

THE HIGH COURT

[2003 No. 740 JR]

BETWEEN

G.C.

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Clarke delivered 16th February, 2006.

1. Introduction

1.1 In these proceedings the applicant seeks to restrain a trial on four counts of indecent assault in relation to his niece, Y.M. together with 12 counts of indecent assault in relation to R.M., a sister of Y.M. and, therefore, also a niece of the applicant. On 17th October, 2003 this court (Kearns J.) gave leave to bring an application for judicial review seeking an order of prohibition or alternatively an injunction to restrain the respondent ("the Director") from continuing to prosecute those charges.

1.2 While there are a large number of issues raised in the statement of grounds, the case made on behalf of the applicant, insofar as proceeded with at the hearing before me, is based on the delay which has occurred between the time of the alleged offences and the bringing of the matter to trial. In general terms three separate grounds are relied upon, that is to say:-

A: Complainant delay. It is submitted that, having regard to the established jurisprudence, there was inordinate delay in making complaint to the authorities which, in all the circumstances of the case, should result in a prohibition on the trial going ahead;

B: Prosecutorial Delay

It is suggested that there was an unacceptable delay in the commencement of the proceedings from the time when initial complaint was made to an Garda Síochána; and

C: Delay Per Se

It is suggested that the overall delay is such that it entitles the applicant to an order of prohibition on that ground alone.

2. The Facts

2.1 It is necessary, however, to commence with the review of the factual circumstances surrounding the position of each of the complainants, the time at which the relevant offences are alleged to have occurred, the age of the complainants at the relevant time and the circumstances in which complaint was made. In those circumstances I set out a chronology, derived from the affidavit evidence, which is based on a similar table included in the written submission filed on behalf of the applicant.

3rd September 1940 Applicant's date of Birth

4th September 1972 Y.M. born

24th January 1974 R.M. born

4th September 1979 First date referred to in charges

3rd January 1985 Last date referred to on charges

c. 1992 Death of Ms. A.M.

28th July 1996 Death of Mr. T.D.

5th February 1999 -

7th March 1999 Y.M. attends Aiseiri and discusses alleged abuse with Sr. E.F.

c. March 1999 Y.M. discusses allegations with her sister D.H.

c. March 2000 R.M. discusses allegations with her sister D.H.

11th March 2001 R.M. made formal complaint

9th April 2001 Y.M. made formal complaint

12th April 2001 Applicant detained and questioned

23rd May 2001 Applicant charged before District Court

18th July 2003 Applicant sent forward for trial

2.2 As will be seen from that chronology the offences are alleged to have occurred over a period of some four and a half years between September 1979 and January 1984. It should also be noted that the offences in respect of Y.M. are alleged to have occurred over the full spectrum of the dates that appear in that chronology. Therefore Y.M. was aged between 7 and 13 years at the relevant time. The earliest date in respect of which an alleged offence occurred relating to R.M. is 1st January, 1982 while the last date in her case is 31st January, 1984. It is, therefore, the case that she was, at the date of the alleged offences, aged between just short of 8 and 10.

The applicant during the relevant period was aged between 39 and 46.

2.3 In addition, the formal complaints were made to An Garda Síochána in March and April 2001 when the applicants were, respectively, 27 and 28 years of age. Those complaints were made between 16 and 22 years after the alleged offences occurred.

It should also be noted by way of general background that it was clear on the evidence that the making of complaint to An Garda Síochána in both cases was, at least in part, influenced by the fact that other members of the family of both complainants made complaint against the applicant at or around the same time.

2.4 The hearing before me was conducted principally on affidavit but the affidavit evidence tendered on behalf of the Director from Ms. Ruth Yoder, a psychologist, was subject to cross examination. Before reviewing the affidavit evidence and the oral evidence of Ms. Yoder it seems to me that it is appropriate to set out the legal principles by reference to which the undoubted jurisdiction of this court to stay criminal proceedings in cases of delay is to be exercised.

