

**THE HIGH COURT
JUDICIAL REVIEW**

[Record No. 2002/ 374 JR]

BETWEEN**F.C.****APPLICANT****AND****JUDGE BRIAN KIRBY AND THE DIRECTOR OF PUBLIC PROSECUTIONS****RESPONDENTS****Judgment of Mr. Justice John MacMenamin delivered the 11th day of February 2005.**

1. The background to these proceedings has already been outlined in the judgment delivered on the same day as this in the case of *B.C. v. Judge Brian Kirby and The Director of Public Prosecutions*.

2. The applicant in these proceedings was born on 9 December 1936 and is now 67 years of age. He has lived in a semi rural area close to a large city since 1969 where he worked as a builder until his retirement. He is married to S.C. and has six children.

The complainants

3. As far as the applicant is concerned there are seven complainants who make allegations against the applicant. These are Mrs. M.C., a sister-in-law of the applicant; K.N.C., a niece of the applicant; Mo.C., a nephew of the applicant; R.C. Junior (hereinafter 'R.C. Jnr.'), a nephew of the applicant; W.C., nephew of the applicant; L.C., niece of the applicant; and C.K. who is unrelated.

First complainant, Mrs. M.C.

4. Mrs. M.C. was born on 7 December 1943. She is also a complainant in the case of B.C. She is the sister-in-law of the applicant, being married to R.C. who is also an applicant in separate proceedings heard by the court. There are two offences alleged. These are of rape which is alleged to have been committed on two separate occasions on 1 August 1972 and 31 August 1973. On the latter occasion the complainant alleges that she was pregnant.

5. The complaints on foot of which these charges proceed were made to the Gardai on 12 July 1999. Further statements were made on 26 July 1999 and also on 18 October of that year. In these statements the complainant describes an incident which occurred in the back of the applicant's van in a somewhat isolated area. In the course of this incident the complainant alleges that she was raped by the applicant.

6. The second incident is alleged to have occurred in the complainant's matrimonial home. The applicant is stated to have called by the house on a Saturday. At the time the complainant was pregnant. She states that she was wearing a maternity dress. He allegedly held her against a wall, stated "*I can have you at any time I want*" and thereafter had penetrative sexual relations with her. The complainant states that she was crying shouting and screaming at him. After the incident it is alleged the applicant said "*I'll be back any time that I feel like it*".

7. The gravamen of the alleged offences was set out in the first statement of 12 July 1999. The subsequent statements relate to alleged offences committed by the applicant relating to the children of the applicant, R.C. Jnr. and W.C.

8. 1999 was not the first occasion upon which this complainant had communicated with the Gardai and other persons on matters appertaining to sexual abuse. It appears from the evidence that Mrs. M.C. discussed alleged sexual abuse with her daughter K.N.C. in or around 1984. She also made complaints against the applicant to other persons not members of An Garda Síochána between the years 1982 and 1988. (These persons included, as she recollects, her daughter K.N.C., L.C., a schoolteacher and another acquaintance.) Reference to these will be made below. However at no stage prior to 1999 does it appear that the complainant made any mention to any of those persons of the fact that she had been raped by the applicant.

9. It is stated on behalf of the applicant that earlier complaints may have been made by Mrs. M.C. regarding alleged sexual abuse of her children R.C. Jnr. and W.C. in the year 1984. The Gardai are unaware of any such allegation and there does not appear to be any documentary evidence of this. While it is stated to have emerged from the statement of Mrs. M.C., I do not believe there is such evidence of a 1984 complaint.

10. It is clear however that on 19 December, 1986 the evidence discloses that M.C. did make a complaint to the Gardai. In this, she alleged that the applicant had sexually abused her sons, W.C. and R.C. Jnr. These alleged assaults are stated to have taken place two years prior to the year of complaint i.e. in or about 1984. The applicant F.C. is alleged to have taken the family and the complainant out to S. A. to visit R.C. her husband, who was then serving a sentence there. In the course of this visit it is alleged that F.C. took R.C. Jnr. and W.C. for a walk in a wooded area and thereafter committed sexual assaults upon them. In the case of W.C. when the matter came to Mrs. M.C.'s attention he allegedly stated that such incidents had occurred a few times before. In the case of R.C. Jnr. he allegedly stated that such an event had occurred on a good number of times.

11. Mrs. M.C. then contacted the Gardai at her local Garda station and informed them of what had occurred. She stated that when F.C. called to her house: "*I confronted him about the incidents and he denied it ... my husband pleaded with me for his mother's sake not to proceed any further with the matter ... I called to S- Station along with F. and said I was dropping the allegations against him*".

12. Mrs. M.C. went on to state that about four weeks prior to her making the statement on 19 December, 1986, her husband was in bed and she was up talking to him when W.C. came in and said that F.C. had interfered with him again. She questioned him and he told her the same story as was told to Sergeant Keating in his statement. It may be taken therefore that the actual complaint made on 19 December, 1986 was made in relation to an alleged assault on W.C.

13. In the course of an affidavit sworn on 24 October 2003, Mrs. M.C. says that the reason she withdrew the statement made on 19 December, 1986 was that her husband R.C. told her to drop the charges after the applicant "S.C." had come to her house. I am satisfied this is an error. Mrs. M.C. is married to R.C. F.C. is married to S.C. The thrust of this particular allegation is that F.C. accompanied by his wife, S.C., came to visit the complainant and her husband, R.C., in the house and that R.C. after an exchange in the house told her to drop the charges. Some further light on the circumstances of the withdrawal may be gleaned from the fact that in the course of his statement R.C. Jnr., their son, describes an alleged serious assault upon him by the applicant following which he was brought to hospital for treatment. Thereafter his mother brought him down to the local Garda station where he made a

statement. He thought W.C., his brother, did as well. He goes on to state "however my father made us withdraw it, he put pressure on Mum, he beat her up over it". He also states in his statement (made 11 June 1989) the applicant "had called to the house a few times – mainly to pressure them (meaning his parents) to drop the charges which they did".

14. On 25 February 1987 the complaint made by Mrs. M.C. on 19 December 1986 was withdrawn.

15. The statement reads -

"second statement of Mrs. M.C. (address) made to Sergeant John J. Keating at S-Garda Station on 25th February, 1987 at 10.10 p.m.

I wish to withdraw the allegations in the statement which I made against my (sic) brother-in-law F.C. (address) which I made in writing to Sergeant K. on 19/12/86. I do not wish to pursue the matter any further. This statement has been read over to me by Sergeant K. and is correct.

Signed M.C. witness (John J. Keating Serg. Date 25/2/87").

16. The timing of this statement is 10.10 p.m. In the course of the statement the complainant did not make any mention of rapes on her by the applicant.

17. On the same date as the complaint made by Mrs. M.C., Sergeant K. also took a statement from W.C., her son. In the course of this statement he describes the alleged incident which occurred in "A.". I infer this relates to S. A.. At the time W.C. would have been aged about 6 years. He describes a sexual assault upon himself by the applicant. Thereafter the applicant is alleged to have said "don't tell anyone about this, don't tell your Mammy or your Daddy and I'll give your money". That night, according to the statement, W.C. told his mother what had happened.

18. In the course of the same statement of 19 December, 1986, W.C. describes a further assault taking place in a toilet of a public house in the same general area. Thereafter the applicant is alleged to have said to the complainant "don't tell anybody". W.C. says he did not tell his mother or father what had happened on that occasion.

