Neutral Citation Number: [2011] IEHC 361

THE HIGH COURT

2007 9323 P

BETWEEN

DANA DOHERTY A PERSON OF UNSOUND MIND NOT SO FOUND

PLAINTIFF

AND

MICHAEL QUIGLEY

DEFENDANT

JUDGMENT of Mr. Justice Ryan delivered the 5th July, 2011

1. Introduction

The plaintiff is a schoolteacher in her early 40s from Co. Donegal. The defendant is in his late 60s and he also comes from Co. Donegal. From early childhood the plaintiff was a very successful Irish dancer; she was very keen and showed great promise. The defendant was a noted teacher of Irish dancing as he still is and taught children all over Donegal. His full time job was as a compositor with the Derry Journal. He spent his spare time teaching Irish dancing at different venues around the county. The plaintiff was brought to his classes when she was very young and he quickly identified her as a rising star. From the age of twelve until the plaintiff was nineteen, she engaged intensively in practising and performing Irish dancing under the close personal tutelage of the defendant. This involved travelling around to different venues in County Donegal where the defendant held classes and also to outside venues for competitions. An indication of the plaintiff's success is that she competed in the Irish Dancing World Championships and came second during this period.

The plaintiff's case is that the defendant took advantage of the close access he had to her to engage in severe sexual abuse over the period from 1982 to 1989. She claims that the abuse began with relatively minor improper and offensive acts of interference with her body in the form of touching and feeling and talking and it gradually and inexorably intensified in the number of occasions when it happened, the locations and in the nature of the abusive acts that the defendant committed or required to be done to him. Ultimately, when the plaintiff was aged 16 years, the defendant was abusing her by getting her to perform fellatio and otherwise on frequent and regular occasions. The defendant was a mature authority figure who exploited his access to a young girl for grossly immoral purposes while he subverted her emotional and moral senses.

As a result of this abuse, the plaintiff claims that she was seriously traumatised and that she continues to suffer to this day. She has been diagnosed as suffering from post traumatic stress disorder of a very serious degree with a dissociation complex, which means that she has not processed many of the experiences that she underwent with the defendant into memories. Instead, they live with her as actual recurring events when they are recalled or when they come to her attention. This is the evidence of Prof. Ivor Browne who examined the plaintiff many years later.

The defendant denies all of these allegations. He says that none of them ever happened and he rejects them outright. He challenges the plaintiff in respect of the specific instances that she cites in her evidence and he also utterly rejects her claims about his general behaviour or that he behaved in any respect in the manner that she describes and complains about.

The plaintiff instituted her proceedings by way of personal injuries summons on the 13th December, 2007, in which she was described as a person of unsound mind not so found. One of the issues focused on by the defendant is whether the plaintiff is or was at the time of the issuing of the summons a person of unsound mind. It seems likely that this approach was adopted because the plaintiff's advisers were seeking to follow an example that they understood had arisen for consideration in a high profile case from the west of Ireland in which members of the McColgan family sued the local Health Board and others for failing to come to their assistance notwithstanding evidence that they were being sexually abused. That case was settled after a number of days of hearing but it received a lot of publicity and it seems that the plaintiff's advisers were consciously seeking to take advantage of a procedure, as they understood it, that had been proposed in the McColgan case in order to overcome the effect of s. 48 of the Statute of Limitations of 1957. Obviously, there was going to be a major issue on the Statute of Limitations and that indeed has proved to be the case. One of the issues, therefore, concerns the question whether the plaintiff is a person of unsound mind not so found, as is stated in the title of the action.

Amending legislation enacted in 2000 inserted s. 48A into the 1957 Statute, under which a person is under a disability while suffering from a psychological injury that was caused by acts perpetrated by the wrongdoer and which is of such significance that the victim's will or capacity to decide to bring proceedings is substantially impaired. Another question in the case is whether s. 48A applies. It follows from this provision that the first thing that has to be decided is whether the defendant did actually commit the acts and behave in the manner that is alleged by the plaintiff and then the question arises whether the plaintiff was under disability within the meaning of s. 48A.

The issues in the case can thus be summarised as follows:-

1. Did the defendant commit the acts of sexual abuse or any of them that are alleged by the plaintiff?

2. If so, is the plaintiff or was she at a material time a person of unsound mind so that s. 48 of the Statute of Limitations operates?

3. If not, does s. 48A of the Act apply?

4. If the acts or some of them were in fact committed and if s. 48 or s. 48A applies, assess damages.

2. Facts

a. the plaintiff's evidence of abuse 1982-1989

The plaintiff was born on the 30th April, 1970 and she grew up in Letterkenny as one of a family of eight children. She and her sisters were keen Irish dancers from a very early age. The defendant was a very well known teacher of Irish dancing in the locality and he was very highly regarded. The events with which this case is concerned began when the plaintiff was twelve, but she was a pupil of the defendant for a number of years before that. She went to classes that he held in her home town of Letterkenny and remembered going to those classes from age six and upwards. There were other pupils at the classes and the plaintiff recalled that the defendant was a very physical and tactile person who was demonstrative and outgoing and apparently affectionate. She did not make a complaint that there was anything offensive about this conduct but it obviously took on a somewhat sinister aspect when viewed in retrospect in light of her complaints, assuming that those complaints are indeed justified. During this early period before the plaintiff was aged twelve years, she was thus in the care of the defendant as a teacher on a fairly frequent and regular basis when she took her lessons with the other children of her age in the classes in Letterkenny. The plaintiff remembered in particular that the defendant would ask the children to "come and give Mickey a kiss" before they left the class. But she emphasised that that was done quite openly and in the presence of parents and nothing was thought of it at the time.

The plaintiff described how from the age of twelve until she was nineteen there was a gradual development of offensive sexual intimacy by the defendant in which he exploited the relationship of teacher and pupil as between her and him. It would nowadays be described as a process of grooming. She specified incidents that she recalled but she also said that sexual abuse was actually more general and was not confined to the specific episodes.

The first instance she described was in August 1982. The plaintiff was attending a class given by the defendant at the Commercial Centre in Letterkenny. He had arranged for another teacher named Peader Matthews who was expert in one aspect of Irish dancing to assess his pupils and that included the plaintiff as one of his star pupils. When the assessment had taken place the plaintiff was upstairs in the Centre and the defendant took her onto his knee and stroked the area of her breasts and spoke about how her body was developing. She was unhappy and uncomfortable about that but she was reassured when a few days later she met the defendant's wife and Mrs. Quigley said something about the plaintiff growing up or developing and she plaintiff took this to be a sort of reference back to her conversation with Mr. Quigley at the Commercial Centre. In the result the plaintiff was reassured as to the propriety of the incident that had made her uncomfortable. The defendant and his wife denied that any such incident occurred with either of them. Mr. Quigley described the arrangements in the upstairs part of the Commercial Centre, the location specified by the plaintiff, and said that it was practically impossible for the incident to have occurred as the plaintiff described because there was no unoccupied and unlocked room available in which the episode as described could have taken place. As for Mrs. Quigley, she did not recall any conversation about the child's development such as the plaintiff had said happened and went further and said it did not happen.

The plaintiff recalled an occasion in December 1982 that happened on the way back from Ramelton in Co. Donegal. She attended classes in Letterkenny on a regular basis and they were always given by Mr. Quigley. But he was in great demand and drove to other parts of the county where he gave lessons as well and it was customary for him to bring the plaintiff and other pupils – girls – to these additional classes. One of these was Ramelton where he gave a class on Friday nights. He drove there after he had taught at Letterkenny. The plaintiff said she recalled this occasion because at the time her sister Catriona was usually in the car as well when they went to Ramelton but not his time because it was her birthday and the plaintiff was on her own with the defendant. When the class at Ramelton finished they were on their way home. She said that the defendant turned off the road and kissed her and groped her upper body. The defendant flatly denies that anything of this kind happened.

The plaintiff described an event that occurred when she was twelve or thirteen years old. This happened again at a time when she was in the defendant's car travelling from an Irish dancing lesson. The incident happened at a place named Windy Hall, near Glencar in Co. Donegal. Again the car was stopped and the defendant engaged in lewd conversation. He asked the plaintiff had she ever seen a grown man's penis. She was frightened and reacted and he backed off. The plaintiff did not suggest that he showed her his penis on this occasion but that he asked about it. She said that she wrote something into her diary that she was keeping at the time about this and one of her sisters saw it and the plaintiff was afraid as a result that her parents might hear about it and she destroyed the page. She mentioned this to Mr. Quigley when they next met and he, according to her account, did not take the matter seriously but merely said that she should or could say that she had a crush on him and that would account for the entry.

Another incident is alleged to have taken place on a Friday night following the class in Ramelton, not on the journey from Ramelton to Letterkenny but later that night after the Late Late Show, when the defendant was driving the plaintiff from his home to her's. The defendant drove off the road to a quarry area and stopped the car. He reclined the plaintiff's passenger seat, opened her jeans and groped her pubic hair. She said that on the way back from there they passed a public house where she noticed her father's car outside and, when she got home, she mentioned to her mother that she had seen her father's car. Her mother asked why they had been going that way which would not have been the normal direct route and the plaintiff said that they had to do an extra message and thus covered up the defendant's diversion to the quarry. The defendant denied this outright. A significant issue arose in relation to the lessons in Ramelton and more particularly the journey home from there. The plaintiff described how it would often happen on a Friday night that they would set off for Ramelton – she and the defendant – in the defendant's car. After the lesson had taken place they would return to Letterkenny. She said that it was quite common for the defendant to bring her to his home where he would watch the Late Late show and then he would leave for her home after the show. Mr. Quigley and his wife denied that this had ever happened. They said that he would drive the plaintiff home first and then come home and watch the Late Late show on a Friday night. They said that it would not have been appropriate nor would it have been accepted by the Doherty parents that their daughter would be out until after the Late Late show on a Friday night. It followed, therefore, on the Quigley's account that the incidents described by the plaintiff that took place on the Ramelton Friday nights could not have taken place as she described.

The next occasion of abuse as described by the plaintiff was when she was babysitting the defendant's daughter Alison. She said that when the Quigley's came home and went to bed, Mr. Quigley came into the small front bedroom that she was occupying and engaged in sexual activity. She specified an occasion when she was about thirteen years of age when he did this – he came into the bedroom and took her hand and put it on his penis. She said that he came into her room on a number of occasions and gradually the sexual activity increased to the point where he would put his fingers in her vagina. Then he would return to his own bedroom. On some occasions a niece of Mrs. Quigley, Caroline McKelvey – who also gave evidence in the case – would stay over at the same time as the plaintiff. The plaintiff and Caroline slept in the double bed in the front room. On one such occasion the defendant came into the room at a time when the girls were sleeping and he groped the plaintiff under the blankets feeling about her vagina and she described how he appeared to be enjoying the discomfort that she was experiencing because Caroline was asleep beside her in bed.

According to the plaintiff, the level of sexual activity continued increased. When she was around fifteen years or sixteen years of age, on a summer morning when Mrs. Quigley, a national teacher by occupation, was doing a course away from home and Alison Quigley was in the garden playing, Mr. Quigley locked the back door and took the plaintiff upstairs and engaged in sexual activity that led to him masturbating and ejaculating over the plaintiff whom he then told to have a shower and clean up. This again is totally rejected by the Quigley's. Alison Quigley gave evidence that it did not happen and could not have happened. Mr. and Mrs. Quigley said the same. They said that there was no way that Mr. Quigley would lock the back door in any circumstances when Alison was outside. Alison was a bad asthmatic and might have suffered an attack at any time and therefore she needed to be under constant supervision. Therefore this incident simply could not have happened because there was not way that Mr. Quigley would or could have locked the back door in the circumstances.

