

**THE HIGH COURT**

**JUDICIAL REVIEW**

**[2007 No. 603 J.R.]**

**BETWEEN**

**C.**

**APPLICANT**

**AND**

**RESIDENTIAL INSTITUTIONS REDRESS BOARD**

**RESPONDENT**

**Judgment of Mr. Justice Brian McGovern delivered on the 9th day of November 2007**

1. In these proceedings the applicant seeks the following relief:

(1) A declaration that "relevant person" as defined in s. 1(1) of the Residential Institutions Redress Act, 2002, does not, or in the alternative, does not necessarily, include a child in the care of the relevant institution at the relevant time and who is named in a statement of the applicant as having engaged in the infliction of injury or abuse on her.

(2) An order, by way of injunction restraining the respondent from notifying persons under s. 11(8) of the Act of 2002 who were fellow residents in the care of the institutions named in a statement of the applicant as having engaged in activities which may have contributed to injury of the applicant, but against whom the applicant has not complained within the meaning of the Act.

(3) An interim order pursuant to O. 84, r. 20(7) of the Rules of the Superior Courts, 1986 preventing the respondent from notifying any persons who were fellow child residents with the applicant of any allegations made by her pending the determination of her application for judicial review.

2. On 21st May, 2007 the applicant was granted leave to apply for judicial review for the reliefs set out above on the grounds set forth in the statement grounding the application for judicial review.

3. The applicant suffers from a profound hearing impairment and as a child was resident in a school for girls with impaired hearing ("the Institution"). She claims that while resident in the Institution she suffered abuse within the meaning of s. 1(1) of the Residential Institutions Redress Act, 2002 ("the Act"). The abuse of which she claims amounts to bullying and sexual abuse. It is alleged she suffered this abuse at the hands of fellow residents in the Institution.

4. The plaintiff wishes to bring a claim for redress pursuant to the Residential Institutions Redress Act, 2002 and she made an application under the scheme provided for in that Act. She completed a written statement in compliance with s. 10(4) of the Act and the regulations made thereunder and she detailed the abuse suffered by her while in the Institution.

5. Section 11(8) of the Act obliges the respondent:

"to take such reasonable steps as are necessary, and in accordance with the regulations made under this section, to inform a relevant person of an application under this Act in which the relevant person is referred to ..."

Where the Residential Institutions Redress Board ("the Board") so informs a relevant person under s. 11(8) the following steps are required to be taken:

"(a) the Board shall invite that relevant person to provide it with any evidence in writing concerning such application as the relevant person considers appropriate,

(b) the Board may, on an application by a relevant person, allow the relevant person to give oral evidence to the Board in respect of the application,

(c) the relevant person may, in person or through a legal or other representative, and with the consent of the Board, cross-examine the applicant and any person giving evidence on behalf of the applicant for the purpose of –

(i) correcting any mistake of fact or misstatement relating to or affecting the relevant person made in the application,

(ii) defending the relevant person in relation to any allegation or defamatory or untrue statement, made in the application, or

(iii) protecting and vindicating the personal and other rights of the relevant person,

and

(d) an applicant may, in person or through a legal or other representative, and with the consent of the Board, cross-examine the relevant person and any person giving evidence on behalf of the relevant person,

and the Board shall consent under this sub-section if it considers that, in the interests of justice, it is necessary or expedient to do so for any of the purposes so specified."

6. The matters set out above provide the background to this application.

**The applicant's complaint**

7. The applicant claims that "relevant person" as defined in s. 1(1) of the Act does not, or in the alternative, does not necessarily, include a child in the care of the relevant institution at the relevant time and who is named in the statement of the applicant as

having perpetrated abuse. She says that the respondent was wrong in taking the view that when she named children who were fellow residents in the Institution as her abusers, that it is obliged to take such reasonable steps as are necessary to inform the relevant person of the application under the Act. She argues that the statutory requirement to notify the "relevant person" does not extend to persons who were fellow residents of the applicant in the Institution.

8. The applicant says that she did not contemplate or intend that the persons she named as her abusers would be notified of her complaint or be given details of her statement. She says that the plain intention of the Oireachtas:

"... was not to further harm or vilify persons who as children were residents of the scheduled institutions". It was not the intention of the Oireachtas that persons who as children, and who, by virtue of being in the institutions may have wilfully, recklessly or negligently inflicted physical injury on a fellow child, would be regarded as having carried out the acts complained of in the application. Those responsible for carrying out the acts complained of were those who permitted the events to take place without let or hindrance and the definition of 'abuse' reflects this. It was not the intention of the Oireachtas that in obliging claimants to specify the totality of the abuse which they suffered this could be used to further erode relationships with their fellow sufferers." (see affidavit of applicant's solicitor sworn on 21st May, 2007)

9. The court has been informed that the deaf community in Ireland is small and identifiable and that there is an unusually high degree of contact between former residents of institutions for those with hearing impairment. It is argued that this makes it all the more difficult for the applicant, and others in her situation, to confront former residents of the Institution where the allegation is directed towards or includes former child residents of the Institution. This is entirely understandable. It is, however, difficult to understand how any applicant for redress under the scheme would not suffer some distress on recalling painful events from their past. The scheme of the Act and the regulations made thereunder is to ensure that the work of the Board is done in a way which minimises confrontation and is as informal as possible.