19. W.C., also in the course of his statement, describes a third sexual assault which allegedly occurred in a shed in premises where the applicant, F.C. and R.C. Jnr.'s father (who is the applicant R.C.) were working. He states that about a week afterwards he told his mother and father what F.C. had done to him. On 29 January, 1987 K.N.C., Mrs. M.C.'s daughter, made a complaint to the Gardaí (Garda Eileen Clare Kavanagh) wherein she described assaults allegedly committed upon her by B.C. In the course of that she also makes a reference to alleged abuse by F.C. in brief terms.

20. The latter statement was withdrawn on 26 February, 1987. The withdrawal statement reads -

"statement of K.C. (she is now K.N.C.) of (address) made on 26th February, 1987 at her home at 10.50 p.m. -

I do not want to go ahead with the prosecution of the case, Re: statements which I gave on 29th January, 1987 at (S)-Garda Station. I don't fell (sic) that I can go through with it. I have read over this statement and it is correct."

Signed K.C.

Witness Eileen Kavanagh Ban Garda 00398M (87) "W" date 26th February, 1987.

21. With regard to the alleged incident in S. A. the matter is also dealt with in the statement of R.C., whose statement is exhibited in the affidavit of Detective Sergeant Byrne. R.C. states that when he was sent to S. A. ... "one Sunday my wife, (the applicant) and all the kids came down to see me. I remember (the applicant) said 'I'll bring the two boys for a walk into the trees'. This was [R. and W.]." (I am satisfied the reference here is to R.C. Jnr. and W.C.) Then: "He said: 'you have a chat with your wife'. When (the applicant) was gone I told (the complainant) to ask the boys if (the applicant) did anything to them when she got home. I said this because the boys had told me that (the applicant) was doing things to them and I now believe this was true. When [Mrs. M.C.] got home she asked the boys about (the applicant) and later reported it to the guards in [S-]. A few days later I was let go and I was (sic.) home when F. and his wife arrived at my house in the evening sometime. He talked about what the boys had said and persuaded us to withdraw the statements made by [R. and W.] ...

22. In the course of her statement made on 18th October, 1999 Mrs. M.C. states - "shortly after (my husband) got released from S. A. I think it was a Saturday night I had already brought the boys R. and W. to make statements. F. and S. arrived. They were very domineering. I put the kids out of the room (my husband) was left in the room. The four of us had a row which lasted about an hour. F. and S. maintained that there was no abuse - nothing happened. I remember screaming at them. (My husband) told me to drop the charges and we will sort something out. I said no but later that evening agreed to drop the charges."

23. On 15 June, 1989 the complainant Mrs. M.C. brought her son R.C. Jnr. to S- Garda Station to make a statement to Sergeant Keating alleging abuse by the applicant. In the course of this statement he gives a description of a number of incidents of sexual abuse committed upon him allegedly by the applicant. Thereafter it would appear that this statement was withdrawn in circumstances apparently described by R.C. Jnr. - "however my father made us withdraw it. He put pressure on Mum. He beat her up over it." This is described in his statement of 11 June, 1999.

24. At no stage in the course of these various visits to the Garda station did Mrs. M.C. mention alleged rapes the subject matter of the charges. Ultimately the complainant made a formal complaint of rape to the Gardaí in respect of the alleged offences on 12 July 1999 approximately 26 years after the alleged date of the last offence.

Second complainant, K.N.C.

25. K.N.C. was born on 23 July, 1968. She is a niece of the applicant and is the daughter of Mrs. M.C. and R.C. Jnr. The applicant faces 22 counts of indecent assault in relation to this complainant. The making and withdrawal of her 1987 statements have been described above. The offences with which he is charged are alleged to have taken place between 23 July, 1976 and 31 December, 1983.

26. She describes an assault taking place in F.C.'s house. He engaged in digital sexual contact with her and also engaged in sexual stimulation. Thereafter, he said he was a member of the IRA and they knew where she lived and if they ever found out she (K.N.C.) had told anyone *'they would kill us all'*. He told her to go and not to say anything. K.N.C. states that she used to hear everybody talking about the IRA and saying that they used to kill people. She used to see things on the news about the IRA and killing people. She was scared. She describes a further assault taking place in the toilet of F.C.'s house. She sustained injuries as a result of this. She stated that *"I felt like it was all my own fault, like I deserved it"*. She describes a further alleged incident wherein she responds to threats from F.C. by stabbing him in the hand. She recounts staying with her grandmother, i.e. F.C.'s mother, for the period of July and August in each year between the time she was aged 9 and 13. Assaults took place during this time, more specifically during the latter 2 years when she alleges that F.C. assaulted her every day.

27. On 25 November, 1986 K.N.C. made a complaint regarding sexual abuse to her G.P., Dr. Joseph Curry when she was 17 years old. The doctor advised her to seek counselling. At this point she was working in a hair studio in F. She described abuse taking place to Dr. Curry although she did not name the alleged perpetrator. It was suggested to her that she should attend the Rape Crisis Centre. K.N.C. stated recollecting that she was told she might have to speak to a group and that this idea scared her.

28. K.N.C. moved to England on 15 April, 1988 and thereafter married. Approximately four years prior to the date of the swearing of her affidavit (I infer in or about 1998) she was depressed and went to see a Doctor Geraghty in England. She was in turn referred to a counsellor, a further doctor and ultimately to a Mrs. Sue Kane, a counsellor who dealt specifically with sexual abuse. At the time of furnishing her statement, K.N.C. stated that she had been attending Sue Kane once a week for a period of 3 months. There is no evidence that K.N.C. gave a full account of the alleged abuse to Ms. Kane.

Third complainant, Mo.C.

29. Mo.C. was born on 10 July, 1963. He is a nephew of the applicant. His father is M.C. and his mother's name is J.C.

30. In the course of a statement furnished to Detective Garda Ultan Sherlock and Detective Garda Gerry Mullaney on 14 June, 1999, Mo.C. sets out a recollection of the four incidents. At the time, he and his family were living in a caravan at the back of the applicant's house. They lived there until he was about 12 years of age. These two caravans were at the front of the house. His mother and father slept in one caravan and himself and five sisters slept in another.

31. He describes assaults taking place upon him by the applicant one night in the caravan itself, in a shed at the side of the house and in the applicant's house. In the course of the assault in the house he alleges that F.C. and his wife S.C. both sexually assaulted him. He describes the further assault which took place in F.C.'s home. Thereafter he states that he was abused by F.C. between 50 and 80 times. Most times were in the caravan when he lived at F.C.'s house.

32. The first person to whom Mo.C. made a complaint regarding the alleged abuse was his sister J. It is not stated when this occurred. It was also stated that he discussed the alleged abuse with another sister C.R.- again it is not quite clear when this occurred.

33. He also discussed the abuse with his wife in or around 1993. He attended a counsellor, Roger, in or around 1996. He also discussed the alleged abuse with his cousin R.C. Jnr., another complainant, in or around 1998. His formal complaint to the Gardai was made on 14 June 1999.

Fourth complainant, R.C. Jnr.