When the plaintiff was sixteen, she said, she was in the garage at the Quigley home and was having a dancing lesson from the defendant. There were wooden planks on the ground. Mr. Quigley locked the connecting door between garage and kitchen and felt around her vagina and he also removed her underpants and put them in his pocket. This left the plaintiff wearing a short dancing skirt and no underwear. Mrs. Quigley came on the scene and criticised the way she was dancing, which was because the plaintiff was afraid that Mrs. Quigley would see that she had nothing on underneath her skirt and so was dancing in a very constrained manner. She said that the defendant was getting pleasure out of witnessing her discomfort in the presence of his wife. This again was the subject of bitter dispute. The Quigley's said that the door between garage and kitchen was never locked; indeed, they seemed to suggest that there was not even a key for it. Mrs. Quigley said that she had never expressed criticism of the plaintiff's dancing and it is right to say that that would have been the province of Mr. Quigley and it would not have been Mrs. Quigley's function to do so. That does not exclude the possibility that on some occasion a lesser expert might express a view, particularly if that was somebody like Mrs. Quigley who was also very familiar with Irish dancing even if not as expert as her husband.

The plaintiff said that the abuse progressed to a point where Mr. Quigley got her to give him oral sex, which soon became a regular occurrence. He would stop the car and bring her head to his penis for oral sex. He could sometimes behave roughly during these encounters. He sometimes forced her head. Again Mr. Quigley flatly denied the plaintiff's evidence.

She said that he abused her every time he was in contact with her, that it became constant, once twice or three times a week, that oral sex became a regular thing at a usual place in the woods. All this continued to take place until 1989, when the plaintiff finished school and went to University in Coleraine.

The plaintiff said that her feelings at the time for the defendant were complicated and confused and that a considerable element of conflicted emotion continues to be part of her life. He was her teacher. He was in loco parentis. He was expert in Irish dancing and he was widely respected in that field. She was talented and ambitious. She wanted to do well in this field and he was the means by which she could do it. She was in awe of him and she was subservient and she trusted him implicitly. She was emotionally involved with him. When he interfered with her, she became sexually aroused. She felt guilty about this and blamed herself. On her evidence, the defendant encouraged her in this belief and manipulated and exploited her immature anxiety. He preyed on it. He used her religious scruples to reinforce in her the feeling that she was unable to control her sexual urges. On the plaintiff's account, the defendant was a cunning abuser who exploited the opportunity he had as teacher of Irish dancing with a pupil who had exceptional ability. This gave him an opportunity to be with her for long periods of time in journeys to different parts of Donegal and elsewhere and he encouraged or permitted her to become emotionally attached and even dependent on him. He deviously twisted and exploited her concerns about her physical development, her emotional attachment and her moral compass in order to satisfy his own sexual desires.

The plaintiff described how she at one time wanted to follow the example of a notorious case in the world of Irish dancing, in which a teacher and his pupil developed a sexual relationship and lived a new life together away from his wife and her parents. The plaintiff discussed that with the defendant, who brushed it off.

The plaintiff said that at times she felt deeply uncomfortable and upset about what was going on. She was confused in her life at school and at home and wanted to talk to somebody but that did not work out. She said that when she was aged fifteen she told her parents that she was giving up Irish dancing. They did not know anything about the abuse that was going on and they were very angry. The plaintiff, who was a good student at school, said that she deliberately failed examinations in December, 1985 and her real rationale for this was that she would thereby be able to give up Irish dancing. Her parents would think that the dancing was interfering with her studies and would more easily consent to her giving it up so that she could concentrate on school work. That, according to the plaintiff's evidence, is what she was thinking at the time. Mr. and Mrs. Quigley came to the Doherty home and discussed the matter and were very keen that Dana should continue to do her Irish dancing. The plaintiff said that Mr. Quigley came and spoke to her in her bedroom and that he cried and said that what was going on would stop. The Quigley's agreed that they had visited the Doherty's on this occasion but denied that Mr. Quigley went to the plaintiff's bedroom and he denied that he promised as the plaintiff testified or that he cried on the occasion.

b. plaintiff & defendant post 1989

The plaintiff went on to third level education at the New University of Ulster at Coleraine where she graduated in 1992 with a degree in Irish studies. During her time as a university student she became increasingly concerned about her experiences with the defendant. She attended Dr. Maria Murray in Letterkenny and discussed the matter with her over six sessions. During this time the plaintiff became concerned that what happened to her might well be happening to other children at the hands of the defendant. She arranged to meet him and this happened in Derry in early 1991. The plaintiff wanted reassurance from the defendant that he would do something about his condition. He did not agree that he needed any treatment or counselling. She said or accused that he was a paedophile and that he had sexually interfered with her. He denied that he had sexually abused her. The plaintiff wanted the defendant to undertake a course of counselling and he agreed to do so. He further agreed that he would phone Dr. Maria Murray in Letterkenny to confirm to her that he was indeed attending the counselling that he had discussed with the plaintiff. It is agreed between the plaintiff and the defendant that this conversation took place and that following the conversation Mr. Quigley did indeed telephone Dr. Murray and give the confirmation that had been requested by Ms. Doherty.

Ms. Doherty said that Mr. Quigley told her that he had been attending a priest called Fr. Stephen in Derry and he brought her to meet him. They travelled together to see Fr. Stephen and he had a separate conversation with the defendant and plaintiff. The defendant gave evidence that the meeting with Fr. Stephen happened not by special arrangement between him and the plaintiff but rather by chance. His account was that the plaintiff was looking for a lift home and called into the Derry Journal offices, where he worked, and it was Mr. Quigley's normal practice to call to Fr. Stephen for confession on a Friday evening, which this occasion was. The result was that he went to confession with Fr. Stephen and there was some casual further conversation between Ms. Doherty and Fr. Stephen. The difference is whether the occasion was pre-arranged and specifically for the purpose of bringing Ms. Doherty to Fr. Stephen for the purpose of reassurance or otherwise or whether it was merely a relatively fortuitous encounter brought about by the fact that Ms. Doherty wanted a lift from Derry and it was a Friday evening when it was Mr. Quigley's usual practice to go to confession with Fr.

Stephen on his way home on a Friday evening.

Whatever the particular arrangements whereby it happened, Ms. Doherty is correct about the visit having taken place to Fr. Stephen. Mr. Quigley agrees that he discussed with Fr. Stephen the fact that Ms. Quigley was making allegations of sexual abuse against him. Mr. Quigley agreed to phone Dr. Murray to confirm that he was going to attend a course that would be suitable for a person who had a history of sexual interference with a child and he followed up on that agreement by phoning Dr. Murray with the confirmation. The fact that Mr. Quigley did not attend any such course does not detract from the significance of his agreement to doing so and to confirm that to an independent outsider.

Another incident in 1992 followed a tragedy in the Doherty family when one of the plaintiff's siblings took his own life. The defendant and his wife and daughter called to the Doherty home to sympathise but the plaintiff would not permit the defendant to enter the house and only his wife and daughter went in.

c. the Garda investigation

Between 1992 and 1994 the plaintiff was at home in Letterkenny doing casual work as a substitute teacher in local secondary schools. During this time she received counselling from a Mr. Seamus Gordon extending over a period of eighteen months. He and a social worker persuaded the plaintiff to report her experiences at the hands of the defendant. On the 29th August, 1993, the plaintiff made a statement of complaint to Garda Sarah Hargadon of Letterkenny in which she related the sexual abuse that she alleged she was subjected to by the defendant in the relevant period as disclosed above. The Garda visited the defendant's home and on the 31st August, 1993 Mr. Quigley attended at the Garda Station where he answered questions put to him by the Garda after the usual caution. The questions and answers were recorded in writing and Sgt. Hargadon, who is now retired, produced a copy of the written record. This account given by Mr. Quigley is of considerable importance in the case and I will consider it later in this judgment.

Garda Hargadon submitted the file to the Director of Public Prosecutions but he decided that there would not be a prosecution. The plaintiff was devastated by this decision, as she testified. Garda Hargadon was also unhappy with it and made representations for the file to be re-examined. Meanwhile, in January 1994, the plaintiff left for the United States of America where she remained until 1997. During this time she met and married her husband who was a teacher of Irish dancing. She herself acquired a qualification to teach Irish dancing and did so with her husband in the United States. In 1995, she was at home and went to Lough Derg on a pilgrimage with her sister where she said she spoke to a priest about the abuse that the defendant had perpetrated on her. In 1997, she returned to Ireland from the US. She worked from 1997 until 2000 in the Customer Care section of Bank of Ireland at Shannon, Co. Clare.

On the 12th July, 1998, the plaintiff made a second statement to Garda Hargadon, who was still pursuing the question of a prosecution of the defendant. A child protection officer, Mr Mulligan and the social worker, Mr Gordon, who had previously counselled the plaintiff, made contact to encourage her to make another statement. Sgt. Hargadon described how extremely upset the plaintiff was at the time when she made this second statement. The plaintiff confirmed this. She said that she had observed Michael Quigley at a dance competition in Ennis and became very apprehensive when she saw him with other children that he would be doing the same thing with one of them. There is no doubt according to the evidence of the Sergeant that the plaintiff was extremely emotionally upset when she made this statement. When the Sergeant resubmitted the file with the new statement the Director decided that there should be a prosecution.

d. Criminal Trials 2000 & 2007

The case came on for hearing at Letterkenny Circuit Court in June 2000 and the plaintiff gave evidence. The result was a disagreement by the jury and a re-trial was ordered. The defendant obtained an order permitting him to bring judicial review proceedings to stop the re-trial. The High Court delivered judgment in 2003 rejecting Mr. Quigley's application. He then appealed to the Supreme Court and that held the trial up for another three years. The Supreme Court delivered judgment in October, 2006. There followed a re-trial at Letterkenny Circuit Criminal Court on the 6th February, 2007, which also ended in a disagreement by the jury. The criminal matter concluded on the 24th August, 2007, when the Director entered a *nolle prosequi* in respect of the charges.

Between the two abortive trials - June 2000 to February 2007, the plaintiff's life proceeded. She qualified as a teacher and got a job in Ennis, Co. Clare. In 2001 her marriage broke up. She undertook counselling after that for approximately one year. In 2002 she was in Letterkenny and spent the summer of 2003 in Ennis. In the years 2004/5 the plaintiff went on a round the world trip and it was during this period in April 2004 that she met Fintan Gallagher, her partner, and she spent the summer of that year in Letterkenny. They arrived home in February or March in the year 2005. In 2005 she got a job as a teacher near Letterkenny which is the position she still holds.

3. The Civil Proceedings

In March 2006, the plaintiff consulted a solicitor, who obtained authorisation from PIAB for a personal injuries claim by authorisation of the 22nd February, 2007. On the 13th December, 2007, proceedings were instituted by way of personal injuries summons in the name of Dana Doherty a person of unsound mind not so found. The statement of claim was delivered on the 12th February, 2008. The plaintiff saw Prof. Ivor Browne in October and November 2008 and he diagnosed severe post traumatic stress disorder and marked personality dissociation with the condition of frozen present which I will discuss in more detail below.

The plaintiff said that she had had counselling again from Mr. Seamus Gordon during the last six months.

4. The Plaintiff's Witnesses

Sgt Sarah Hargadon gave evidence about the investigation that she carried out when the plaintiff made her complaint and which led to the criminal trials described above. She produced the written record of her interview with the defendant at Letterkenny Garda Station on the 31st August 1993, in which she questioned him about the complaints Ms Doherty had made. The plaintiff adduces this evidence to confirm some parts of her testimony, to corroborate others and to undermine the rebuttals by Mr Quigley and his wife by showing inconsistency with this record. The interview is considered in some detail below in relation to the evidence given by the defendant and Mrs Quigley. The defendant said that he was shocked by Dana Doherty's complaint because he treated her so well, "the impression I got from her was that she was in love with me." In this connection, he referred to the relationship between pupil and teacher. He confirmed the first incident described by Ms Doherty, namely, the conversation about body development at the Community Centre. He agreed that she often baby-sat at their home and at one point in the interview said that he would put his head into her room to check if she was alright, adding "I can never honestly say Alice ever left it to me to check her. I might be passing by the room. It was the relationship we had, the teacher-pupil relationship." Mr Quigley denied some of the plaintiff's allegations but in respect of other serious claims of abuse, he said merely that he did not remember.