3. The Law on Complainant Delay

3.1 I had recent occasion to review the legal authorities on complainant delay in *T.C. v. D.P.P.* (Unreported, High Court, Clarke J., 16th December, 2005). At paragraph 3.3 of that judgment I noted that the first question that must always be asked is as to whether there has been long delay. Assuming that there has, then the court next has to consider the adequacy of any explanations offered for such delay.

3.2 In this case, as I did in *T.C.*, I propose to follow the summary of the fundamental principles for assessing such delay set out by Fennelly J. in *P.L. v. Judge Buttimer and Another* (Unreported, Supreme Court, Hardiman, Geoghegan and Fennelly JJ, 20th December, 2004) in the following terms:-

- “1. Long delay by a complainant in making a complaint of sexual abuse may be explained by the fact that the accused, by reason of disparity of age combined with the tenure by the accused of a position of trust and authority over the complainant;
2. For the purposes of the inquiry as to whether the delay is explicable, but not further, it should be assumed that the allegations of sexual abuse are true;
3. Delay, even after the end of period when the accused is in a position to exercise dominion, may be explained by showing that the alleged sexual abuse continued to affect the complainant in the sense that he or she was psychologically inhibited from complaining. In deciding this issue, psychological or psychiatric evidence may be relevant, but is not essential. All the relevant circumstances of the particular case must be considered. The question is not simply whether the complainant continues to be affected by the alleged abuse, but whether such effects constitute a reasonable explanation for the delay in complaining;
4. The burden of proving that the trial should be prohibited lies on the applicant. However where the delay is *prima facie* such as to give rise to a presumption that the applicant’s right to a fair speedy trial is infringed, the court will have regard to the adequacy of any explanation offered by the complainant.”

3.3 I also noted, at paragraph 3.7 of the judgment in *T.C* that:-

“Reasons for delay in reporting which may well be reasonable from the prospective of the complainant concerned may not be sufficient to excuse the delay in law”.

3.4 In that regard I placed reliance on the judgment of Keane C.J. in *P.M. v. Malone* [2002] 2 I.R. 560 at p. 580 where the view was expressed that the complainant in that case:-

“Made a conscious decision, as an adult, not to proceed with the complaint for reasons which seemed good to her at the time but which were not the result of any dominion exercised over her by the applicant”.

3.5 Furthermore at paragraph 3.8 of the judgment in *TC* I went on to note that:-

“If, in accordance with the above jurisprudence, the delay on the part of the complainant is regarded as explicable it is also necessary for the court to consider whether, having regard to any prejudice which may have been suffered by the applicant as a result of the delay, considered in accordance with the test identified by Finlay C.J. in *Z. v. D.P.P.* [1994] 2 ILRM 481, the accused may no longer be able to have a trial in accordance with fair procedures.”

3.6 The relevant passage from the judgment in *Z.* is to be found at p. 498 where Finlay C.J. commented as follows:-

“This court in the recent case of *D. v. D.P.P.* unanimously laid down the general principles of the onus of proof which is on an accused person who seeks an order prohibiting his trial on the grounds that circumstances have occurred which would render it unfair, is that he should establish that there is a real risk that by reason of those circumstances ... he could not obtain a fair trial”.

A further passage from the same judgment noted that the relevant onus was:-

“An onus to establish a real risk of an unfair trial ... (this) necessarily and inevitably means an unfair trial which cannot be avoided by appropriate rulings and directions on the part of the trial judge. The risk is a real one but

the unfairness of trial must be an unavoidable unfairness of trial”.

3.7 I also noted at paragraph 3.8 of the judgment in *T.C.* that Denham J. had found in *P.C. v. D.P.P.* [1999] 2 I.R. 25 that counsel in that case had correctly accepted:-

“That if the applicant is the cause of the delay he cannot take advantage of what he caused, subject to a reservation that after a certain length of time no matter who caused the delay there may not be a fair trial”.