34. R.C. Jnr. was born on 29 March, 1975. He is a son of R.C. and Mrs. M.C. He makes complaint of 25 counts of alleged indecent assault which are stated to have been committed upon him by the applicant on five separate occasions between the 1 June, 1980 and 28th March, 1989. These assaults allegedly took place in the applicant's van and frequently in the toilet of a public house in the locality. He describes a serious assault taking place in a field owned by a person for whom S.C. and R.C., his father, were doing work. F.C. allegedly committed an assault on him in his van while he was in the field. W.C., his brother, was there at the time.

35. He also recollects a further assault where his testicles were squeezed to such an extent that he was unable to go to the toilet, passed blood and thereafter had to be taken to a children's hospital where he had to have an operation for the removal of a testicle.

36. Other assaults allegedly took place in the vicinity of F.C.'s house. He estimated that he would have been assaulted about 200 times. He also saw his brother W.C. being abused by F.C., mostly in fields or in pubs in the area in which they lived. This continued up to the time he was aged about 8 years. He describes an alleged incident which occurred in the premises of S. A. when he visited his father.

37. R.C. furnished a statement to the Gardai on 15 June, 1989 at 10.45 p.m. In the course of this statement he describes an alleged assault committed upon him by F.C. while he was out fishing with him. He describes further assaults allegedly committed upon him while he was in the company of his brothers, W.C., and F.C., (the applicant) in the premises owned by a Mr. B. R.C. describes climbing a ladder and F.C., who was below him, sexually assaulting him by putting his hand up his pants to touch his sexual organs. Thereafter F.C. allegedly said that he should not tell his mother or he, F.C., would hurt him. He did not tell his father or mother what happened, he says.

38. R.C. Jnr. describes a series of assaults taking place in an identified public house of the locality. These assaults took place in the toilet. The assaults were committed allegedly on R.C. Jnr and upon W.C. R.C. Jnr. alleges that the assaults occurred to him about six times. The last occasion F.C. allegedly interfered with the complainant was approximately four years prior to the making of the statement.

39. The Book of Evidence contains a statement of Dr. Matthew Corcoran. Dr. Corcoran states that on 14 July, 1982, he attended R.C. at his home. His records show that he discovered an absent left testicle. He did not recall blood discharge. He referred R.C. Jnr. to H.S. hospital for further assessment. Dr. Corcoran states that R.C. Jnr. never informed him that he was sexually abused.

40. In an affidavit sworn on 22 October, 2003, R.C. Jnr. refers to the statement made on 15 June, 1989 at S- Garda Station to Sergeant Keating. He states that the contents of the statement are true and accurate. He says *"my mother had brought me down to the garda station, however, my father (name) made us withdraw it. He put pressure on my mother and he beat her up over it"*.

41. In the final paragraph of the aforesaid affidavit R.C. Jnr. says –

"I say that I was sexually abused by the applicant herein as described in my statements. During the abuse the applicant told me that no one would believe me. I did not tell anyone because the applicant also told me that I would get into

trouble. On one occasion I ended up in hospital because the applicant squeezed my testicles so hard. I was concerned that if I reported the abuse my father would be abusive to my mother. I was frightened of the applicant and I still feel threatened by both him and his sons. I moved to England after making my statement to the Gardai in order to escape this threat from the applicant."

42. R.C. Jnr. states that he discussed the alleged abuse with his mother and sister when he was approximately 8 years old. He states that he actually did report the alleged abuse to a Dr. Corcoran and another unidentified doctor at H. hospital in or around 14th July, 1982.

43. Accompanied by his mother, Mrs. M. C., he made a formal statement of complaint to the Gardai on 15th June, 1989. He also told his then girlfriend in 1996. He discussed the alleged abuse with his sister, Ms. Ma. C. and his cousin, Mr. Mo.C. on dates unspecified prior to 1999. Ultimately he made a formal complaint to the Gardai on 11 June, 1999, approximately ten years after his initial complaint.

Fifth complainant, W.C.

44. W.C. was born on 23 June, 1978. He is the son of R.C. and Mrs. M.C. He is the brother of R.C. Jnr.

45. Four counts of sexual assault and 18 counts of indecent assault are alleged to have been committed upon him by the applicant at four separate locations between 3 October, 1984 and 31 December, 1992.

46. He states that he made a complaint to Dr. Joseph Curry on 25th November, 1986, that he had been sexually assaulted by an uncle. He discussed the alleged abuse with his cousin, R.C. Jnr., also a complainant herein at an unspecified date. Mrs. M.C., W.C.'s mother, made a statement of complaint on his behalf to the Gardai in or around 1989. (He discussed the alleged abuse with another cousin, Mr. Mo.C., a complainant herein about a year-and-a-half before making a formal statement of complaint in 1999.)

47. W.C.'s formal statement of complaint to the Gardai was made on 11 June, 1999, approximately ten years after his initial statement of complaint.

48. W.C. made a statement to Sergeant John J. Keating at S. Garda Station on 19th December, 1986 at 3.40 pm, in the company of his mother, Mrs. M.C.

49. In that statement he describes an alleged assault taking place while his father was staying out in "A." at the time. He says –

"Mammy and my sisters went to see Daddy. Uncle F. bought R. and myself for a long walk in the woods. After walking for a good while my uncle called me and opened the front of my pants. He then put his hand inside my underpants and felt my privates. He continued to do this for some time. He said 'don't tell anyone about this, don't tell your Mammy or your Daddy and I will give you money'. We went back to his car a short time later. That night I told my Mammy what had happened."

50. W.C. Jnr. describes further sexual assaults allegedly taking place in the toilet of a public house in the locality. He describes a further alleged assault taking place in the premises where he was accompanying F.C. when F.C. was carrying out work. He describes a further assault allegedly taking place in the same location in a tool shed. He says that he was afraid of F.C. and that F.C. kept saying to him "don't tell anybody". He said that about a week afterwards he told his mother and father what F. had done to him.

51. In his affidavit sworn 24th October, 2003, he states –

"In later years I avoided thinking or talking about the abuse. I would not have made a complaint had my sister K. not made a complaint and had the Gardai not contacted me."

Sixth complainant, L.C.

52. L.C. was born on 22 October, 1973. She is the daughter of R.C. Senior and Mrs. M.C. She is the sister of R.C. Junior and W.C. She has two sisters K. and M. She describes this abuse as commencing about a year after her Communion in her house. The applicant allegedly carried out a digital sexual assault on her. She stated that "this happened until I was 13 years old until I told the social workers about my Dad". She stated "this would happen once or twice a week, any time F. called down to the house and he could get me on my own." She also describes coming down in his van which was either red or green in colour. She sometimes went out with her brothers with him for a drive. On one occasion she was on her own and the applicant committed an assault on her and asked her to engage in sexual stimulation upon him. She describes one occasion after she and her family had visited her father R.C. Senior in S. A. When they got into her home she went into kitchen to put the kettle on and F.C. came in and engaged in a digital sexual assault.

53. She discussed the alleged abuse with either Mo.C. or R.C. Jnr. in or around 1995/1996 when she was 22 or 23 years of age. She also discussed the alleged abuse with W.C. three months prior to making her first formal complaint to the Gardai. This was made on 30 September 1999.

Seventh complainant, C.K.

54. C.K. was born on 13 August, 1975. He is not a member of the extended C. family. The 22 alleged offences include 2 counts of buggery and 20 counts of indecent assault, at five named locations and other places between 1st January, 1979 and 1st December, 1986.