In response to her allegations in 1991 about sexual abuse, he said that he tried to put her mind at ease: "I didn't ever consider she was sexually abused" and he agreed that he brought her to talk to Fr Stephen in Derry. Ms Doherty had indeed left his dancing classes and he and his wife went to her home to persuade her to return. She had asked him to go to counselling and he had agreed because, he said, he "just wanted to keep her happy." He attended Relate on one occasion because Fr Stephen advised him to do so. He had given Ms Doherty £100 in September 1991. Asked why he thought the plaintiff had made the allegations, he replied "I don't know, she was disturbed." He confirmed that she had stopped him going into her house at the time of her brother's wake.

Michelle McCafferty said she was born on the 2nd January, 1977 as the youngest of four girls and she had been engaged in Irish dancing since she was four years. At about ten or eleven years she started with Michael Quigley. She was at that stage in fifth or sixth class in the national school. When the classes began, they were on Sunday afternoons but then they moved to Friday evening. The first location was the Commercial Centre at Quay Street in Donegal Town but that changed to the second floor of the old Vocational School. She was originally in the earlier of two groups with lessons from 6.30 pm to 7.30 but she would wait for her sister who was in the older class that finished an hour later.

She said that when she paid Michael Quigley, he would pull her into him putting his arms around her waist and keeping her held close with chest to chest contact, while giving her kisses and talking about dancing. There were about 20 or 30 girls in the class and the defendant did the same thing with the other girls, hugging and kissing them when they were paying him. This behaviour was very unwelcome. Girls arranged between themselves to take turns so one of them would go up with the money for more than one.

She recalled an occasion when she was aged 11 and had outgrown her dancing costume. Mr Quigley brought a second-hand outfit from Letterkenny, which she tried on after class but it was too small. She went back to the bathroom to change but could not undo the zip and called out for help. The defendant came and locked the door and then he helped her out of the skirt. As she stood in her underwear, they were face to face and he had his arms around her and was purportedly reassuring her that a suitable costume would be found but she said she was frightened and uncomfortable because of the unnecessary and upsetting physical contact with the defendant.

She described an incident that occurred during a class on the second floor of the old Vocational School when she was 14 years old and in the older group. On this evening she was physically sick and had vomited in the bathroom, where she stayed in a cubicle. She heard somebody come into the bathroom and go in and out of the other cubicles before reaching the one she was in. It was the defendant, who then came into her cubicle. She stood over to the side and he enquired about her and she said she was not feeling well. He put his arm around her waist and said she could stay there. When she bent over the toilet, his arms were around her waist and he dropped his hand and felt the top of her leg and brought his hands up and down into her crotch. She was very frightened and when he left she was feeling uncomfortable and terrified and she stayed there until her father came to collect her. As a result of this, Ms. McCafferty stayed away from the classes but pretended at home that she was going to them. Eventually, after some weeks, the truth emerged that she was not actually going to the classes. There was trouble at home about this and her father was annoyed. She then told her parents what had happened. She made a statement to the Gardai that weekend. She did not return to the classes. The upshot was that a Garda interviewed the defendant about this complaint. However, it appears that the statement Ms McCafferty made to the Gardai at the time, in or about 1991, may have been lost and the nature of the complaint that was investigated is in dispute.

Ms McCafferty said that she was very upset and felt confused and isolated after this and her parents were also troubled. There was family discord. She said that she subsequently took an overdose of tablets and was taken to Sligo Hospital. She was very frightened. Following a family meeting, the witness undertook psychotherapy over a period of three years.

In cross examination by Mr. Nolan, Barrister, Ms. McCafferty said that she first heard of the case in 2001 when she was in London. She phoned Garda Hargadon and told her about what had happened when she was aged fourteen and the statement she had made at the time. It was put to her that in Donegal Town there were lessons only on a Sunday and that Mrs. Quigley and her daughter were there a lot of the time. Mr. Nolan put to the witness the defendant's case that there were no other complaints and, as to the Garda investigation, he suggested that this was not about any allegation of sexual impropriety on the part of Michael Quigley but it was a minor matter of a complaint arising out of instructions to show legs and knees when dancing. It was suggested that this complaint was not as Michelle McCafferty said but was about something altogether innocuous and it was not pursued by the Gardai and that there were no other complaints made by parents besides the McCafferty one. The witness insisted that the complaint was about the particular incident and inappropriate touching generally.

Jacqueline Toner

Jacqueline Toner was born on the 7th March, 1973, in Letterkenny and she still lives there. She is a project co-ordinator by occupation and she has a BA from the University of Ulster and an MA from Magee College. She was an Irish dancer from age four or five until she was seventeen. She was a pupil of the defendant in Letterkenny, first in the Literary Institute and then in the old Tech. She was very involved in Irish dancing she knew him and his family. She went to Feiseanna all over; she reached the World Championship stage as did her younger sister. When she was a teenager, she and her sister used to go from Letterkenny to Ardara or Glenties or Donegal with the defendant on a Friday night or a Sunday to help with his teaching. She described how one night in autumn 1989 she was alone with him in his car coming home when he took a detour that he said was a shortcut and stopped at a lay-by. He turned off the lights and the engine, released his seat-belt and then leaned over and tried to kiss her. She said "what are you doing" and he stopped. On the remainder of the journey, the defendant told her that "me and you are good friends, aren't we?" The witness said she was upset and frightened by the incident but she did not tell her parents.

Ms Toner said that she and her sister Triona had agreed not to travel with the defendant on their own but the reason for their pact remained unspoken. He often reached over and put his hand on the front passenger's knee.

Following the incident at the lay-by, Ms Toner went back to the classes but three weeks later during a lesson Michael Quigley put his hand on her low back and then below that on her buttocks, which she thought was offensive. That was the end of the line and she did not go back after that and could not go back. She changed dancing school soon after. These matters had a depressing effect on her at the time.

Ms Toner said that she was out of Ireland until 2004. In 2007 she made a report to the Gardai and on the 5th March, 2007 she made a statement to Garda Hargadon. In cross-examination it was suggested to Ms. Toner that none of these things had happened and that she had never even been in the defendant's car. She agreed that Mrs Quigley attended dancing classes but said that she did so sporadically and not routinely. She denied that the reason for changing schools was because she was disappointed by her result in the World Championships.

D/Garda John Murphy

This witness interviewed the defendant in respect of the complaint made by Ms Toner. Mr Quigley told the Gardai that Jacqueline Toner had never been in his car on her own. When asked whether she could have been in the car with others, he said that he didn't recall, that he was nearly definite that she was not but she could have been accompanied by others.

Professor Ivor Browne.
Prof. Browne is a consultant psychiatrist who for the last 30 years has practised psychotherapy focusing on trauma of various kinds. He consulted with Ms. Doherty on the 8th October and the 26th November 2008. In his report dated the 17th April 2009, he said that he found Ms. Doherty to be a pleasant person who was clearly intelligent and very willing to cooperate in any way that she could. He expressed the opinion that the manner in which Mr. Quigley manipulated Ms. Doherty was a subtle form of brain washing which led to a gradual de-patterning of her entire personality. Prof. Browne said he found Ms. Doherty to be vulnerable and very insecure. She continued to suffer from severe flashbacks, particularly when faced with any form of sexual intimacy and she somehow tended to blame herself for the abuse that took place at the hands of Mr. Quigley. Prof. Browne noted that Ms. Doherty manifested highly obsessive behaviour, making lists of what had to be done every half hour. He also noted that much of her behaviour was contradictory; for instance, she would at times be cold towards her partner, Mr. Gallagher, refusing his help and asserting her independence, but she could quickly revert to crying and seeming childlike and vulnerable.

Prof. Browne said in his report that there was evidence of marked personality dissociation in Ms. Doherty. He observed that at times she would behave like an adult but then suddenly become like a small child and even refer to herself in the third person. Prof. Browne said that Ms. Doherty's symptoms were typical of a person who had been subjected to years of repetitive sexual abuse. His diagnosis of Ms. Doherty was that she suffered from "full blown" Post Traumatic Stress Disorder (PTSD), a condition by which she remained seriously incapacitated. He said that due to the subtle and insidious conditioning to which she was subjected during her adolescence she lost volition and control over her personality. His report went on to state as follows:-

> *"Furthermore it is essential to understand that the only way that she could survive this continuous abuse was to dissociate and to freeze the experience so that she was unable to feel the emotion which would have been appropriate to such experiences at the time they were happening. Thus Dana like so many others in this situation was observing what was going on as if it was not really happening to her. Evidence of this is to be seen in the 'out of body' and other depersonalised behaviours which she describes in her statements.*
>
> *This is the phenomenon which I have termed 'unexperienced experience' and which was referred to by the great French psychiatrist, Pierre Janet, over a 100 years ago as 'unassimilated happenings'. When a person is subjected to a serious trauma, an immediate, non conscious, biological mechanism may be invoked which will suspend the experience, either partly or completely, thus blocking further integration into long term memory. It is now as if a part of the external world is within the person but not part of them. This internalised 'stressor' now exists outside time, in a potentially unstable state. I have referred to this as the 'frozen present', which may well be held in that state for years or even a lifetime."*

In relation to Ms. Doherty's delay in bringing her civil claim, Prof. Browne said that in cases such as hers a person is so incapacitated and frozen that she is unable to take any effective action at the time. He said that this had been even more difficult than usual in Ms. Doherty's situation because of the failed legal actions brought by the State and the long delays extending over years which further devastated her personality. Prof. Browne observed that even now Ms. Doherty had only been capable of proceeding with a civil action with the support and help of her partner taking the case on her behalf. Prof. Browne expressed the view that what finally led to Ms. Doherty deciding to take the action against Mr. Quigley – which he described as a "difficult decision" – was the realisation that other girls might be at risk.

In his oral testimony, Prof. Browne expanded on his report. He said that a sudden sexual interference could lead to great shock but in the case of Ms. Doherty the sexual intrusion was gradual so the shock element would be less. Nonetheless, as each episode occurred, it did lead to a feeling of shock, going on eventually to the whole question of "freezing" the experience. In these types of trauma cases Prof. Browne said he had noticed a pattern as to the process of freezing. When a traumatic event happens a raw recording of it is made but the person resists it becoming part of her long term memory. The recording is stored in the brain and when it is later triggered, when something activates it, it starts from where it left off. In other words, the recording has yet to become a memory and starts to play.

Prof. Browne said that in relation to Ms. Doherty this phenomenon was manifest from her testimony to the Court in these proceedings, where all of a sudden she would switch to the present tense and begin describing events as if they were happening. He pointed to an instance in her evidence when the plaintiff was describing how the defendant made her perform fellatio, which she said became a regular occurrence. As she gave the evidence, Ms Doherty was visibly troubled and appeared to move in a manner that indicated she was reliving the incident rather than describing it from memory. Prof. Browne explained that anything that is close to the traumatic experience can prompt this shift into the feeling of the experience and that in essence it can be characterised as what is commonly known as PTSD.

Dissociation is part of this condition in Ms. Doherty's case, according to Prof. Browne. In order to carry on with her life, a person who has suffered prolonged sexual assaults will split her personality so to speak, so that the sensitive part is suppressed and the cognitive part continues. This can remain unresolved and carry on until death unless the person is wiling to open up on the suppressed experiences and work through them fully.

In cross-examination, Prof. Browne said that he very much subscribed to the concept of personality dissociation but agreed that it remained a matter of active debate in the psychiatry discourse and was by no means universally accepted. He disagreed with the opinion of another doctor, Dr. Stephen Clarke, to which he was referred and said that he had dealt with more of these types of cases than any other doctor in the country. Prof. Browne acknowledged that it was known on occasion for false memories to occur; however, he said that the level of detail conveyed by Ms. Doherty in relation to her alleged abuse would tend to preclude the possibility of false memories here.

Prof. Browne told the Court that Ms. Doherty developed certain obsessive tendencies and routines (making lists, etc.) in order to keep the traumatic experiences of abuse suppressed. They were defensive manoeuvres, designed to prevent the traumatic experiences from integrating into memories and to assert control of the personality and avoid the "dangerous areas". These defences could fail, however, and flashbacks could be triggered by certain stimuli, such as seeing her abuser, being in the area where the abuse happened or attempting sexual intimacy.

