing approach contended for by the respondent also seems to me to urge that the court to engage in a merits-based analysis of evidence and this is not an approach which I regard as appropriate. When Kearns P. in *Lawlor* referred, at para. [62] to the "*mere assertion*" that the outcome of the inquest would have been no different and went on to comment that this did not provide "*anything like a sufficient basis*" to adopt an alternative course, he certainly did not state that a sufficient basis equated to the *probability* that the verdict would be no different. This seems to me to underline that no probability test flows from the decision in *Lawlor*. However, and for the avoidance of doubt, even if I am wrong in the foregoing views, and even if it was legitimate for this Court to exercise its discretion against intervening to quash a verdict where a breach of fair procedures had been established and where prejudice to the applicant's position and to the inquest itself had been proved, unless satisfied that the verdict would probably have been different, but for the unfairness, I am satisfied that in the present case the evidence which might have been tendered and the effect of same on the outcome, had the breaches of fair procedures not occurred, is entirely unknown. Thus, I cannot safely hold that as a matter of probability the outcome of the verdict would not have been any different, whether as to the main verdict or as regards a rider.

143. In short, all that is known is that there was an error in law compounded by a breach of fair procedures regarding a refusal to entertain submissions based on Supreme Court authority, as well as a further breach insofar as the true reasons for the original ruling were concerned. It is also plain that the foregoing had a material and adverse effect insofar as the applicant's position was concerned, but also prejudiced the inquest because it deprived the respondent of evidence which would have been given, but for the erroneous ruling. Thus, prejudice has been established and, emphasising again that this Court has no medical expertise, it cannot engage in a merits-based analysis as to the verdict which was given based on such evidence as was adduced or, for that matter, a

hypothetical verdict which would have emerged had other evidence – not before the respondent as a consequence of the erroneous ruling – been given.

In summary

144. The ruling by the respondent that cross-examination is not permissible in a coroner's inquest was an error of law.
145. The refusal by the respondent to have Supreme Court authority opened to her with regard to the foregoing issue and to hear any submissions from the family's legal representative, in breach of the *audi alteram partem* principle, constituted a further breach of the applicant's entitlement to fair procedures.
146. The respondent's failure to convey her true reasons for her erroneous ruling at the time she made it, thereby denying the opportunity to the applicant's legal representative to make submissions with respect to same, was a third breach of procedural fairness.
147. The evidence in this case reveals the fact that the erroneous ruling had a material and negative effect on the applicant, resulting in prejudice to the applicant's position.
148. Prejudice was also caused to the inquest itself, as it deprived the applicant and the coroner of the opportunity to hear evidence which might have been adduced but for the erroneous ruling;
149. It is simply impossible to divorce the *ruling* from its *effects* and, thus, impermissible, in my view, to do what the respondent's counsel urges on the court (namely, to look at the transcript as if the ruling never occurred and to hold that the process was fair, by 'putting the ruling to one side').
150. What evidence would have been tendered, but for the erroneous ruling, is unknown.
151. The significance of such evidence with regard to the verdict and/or a rider pursuant to s. 31(2) is unknown.
152. Experts such as the respondent perform an essential role and the evidence reveals that the respondent approached the task in the present case with professionalism, sensitivity, care, diligence and expertise. Unfortunately, however, the respondent unwittingly fell into error and this unwitting failure to employ fair procedures requires the intervention of this Court.
153. In light of the facts and for the reasons explained in this judgment, the applicant is entitled to the relief at paras. (d) 1 to 5, inclusive, and para. (d) 7 of the applicant's amended statement of grounds (which comprises Exhibit "MCB1" to the affidavit of Marie Claire Burke, sworn 26 July 2021).
154. On 24 March 2020, the following statement issued in respect of the delivery of judgments electronically: "*The parties will be invited to communicate electronically with the Court on issues arising (if any) out of the judgment such as the precise form of order which requires to be made or questions concerning costs. If there are such issues and the*

parties do not agree in this regard concise written submissions should be filed electronically with the Office of the Court within 14 days of delivery subject to any other direction given in the judgment. Unless the interests of justice require an oral hearing to resolve such matters then any issues thereby arising will be dealt with remotely and any ruling which the Court is required to make will also be published on the website and will include a synopsis of the relevant submissions made, where appropriate."

155. Having regard to the foregoing, the parties should correspond with each other, forthwith, regarding the appropriate form of order including as to costs, which should be made. In default of agreement between the parties on that issue, short written submissions should be filed in the Central Office within 14 days.