55. On those occasions F.C. sexually assaulted C.K. by holding his sexual organs with his hands. He also describes incidents of alleged buggery taking place in F.C.'s van in two identified locations. He describes a further incident of buggery occurring in the location of a house which was under construction. He describes sexual assaults taking place in the toilet of a public house and in a further house which was under construction. He first made a complaint to one D.W. sometime in the 1980s. The precise point was not identified. The parents of C.K. were made aware of the complaints also sometime in the 1980s. A formal complaint appears to have been made on behalf of C.K. by his mother to Garda Tom Conway sometime in the 1980s. The documentation in relation to this complaint (if any ever existed) cannot be located and the details of the investigation at this time are unknown. A formal statement was made to the Gardai on 31st July, 1999.

The 1999 Investigation

56. The general facts regarding the 1999 investigation have been set out in the course of the judgment in the case of B.C., delivered on the same day as this.

57. In the course of his affidavit Detective Sergeant Byrne identifies some 58 people who were interviewed in the course of the investigation into F.C. and who provided statements. Additionally 11 statements were taken from other persons who made allegations of sexual abuse against F.C. These persons are, with the exception of J.C. who is F.C.'s son and J.C. Junior who is F.C.'s grandson, not family members. The statement provided by F.C.'s son J.C. makes allegations of a most serious nature. Taken together the statements, if proved, would I think entitle a trial court to conclude that the applicant is a person of a highly domineering nature.

The applicant's grounds

58. It is alleged that the first-named respondent acted *ultra vires* in returning the applicant for trial on 11 January, 2002. For the same reasons as are set out in the B.C. judgment delivered today, the applicant is entitled to an order of *certiorari* quashing this return. This court will so order.

59. Turning to the remainder of the applicant's submissions: It is submitted that the respondents have been guilty of delay in bringing the prosecution against the applicants and that such delay amounted to a breach of the applicant's constitutional rights to a trial in due course of law and with reasonable expedition. It is further submitted that the delay between the arrest and charge of the applicant on 13th July, 2000 and the prosecution of the applicant before the Central Criminal Court constituted a breach of the applicant's right to trial in due course of law and/or a trial with reasonable expedition. In the light of the foregoing it is contended that the second named respondent acted in a manner contrary to natural and constitutional justice and fair procedures in instituting proceedings against the applicant relating to offences alleged to have occurred between 1972 and 1992, some 10 to 30 years ago. It is contended also this prosecution amounts to a breach of the applicant's rights to a fair trial in due course of law in that he is unable properly to defend himself by reason of the absence or potential unavailability of witnesses and the potential incapacity of the applicant or other witnesses to recall either accurately, or at all, relevant evidence. Further he is denied the opportunity to seek to adduce alibi evidence.

60. In the light of the foregoing the applicant contends that to proceed with the trial would amount to a breach of the applicant's right to fairness of procedures and natural justice.

Grounds of Opposition

51. In the statement of grounds of opposition filed on 29 October, 2003 (in addition to the concession on the *Zambra* point addressed above) the respondent:

1. maintains that the applicant is not entitled to relief by reason of delay in instituting judicial review proceedings.
2. asserts there has been no delay on the part of the complainants
3. contends that where the Director of Public Prosecutions on information available to him has not proper grounds for charging any person with an offence, his failure to do so and any elapse of time before he is in a position so to do cannot give an accused a right to prohibit a trial on the basis of defeat of his constitutional right to an expeditious trial.
4. responds that the delay is not of such duration that it should prevent the trial proceeding.
5. contends that if there has been a delay in making complaints then the applicant himself is responsible for such delay by reason of his position of dominion over the complainants.
6. submits that the applicant prevented the making of complaints by threats and intimidation of the complainants
7. denies prosecution delay, or delay between arrest and charge on 13th July and prosecution of the applicant before the Central Criminal Court.
8. denies that the applicant is entitled to a prohibition of his trial merely because of the lapse of time since the cause of complaints first arose.

52. In support of the statement of grounds of opposition, affidavits were sworn by Detective Sergeant Thomas Byrne on 16 October, 2003, together with exhibits. An affidavit was sworn by Michael Dempsey, Psychologist, on 28 October, 2003. Affidavits were also sworn by each of the complainants affirming the contents of their statements in the book of evidence. There is in addition an affidavit of Catherine Finn exhibiting a chart indicating the relationship between the complainants and the alleged perpetrators and supplemental affidavits of Mr. Dempsey (26 February, 2004) and Detective Sergeant Byrne (17 November, 2003).

Mrs. M.C. – the psychological evidence

53. In respect of Mrs. M.C., Mr. Dempsey, Senior Clinical Psychologist of St. Brendan's Hospital, Rathdown Road and at the Hilltop Centre in Raheny, furnished a report dated 28 June 2003. He stated that he found Mrs. M.C., who is now living in England, in poor health. He carried out the interview with Mrs. M.C. on the same date as his interview with her relating to the allegations concerning B.C. and P.J. C..

54. The complainant, Mrs. M.C., stated that she reported she felt suicidal after allegedly being raped by F.C. but that she prevented herself from committing suicide for the sake of her then two children, K. and M. The alleged sexual assaults took place in the context of her living in what she referred to as a constant state of fear of her husband, R., and her three brothers-in-law. Her husband allegedly beat her on a regular basis. At times he allegedly accused her of having an affair with F.C. Additionally she alleged that her now deceased father-in-law sexually assaulted her.

55. From her account, Mr. Dempsey comments that it would appear that she had married into a family where there were few boundaries in relation to sexual behaviour between children and adults and between adults themselves. In this context she alleged that her husband, R.C., had told her that a number of his brothers had been sexually abused in childhood by their father.

56. Mrs. M.C. said to Mr. Dempsey that she had few social or emotional supports from living within the extended C. family. Her mother-in-law allegedly did not support her when she complained to her that her father-in-law was abusing her daughter.

57. In Mr. Dempsey's opinion it was her fear of her husband and brothers-in-law that prevented her from reporting the alleged sexual assaults until relatively recently. Such was the dominance of the C. family over her that she withdrew previous complaints she had made to the Gardaí about alleged sexual abuse in relation to her children. Assessment indicated that she was experiencing symptoms of post-traumatic stress and severely depressed mood in relation to the alleged sexual assaults.

58. In Mr. Dempsey's view it was not possible to separate the contribution of the alleged behaviour of each of her brothers-in-law to her psychological symptoms. It was further his opinion that she was inhibited from reporting the alleged assaults to the Gardaí by the psychological consequences of the alleged assaults and her attempts to cope with them. She has not received counselling in relation to the alleged abuse.

K.N.C. – psychological evidence

59. At the time of her interview (on 1 July, 2003) with Mr. Dempsey, K.N.C. was aged 34 years. She had previously been interviewed in relation to allegations of childhood sexual abuse made against her uncle, P.J. C.

60. In the course of the interview K.N.C. alleged she had been sexually abused by her paternal grandfather and three of her uncles, including her uncle F.C., over a period of some years. She alleged that her uncle F.C. sexually abused her from the age of five or six years until she was approximately fifteen years of age. She said that her Uncle F.C. was rougher than the other perpetrators when he allegedly abused her, which caused her vaginal injuries. She alleged that when she was approximately ten years old the applicant had tried to make her abuse her smaller brother, W.C. when he was changing his nappy but that she had stuck a nappy pin in the applicant's hand. She alleged that he told her he was a member of the IRA and he would get them to kill her if she told anyone about the abuse. She stated she remembered being frightened by this threat as she could see accounts of IRA atrocities on the television. She also stated that she had witnessed the applicant raping her mother, M., when she was approximately seven years of age.