3.8 Finally, as in *T.C.*, it is appropriate that I should note that a significant aspect of the written submissions filed in these proceedings on behalf of the Director concerned an argument to the effect that the appropriate time frame in respect of which the court should consider delay is the time subsequent to the making of complaint to the Garda authorities. As in *T.C.* it was accepted that there was clear and recent authority from the Supreme Court which was against the proposition sought to be argued. For those reasons counsel confined herself to a formal argument of the matters set out in the written submissions for the purposes of preserving her position in relation to a possible appeal. It was, as in *T.C.*, accepted that so far as this court is concerned I was bound by the current jurisprudence of the Supreme Court and was required to approach the case on the basis that it was necessary that I should have regard to delay in accordance with the established jurisprudence and thus consider delay up to the time of the making of the original complaint to the authorities as well as delay thereafter.

3.9 Consequent upon that review I summarised the issues which require to be addressed at paragraph 3.10 of the judgment in *T.C.* in the following terms:-

- “(i) has there been excessive delay;
- (ii) if so is that delay excusable. Insofar as the delay is complainant delay have the tests outlined in *P.L.* being met
- (iii) having regard to the answers to issues (i) and (ii) and any other relevant circumstances including any prejudice to the applicant can it be said that the applicant has established that he cannot have a trial in accordance with the principles of constitutional justice”.

4. Applications to Facts of this Case

4.1 The delay in the commencement of the proceedings with which I am concerned insofar as it is attributable to the complainants has undoubtedly been significant. In those circumstances it is necessary to give a detailed consideration to the explanation proffered on behalf of the Director for the delay concerned. In that regard, in each case, the Director caused a psychological assessment to be conducted in respect of each complainant. The assessment was carried out by Ruth Yoder, a Clinical Psychologist attached to the Institute of Psycho-Social Medicine. Ms. Yoder was asked and answered specific questions raised with her on behalf of the Director and incorporated her views into reports relating individually to each of the complainants. Ms. Yoder swore an affidavit verifying the contents of those reports and was subject to cross examination on that affidavit.

4.2 Furthermore each of the complainants swore an affidavit in these proceedings. On the basis of the authorities referred to above it must be assumed, for the purposes of ascertaining whether there is, in accordance with the jurisprudence of the courts, an adequate explanation for any complainant delay, that the account of the complainant in respect of the alleged offences is correct. There is not, of course, any such presumption in relation to any other aspects of the accounts of the complainants. However while Ms. Yoder, as I have indicated, was subject to cross examination on her affidavit it should be noted that the complainants were not cross examined. Nor was any evidence tendered on behalf of the applicant which was directed towards the relevant factual and psychological issues which arise in respect of each of the complainants. In the circumstances the state of the evidence in respect of the psychological state, at all material times, of each of the individual complainants consists of the affidavits sworn by that complainant together with the expert evidence of Ms. Yoder with only the latter being the subject of cross examination.

4.3 In a number of the authorities to which I have been referred, expert evidence such as that given by Ms. Yoder in this case, has been tendered. It has been stated that while such evidence may be useful, the court remains entitled to bring to bear on the situation its own view from common experience in relation to the delay issues in proceedings such as this. I propose to approach the issues which arise in that manner.

4.4 The letter written on behalf of the Director, which requested Ms. Yoder to interview the complainants, invited her to prepare a written report in each case as to her professional opinion concerning the following matters:-

- “1. The nature of the relationship between the Applicant and the Complainants having regard to the issue of dominance.
- 2. The effect (if any) which the alleged abuse had upon the Complainants.
- 3. What reasons existed for the Complainants’ failure in each case to make a complaint to the Gardaí at an earlier date?
- 4. Whether their failure to come forward earlier was referable in anyway to the effect of the alleged assaults of the Applicant or any of his actions and/or the nature of the Applicant’s relationship with the Complainants.
- 5. Whether the delay in coming forward was reasonable in the circumstances”.