Prof. Browne's overall clinical diagnosis was that Ms. Doherty suffered from PTSD at the severe end of the spectrum. As regards how this has affected her daily life up to and including the present, Prof. Browne expressed the view that Ms. Doherty can go about her daily business and do normal things for a large amount of time but her condition is there continuously and can be activated at any

moment, at which point she will show all the disorganisation and emotion of the traumatic experience. He described it like there were two dimensions to the one person. Both of these dimensions are there at any given time, although not always apparent. Prof. Browne took the view that having seen Ms. Doherty give evidence in these proceedings, the core of her dissociation and her PTSD were still active and had not been resolved.

Prof. Brown accepted that a person suffering from this condition may act normally and enjoy periods of lucidity and intellectual clarity but he said the other dimension was always there and could activate at any moment. So in the context of bringing these proceedings, Ms. Doherty could have been able to list the facts quite clearly in her PIAB claim application or through instructions to her legal representatives but it did not follow therefore that the other dimension of her personality had gone away. In cross-examination it was put to Prof. Browne that it could not be said that from the early 1990s to 2007, adopting the language of s. 48A of the Statute of Limitations Act 1957, Ms. Doherty was "substantially impaired" throughout that period, considering that she participated in two criminal proceedings, dealt with Mr. Quigley, met Mrs. Quigley, went travelling and generally carried on normal activities. Prof. Browne expressed dissatisfaction with the terms of s. 48A, which he thought was simplistic in its assumptions and did not cater sufficiently for sophisticated conditions such as dissociation. He said that when Ms. Doherty was in a rational frame, she was capable and was not impaired in bringing the action. But there were serious errors in her personality that were impaired if activated, as was evident from her testimony. Prof. Browne expressed the view that he could not answer the question with a simple "yes" or "no" as to whether her will was impaired across the board – it was not as simple as that. In the rational, ordinary part of Ms. Doherty's personality, she was capable of making those decisions but at any time she could move into the other part of her personality and be completely incapacitated.

It was put to Prof. Browne that Ms. Doherty's behaviour did not manifest any constricted normal life insofar as she moved back to Letterkenny some time ago, she met with Mr. Quigley, she went back to dancing and to teaching. This, it was suggested, ran contrary to what he said was a feature of dissociation, namely a tendency to adopt defensive manoeuvres and avoid whole areas of life to avoid confronting anything that would remind a person of her traumatic experiences. Prof. Browne explained that in his opinion a person can make efforts to normalise her life but this can be very difficult and can come at a cost. He pointed out that there was also a loving side – namely the support of her friends and family – that would naturally draw Ms. Doherty back to Letterkenny. He said that tendencies of avoidance can co-exist with efforts to normalise life.

Prof. Browne said that it was clear that Ms. Doherty was finding it extremely difficult to make her complaint regarding the abuse and it took her a long time and only after psychotherapy to make her first statement to the police, and she had said that the only reason she did so was in order to protect other children who might be harmed. Using the cognitive part of her personality she would have been capable of bringing this action earlier, but not in any easy way and it was under great strain that she eventually did so. Prof. Browne said that taking her personality as a whole there was considerable impairment but she had managed to override that enough to be able to take this case eventually. She was acting under extreme difficulty, however, and her alternative personality was tending to interfere constantly with her ability to do so. Prof. Browne told the Court that regardless of what Ms. Doherty might have said in her press release following the collapse of the criminal proceedings, when she came to see him she was very exhausted by the legal ordeal and could not go on without help. He said he thought that this was the reason why Ms. Doherty was suing through her partner in the within proceedings. Prof. Browne expressed the view that Ms. Doherty brought these proceedings with great difficulty and only because of her fear that other children were being abused.

5. The Defendant's evidence

The defendant Michael Quigley gave evidence in which he rejected all the allegations made by the plaintiff Ms. Dana Doherty. He said he had never been guilty of sexual abuse with her or anybody else. His dealings with the plaintiff had been as a teacher of Irish dancing and there was nothing improper about his behaviour towards her. He believed that her claim against him was actuated by a desire for revenge because he had rejected her love for him and her desire that they should run away together. He also rebutted the evidence of Michelle McCafferty and Jacqueline Toner.

In respect of some of the incidents that were given in evidence by the plaintiff Mr. Quigley said simply that they did not happen; in regard to others he gave a more detailed and circumstantial rebuttals and this applied also to the evidence of Ms. McCaffferty and Ms. Toner. There was some measure of agreement in his testimony with the evidence of Ms. Doherty. In the first place, Mr. Quigley agreed that the plaintiff had come to him for dancing lessons when she was about six years of age and she attended on those occasions with her sisters for lessons. It became clear by the time she was about eight years of age that the plaintiff was particularly talented and promising. She came into his particular orbit when she was twelve years of age when she became his private pupil and that continued until she completed secondary school and went on to further education at the New University of Ulster in Coleraine, which was in 1989. The relevant period of complaint by the plaintiff is from 1982 to 1989 when she was between twelve years and seventeen years of age. Some other areas of agreement emerged and I will deal with those in due course. First it is necessary to consider the specific incidents of abuse described by the plaintiff and to analyse the defendant's response and that of his supporting witnesses.

The first incident was the allegation by the plaintiff that an incident happened in or about August 1982 at the Commercial Centre in Letterkenny on an occasion when another dance teacher named Peader Matthews had come for Dundalk to give lessons to a small number of children at the invitation of Mr. Quigley. The defendant, Mr. Quigley recalled this occasion. In evidence he said that the incident as described by Dana Doherty simply did not happen. This was the occasion that she described as happening upstairs in a room when Mr. Quigley allegedly had her on his knee and spoke about her body developing and was feeling her breasts. Mr. Quigley testified that this could not have happened because there was no available room in the upstairs area in the Commercial Centre in Letterkenny so that that part of what Ms. Doherty said could not be true. Her account therefore was seriously undermined by this material element that was clearly wrong. He said there was indeed a room upstairs but it was always locked when Irish dancing lessons were going on because it was used as a weightlifting equipment area. Although Mr. Quigley was clear and definite in his testimony on this matter that is in sharp disagreement with what he told Garda Sarah Hargadon at Letterkenny Garda station on the 31st August 1993. Relevant parts of the recorded interview are as follows in question and answer form. Garda Hargadon drew Mr Quigleys attention to the first incident.

> Q. Can you recall back in 1982 at Peader Matthews teaching lessons in the community Centre?
>
> A. I remember having Peader Matthews, yea.
>
> Q. Did you take Dana Doherty upstairs to a small room in the community centre and talk to her about how her body was developing?
>
> A. Yes I did, yes I did.

Q. Did you touch Dana's breasts?

A. I can't remember, I'm shocked. I remember preparing the class for what Peader Matthews would say to them.

Q. Did you take Dana Doherty up to the room?

A. I think there were two or three girls there.

Those answers are at pp. 1 and 2 and on p. 3 Mr. Quigley was asked again about speaking to Dana Doherty about her body:-

Q. Did you ever talk explicitly about her body to her?

A. The only time I remember is when Peader was up.

These answers cannot be reconciled with Mr. Quigley's testimony in Court. There is in the answers he gave to Garda. Hargadon a clear admission that he did indeed take the plaintiff up to a room in the Community Centre and he confirmed subsequently that he had spoken to her about her body development on that occasion. His evidence about what happened and about the impossibility of her account being correct is wholly undermined.

Garda Hargadon asked Mr. Quigley about Dana Doherty's second specific allegation that in December 1982 she was returning with him from Ramelton, Co. Donegal, when he turned off the road and kissed her. She said that that the reason she was on her own on this occasion was that it was her sister Catriona's birthday and she had stayed at home that time. The exchange with the Garda was as follows:-

Q. Did you take Dana Doherty up a road at Woodlands and park in a gateway, turn out the lights and lean over to Dana and kiss her in December, 1982?

A. I don't remember.

To say this is a strange, peculiar answer in the circumstances is a considerable understatement. Mr. Doherty responded in a similar way to other questions asked by the Garda and it was not as if the request to go to the Garda station and answer questions had come entirely out of the blue as a complete shock to Mr. Quigley. In late 1990 and in 1991, encounters took place between Ms. Doherty and Mr. Quigley at which she expressly accused him of engaging in sexual abuse of her and in which she demanded that he should attend counselling to deal with this proclivity on his part and he had agreed to do so and had indeed taken advice about what he should do and he had also confirmed, at the plaintiff's insistence, to her general practitioner that he had indeed attended the proposed counselling. His simple expression of incapacity to remember must be considered in that context. It is also relevant to note that Mr. Quigley in his testimony in court did not disavow any of his answers as given to Sgt. Hargadon or as recorded by her and signed by him. Although he said that he had been working for a very long time and had had very little sleep when he went to the station, he nevertheless did not say that any of the answers was wrong or seek to correct them in any way.

The next episode that was addressed by Garda Hargadon was the allegation by Ms. Doherty of an incident that she said happened at Windy Hall near Glencar when she alleged that Mr. Quigley asked her had she seen a grown man's penis. The relevant exchange is as follows:-

Q. Did you ask her if she had ever seen a grown man's penis?

A. I don't remember.

The Garda asked questions about Ms. Doherty's complaints as to interference with her when she was babysitting at the Quigley home. Mr. Michael Quigley and his wife gave evidence on this matter. They said that it was true that Dana Doherty babysat for their daughter when they were living in a small house at Ashlawn, which was their home until 1985, when they moved to another house that had a garage attached and which is the subject of another of the plaintiff's allegations. Ms. Doherty had said that she very often babysat and the Quigley's agreed that she had done so but not as often as she had indicated in her evidence. Ms. Doherty said that Mr. Quigley came into her bedroom and interfered with her sexually, the nature of the interference becoming worse as time went on. She first described how he put her hand on his penis and the sexual interference and abuse progressed over time and on a later occasion he put his fingers into her vagina. She said that this happened when she was about thirteen years of age. Mr. and Mrs. Quigley said that this did not happen and could not have happened. Anybody moving about the house would have been heard and, if Mr. Quigley did actually go into the babysitter's bedroom, Mrs. Quigley would have been aware of that and each said that nothing of that kind had actually occurred. Mrs. Quigley added that she was a very light sleeper because her daughter suffered severely from asthma and so she was always on the alert even when she was asleep. Thus, in the evidence there was a direct conflict as to whether or not this happened and as to how frequently Dana Doherty babysat for the Quigley's. Garda Hargadon asked about this series of allegations by Dana Doherty as follows:-

Q. Did Dana ever baby-sit at your house?

A. Yea, she did on numerous occasions.

Q. Did you ever go into her room during the night and wake her up?

A. I don't think that ever happened.

Q. Did you ever get into her bed in your house?

A. No I never did.

Q. Did you at any stage sexually abuse Dana Doherty in your house?

A. No.

At a later stage in the session the Garda returned to the topic and a further exchange took place:-

Q. Did you ever go into Dana's bedroom when she was babysitting?

A. I would go in with Alice.

Q. Did Alice your wife go in to check her?

A. I would put my head in and check Dana to see if everything was alright.

Q. Why would you go in to check Dana, would it not be sufficient for your wife to check her? Why?

A. I can never honestly say Alice ever left it to me to check her. I might be passing by the room. It was the relationship we had, the teacher/pupil relationship.