61. Mr. Dempsey found that K.N.C. continued to suffer from a moderate degree of depression as assessed by the Beck Depression Inventory, and a moderate to severe degree of post-traumatic stress; and obsessive-compulsive behaviour as a result of the alleged abuse in childhood.

62. As in the other cases it was not possible to attribute specific psychological consequences in relation to alleged abuse to the individual alleged perpetrators. In Mr. Dempsey's view, the reasons for delay in reporting the alleged abuse was the same as those for delay in reporting the alleged abuse by her uncles B.C. and P.J.C. She stated to Mr. Dempsey that she had reported the alleged abuse by her uncles (including the applicant) to the Gardaí when she was a teenager, nothing had come of this complaint and this may have served to inhibit her from reporting the alleged abuse again to the authorities.

63. She felt ashamed and blamed herself for the alleged abuse but these factors served to inhibit her complaining to the Gardaí. She reported that she told a priest in confession about the alleged sexual abuse but that his attitude was such as to reinforce her own feelings of self-blame in relation to the abuse.

64. K.N.C. told Mr. Dempsey that fear of her uncles also prevented her from complaining to the Gardaí until relatively recently. In Mr. Dempsey's view the psychological problems she experienced as a result of the alleged abuse and her coping with them were also factors that prevented her from complaining to the Gardaí until relatively recently. Ultimately it was the Gardaí who contacted her in the course of their investigation of the complaints of other allegations of sexual abuse. In Mr. Dempsey's view, the reasons for the delay in reporting the alleged abuse to the Gardaí were "understandable" in terms of her life experiences.

Mo.C. – psychological evidence

65. At the time of his interview (on 8 April 2003) with Mr. Dempsey M.o.C. was 39 years of age, having been born on 10 July 1963. He stated that the applicant had sexually abused him "*hundreds of times*" from between the ages of 8 or 9 years to 13 or 14 years. He also alleged sexual abuse by his father, M.C., between the ages of 12 and 15 years. He told Mr. Dempsey that the frequency of the alleged sexual abuse by his uncle F.C. was reduced when his family moved house when he was about 11 years of age. However, the alleged abuse continued on occasions when he visited his uncle's house with his family. Eventually, at between 13 and 14 years, he refused even to visit his uncle's house and hence the alleged abuse stopped.

66. He informed Mr. Dempsey that the immediate effect of the alleged abuse was fear of his uncle F.C. the applicant herein. He felt he could not tell anyone about the abuse because, in his view, his father would only believe his brothers. His mother would not believe him. His uncle F.C. allegedly told him that girls would laugh at him if they knew that somebody had been abusing him and this fear of being humiliated prevented him from complaining about the alleged abuse. He stated that he withdrew socially and had few friends growing up. On growing up he was concerned that he might abuse children himself as a result of his own abuse. His first marriage broke down after one of his sisters told his wife that he had been allegedly sexually abused in childhood. M.o.C. reported that he felt that his first wife rejected him because of the alleged abuse. He remarried in or about 2002.

67. He stated to Mr. Dempsey that he eventually complained to the Gardaí about the alleged sexual abuse in 1999, after being contacted by them in the course of their investigations into other allegations. He stated that he doubted he would ever have complained to the Gardaí if they had not contacted him. One reason for this was that his cousin J., his uncle F.'s son, had reported to him that he had complained to the Gardaí that he had been sexually abused by his father some years ago but that the Gardaí had brought J.C. back to his house and his father had beaten him. Having heard J.'s story he felt that if he had complained to the Gardaí he also would not be believed.

68. M.o.C. reported that a further factor that inhibited him from complaining to the Gardaí until relatively recently was that his sister, Je.C., told him that in 1987/1988 that she had complained to the Gardaí that she had been sexually abused by their father but her father denied it and the investigation appeared to have ended there. As a result of these accounts given to him by his cousin he felt that there would have been little point in complaining about the alleged abuse to the Gardaí. He stated that he attended counselling for approximately one year on the advice of the Gardaí following the making of the complaint to them.

69. Mr. Dempsey points out that he stated that he had allegedly been abused "*hundreds of times*" by his uncle and in his original statement to the Gardaí he reported that he had been allegedly abused between 50 and 80 times. An explanation put forward by Mr. Dempsey is that it is possible that his experience in counselling may have helped him to disclose the full extent of the alleged abuse.

70. Mr. Dempsey maintains that it is not possible to separate out the effects of the alleged abuse by his father and Uncle F.C. (the applicant). However, M.o.C. described being more fearful of his uncle than his father and that the alleged abuse by his uncle was over a longer period. In making the reference to his uncle it is clear that such reference was to the applicant herein. Mr. Dempsey considers that the delay in reporting the alleged sexual abuse to the Gardaí is "*reasonable*" in light of the reasons outlined above. He states it would be helpful to obtain a report from the counsellor he attended.

R.C. Jnr. – psychological evidence

71. R.C. Jnr. was born on 29 March 1975 and at the time of the interview (on 8 April 2003) was aged 28 years. He alleged that he had been sexually abused by his uncle F. (the applicant) from the age of 7 until 16 years. He reported that the alleged sexual abuse had ended because he was getting older and was able to defend himself.

72. He stated that as a consequence of the sexual abuse he felt dirty. He felt frightened of his uncle F. who warned him not to tell anyone about the alleged sexual abuse. He was told that if he told anyone about it he would be locked up for telling lies. He stated to Mr. Dempsey that he still to this day feels threatened by the applicant and, indeed, by the applicant's sons. He stated that one of F.C.'s sons threatened him after he made his complaint to the Gardaí in 1999. He moved to live in England after making the complaint to the Gardaí to escape the alleged sense of threat from F.C.

73. R.C. Jnr. informed Mr. Dempsey that he drank alcohol to excess as a result of the sexual abuse and has had to be hospitalised twice since going to live in England. On the first occasion he took an overdose of paracetamol. This, he said, was as a direct result of his alleged childhood sexual abuse. His second hospitalisation was as a result of his alcohol abuse. He told Mr. Dempsey that he was referred to St. John of God's Child and Family Clinic at the age of 12 years but was not sure why, nor was he sure to which clinic he was referred. He remembered attending the clinic approximately six times.

74. He said that he complained to his mother about being allegedly sexually abused when he was 7 years of age in 1982. He recollected that his mother brought him to the Garda station. There does not appear to be a record of any complaint made at the time. He reported that his father put pressure on his mother to withdraw these complaints. Mr. Dempsey states that a number of persons who he interviewed in relation to allegations of sexual abuse regarding the applicants reported that they, the applicants, always supported each other.