### **The respondent's case**

10. The respondent states that on receipt of an application for redress under the statutory scheme the respondent is required to inform any "relevant person" of the making of the application and to afford certain procedural entitlements to such person. The respondent does not accept that the definition of "relevant person" excludes fellow residents and says that the definition of "relevant person" is clear and unambiguous.

### **Submissions**

11. Both parties have made extensive submissions in this case. I do not propose to set out all the submissions but will deal, in a general way, with those that appear to me to be relevant. The applicant questions the need for "fair procedures" and *In re Haughey* rights to apply to the "relevant person" on the basis that no finding of negligence or fault can be made against such a person under the statutory scheme and the hearings are conducted in private. No publication will take place of any "findings" adverse to the "relevant person". The applicant asserts that *In re Haughey* [1971] I.R. 217 and *Maguire v. Ardagh* [2002] 1 I.R. 385 do not apply in the context of the statutory scheme because the issue of protecting and vindicating a person's good name does not arise, nor does the publication of findings of fact occur. In *Maguire v. Ardagh* [2002] 1 I.R. at p. 597 Murray J. stated:

"It is only when there exists a power to conduct an inquiry or a hearing as to the culpability of an individual that procedural questions concerning the fairness of the proceedings and the rights of the parties which may be affected by such a hearing arise. Similarly, the principle of proportionality, referred to by the Attorney General in his submissions, arises as there are competing rights, in this context, a competing right of the Oireachtas to conduct an inquiry of this nature and the right to a good name. Merely establishing fair procedures to be followed in the exercise of a particular power does not create that power itself. Fair procedures apply to the exercising of an existing power. In short just as the passing of an Act for the purpose of regulating the exercise of an alleged power cannot be used as evidence of the existence of such power, as Geoghegan J. observed in his judgment, neither can the provision of fair procedures be evidence of its existence."

12. Hardiman J. stated at p. 669:

"The arguments of the respondents draw heavily on the proposition, undoubtedly correct, that the findings of a tribunal of inquiry are said on high authority to be 'legally sterile' in the sense of having no strict legal consequences. This quality is sufficient to prevent the results of a tribunal's inquiries being regarded as an administration of justice within the meaning of Article 34 of the Constitution. The applicants do not submit that the 'findings of fact' by the sub-committee would be an administration of justice. But they say, and it has not been disputed, that while such findings have no 'legal effect', they may have many and far-reaching effects."

He went on to state:

"It is true that even the most adverse imaginable finding of fact or conclusion by the sub-committee will not amount to a conviction and will not determine anyone's rights and liabilities in civil law and will not expose them to any penalty or liability. But that is not the same as saying it has 'no' effect."

13. The respondent argues that it is a fundamental tenet of constitutional justice that a person against whom allegations of wrongdoing have been made is entitled to certain procedural rights. The granting of these rights is necessary to ensure that the personal rights of that person, including his or her right to a good name, are vindicated. What the applicant seeks to do in these proceedings would be to deny these procedural rights to persons against whom serious allegations (including, in this case, allegations of sexual abuse) have been made. It seems to me that the court should have regard to the proportionality of the rights afforded to the "relevant person" in the context of the scheme as a whole.

14. The applicant maintains that the respondent is not entitled to make a finding of fact relating to fault or negligence and therefore is not entitled as a matter of law to find as a fact that any alleged abuser had done or had not done any act leading to or connected with the abuse. In her submissions the applicant also states that it forms no part of the remit of the respondent to seek to establish whether or not the abuse probably did occur. It is clear that the scheme provides that no finding relating to fault or negligence can be made but I cannot accept that the Board is not entitled to seek to establish whether or not the abuse probably did occur or that any alleged abuser had done or had not done any act leading to or connected with abuse. The scheme is, of course, designed to compensate victims of abuse who come within its scope and establishes certain criteria set down in the legislation which demand a lower level of proof than that required, for example, in civil litigation. But it seems to me that it would be absurd to suggest that a claimant could make an allegation of abuse and that virtually no testing of the evidence would occur. The scheme is paid for out of public funds. If there was no scrutiny of the evidence it would leave the scheme open to abuse. Section 7 of the Act sets out the

basis on which a person is entitled to an award and requires the Board to make an award to a person where he or she:

"...establishes to the satisfaction of the Board –

- (a) proof of his or her identity
- (b) that he or she was resident in an institution during his or her childhood, and
- (c) that he or she was injured while so resident and that the injury is consistent with any abuse that is alleged to have occurred while so resident ..."