Again, this is a very different picture that is painted in the answers given to Garda Hargadon as compared with the evidence of Mr. and Mrs. Quigley given in court and they both cannot be right. The sureness of the answers they gave in their evidence is in my view demonstrably unfounded and the answers are substantially undermined by this exchange with the Garda, which of course took place at a relatively recent time in relation to the events that were being discussed. Another reference to Dana Doherty babysitting is as follows:-

Q. Did Dana stay in your house babysitting while your wife was in hospital having your second child, Coleen?

A. I don't remember, she could have been.

An incident described by Ms. Doherty occurred on a summer morning when Mrs. Alice Quigley, who is a teacher, was away from home on a training course. She described how Alison was in the garden and that the defendant took her upstairs and engaged in sexual activity. Sgt. Hargadon referred to this:-

Q. Did you remove Dana Doherty's clothes and ejaculate all over her body when she was sixteen years in your house?

A. I don't remember

It is not the case that Mr. Quigley responded in this peculiar manner to all the questions that he was asked, as appears from the following:-

Q. Did you at anytime force Dana Doherty to have oral sex with you?

A. No never.

Mr. Quigley denied in evidence each of the other specific allegations made by Ms. Doherty and he also rejected the general claim that she made that he abused her whenever he was in contact with her, that that happened on a regular basis, that oral sex became a regular thing, or that it usually took place in woods. He said that the incidents she described simply did not happen. Ms. Doherty said that on a Friday night when they came back from Ramelton the defendant would bring her into his house where they would watch the Late Late Show and then he would drop her home. This he and his wife denied. They said that he would come from Ramelton and drop Ms. Doherty home first before he came home and watched the Late Late show. There was never a compliant he said from her parents that he dropped the child home late and it would have been late if he had waited until after the Late Late show. On the other hand, it occurs to me that it would not have been seen as very unusual or a reprehensible thing for somebody to watch the Late Late show in a teacher's home or with an Irish dancing teacher at home with his wife and family. A child of thirteen might well be allowed to stay up to watch a programme like that. I do not think that this evidence refutes that of the plaintiff – the furthest it goes is to cast some doubt on the timing of the incidents that she describes as having happened between Ramelton and the Letterkenny area.

Mr. Quigley described in his evidence what he called a confrontation. He said that an Irish dancing teacher in Belfast and his pupil became something of notoriety and a sensation in 1987 when they began to live together. This was of course well known in Irish dancing circles and Mr. Quigley said that Ms. Doherty asked him could the same thing happen to them. This occurred on their way to an Irish dancing class at a time when Mrs. Alice Quigley was in hospital. "I said eff off." Mr. Quigley ascribes the complaints made by Dana Doherty to his rejection of her proposal as expressed on this occasion and, on his account, as a continuing if unspoken desire on her part. He did say to the Garda, however, that his impression was that she was in love with him. This comes in an exchange at the beginning of the session as follows:-

Q. Do you know Dana Doherty, Crieve, Letterkenny?

A. Yea I do.

Q. How do you know her?

A. I taught her Irish dancing.

Q. When did you start learning her Irish dancing?

A. She would have been around six years at the time and she danced with me until she was eighteen years.

Q. Your are aware that Dana Doherty has made a complaint against you of sexual abuse to her between the ages of twelve years and nineteen years of age?

A. I am shocked.

Q. Why are you shocked?

A. Because I treated her so well, the impression I got from her was that she was in love with me.

Q. At what stage did you think she was in love with you?

A. I don't know how to put it, there is an effinity *[sic]* between pupil and teacher, and at major championships, you have to bring out the best in the pupil and I would say I was successful in that with Dana.

Once again, to say the least of it, this is peculiar. Mr. Quigley was aware because she had previously accused him directly that Dana Doherty was making allegations of sexual abuse against him so the element of shock cannot have been very great. It is hard to understand how he could have sought to explain anything in this regard by referring to the relationship between pupil and teacher that would explain either her allegations or any element of his behaviour. It will however be seen that this is not the only reference to that relationship and its particular and perhaps peculiar elements. Mr. Quigley referred it several times in his questioning by the Garda as if thereby to explain something of what had happened between them.

A topic that Mr. Quigley dealt with in his evidence and also in the answers he gave to the Garda was the confrontation that happened when Ms. Doherty accused him of being guilty of sexual abuse and the aftermath of that episode. Ms. Doherty described speaking to Mr. Quigley at or outside the Townsman's Bar in Derry and this as I understand happened in December – around Christmas 1990. She said she wanted him to attend a course for sexual abusers. He agreed that this had happened. He said that she threatened to tell the Gardai that he had abused her. He told the Court that he was astonished and thought he was being set up. He told her that he would have to make enquiries. He knew Relate had a brochure on abuse. He had no intention of doing a course but he agreed to do so nevertheless. Ms. Doherty described how some time after that Mr. Quigley brought her to see a Fr. Stephen in a place called Termonbacca and that Fr. Stephen had seen them separately. Ms. Doherty later asked Mr. Quigley to phone her doctor, Dr. Maria Murray, to confirm that he had indeed attended the course. Mr. Quigley agreed that he had phoned Dr. Murray although he had not attended a course. An area of disagreement was that he described visiting Fr. Stephen in different circumstances. He said that Ms. Doherty called to his workplace, the office of the Derry Journal and was looking for a lift to Letterkenny. He said he had to go Termonbacca, which was the case because he used to go there every second week for confession and that was his reason for going to Fr. Stephen. Dana Doherty went along with him as it was on the way home. That was his explanation in evidence of the circumstances of going to see Fr. Stephen. This also was referred to in the question and answer session.

Q Did you at any stage get in touch with Dr. Maria Murray regarding Counselling?

A. Yea I did, Dana had this thing in her head at being abused and I got in touch with Dr. Murray. I phoned her up once.

Q. What did Dana tell you of being abused?

A. She was under the impression of being abused.

Q. By whom?

A. By me.

Q. Can you explain this?

A. I can't just explain it, I tried to put her mind at ease.

Q. What do you mean when you say you were putting her mind at ease?

A. I didn't ever consider she was sexually abused

. . . . . .

Q. Did you take Dana Doherty into Derry to talk to a priest friend of yours in September 1991?

A. Yea I did.

Q. Why did you take her in?

A. I felt that the priest talking to her would help her.

Q. What do you mean by that?

A. Just give me a minute until I gather my thoughts. I thought she was mixed up and the priest would sort her out.

Q. What is the priest's name?

A. Fr. Stephen in Termonbacca.

. . .

Q. Did Dana contact you at your work around Christmas around 1990 and arrange to meet you in the Townsman's Bar in Derry?

A. She did, yea.

Q. Why did she arrange this meeting?

A. As a direct cause of this meeting that I took her to see Fr. Stephen.

Q. Did she at any stage talk to you about going to counselling?

A. She did.

Q. Why did she ask you to go to counselling?

A. She said she didn't want to see me abusing my children.

Q. Did you go to counselling?

A No I didn't I just wanted to keep her happy.

. . .

Q. Did you give Dana £100 in September 1991?

A. She asked me for £200 she said she was in debt at school and I told her I could only give her £100.

Q. Did you give her £100?

A. Yes I did.

Q. Where did you meet her?

A. At the library in Letterkenny she said she was desperate.

. . .

. . .

Q. Why did you not go to counselling?

A. I talked to Fr. Stephen and he advised me to go and see somebody and I did.

Q. Who was that somebody?

A. I think it was Relate or something like that.

Q. What is Relate?

A. Some sort of organisation that deals with problems, I'm not sure if it is marriage problems or not.

Q. How many times did you go?

A. I went once.

Q. Where is Relate?

A. It is in Derry, Queen Street maybe.

Q. Why did you go to Relate and give Dana £100.

A. Because she was desperate.

Q. Do you think Dana has a problem?

A. Yes.

Q. Did she tell you she went to a priest?

A. She didn't go to a priest.

Q. Why do you think Dana made these allegations?

A. I don't know, she was disturbed.

Another reference to the confrontation at the Townsman's Bar in Derry is as follows:-

Q. Did Dana say to you in the Townsman's Bar in Derry that you needed help as a sexual abuser?

A. I think she did.

Q. Did you get annoyed?

A. Yes I was annoyed.

Q. What did you do regarding your relationship with her at that stage?

A. I had no relationship with her at that stage at all.

Q. Would you agree that you did have a relationship with her?

A. I had a relationship as teacher and pupil only.

Garda Hargadon went on to discuss what Ms. Doherty had said about being hugged and kissed. She followed the answer given by Mr. Quigley to the previous question as to the relationship of teacher and pupil as follows:-

Q. Would that mean hugging and kissing a pupil?

A. No it wouldn't.

Q. What would you say about Dana saying she was hugged and kissed?

A. When they come in at 4.00 they all, my pupils want a kiss before they go home.

Q. Are you saying the six your old girls give you a kiss when they are leaving?

A. yes.

Q. Do you agree with this?

A. I suppose it's just the way I go on in the class, the parents might say to their child, "come on give Mickey a kiss before you go".

Q. Can you name a parent?

A. Mrs. Browne from Derry.

Q. Is this normal for all dancing teachers?

A. No I'm mot saying for all but it is for some.

Q. Did any parent object to you giving their child a kiss?

A. No they didn't.

The interview also includes a reference to an occasion that Ms. Doherty described as having occurred in 1992. Her brother had committed suicide and neighbours came to the house to sympathise. When the Quigley's arrived Dana Doherty would not permit Michael Quigley to come in to the house, but his wife and daughter did so. Mr. Quigley referred to this incident:-

Q. Do you recall going to a wake at Doherty's and Dana stopped you at the door?

A. I felt she wasn't able to cope, I thought it was peculiar that she stopped me.

In their evidence, Mr. and Mrs. Quigley referred to the allegation by Ms. Doherty that Mr. Quigley interfered with her at a time when she was sixteen years of age and practising Irish dancing in the garage of their home at Barnhill Park, which they had moved into in 1985. They said that the floor was concrete but that there were a couple of wooden boards on the floor. The door from the house into the garage was never locked according to Mrs. Quigley and she later said that there was no key in the door so that it could not possibly have been locked. Mrs. Quigley denied that she had ever criticised Dana's dancing on an occasion when she was practising her dancing with Mr. Quigley in the garage or on any other occasion. Dana had alleged how Mr. Quigley had removed her underpants and when Dana was dancing for Mrs. Quigley she was very inhibited and was not doing it properly, which caused Mrs. Quigley to comment and criticise her dancing on the occasion. She said that Mr. Quigley had her pants in his pocket and was enjoying her discomfiture in front of his wife. Mr. Quigley denied this episode entirely and confirmed that the door from the garage into the house was never locked and thus it was sought to demonstrate that the plaintiff's evidence on this matter could not be accepted as true or reliable.

6. Other defence witnesses

Mrs. Alice Quigley, the defendant's wife, described how much he worked and how he spent more or less all his spare time teaching Irish dancing she often – she said usually – travelled with him to venues but this did not happen always and there was also the fact that their daughter Alison was severely troubled by asthma. She said that they lived in a house at Ashlawn, Letterkenny, from 1976 until 1985 when they moved to Barnhill Park. The Ashlawn house was a three bed roomed building in which she and Mr. Quigley slept at the back and Alison slept at the front of the house. The walls were very thin and light and you could everything going on even what was happening in the house next door and you would easily hear somebody moving about. As to the Barnhill Park house she said that there was a concrete floor in the garage until Alison was about nine years of age and then they put two boards down – 8 by 4. There was never a key to the door of the garage from the utility room.

These two points about Ashlawn and Barnhill Park relate to the evidence of the plaintiff as to Michael Quigley coming into her bedroom in Ashlawn and the dancing in the garage incident at Barnhill Park. As I have mentioned above in discussing the defendant's Garda interview, Mr. Quigley himself appears to contradict the evidence in respect of Ashlawn insofar as he acknowledges that he and/or his wife did look into the room where Dana was sleeping, when she was babysitting.

Mrs. Quigley went on to deal with Donegal Town and said that the classes there were on a Sunday morning and were held in various places and also in the evening in a Sunday. However, they never took place on a Friday and they never were held in any premises in Quay Street and there was no hall there. These points about Donegal are intended to contradict the evidence of Ms. Michelle McCafferty. Also Donegal town lessons ended in 1989 and therefore any reference to 1991 is wrong; after 1989 the lessons were held some six miles out in the country from Donegal.

Caroline McKelvey a niece of the defendant's wife who was often in their house and who sometimes went there to babysit. On some occasions this witness and the plaintiff were both in the house babysitting. When that happened they would sleep over sharing the double bed in the small front spare bedroom. Caroline's evidence disagreed with that of the plaintiff about the defendant coming into the bedroom when the girls were in bed. She said that that did not happen. Of course, it was the plaintiff's evidence that Mr. Quigley did come into the room and that his behaviour was intended to be concealed from Caroline.