75. R.C. Jnr. made a further complaint to the Gardaí at the age of 14 years in 1989. This is included in the Book of Evidence. Mr. Dempsey states that it is clear from the statement he did not report or complain of all the incidents of alleged abuse that he currently reports he experienced from his uncle F.C. He said that he was too afraid to report on all the incidents of abuse at that time. He also stated that his mother was with him when he made the statement and he did not report all of the incidents of alleged sexual abuse as he would feel too embarrassed to have done so in front of his mother. A further reason for his reluctance to report the sexual abuse to the Gardaí was that he said he was apprehensive that his father would be physically abusive to his mother. He was also apprehensive that he would not be believed. An Impact of Events Scale assessment indicated that he was suffering symptoms of intrusion and avoidance that characterise post-traumatic stress. A Beck Depression Inventory indicated that he was currently experiencing depression to a severe degree. This level of depression was related to the alleged abuse in childhood. Mr. Dempsey points out though that his current level of depression is being maintained by his alcohol abuse.

76. Mr. Dempsey states that the reasons for R.C. Jnr. not reporting the alleged sexual abuse are understandable in terms of his own life experiences.

W.C. – psychological evidence

77. W.C. at the time of the interview was aged 24 years. He was born on 23 January, 1978. He stated that he had been assaulted from the age of 4 years to approximately 14 years. As a young child he had been frightened of his uncle F.C. He was worried about when the abuse would occur again. From the age of 10 years onwards he did manual work with his father and uncle F.C. when not in school. He would accompany his father and the applicant to the pub in the evenings after work and at the weekends. The alleged sexual abuse often occurred either in the toilets of the pub or after they had left it. A complaint was made to the Gardaí about the alleged sexual abuse. He stated that he did not remember making the statement and he did not know why it was withdrawn.

78. A further complaint was made to the Gardaí when he was eleven years old. This was after an incident in which the applicant, whilst driving his car, allegedly attempted to sexually abuse him and crashed into another car. This statement was subsequently withdrawn but he was not sure why. He reported that the alleged sexual abuse continued until he was aged 14 years when he punched the applicant F.C. on an occasion when F.C. allegedly tried to sexually abuse him. He stated that the applicant kept his distance from him after that incident. (On the basis of W.C.'s date of birth, this incident would have occurred around 1992 or 1993.)

79. He stated that eighteen months prior to making the statement to the Gardaí in 1999, he discussed the alleged sexual abuse with his cousin, M. He reported that at 14 years he had told his brother, R., that he had been sexually abused by his uncle F.C.

80. The Impact of Events Scale is a self-report measure of a person's reaction to a traumatic event. It indicated that W.C. characteristically used avoidance to deal with the impact of the alleged abuse. He stated that he never would have complained to the Gardaí about the abuse had his sister, K.N.C., not made a complaint. The Gardaí contacted him following K.N.C.'s complaint and he subsequently reluctantly made a statement of complaint to them. Mr. Dempsey states that W.C. dealt with the effects of the alleged abuse by avoidance and seeking to put the matter behind him.

81. It should be pointed out that the report relating to W.C. is quite different to those relating to many of the other complainants. It cannot be said that there is sufficient evidence that W.C. was significantly inhibited after the confrontation with his uncle. Nor is there an indication of ongoing fear, threat, intimidation of the type described in the other reports.

82. On the basis of this evidence, therefore, I am unable to conclude that dominion or its effects continued in the case of W.C. beyond the age of 14 years up to the date of his complaint of 1999. It cannot be said that he continued to suffer from "*the effects of abuse*" for any significant period during that time.

L.C. – psychological evidence

83. L.C. was born on 22 October, 1973 and was 29 years of age at the time of her interview with Mr. Dempsey. She reported that she had felt "*soiled*" and "*dirty*" in relation to the alleged sexual abuse.

84. She stated that at times she felt worthless. She wanted to put her alleged experiences of sexual abuse "*to the back of her mind*". She had left the country at the age of 23/24 years to start a new life away from the alleged abusive experiences. She had not attended for further counselling. The Impact of Events Scale test confirmed that her dominant reaction to the alleged abusive experiences was one of avoidance.

85. In Mr. Dempsey's view, L.C. was inhibited from reporting the alleged sexual abuse by her uncle F.C., the applicant, partly lest she be compelled to reveal the name of another individual who was allegedly sexually abusing her until she was in her twenties. L.C. is the daughter of R.C. and Mrs. M.C. Mr. Dempsey took the view that she was inhibited from complaining about the alleged sexual abuse partly out of loyalty to her mother, who, she reported, did not want her to identify this relative. She was further inhibited from reporting the alleged abuse by these three relatives to the Gardaí by her fear of the person whom she did not want to be named. She had stated that when she had previously complained about alleged abuse by another family member at the age of 13 years she was encouraged by her mother to withdraw the complaint.

86. Yet another factor that inhibited her from complaining about the alleged abuse by the applicant was her concern that she might

be encouraged to drop the complaints again.

87. In the course of her interview, L.C. alleged that her deceased paternal grandfather had sexually abused her a few times. She stated that she had been sexually abused by another male member of the C. family. She was unsure as to when the abuse by this person had started but she reported that she was still in primary school when it began and it only ended when she was 23 or 24 years of age. She did not want to name this person because of the fear of distressing members of her family. She reported that she remains "terrified" of this man. She stated that the applicant began to sexually abuse her when she was around 8 or 9 years of age.

88. She had complained to the Gardaí about the alleged abuse by this other relative when she was 13 years of age but she stated that her mother encouraged her to withdraw the complaint.

89. At the same age she had attended counselling sessions for a period of time in relation to alleged sexual abuse by the other relative. She stated she did not at that time disclose the alleged abuse by her grandfather or her uncle F.C. to the counsellor she attended. She did not know why she did not disclose the alleged abuse by her grandfather and the applicant at that stage.

90. Mr. Dempsey considered that it is not possible to separate out with precision the differential effect of the alleged sexual abuse she experienced from the applicant, her grandfather and the other relative. The assessments carried out indicated that her dominant response to the alleged abuse was one of avoidance and her delay in reporting the alleged abuse to the Gardaí was part of this avoidance response. She was finally motivated to complain about the alleged abuse by her uncle, the applicant, when her mother told her that she had complained to the Gardaí that she had been allegedly raped by the applicant.

91. In Mr. Dempsey's view the reasons for the delay in reporting the alleged sexual abuse by the applicant are "understandable" and, indeed, "reasonable" in the light of her own particular life circumstances.

92. In view of her ongoing fear as described above, I conclude that L.C. continued to be affected by dominion and the effects of the alleged abuse.

C.K. – psychological evidence

93. C.K. was born on 13 August 1975. He was aged 27 years at the time of the interview with Mr. Dempsey. It appeared that C.K. had been drinking either the day of the interview or the night before. He had only reluctantly agreed to the interview as he reported that he did not want to talk about the alleged abuse by the applicant as he found it so distressing. He stated that the thought of attending the interview had precipitated a drinking binge. He complained of suicidal ideation in relation to the alleged childhood sexual abuse by the applicant. He stated that the applicant, who was a friend of his father, began to sexually abuse him when he was 4 or 5 years. He alleged that the abuse included anal sex.

94. He stated that he is unsure as to when the alleged abuse had stopped although from the statement to the Gardaí, Mr. Dempsey inferred that it ceased when he attended secondary school.

95. He stated to Mr. Dempsey that he began to drink alcohol to excess to block out the memory of the abuse. He received in-patient hospital treatment for the physical effects of excessive drinking.

96. He believed he would never have complained to the Gardaí about the alleged abuse had they not contacted him in the first instance. He reported he said "it all came flooding back" when the Gardaí contacted him.