4.5 For the purposes of compiling her report Ms. Yoder was supplied with relevant documentation including the statements made by the respective complainants to the Garda Síochána which formed part of the book of evidence in the case. She also conducted an interview with both of the complainants. In the course of that interview process she applied certain psychological tests to each of the complainants. I will return to certain aspects of those tests in the course of assessing the position in respect of each individual complainant. The results of Ms. Yoder's interview and testing were, in certain significant respects, different as and between the two complainants even though her overall conclusions, so far as they related to the issues which the court has to address, were the same. In those circumstances it seems to me to be appropriate to approach the issues which arise individually in respect of each complainant. I therefore turn to those individual cases.

5. The Case of Y.M.

5.1 In the case of Y.M. an interview, which appears to have taken in total some two hours, took place. The interview occurred on the same day as the interview with R.M. In addition to the interview, Y.M. completed two tests the first of which is called a standardised psychometric test:- "the 16 personality factor questionnaire – fifth edition". This test is designed to assist in the assessment of the interviewee's personality. Y.M. was also given a test for the purposes of ascertaining a trauma symptom inventory. This test is designed to measure post traumatic symptoms and to assist in the diagnosis of post traumatic stress disorder. As a result of the interview and those tests Ms. Yoder came to the following view as to the personality, social and emotional functioning of Y.M.:-

"There was evidence of emotional impairment and (Y.M.) projects an immature and socially unsophisticated personality. Standardised personality test results reveal that in her style of relating, (Y.M.) is socially distant from people. She confirmed that she rarely socialised outside of her extended family in the last few years. She shows a typical level of forethought before speaking or taking action, but is shy, timid and threat-sensitive, preferring stability and predictable environments. She is vigilant, likely to question the motives of others even when there is no apparent reason for doubt, less likely to take people at face value, and expecting to be misunderstood".

5.2 More specifically Ms. Yoder went on to conclude that Y.M. "survived growing up in a large poor family marked by alcoholism and violence. Her emotional and psycho-social development was significantly slowed by her succumbing to the numbing effects of drug abuse, rather than working through her traumatic experiences. Although she was technically an adult, she was emotionally and psychologically very immature and is still catching up".

5.3 On that basis Ms. Yoder offered the opinion that Y.M. was not emotionally or psychologically strong enough to independently come forward with allegations and only did so approximately one year after she completed drug rehabilitation and only when she discovered that other members of her extended family, including her own sisters, were making similar allegations.

5.4 In the case of Y.M. I am satisfied that there was an ample basis for those conclusions. Ms. Yoder was subjected to detailed cross examination in relation to the methodology of and principles behind, the testing methods used. While it is true to state that the testing methods place significant reliance upon the views expressed by the interviewee I am satisfied that there are contained within the questions, measures designed to identify cases of exaggerated or untruthful answers. For example there are similarly worded questions designed to ascertain consistency by reference to a "consistency scale". There are also scales designed to flag unusual or outrageous answers. Even though the interviewee might be aware that the continuance of the criminal process was, in part, dependent on the results of the interview process (including the test), the answers which were liable to give a favourable result from that perspective would not necessarily be obvious in many cases.

5.5 In those circumstances I am satisfied on the evidence that Ms. Yoder's conclusions in respect of Y.M. are correct. On that basis I am satisfied that Ms. Yoder was correct in forming the view that the applicant was in a dominant position in his relationship with Y.M. I am also satisfied that her evidence concerning the difficulties encountered by Y.M. as a result of the alleged offence (and assuming for this purpose that the allegations are true) were as set out in her report and gave rise to sexually dysfunctional behaviour, hyper vigilance regarding her children's safety, significant post traumatic symptoms and depression. For the reasons specified by Ms. Yoder I am satisfied that the effect of the dominance of the applicant over Y.M. was such that it was likely to continue for a significant period of time after she achieved full age. I accept Ms. Yoder's evidence to the effect that it would have been likely to have required some external event, such as therapy and/or the fact that other complaints were being made in respect of the same individual, to bring about a situation where the psychological inhibition which prevented her from making formal complaint was removed.