Alison Quigley, the daughter of the defendant gave evidence she is a national teacher and is acting principal of Carrigans School since 2002 and she is herself an Irish dance teacher. She has been a chronic asthmatic since she was four. She has a severe condition as to the allegation made by Dana Doherty about the time when Mrs. Quigley was away on a course, Alison says that she always had to have access to her inhaler and therefore her father would not have locked the back door while she, Alison was out in the garden. She recalled meeting Dana in 1992 or 1993 and in 1994/5 but the latter never approached her or told that she was in danger or suggested that. In fact in 1993 she had a normal conversation with Dana. In 1994/5 Dana Doherty was substituting as a teacher in the convent where Alison was a pupil and she said that Dana asked everyone to read a passage except her. She also described seeing Dana in

2002 at the Christmas staff party giving every impression of enjoying herself and similarly on an occasion three years ago she said the same thing that she saw Dana Doherty enjoying herself.

Colleen Quigley, another daughter born on the 20th May, 1987 said she was never abused and going back to Alison Quigley she was born on the 15th March, 1979.

Sharon Rodgers (Friel) was born on the 7th February, 1970 and was in the Quigley School of Dancing at the age of seven or eight. She was in class with Dana Doherty who was one year behind her in school. She said that Quigley never touched inappropriately. Dana never said anything about abuse, Sharon stopped dancing in 1989 and she got married in 1993. She said she was shocked at the allegations.

Brid McCaffery (nee Bonnar) comes from Dungloe. She was in an Irish dancing class at Burtonport and was in the car with Michael Quigley and his wife and sometimes Dana Doherty. Dana was an extremely good dancer. She has a daughter whom she sent to the Quigley School of Dancing. She said that there was nothing inappropriate about the way Quigley behaved and that parents were often around and she particularly said that there was nothing unusual about the payment for the dancing.

Fintan Gallagher was called to give evidence by the defence. He is the plaintiff Dana Doherty's partner. He said they met in 2004 in November, in Australia. They spent time there and in New Zealand. In March 2005 he said he took Dana to a solicitor's office. Dana did not want to go but he wanted her to talk to some one about civil actions because he thought that criminal and civil matters were different. He is a private in the Irish army.

7. Submissions

Desmond Murphy S.C. for the defendant made submissions which may be summarised as follows: the case is going since 1982. The plaintiff is passionate but the facts demonstrate very little that can be confirmed or rebutted. He referred to the first incident that happened on the 10th August, 19982 at the Community Centre. He said it was a case of assertion versus denial. The same is true of the assault coming home from Glenties/Adara they are only assertions. Charleton J. drew attention to the dangers to trying to judge witnesses from their demeanour. He said there was no evidence of assaults. Where in these allegations it was possible, the facts were rebutted as to the allegation that the plaintiff met Mrs. Quigley and had a conversation with her about her body, Mrs. Quigley denied that and Mr. Murphy wondered why Mrs. Quigley would deny that if it actually happened.

As to the bedroom story he said that there were very thin walls in the house and any sound would be heard. Caroline McKelvey had given evidence that she had on occasion been in the house and shared a double bed with Dana Doherty as Dana described. But Caroline McKelvey who is a cousin of the Quigleys denied that Michael Quigley ever came into the room or that anything untoward happened. Mr. Murphy said that Alison's asthma meant that Mrs. Alice Quigley was extremely alert and so this bedroom incident could not have taken place and this evidence he asserted had not been rebutted.

As to the garage incident was it locked? As Dana Doherty said it was but that was entirely contradicted by the evidence that there was no key to the door. Michael Quigley would not risk having his wife walk in while he was engaged in sexual interference with Dana. Mrs. Quigley said she had never criticised a child for poor dancing.

Again as regard Ramelton it was a case of assertion versus denial and no more similarly with most of the allegations there were no facts on which to base any conclusion but merely a swearing match between plaintiff and defendant. The defendant had to succeed unless the court was prepared to find that Alice Quigley and Caroline McKelvey had perjured themselves. There was a small amount of facts and beyond those there were no supporting facts and there was nothing beyond mere assertions. Mr. Murphy was keen to emphasise that it was no appropriate to resolve the conflicts between plaintiff and defendant by assessing the witnesses through their demeanour etc. and in this respect he was referring to the observations of Charleton J. on this matter.

The plaintiff had not said to friends including Sharon Rodgers that she had any complaint about Michael Quigley and she did not say anything to Alison Quigley to indicate that she was in danger from her father.

Mr. Murphy said that the £100 was a gift and that Dana Doherty in evidence had said it was to help her out of financial difficulties. The incident with Fr. Stephen at Termonbacca was not in any respect evidence of guilt.

In respect of the question and answer session on the 31st August, 1993, Mr. Murphy said that Michael Quigley had been at work for 22 hours and in bed a couple of hours. As for the "I can't remember" answers that I have said above I think were very peculiar, that according to Mr. Murphy depends on how the statement or comment was made. He said that there was no admission of guilt in respect of any allegation and you cannot make the leap linguistically in respect of something that happened, i.e. this conversation, eighteen years ago which is not probative or relevant and one has to avoid the trap of relying on this segment. I have to say I think this is endeavouring to explain away the comments that Mr Quigley made when he was asked about these serious matters by Garda Hargodon. I do not think it was good enough for him to say he did not remember, although I accept of course that saying that you do not remember is not an indication that you are admitting anything. Having said that, it makes it more difficult for you to say that you do remember on a later occasion and it also does not say much for your general candour in your approach to the questions that you were being asked by the Garda.

Turning to Dana Doherty, Mr. Murphy said that she was able to go the United States in 1994, that she made a second statement in 1998, that there was judicial review taken by Michael Quigley in which the plaintiff swore an affidavit, her marriage broke down she was in the Donegal Gaelscoil, she was able to deal with solicitors and she met her partner while she was socialising. She had to deal with solicitors in 2006 and 2007 and therefore she is not in any circumstances to be properly considered a person of unsound mind not so found. There was no evidence that she was of unsound mind before 2007. This was a device to overcome the Statute of Limitations and then he said, they had gone and get the medical evidence which is where Prof. Ivor Browne's evidence came in. He said that the professor's theory of frozen memory is entirely incapable of being proven. Referring to the 2000 Act, Mr. Murphy said the test was impairment which was to be objectively determined. He claims that Prof. Browne admitted that the plaintiff was not impaired for the purpose of the Act and that she had led a normal life. I do not think that the test of impairment is whether you have lived a normal life or have given the appearance of doing so. The test in my view is whether your capacity to make relevant decisions about proceedings etc. as provided in the Act, is substantially impaired and it does not demonstrate that you are not impaired in that way to show that you are actually holding down a job and eating and sleeping and behaving in an apparently normal functioning manner. Many victims of abuse whether that is physical or sexual abuse, but particularly sexual abuse since that is what is relevant here, have managed to live relatively normal lives or apparently normal lives but they are nevertheless deeply traumatised and affected in many areas of their activities and in their psychiatric health by the effects of the trauma. It would be absurd however, to suggest that somebody thus affected could not have a job or even get promoted or could not go on holiday or could not go out for a drink, but there is a serious malfunction in their operations and particularly in their emotional lives and I think that many people find ways of

concealing and appearing to overcome their difficulties. That does not mean that those problems have gone away and they can indeed surface at moments of emotional tension or other occasions of stress or they can lie dormant for many years indeed while still exerting their constricting impact on emotional maturity and in functioning relationships. Therefore the emphasis by counsel for the defendant on the fact that the plaintiff was able to do these things does not overcome the psychiatric assessment made by Prof. Browne.

Mr. Murphy referred to the evidence of Michelle McCafferty and Jacqueline Toner. In respect for Ms. McCafferty, Mr. Murphy drew attention to her evidence of attempted suicide at the age of fourteen and he said there were no hospital notes produced and if she told her parents why she stopped the class with Michael Quigley there was no complaint by the parents to the Quigleys. He also said that in 1991, Michael Quigley was no longer teaching dancing in Donegal and there was no hall in Quay Street. I think these are relevant points and it means that Michelle McCafferty's evidence has to be looked at with considerable care and I have to ask whether I think that this evidence can be relied on. All things considered, it seems to me that this witness is a truthful person and her evidence is I think reliable in describing the type of behaviour engaged in by Michael Quigley and how children responded to it.

Mr. Murphy did not have an obvious undermining factor for Jacqueline Toner. He said that her mother was usually with her and he suggested that this was not similar fact evidence so as to confirm the case made by Dana Doherty against Michael Quigley. It is true that the facts are not the same as Dana Doherty alleged or perhaps not completely the same as some of the facts that Dana Doherty alleged. On the other hand there is considerable similarity between part of the plaintiff's evidence and what Jacqueline Toner described in evidence and Jacqueline Toner's account is completely consistent with Dana Doherty's. It is also consistent with a pattern of behaviour of somebody who is grooming a child or grooming children generally with a view to seeing which of them can be exploited.

Overall, Mr. Murphy said that this was a case of unalloyed assertions. There was passion and emotion but of facts there was very little. The evidence about the Ashlawn bedroom, the Barnhill Park garage and the Community Centre in Letterkenny was contradicted in every instance where that was possible: I think what he means that in any case where it was possible to do so, there was contradictory evidence and that applied to these three specific allegations made by Dana Doherty. However, as I have mentioned above in my commentary of the defendant's Q and A his evidence is actually contradictory of what he told Garda. Hargodon in 1993.

Finally Mr. Murphy referred to a case of *F.W. v. J.W.* Charleton J. 18th December, 2009 and he referred to p. 46, para. 23.

> "In any case the tribunal of fact be that a judge or a jury, is required to fairly assess the accuracy and truthfulness of witnesses. In the course of his dissenting judgment in *J. O'C v. D.P.P.,* [2000] 3 I.R. 478 at 373, Hardiman J. emphasised that the absence of facts independent of the assertion and denial of witnesses has the capacity to severely handicap a fair assessment of the issues. There are perhaps three usual approaches which can, when used together, assist in attempting to discover whether a witness is telling the truth about a vital issue. Firstly, a tribunal of fact will often look to the detail with which a narrative is presented. Bearing in mind that lies can disguise the absence of truth in an account, the fact-finder may bear in mind that a narrative lacking in truth is less likely to be discovered if detail is kept to a minimum. Where two or more witnesses are conspiring to tell lies, the closer they keep to a simple narrative, the less likely they are to be discovered. Truthful witnesses often produce surrounding details that are unrelated to the core events and which may constitute spontaneous observations on surrounding circumstances and events. To this, a caution should be added. Those who have suffered and experienced the horrible trauma of sexual abuse may find themselves overwhelmed by emotion and therefore unable to produce anything but a core account of the narrative: the court has observed that many times in sexual violence criminal trials. Secondly, the fact-finders often look to see whether the witness appears to be reliving events in answering questions, or merely consulting their memory. Psychologists tend to call this appropriate affect. This, however, can be acted and it is dangerous to imagine that a mere view of the demeanour of a witness can always uncover the truth. In Shakespeare's play Macbeth, Duncan says about the deceitful main character: "There's no art to find the mind's construction in the face: he was a gentlemen on whom I built an absolute trust". Finally, as has been emphasised in previous caselaw, the relationship of the contested facts to all the relevant circumstances otherwise proved in the case can be crucial. Having a witness available who saw part of what occurred, or who is in a position to place two people together, or to put them apart, at a particular time, can be very important while circumstances such as the layout of a room or the conduct of an accused or accusing party before or after an event can be crucial. Again, as in all human circumstances, this test is subject to deceit. Sexual violence generally takes place in private and is sustained by concealment, very often by threats to the victim which exploit the tendency of the child to comply with adult authorities."