97. Mr. Dempsey concluded that Mr. K. had given a credible account of the alleged abuse in childhood and stated that he would not have reported or made complaints about the alleged abuse had he not been contacted by the Gardaí. In Mr. Dempsey's opinion the delay in reporting the matter to the Gardaí is "understandable" in terms of his life circumstances.

Previous complaints to persons other than the Gardaí

98. In the course of the affidavit sworn on his behalf by his solicitor, Mr. Eagar, the following previous complaints to persons other than members of the Gardaí are adverted to.

1. Mrs. M.C. spoke to her daughter, K., about one of the alleged incidents of rape when K.C. was aged 18 years. This apparently occurred some time in 1984.
2. She may also have told her husband R. but cannot remember.
3. The statement of R.C. Jnr contained in the Book of Evidence indicates that he recalls his mother, M.C., discussing alleged abuse with her daughters when Richard was aged 7 or 8 years of age, in 1982 or 1983.
4. Mrs. M.C. also stated she made an allegation to Mr. Griffin, the principal of the National School, stating that R.C. Jnr and W.C. had been abused, when they attended school there but it was not clear when that complaint was made.
5. Mrs. M.C. also stated that she and her daughter, M., went to a neighbour P.D.'s house and made an allegation that the applicant was abusing her (the neighbour's) son M.D. It is unclear when this occurred.
6. K.C. made previous complaints when she was aged 15 to a general practitioner, Dr. Curry.
7. Four years prior to her making the statement to the Gardaí in 1999, she had also made a complaint to Dr. Geraghty in or around 1995, at which time she had also attended a counsellor called Abigail, for a few weeks and also reported the alleged abuse around the beginning of 1999 to Dr. Wheatley, at an unknown date to her husband, D.N., in or around the early 1990s and also a counsellor named Sue Kane, who she had been attending since 17th June, 1999.
8. M.C. may have told his sister, J.C. He also may have informed his ex wife, N.S., some time in 1993. About three years prior to making his first complaint to the Gardaí in 1999 the complainant M.C. attended a counsellor called Roger. He also discussed the alleged abuse with one of the other complainants, namely R.C. Jnr, in 1998. He told his sisters that he was being abused.
9. With regard to R.C. Jnr., the complainant told his brother, W.C., one of the other complainants, about the alleged abuse when he was approximately 8 years of age.

10. He also informed his mother, M.C., one of the other complainants, about the alleged abuse.
11. He further stated that he told Dr. Corcoran and another doctor at H.S. Children's Hospital. This would have been in or around July 1982. Dr. Corcoran denies that R.C. told him that he was being sexually abused.
12. He also states that he told his former girlfriend, E.L., in or around 1996.
13. He also states that he told his cousin, M.oC., one of the other complainants, about the alleged abuse a couple of years prior to his making the statement to the Gardaí on 15 June 1999.
14. He also told his sister, M., about the alleged abuse "years later".
15. With regard to W.C., he (W.C.) made complaints to Dr. Curry on 25 November, 1986. He discussed the alleged abuse with R.C. Jnr., one of the other complainants, after one alleged incident on an unspecified date.
16. He also stated that he discussed the alleged abuse with M.C., one of the other complainants, about one and a half years prior to making the statement to the Gardaí on 30 September, 1999.
17. L.C. stated that when she was 22 or 23 years of age she discussed the abuse with either M.oC. or R.C.
18. She also discussed the alleged abuse with W.C., one of the other complainants, three months prior to making her statement to An Garda Síochána.
19. C.K. stated that when he was approximately 12 years of age he told two friends, M.R. and P.W. about the abuse. It also appears from the Book of Evidence that the complainant made an allegation to Mr. Dave Watchaco sometime in the 1980s that he had been abused by the applicant, F.C.

The unusual features of this case

99. It is undeniable, however, that in this case as distinct from others decided in the past before these courts there are the following unusual and perhaps unique factors:

- (a) the familial relationship between the vast preponderance of the complainants save C.K. and the respondent;
- (b) the close proximity in which they lived;
- (c) the continuing fear which the complainants save W.C. have of the applicant and his brothers;
- (d) the specific incidents of intimidation described by complainants in relation to the applicant;
- (e) the evidence of dominion on the part of the applicant, F.C.;
- (f) the fear described by complainants such as to be felt even up to the present day;
- (g) the evidence regarding the character of F.C. as set out in a statement by his son, J.C., contained in the Book of Evidence and which makes allegations of exceedingly disturbing treatment by his father F.C.;
- (h) the testimony of Detective Sergeant Byrne that J.C., even to this day, felt he could not go through the experience of giving evidence in such a case. The extraordinary account of the allegations made by J.C. in his statement in the Book of Evidence, would perhaps stand unique in the category and range of cruelty in all cases of alleged sexual abuse if proved in court. I do not consider it appropriate to recite this material in detail on the basis of prejudice which might arise in circumstances where J.C. is not a complainant
- (i) the earlier conduct of F.C. regarding the withdrawal of complaints in the early 1980s and in the 1986/1987 period;
- (j) the evidence that each of the brothers acted in concert for and on behalf of each other. It is to be noted that Detective Sergeant Byrne described the C. brothers and, indeed, the family, as being "a *mini Mafia*". Just as it is not possible to distinguish the effect of the dominion felt by the complainants, equally it is not possible to distinguish acts carried out at the behest of the brothers by other family members, e.g. F.C.'s sons, in an effort to dissuade complainants from proceeding with their complaints or, indeed, to induce the complainants to withdraw their statements of complaint.

100. In these cases, therefore, it seems to me that there is not simply an example of "dominion" in a narrow technical sense but real fear caused by the actions and conduct of the applicants.

Delay per se

101. I am not persuaded that the delay which occurred in this case is sufficient in itself to justify an order for prohibition. The delay is undoubtedly unusual. However, the courts have countenanced longer elapses of time in cases such as *S. v. D.P.P.* (unreported, Supreme Court, 19 December 2000, McGuinness J.) and others.

102. Moreover it is clear that the conduct and character of the applicant has been the major cause of the factor to the elapse of time which has occurred since the time of the alleged offences and the dates of complaint.

103. I am satisfied that this applicant managed to preserve a *status quo* on the basis of fear, intimidation and threats. Undoubtedly complaints were made to the Gardai at earlier times. These may include the years 1981, 1982, 1986 and 1989. However, such complaints as were made in the earlier years, 1981 and 1982, were not recorded. Those in the later years, 1986 and 1989, were quickly withdrawn. The circumstances surrounding such withdrawal have been described above. Such withdrawal occurred on foot of pressure and intimidation exercised either by F.C. or his wife S.C., or in the case of the withdrawal of the 1989 complaints, intimidation by R.C. of his wife Mrs. M.C.

Common prosecutorial delay

104. On behalf of the applicant it is pointed out:

- 1) That the Gardaí for no apparent reason allowed approximately 10 to 13 months to pass before moving to put the complaints to the applicant.
- 2) After the applicant was charged on 13th July, 2000 a further period of approximately nine months passed before he was served with a copy of the book of evidence.
- 3) From the date on which the applicant was charged, namely 13th July, 2001, a period of fifteen months passed before he was sent forward for trial.
- 4) The applicant was sent forward on an invalid return for trial and between the date of the return and the institution of the proceedings herein, a period of approximately five month elapsed where no steps were taken by the prosecution to quash the invalid return for trial.
- 5) The offences alleged against the applicant are separate and distinct to those made against other persons. There are only 35 witnesses in the Book of Evidence, including the seven complainants.