5.6 In all the circumstances I am satisfied that there is an adequate and appropriate explanation tendered for the complainant delay in the case of Y.M. I now turn to the case of R.M.

6. The Case of R.M.

6.1 R.M. was also the subject of a two hour interview which appears to have run, at least in part, in tandem with both the interview process with Y.M. and the tests applied in both cases. R.M. was given the "16 personality factor questionnaire – fifth edition". However she was not given any test designed to measure post traumatic stress. In evidence Ms. Yoder indicated that the reason for not administering that test was that R.M. did not report many post traumatic symptoms and that in those circumstances she did not see any point in administering that test.

6.2 Having regard to both the interview and the personality test Ms. Yoder came to the following view concerning R.M.:- "Standardised personality test result reveal that in her style of relating (R.M.) is as attentive to and interested in others as

most people are. She is averagely self sufficient and typical of most people in her unwillingness to disclose personal information. She is lively and enthusiastic and at least as socially confident as most people. She is likely to express an opinion but defer to others when appropriate and is trusting, unsuspecting and accepting. In her style of thinking, (R.M.) is practical and solution orientated, attending to details, responding to what is immediately necessary, basing decisions on logic and objectivity. She values traditional ideas and beliefs and is as rule conscious as most people. She is a perfectionist, organised, self disciplined, and more inclined to plan ahead than most people". Ms. Yoder concluded that R.M. was tough minded and resolute.

6.3 Ms. Yoder did report that R.M. had apparently, suffered some post traumatic symptoms. In addition it was noted that R.M. had given a history of bulimia. Ms. Yoder was cross examined at some length as to what was suggested was an apparent contradiction between her decision not to apply a test for post traumatic stress (as she had done in the case of Y.M.) on the one hand and her statement that R.M. was suffering from post traumatic symptoms on the other hand. Perhaps her ultimate explanation is to be found in her answer to question 332 (24.1.2006) where she said the following:-

"I don't know if she, well, I wouldn't have diagnosed her with any psychiatric illness because she was, she was functioning from day to day, she was carrying out all her necessary responsibilities, she was working, she was in a stable relationship so she was indeed suffering from the symptoms but they were not disabling her".

6.4 Having regard to her healthy personality, as found by Ms. Yodar, and the absence of disabling symptoms, a more serious question arises in the case of R.M. than in that of Y.M. as to whether it can be said that the dominance which her uncle undoubtedly exercised over her at the time of the alleged offences could be said to have continued up to the time when she first made complaint to An Garda Síochána.

6.5 In Ms. Yoder's view R.M. dealt with the undoubted difficulties which she suffered in childhood (not only as a result of the alleged sexual abuse) by means of avoiding reminders of the alleged assaults and reducing tension by attempting to impose order on her life. In those circumstances Ms. Yoder attributed the absence of any earlier complaint to the authorities to an unwillingness on the part of R.M. to put at risk (as R.M. apparently believed coming forward would do) what she had struggled to achieve. On balance I have concluded that Ms. Yoder's view is correct and sustained by the evidence.

6.6 Different people deal differently with the same or similar trauma. While some may be unable to cope to any great extent, others attempt to deal with the trauma by seeking to impose order on their lives. Of course there may be still others who have suffered trauma but whose lives are orderly simply because they have, either by virtue of having a robust personality or with the assistance of therapy, come to deal with the incidents that gave rise to the trauma in the first place. However not all who apparently cope with day to day living will necessarily do so by having reached an adult view of the trauma itself. For some an apparent coping with the day to day difficulties of life will simply be a method of excluding the trauma from their consciousness. Such persons, even though superficially unaffected (or less affected) by the trauma, may nonetheless be subject to a continuing psychological inhibition sufficient to justify a failure to report.

6.7 On balance I am satisfied on the evidence that R.M. is such a person and that there was, at all material times, therefore a psychological inhibition on her reporting the alleged offences.