In reply on behalf of the plaintiff, Mr. Eanna Molloy S.C. drew attention to the criminal law rape amendment Act 1990, s. 7 of which abolished the requirement of corroboration. He said there was no need for a conspiracy finding or a perjury determination in respect of defence witnesses. He said that Jacqueline Toner contacted the Gardai in March 2007, circumstantial detail he said will not always be perfect. He then referred to Prof. Browne's evidence about the plaintiff and how on his argument confirmed the application of section 48A. He said the question and answer of 1993 is admissible, he referred to *B. v. D.P.P.* [1997] 3 I.R. 140 at 157 and to judicial review – prohibition. He referred to para. 9.71 in relation to McGrath's evidence. He also submitted that sexual assault is committed in private and it is pointless to be looking for independent evidence about. On the question of damages he cited Towards Redress and Recovery, the report in 2002 of an expert group established under the Residential Institutions Redress Act, 2002. He also referred to *M. v. N.* [2005] 4 I.R. 461 on damages, Gatley 10th Ed, Para. 33.6 and Phipson on Evidence, 2010 edition, Para. 19.4 to 19.10.

8. Factual Conclusions

This is not a case of mere assertion being met with simple denial. There is first some undisputed material; secondly there is evidence of behaviour close to the time of the events; thirdly there are relatively contemporary responses given by the defendant; fourthly there are independent corroborative witnesses; and there is relevant medical evidence.

The facts and circumstances in which the defendant was the plaintiff's Irish dancing teacher during the period from 1982 to 1989 are not in dispute. Neither is there any controversy about their frequent travel between different locations in Co. Donegal and their occasional trips to other venues. It has to be acknowledged, therefore, that Michael Quigley did at least have the opportunity to engage in the misconduct that Ms. Doherty accuses him of doing. That does not of course mean that he is guilty of any wrongdoing but it does mean that there is not evidence to exclude the possibility of his doing so. The fact that Mrs Quigley or Ms Alison Quigley may have been present on some occasions, which is common case, does not constitute such proof. Mrs Quigley was a teacher who also had family responsibilities so her availability to attend her husband's classes was limited. I accept the evidence that her attendance was occasional or sporadic.

Some points of the plaintiff's evidence are agreed. She confronted the defendant at Christmas 1990 in Derry, accusing him of having sexually abused her; she demanded that he consent to seek expert help; he agreed to do so; he undertook to phone her doctor, Dr.

Murray, to confirm that he had attended a counselling course to deal with his proclivities; the plaintiff spoke to the defendant's wife about the allegations; she went with him to see a priest of his acquaintance; he gave her £100; Mr. and Mrs Quigley visited the Doherty home when Dana threatened to give up Irish dancing at Christmas 1985; in 1992 the Quigleys called to commiserate on the death of the plaintiff's brother and she would not permit Michael Quigley to come into the house.

I turn now to the witnesses. I found the plaintiff's evidence to be coherent, consistent and entirely credible. The account she gave was detailed and candid. She freely confessed to the confused feelings she had towards the defendant and what he was doing to her. She did not rush to prosecute him and only made a statement to Garda Hargadon when persuaded to do so. The proposition that she has concocted this case in order to get back at Michael Quigley because he spurned her advances to him is in my view wholly unconvincing and it does not accord with logic or with her behaviour. I do not think that the plaintiff has a thirst for vengeance against the defendant or that she was eager to drag him into court.

Another point is how, if the plaintiff's account is to be disbelieved, she comes to be suffering from such a severe form of Post Traumatic Stress Disorder and personality dissociation that Prof Browne has diagnosed. The defendant did not call medical evidence.

By contrast with the plaintiff and these witnesses, the defendant's evidence was inconsistent and unconvincing. It was inconsistent because of conflict between his account in Court and his interview with Garda Hargadon and between his agreed behaviour as outlined above and what would be expected from an innocent teacher who found himself accused of sexual abuse. It was unconvincing because it failed to refute the weight of evidence showing him to be an abuser of children.

Mr Quigley said in his evidence that he gave his answers to the Garda at a time when he had got out of bed shortly after he had gone to sleep following a long period of duty at the Derry Journal where he worked as a compositor. He had had no more than a couple of hours sleep at the time and the implication was that he was not at his most acute at the time when he spoke to Sgt. Hargadon. Having said that, Mr. Quigley did not disavow any of his answers, he did not say that he had been misquoted in anything he said or that he had been in any way induced to say something that was wrong and neither did he say that there was anything in the answers he gave that he wished to correct at this stage. It must therefore be taken that the answers Mr. Quigley gave are not invalidated by the circumstances in which the session took place.

It is noteworthy that the defendant did not ask for details of what Dana Doherty had alleged. Although he referred to the impression that she was in love, it is not clear how that could be an answer to any allegations of sexual abuse. His reference to the teacher/pupil affinity could explain a situation in which an immature person was infatuated with an older person – including perhaps pupil/teacher—but it could not excuse or legitimise any kind of sexual activity. The memo confirmed the plaintiff's recollection of the conversation about body development, undermining the defendant's evidence. It is strange to say the least that Mr. Quigley said that he could not remember touching Dana Doherty's breasts. There are many "don't remembers" which are difficult to understand. Finally, on the question of going into Dana Doherty's bedroom when she was a babysitter in his home, Mr. Quigley replied "I can never honestly say Alice ever left it to me to check her. I might be passing by the room. It was the relationship we had, the teacher/pupil relationship". This is very far from a ringing denial that anything of the kind alleged by Dana Doherty might have taken place. The evidence given by Mr. Quigley and by his wife is that no such thing happened or could have happened but this reply given to Sgt Hargadon is very different. The renewed reference in this reply to the pupil/teacher relationship is a telling sign of the way that Mr. Quigley regarded Dana Doherty and their relationship.

Mr. Quigley also dealt with Fr. Stephen in his evidence and in his Garda interview but again there was inconsistency. He said in evidence that he had planned to go to Fr. Stephen; in other words, it was part of his plan for that evening and it just happened that the plaintiff turned up and was looking for a lift home. By contrast he told Garda Hargadon that, following his meeting with the plaintiff in Derry, "As a direct cause of this meeting that I took her to see Fr. Stephen."

The questions and answers with Garda Hargadon are important in a number of ways. First, they contradict Mr Quigley's evidence given in Court in material particulars as I have mentioned above. Secondly, they exhibit an unhealthy attitude towards the children in his care. Thirdly, they suggest that the defendant does not have a proper appreciation of his responsibilities towards the children in his care and that he was satisfied to behave in a manner that was quite inappropriate. Fourthly, they reveal an extraordinary incapacity to remember events that were relatively recent and which Mr. Quigley appears at this stage to have no difficulty in recalling.

There is independent evidence that Michael Quigley engaged in improper and indecent sexual behaviour with the two witnesses, Ms McCafferty and Ms. Toner, if their evidence is accepted. As a result of a complaint made by Ms. McCafferty, there was a Garda investigation in 1987 but there is dispute about the complaint and any Garda investigation. In the absence of a concluded criminal process or even any clear evidence about the Garda enquiries, no conclusion can be drawn except as to consistency of conduct on the complainant's part.

The question remains, however, as to whether Ms McCafferty is to be believed. Mr and Mrs Quigley contradicted this witness as to the venues of dance classes in Donegal town. She remained adamant that her evidence was true and accurate. I found Ms McCafferty's evidence convincing and I think that the Quigley's were wrong in their recollection. There was no reason why the witness would have come forward to the investigating Garda in the way she did or to have given evidence in Court if the events she complained about were not true. I accept that she was a somewhat reluctant witness, which belies malicious motivation, and whose testimony is entirely credible and consistent with other evidence.

The evidence that Ms. Toner gave and the evidence of Ms. McCafferty confirm the plaintiff's account of Michael Quigley's conduct with her in the beginning. The description by these witnesses of how the defendant engaged in touching and groping and kissing corroborates the evidence of the plaintiff and undermines that of the defendant. I can see no reason why they would have trumped up allegations against the defendant, nor do I think it likely that they misinterpreted or misunderstood what was going on. The suggestion that they would be actuated by malice or resentment or hostility against Mr. Quigley I find wholly unconvincing but I do think they perceived him as a sexual molester and abuser.

The case made by Mr. Quigley is supported by his wife and by other relations and witnesses who gave evidence to the court. However, these witnesses were not in a position to disprove what the plaintiff said other than by giving general support to Mr Quigley and his answers to Garda Hargadon actually undermined some of this evidence.

My conclusion accordingly is that the plaintiff has established on the balance of probability that the defendant committed acts of sexual abuse against her on the particular occasions and also in the general circumstances described above as claimed.

9. The Impairment Issue

The relevant parts of the section may be extracted as follows:

> s.48.—(1) For the purposes of this Act, a person shall be under a disability while—
>
> (b) he is of unsound mind,

It is clear as a matter of logic and also on the basis on which the case was presented that no real issue arises under section 48 of the Statute of Limitations, 1957. In other words, it was not a serious issue in the case that the plaintiff is or was at any material time a person of unsound mind in the sense of being incapable of conducting her ordinary affairs in a general way. Professor Browne did not give evidence that would support any such conclusion. The plaintiff was capable of conducting her affairs, achieving a university degree, embarking on a career, having a relationship that led to marriage, working in this country and in the United States, becoming an Irish dancing teacher and acquiring a professional qualification as a teacher. All of these matters are put forward by the defendant as evidence showing that the plaintiff is not in fact impaired in any practical sense in the conduct of her ordinary life and that includes deciding whether or not to sue the defendant. That question must be considered in light of section 48A of the Statute. It is sufficient to say that there is no evidence in the case to suggest that the plaintiff is anything other than a person who is capable of looking after her own affairs in the ordinary way. The conclusion therefore is irresistible that the plaintiff cannot be considered to be a person of unsound mind.

It is of course the case that these proceedings were instituted on the basis that the plaintiff is a person of unsound mind. I have mentioned above that the inspiration for this procedure seems to have been a previous case concerning sexual abuse of children, in which the plea that the action was time-barred loomed large. Apparently, that case was settled during the course of the hearing so there is no judgment of this Court dealing with the circumstances in which a person might be capable of dealing with most if not all of their routine affairs of life and yet might still be considered for the purpose of section 48 of the Statute of Limitations to be a person of unsound mind. Nothing in the plaintiff's evidence or in that of her partner supports any such suggestion. More importantly, there is nothing in Professor Browne's testimony that would establish a factual foundation for a conclusion that the plaintiff was or is of unsound mind.

> Section 48A

I have isolated the essential relevant elements of s. 48A as follows, with my emphasis added.

> 48A.—(1) A person shall, for the purpose of bringing an action— be under a disability while he or she is suffering from
>
> **any psychological injury**
>
> that—
>
> (i) is caused by any act of the perpetrator **and**
>
> (ii) is of such significance that his or her **will** to bring the action is **substantially impaired** or
>
> his or her ability to make a **reasoned decision** to bring the action is **substantially impaired**

The section provides for **impairment**, not prevention, of capacity. It seems obvious that one cannot simply say that a person who brings an action is necessarily outside the scope of the provision. Nor will it always be possible to say with any confidence when impairment ended. The fact that the plaintiff did actually bring proceedings or have them instituted on her behalf in 2007 does not mean that she is obliged to prove that there was a date when her condition changed from previous impairment to non-impairment. It seems to me that some such proposition is implicit in the defendant’s approach in submissions and cross-examination. And it does not have to be at a particular level all the time; that would not make sense because there must be very few conditions, whether psychological or physical, that do not wax and wane over time. It follows that the section may apply in a wide range of circumstances, including episodic reduction of capacity if that means it is substantially impaired.

A person who is not under a disability has full capacity to reflect, to seek advice and to decide for the whole period before the Statute bars proceedings. The person’s will in regard to bringing an action is not restricted; that is, the capacity to do it or not to do it. The section says that a person is under a disability so as to prevent time running while he or she is suffering from a psychological injury that was caused by the defendant and is of such significance that his or her will to bring an action, or his or her ability to make a reasoned decision to bring an action is substantially impaired. Will is the faculty whereby a person decides to do something or not to do something. That faculty may be impaired. If the ability to sue or the ability to make a reasoned decision to sue is substantially impaired, the person is under a disability.