15. It seems to me that the use of the words "... establishes to the satisfaction of the Board ..." implies some form of scrutiny and s. 10(4) requires the applicant to provide the Board with "evidence" of certain matters. What is meant by "evidence"? I think that most lawyers would agree that evidence is material which is produced in court or some other forum to establish or prove a point which is in issue or dispute. A mere allegation is not evidence. I find nothing in the Act to satisfy me that the Board is not entitled to evaluate the material or evidence before it in order to decide whether an award should be made and, the extent of the award. I reject the argument made on behalf of the applicant that the Board cannot even decide as a fact that the act complained of actually occurred or did not occur. Many of the submissions made on behalf of the applicant are based on the contention that the respondent cannot decide as a matter of probability whether or not the act complained of did occur. Many submissions are also based on an assumption that the meaning of the Act is not clear and should be interpreted by the court. On the other hand, the respondent asserts that the meaning of "relevant person" in the Act is perfectly clear and without any ambiguity.

16. In approaching this aspect of the case the court has to have regard to the rules of construction of statutes.

17. In *Howard v. Commissioners of Public Works in Ireland* [1994] 1 I.R. 101 Blayney J. made reference to Crais on Statute Law (1971) 7th edition at p. 65:

"The cardinal rule for construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense."

He also quoted from Crais on Statutory Interpretation, 3rd edition at p. 40:

"In determining the meaning of any word or phrase in a statute the first question to ask is always what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature that it is proper to look for some other possible meaning of the word or phrase."

17. Section 5 of the Interpretation Act, 2005 provides that in construing the provision of any Act (other than a provision that relates to the imposition of a penal or other sanction) -

- (a) that is obscure or ambiguous, or
- (b) that on a literal interpretation would be absurd or fail to reflect the plain intention of the Oireachtas,

the provision shall be given a construction that reflects the plain intention of the Oireachtas where that intention can be ascertained from the Act as a whole. It is important to note that this section is concerned with a provision in any Act which is either "obscure or ambiguous" on the one hand or "that on a literal interpretation would be absurd or fail to reflect the plain intention of the Oireachtas".

18. The court has to decide whether "relevant person" as defined in s. 1(1) of the Act is obscure or ambiguous or on a literal interpretation would be absurd or fail to reflect the plain intention of the Oireachtas where that intention can be ascertained from the Act as a whole.

19. Section 1 of the Act deals with the interpretation of words used within the Act. The relevant portion of s. 1(1) is as follows:

"'relevant person' means –

- (a) a person who is referred to as having carried out the acts complained of in the application, and
- (b) in the case of an institution that is referred to in an application as being the institution in which the acts complained of in the application were carried out, the person who is concerned with the system of management, administration, operation, supervision, inspection and regulation of such institution as the institution may determine and specify in writing to the Board."

For the purposes of this application the court is concerned with (a) above.

20. It is only if those words are obscure or ambiguous or on a literal interpretation would be absurd or fail to reflect the plain intention of the Oireachtas that the court can intervene and give a construction that reflects the plain intention of the Oireachtas where that intention can be ascertained from the Act as a whole.

21. The applicant contends that s. 7(5) of the Act is an indication that the Oireachtas did not intend "relevant person" to mean a child who was a fellow resident in the institution but rather an employee of the institution because it says:

"An applicant shall not, when presenting an application to the Board, be required to produce to the Board any evidence of negligence on the part of a person referred to in the application, by the employer of that person or a public body."

I do not accept that the wording of s. 7(5) has that meaning. It simply states that an applicant is not required to produce any evidence of negligence whether as against the person referred to in the application or by that person's employer or by a public body.

22. The applicant questions whether it is necessary to have a *legitimus contradictor* if no finding relating to fault or negligence can be made by the respondent and also queries whether or not there is any necessity to give rights to the "relevant person" as provided

for in s. 11 since no finding of fault or negligence can be made and there will be no publication of a finding. It seems to me that it is entirely proper that a person against whom serious complaints have been made should be involved in the process since they may have relevant information to give to the Redress Board and I think that the rights given by s. 11 to a "relevant person" are reasonable and proportionate. The section does not say that the relevant person must be given what are generally called *In re Haughey* rights but that they may be given such rights if the Board considers that in the interest of justice it is necessary or expedient to do so for the purposes expressed in s. 11. But these are really matters raised by the applicant to show what was the intention of the legislature and only come into play if the meaning of "relevant person" is obscure or ambiguous or on its literal interpretation would be absurd or fail to reflect the plain intention of the legislature.

### **Conclusion**

23. I am satisfied, having considered the definition of "relevant person" set out in s. 1(1) of the Residential Institutions Redress Act, 2002, that the meaning of the words are clear and unambiguous. I am also satisfied that on a literal interpretation of the words as defined, they are not absurd and do not fail to reflect the plain intention of the Oireachtas to be found within the Act.

24. Accordingly, I refuse the relief sought.