7. Prejudice

7.1 It is, of course, well established that in considering the prejudice which may have been caused by any delay the court must have regard both to general or presumptive prejudice on the one hand and any item of specific prejudice relied upon on the other hand. The general or presumptive prejudice stems from the fact that, in any case, there will necessarily be difficulties encountered in dealing with factual issues which occurred a significant period of time prior to trial. The extent of that prejudice will, of course, depend on a variety of surrounding circumstances. In many cases involving an allegation of sexual abuse, irrespective of the time at which the issue comes to trial, there may well only be evidence from the complainant and the accused. That is not to say that the ability to test the veracity of the evidence of either complainant or accused may not, in every case, be impaired to some extent by lapse of time.

7.2 However, in addition to such general or presumptive prejudice, it is also necessary to consider whether it can be shown that the accused has suffered a specific prejudice by reason of the unavailability of material evidence which would or might well have been available had the matter come to trial at an earlier stage. As appears from the chronology set out at paragraph 2.1 above Ms. A.M. died in 1992. She was the mother of both complainants. Furthermore that chronology notes the death on 28th July, 1996 of Mr. T.D. He was a person who worked in a shop run by the applicant. Some of the allegations of sexual abuse made by the complainants refer to incidents which allegedly took place in that shop. Other incidents are alleged to have taken place at the home where the complainants lived with their mother.

7.3 In those circumstances it is contended that both A.M. and T.D. might have been in or around the locus of the alleged incidents at material times and would, therefore, have been in position to give relevant evidence.

7.4 However both complainants gave sworn affidavit evidence to the effect that the applicant was always careful to commit his alleged acts of abuse on occasions when he was alone with them in either location. For the purposes of this application that contention is not contested. On that basis it does not seem to me that any case for specific prejudice has been made out. Furthermore the general contention relied upon on behalf of the applicant, to the effect that persons now unknown and unavailable to the applicant might have been in a position to discredit the complainant's testimony at trial by virtue of the fact that the locus of the alleged incidents was a public shop where such persons might have been present, also seems of little weight in the light of the case which, it appears, will be made at trial based upon the fact that the alleged incidents occurred when no one else was present.

7.5 In those circumstances it seems to me that the prejudice in this case is confined to the general or presumptive prejudice which arises by virtue of the significant lapse of time between the alleged incidents and the likely date of trial.

8. Prosecutorial Delay

8.1 It is next necessary to turn to the case made by the applicant to the effect that the delay between the making of complaint by each of the complainants to an Garda Síochána, and the bringing of charges, amounts to an unacceptable delay on the part of the prosecution authorities. In relation to this aspect of the case affidavits were sworn by David Gormally, a professional officer in the office of the Director and by Garda Ann Tierney who was centrally involved in the investigation of the allegations. Neither was subjected to cross-examination on their affidavits. On that basis it would appear that there is uncontested evidence as to the sequence of events which followed from the making of complaints to An Garda Síochána.

8.2 It seems that allegations of sexual assault were made as against the applicant by six persons. Five of them (including Y.M. and R.M.), are nieces of the applicant. The sixth person was a grandniece of the applicant. It seems that the matter first came to the attention of the Gardaí when the mother of the grandniece concerned made allegations of a contemporary assault in February, 2001. At the same time it would appear that a complaint was made by a niece of the applicant (other than Y.M. or R.M.) to a separate Garda station complaining of an assault alleged to have occurred in 1984. Garda Tierney set out on affidavit, evidence of having conducted a detailed series of interviews with each of the persons concerned together with others who appeared to be in a position to offer evidence. Those interviews took place over a period of approximately three months. In the middle of that process the applicant was arrested and questioned but declined to make a statement or to answer any questions.

8.3 Subsequently Garda Tierney sought medical evidence and received medical reports together with certain information from a counsellor who had been attending Y.M. She thereafter set about compiling a file for submission to the Director. That file was submitted on the 14th February, 2002.