The Court has to determine whether the plaintiff was at the time when the ordinary statutory period ran out in the early 1990s and subsequently suffering from a psychological injury caused by the acts of Mr. Quigley and that it was of such significance that her will to bring this action was substantially impaired, or that her ability to make a reasoned decision to bring the action was substantially impaired.

I am satisfied that the plaintiff was and is suffering from a serious psychological injury that was inflicted by the defendant. The evidence in that regard is clear and uncontradicted. Having heard Ms. Doherty’s evidence and the clinical assessment of Prof. Browne, I accept that Ms. Doherty clearly suffers from a serious psychiatric condition in the form of Post Traumatic Stress Disorder of severe degree as a result of the abuse she suffered. That constitutes a psychological injury within the meaning of section 48A. The injury has caused the plaintiff to be severely affected in her psychological health and it is continuing to do so. Because the condition is of such severity and has persisted for many years the prognosis is uncertain as to future duration and degree of recovery. It is clear, therefore, that the first requirement is satisfied.

Prof. Browne’s overall clinical diagnosis was that Ms. Doherty suffered from PTSD at the severe end of the spectrum. Ms. Doherty can go about her daily business and do normal things for a large amount of time but her condition is there all the time and can be activated at any moment, at which point she will show all the disorganisation and emotion of the traumatic experience. He described it like there were two dimensions to the one person, both of which are there at any given time, although not always apparent. The core of her disassociation and her PTSD are still active and have not been resolved. In the rational, ordinary part of Ms. Doherty’s personality, she was capable of making those decisions but at any time she could move into the other part of her personality and be completely incapacitated.

A specific effect of the post traumatic stress disorder that resulted from the prolonged sexual abuse is what Prof Browne called frozen present or dissociation. That causes the plaintiff to relive the abuse experience as a present event, not as a memory, nor even as a disturbing and extremely horrible memory. This specific feature of the plaintiff's PTSD, when it was present, represented a block on her ability and her will to bring proceedings. It was not always present, which explains why Ms Doherty was able to deal with the criminal trial and eventually to institute these proceedings. But dissociation of this kind is a feature of the plaintiff's life; it prevents or inhibits her thinking about the abusive events and gives rise to avoidance behaviour. As I understand, it is impossible to quantify the time when dissociation is present or indeed the level of intensity of the impact on thinking. It does however constitute serious impairment of psychological health with specific impact on any decision to sue Mr. Quigley.

I consider that the circumstances of the abuse made it even more difficult to take action: the status and authority of the defendant; the long duration of the abuse; the plaintiff's conflicted emotions brought about by the defendant; the fact that during the period of the abuse she lived a normal life concealing what was happening; and that he distorted her thinking and subverted her moral sense. The evidence is that the defendant's exploitative relationship with the plaintiff continued to affect her for many years after the physical acts ceased and still does so. He was an authority figure to whom she formed an emotional attachment. He was her trainer and mentor in the world of dancing in which she hoped to excel. He sedulously groomed her for sexual gratification and she responded by submitting to his wishes or demands. These features co-existing with the severe psychological injury represented additional impairments of Ms Doherty's capacity to sue Mr. Quigley.

The plaintiff was able to live an apparently normal life while the abuse was going on but it was having a profound effect on her, just as much lesser abusive behaviour did on Michelle McCafferty and Jacqueline Toner. The effects of her PTSD operated to make it extremely difficult for her to think about the abuse or related events and circumstances. To do so meant re-experiencing them. That was not present all the time nor, I presume, was it always at the same level of intensity. The evidence of Prof Browne is that the plaintiff's capacity to decide to sue or to make a reasoned decision to do so was seriously interfered with when her ever-present condition was activated, which means that for such time those capacities were substantially impaired. And accepting, as I do, that those active periods were and continued to be of such duration and frequency that they interfered significantly with the relevant capacities, then it follows that the conditions of the section are fulfilled and that the plaintiff was under a disability.

It seems to me that, contrary to what Counsel for the defendant have suggested, carrying on one's life with a semblance of normality does not preclude the possibility that there may be a myriad of complex and debilitating psychological problems lurking beneath the surface. I am satisfied that this was – and remains – the case with Ms. Doherty.

The plaintiff had to be persuaded to report the matter to Garda Hargadon, who took over from that point on. Her participation in the criminal proceedings cannot be seen as manifesting by analogy a will to bring a civil claim that she simply failed to act upon. Criminal proceedings are different in a number of respects. Certainly, Ms Doherty with encouragement summoned up the courage to make her original complaint to the Gardai. Once she had done this, however, such is the nature of criminal investigations and prosecutions that events took on a life of their own and she was not required to take the lead in pursuing Mr Quigley, as it were. She assisted the authorities with their enquiries and gave evidence when asked to do so. Ms Doherty found this difficult enough, but that experience still falls short of prosecuting a civil case, whereby much of the initiative in pursuing the claim and carrying it through to the end rests with the victim. In bringing this action, her partner brought her to solicitors; even then --on the evidence-- she did not unaided have the will to sue. Of course these things happened with her consent but that is very different from saying that she was exercising free will unimpaired by the injury that the defendant had inflicted on her.

Prof. Browne has expressed the view that he fears the scheme of s. 48A is overly simplistic and fails to reflect the multi-faceted nature of psychiatric disorders such as personality dissociation. I do not regard this opinion as relevant to determining the matter; it is for the Court to decide whether or not a claim is statute barred and insofar as Prof. Browne is permitted and indeed welcome to assert his opinion, this does not extend to legal opinion, which in any event is beyond his realm of expertise.

In my judgment, Ms Doherty was and is suffering from a serious psychological injury that was caused by Mr Quigley. That condition is Post Traumatic Stress Disorder, which manifests itself in a variety of distressing symptoms including in particular but not restricted to the phenomenon of dissociation. That is the incapacity to process the traumatic events visited upon her into memories so that they have remained in her consciousness to be re-lived as present experiences on being triggered or on arising spontaneously. Symptoms vary in duration and intensity but the underlying injury and illness remains as a very severe condition. I am satisfied that the plaintiff's psychological health has been profoundly injured. Her will to bring the action or her ability to make a reasoned decision to bring the action were and indeed still are substantially impaired. She has been impaired as Prof Browne reported and testified particularly by reason of the dissociation which affects the plaintiff's ability to address the abuse and the action is all about the abuse. Her psychological make-up has also been substantially impaired more generally, including her will to bring an action and her ability to make a reasoned decision to do so, because the ever-present condition has not abated and represents impairment within the meaning of s. 48A.

My conclusion on this issue is that s. 48A applies and the plaintiff's action is not statute-barred.

10. Damages

In the case of *M.N. v. S.M.* [2005] 4 I.R. at 461, the Supreme Court considered damages in a case of severe sexual abuse by an adult of a child over a prolonged period. The circumstances of that case bear some remarkable similarities with the present one. Speaking for the court Denham J. set out the circumstances, which in that case were not disputed:-

> "The facts were not disputed. The events in issue took place between 1990 and 1995, when the plaintiff was between 12 and 17 years of age. The plaintiff's and defendant's families were friends. The plaintiff's family lived in Dublin, the defendant's family lived in the country, and the families would visit each other's homes.
>
> The plaintiff was abused by the defendant in her own home and in his home and premises. Between 1990 and 1995 she was repeatedly and, in different ways, sexually assaulted. The defendant admitted that he so acted between 1990 and 1995.
>
> The nature of the abuse developed over the years. The activity started with the defendant putting his hand on her breast, her buttocks, and generally acting improperly. He fondled her over and under her clothes and tried to kiss her. He pinched her nipples. He rubbed and touched her. Initially he was not violent to her. The sexual abuse developed in 1992. Late at night he would make her masturbate him and make her touch him inappropriately. He would kiss and bite her neck. He touched her improperly and inserted his fingers into her vagina. The plaintiff remembered Christmas 1992. She told the jury that the defendant would be asking "if it was nice?" He would say things such as "it is our secret". He became more insistent. She gave evidence of the defendant coming to her home when no one else was there and of attempting to

> have intercourse with her and making her masturbate him. The plaintiff said the years 1994 and 1995 were the most painful. She was as resistant as she could be, kicking him and scratching him when he approached her. She said it was constantly happening. She gave evidence of instances of full penetrative sex."

In *M.N.'s* case psychiatric evidence was that the plaintiff's life had been blighted. She suffered from depression and had feelings of self loathing and low self esteem. The plaintiff's development had been subverted by sexual abuse at the pre-pubertal stage and her development had been altered and derailed. The consultant psychiatrist anticipated that the plaintiff would have difficulties in emotional and physical intimacy which would possibly be life long.

The court considered the defendant's conduct in response to the complaints made by the plaintiff to be significant. Denham J. said:-

> "When the defendant was confronted with the abuse, he admitted it. When first interviewed by the Gardaí, he admitted it. Counsel for the defendant said that he was instructed to apologise and to repeat the previous apology. The defendant pleaded guilty in the criminal prosecutions in both the District Court and the Circuit Court. He admitted that the plaintiff told the truth. The defendant has been sentenced to eight years imprisonment and is a prisoner in Wheatfield Prison. He has undertaken therapy. Mrs. M. is now rearing their children on her own. They had a share in a public house business."

The court considered general principles that apply in personal injury cases. The court also found informative the scheme of payments provided under the Residential Institutions Redress Act 2002, which was outlined in a report entitled "*Towards Redress and Recovery"* by a group appointed under s. 14 of the legislation. Counsel for the plaintiff cited this report in submissions on damages. I should perhaps mention that I was chairman of the committee that produced this report at a time when I was a member of the Bar. The Court also considered the Book of Quantum of the Personal Injuries Assessment Board. Denham J. said that a number of relevant factors had to be considered:-

> "Thus an award of damages must be proportionate. An award of damages must be fair to the plaintiff and must also be fair to the defendant. An award should be proportionate to social conditions, bearing in mind the common good. It should also be proportionate within the legal scheme of awards made for other personal injuries. Thus the three elements, fairness to the plaintiff, fairness to the defendant, and proportionality to the general scheme of damages awarded by a court, fall to be balanced, weighed and determined."

The court decided that the defendant's conduct in admitting the allegations made by the plaintiff was of some albeit limited relevance in mitigating damages.

Denham J. continued:-

> "Should he not have pleaded at an early stage or rendered an apology, the injuries to the plaintiff may have been further aggravated. The early plea of the defendant enabled the plaintiff tell her story in the criminal trial without having to suffer cross-examination. His counsel expressed an apology on the defendant's behalf. While these matters are of limited relevance to the issue of compensation for the plaintiff, some weight may be attached to them. A comparison may be drawn to the situation if he had not taken such steps. Similarly, while an expression of remorse, through his counsel, is a factor, it is so rather to contrast the situation in this case with a case where it did not occur and where the conduct of a defendant may exacerbate the already occurring injuries of a plaintiff."

No two cases are the same; there are of course, differences between the facts and circumstances of M.N. and the present case. Nevertheless, the analysis of the issue with damages by the Supreme Court in that case is of great assistance in this. It is true that although there are elements of M.N. that go beyond the physical invasions that occurred in this case, there are also some remarkable similarities. It is to be noted that a very similar pattern of grooming took place. The period of abuse was longer in this case and of course there was complete denial of the allegations, thus undoubtedly increasing the ordeal and the trauma of the events.

It is difficult to overstate the profound and lasting effects of prolonged sexual abuse on a person whose childhood was blighted by this conduct. It is unnecessary to repeat the evidence of the plaintiff and of the consultant psychiatrist to understand what she has gone through and the severity of the illness that afflicts her at present and will do so long into the future. She is obviously entitled to a substantial award of damages both in respect of past pain and suffering and for future general damages but it must be limited in accordance with the precepts established by the Supreme Court.

In all the circumstances of the case it seems to me that the proper figure for general damages in this case is €400,000.

If I ought to make separate awards for past and future general damages, I assess the figure for the past at €250,000 and for the future at €150,000.