105. It is true that an elapse of time which is significant, perhaps even exceptional has occurred here. The factual matters set out in indents 1 to 5 are not in dispute. But does this constitute prosecutorial delay proper? The principles applicable here have already been discussed by Geoghegan in *P.P. v. D.P.P.* [2000] 1 I.R. 403. I refer to these in the course of my judgment herein in the B.C. case given today. I also rely on the judgment of McCracken J. in the case of *M(J) v. D.P.P.* (unreported, Supreme Court, 2004). I do not think there has been inordinate, unnecessary or blameworthy delay on the part of the authorities. The immense detail in the investigation has been described Detective Sergeant Byrne's evidence and affidavit, as already indicated.

106. This Court must have regard to the inherent complexity of the investigation, having regard not only to the interviews which had to be carried out in the investigation of the case against F.C. but also all other investigations herein and the inter-relationship between the complainants as well as the applicants. The case of each applicant must be considered separately so as to identify whether delay has been blameworthy. In the circumstances, therefore, I am satisfied that the elapse of time which has occurred has been explained adequately by the respondent even though it is indeed unusual.

107. There is no evidence at all that the present investigation was slovenly in nature or carelessly carried out. Indeed it is noteworthy that such a proposition was hardly put to Detective Sergeant Byrne in the course of his evidence. Insofar as the assertion of prosecutorial delay is made I conclude that the applicant has failed to discharge the onus of proof to identify any conduct which is blameworthy or lackadaisical, and thus is not entitled to prohibition on this ground.

Complainant Delay

108. This case shares the "*common factors*" outlined earlier in the case of B.C.

109. However the following points are of particular relevance regarding the issue of dominion. In this case the dominion was not confined to the simple relationship between the parties. There is ample evidence that the conduct of the applicant on his own behalf and on behalf of other persons has been such as to constitute a continuation of dominion up to the time of the making of the complaints. There is ample evidence that such conduct constitutes a continuation of the effects of the relationship between the complainants and the respondent. The court is assisted by the evidence of Mr. Dempsey on the factual background. What is more important is that the evidence which he tendered clearly bears out the other testimony regarding the state of fear and dominion existing between all the complainants (save W.C.) and the respondent. Taken together with their own affidavits, it demonstrates the fear which the complainants, save W.C., have of F.C. In this context the court is entitled to place weight on the sworn evidence of the complainant. Greater weight can be placed on this evidence than a generalised denial such as that made by the applicant. Such generalised denial is accompanied by somewhat vague and evasive comments when he seeks to assert that he had no part and conduct amounting to dominion. The court rejects this contention. It is not reconcilable with the specific evidence of the visit which the applicant and his wife, S.C., paid to the complainant, Mrs. M.C., which led to the withdrawal of the complaints in 1986. It is inconsistent with the evidence which I accept that Mrs. M.C. was beaten by her husband R.C. after making a complaint regarding the applicant in 1989. A pattern and sequence of events is self-evident. The short time-span which elapsed between the making of complaints and their withdrawal in 1986/1987 speaks for itself. The evidence of R.C. Jnr was that he was threatened by sons of the applicant, and that he was afraid of them after he made his complaints, is evidence of dominance. Taken together these factors demonstrate an evidence of culture and intimidation exercised by F.C. himself and through his family members on the complainants, save W.C. The conduct of the applicant in this case indeed is more consistent with a type of oppression as opposed to dominion in a narrow technical sense.

Actual prejudice

110. It is now necessary to consider the submissions regarding actual prejudice. It is contended that the applicant's mother died on 24 August, 2000. She suffered from senility for a year prior to her death. No evidence is adduced that the applicant's mother would have relevant or material evidence to give in the trial of the applicant.

111. The applicant's father died on 12 February, 1983. Similar considerations apply here. Indeed the indications are that the applicant's father might have been an entirely unhelpful witness from the point of view of the accused person. No evidence was tendered even of a speculative type as to how and in what manner the absence of these particular persons would have a specific prejudicial effect upon the applicant and upon his undoubted right to a trial in due course of law.

112. It is alleged that the charges are broad and lack precision. However in *P.C. v. Director of Public Prosecutions* [1999] 2 I.R. at p. 25 the Supreme Court (per Lynch J., Hamilton C.J. and Barrington J. concurring) held that the lack of specificity in charges in a child sexual abuse case is not a valid cause for complaint.

113. It is contended that the applicant is unable to identify witnesses who may have material evidence concerning his presence and conduct in the relevant periods. However, no *specific* material is tendered in evidence to demonstrate the identity of such alleged witnesses. Nor is there any evidence regarding the manner in which the testimony of such persons might be relevant or material to the applicant's case. This is of particular relevance in view of the fact that the offences are alleged to have taken place in circumstances where in any case there would have been no eyewitnesses. The evidence on this point is not adequately particularised, specified or identified.

114. I conclude that such of the matters which have been cited as constituting prejudice will best be dealt with by the trial judge.

115. Allegations are made in the course of the affidavit sworn on behalf of the applicant that earlier complaints referred to in the course of this judgment had been made regarding the applicant. Alternatively it is contended that the complainants had the opportunity of making the earlier complaints regarding the applicant and did not do so. I do not consider that there is any merit in these contentions, by reason of the dominion outlined earlier in this judgment.

116. The applicant also makes the point that when R.C. made his statement to the Gardaí of 15 June, 1989, aged 14, he stated "*the last occasion (the applicant) interfered with me was about four years ago*" (i.e. when he was approximately ten years of age), yet in the statement which he made to the Gardaí on 15 June 1989 he states that "*the last time (the applicant) abused me I was around 13 years of age ... I know that I said in my statement the last time (the applicant) abused me was four years ago – that is wrong*". This inconsistency is a matter that can be dealt with by the trial judge in the course of directions to the jury.

The Personality of the Applicant

117. In the course of her judgment in *B. v. D.P.P.* [1997] 3 I.R. 203 Denham J. stated: "[T]he events in this case are governed by what the learned trial judge described as the applicant's *'violent dominant and menacing personality. This dominance is the kernel reason for the delay and the factor carrying most weight.'*" I consider that this language constitutes an apposite summary of the circumstances surrounding the present case.

Extension of time

118. The court has already dealt with the question of extension of time in the context of other judgments. For the grounds set out in the affidavit of Robert Eagar I will extend the time for leave to seek judicial review to the date of the making of the application if such were necessary.

Decision

119. The evidence regarding the complainant W.C. does not establish that there has been a continuation of dominion or its effects. The alleged offences in question relate to incidents alleged to have taken place between the 3 October 1984 and 31 December 1992. There is therefore evidence of inordinate delay on the part of the complainant for which no explanation has been offered which would justify such delay. For this reason the court will grant prohibition in relation to charge sheets 108 to 130 of 2001 in the Book of Evidence.

120. It has been accepted by the respondent that the applicant is entitled to a judicial review by way of *certiorari* on the grounds of the decision in *Zambra v. McNulty* [2002] 2 I.R. 351. I will grant relief on those grounds.

121. The court is not disposed to grant an order of judicial review by way of prohibition on the grounds of delay in relation to the other charges.