8.4 Having regard to the complex set of interlocking facts which it was necessary for Garda Tierney and the other Gardaí involved in the investigation to deal with, I am satisfied that their enquiries were conducted with all appropriate expedition.

8.5 The period between the submission of the file and the decision to bring charges was unusually long. I am satisfied that there is a particular onus on the prosecuting authorities to move with expedition where the case under investigation has already been the subject of a significant lapse of time between the alleged events and the making of complaint to the authorities. If no explanation had been tendered for the delay between the forwarding of the investigation file to the Director and the bringing of charges, then I might well have been persuaded that the delay was, in all the circumstances, excessive. However the affidavit of Mr. Gormally makes clear that it was necessary to seek additional material in relation to the complaints. The complexities of the matter required it to be referred onward to the Director personally who considered that the opinion of senior counsel should be sought. That opinion was sought on the 9th October, 2002 and received on the 23rd January, 2003. Thereafter a decision was made that no criminal proceedings should be initiated against the applicant on foot of the complaints made by the three nieces other than Y.M. and R.M. At that stage a direction was given the charges be preferred in relation to the complaints made by R.M. However further information was required in relation to Y.M. which was sought from the Gardaí and replied to on the 14th April, 2003. On the 16th April, 2003, a direction was given that charges be preferred against the applicant in relation to the complaints made by Y.M.

8.6 In all those circumstances it seems to me that having regard to the undoubted complexities with which the Director was faced it would be impossible to say that any lapse of time between the receipt by the Director of the file and the respective decisions to bring charges against the applicant was excessive. I am not, in those circumstances, satisfied that there was any prosecutorial delay.

9. Delay Per Se

9.1 There is a continuing debate about whether delay per se is potentially a separate ground for contesting the ability of the State to bring charges or merely an example (albeit an extreme one) of the general principles applicable.

As pointed out above, in all cases it is necessary to consider the extent of the prejudice caused by delay. That prejudice can, of course, be specific on the one hand or general and presumptive on the other hand.

9.2 In the passage from *P.C.* referred to at paragraph 3.7 above Denham J. noted that “after a certain length of time no matter who caused the delay there may not be a fair trial”. On the other hand it has been said on numerous occasions that the question of the imposition of a statute of limitations is a matter for the Oireachtas and not for the courts. In those circumstances it is well established that there can be no formula which renders, in all circumstances, an applicant entitled to prohibit a trial after a specified period of years.

9.3 The applicant place reliance on the judgment in *P.M. v. D.P.P.* [2002] 2 I.R. 560 where, speaking for the Supreme Court, Keane C.J. said the following:-

“It must be acknowledged that a reading of some of the Irish authorities in this area might suggest that the right to a reasonably expeditious trial is recognised and protected by the law solely in order to ensure the fairness of the trial process itself ... But it does not follow that impairment of his ability to defend himself is a necessary precondition to the successful invocation by him of the discreet constitutional right to a speedy trial. Where there has been significant and culpable delay to which he has not contributed in anyway, the result may be either actual prejudice (the loss of otherwise available evidence) or presumptive prejudice (the difficulties inherent in giving evidence after a lengthy period) which may affect his ability to defend himself and, hence, fatally compromise the fairness of the trial”.

8.4 It is clear, however, that Keane C.J. was there speaking of culpable delay not contributed to by the accused. In a case which survives a challenge under the jurisprudence that has developed in respect of complainant delay in sexual abuse cases, it will necessarily be the case that the court has become satisfied that the delay concerned was not culpable and was capable of being attributed to the accused (on the assumption that the accusations forming the basis of the complaint are correct).

8.5 It does not seem to me, therefore, that delay per se operates as a separate ground of challenge. It can, of course, be the case that a very long period of delay may, even in the absence of specific prejudice, be sufficient, having regard to all the circumstances of a case, to render a fair trial impossible by virtue of the weight that needs to be attached to the general or presumptive prejudice attributable to that delay.

10. Conclusions

10.1 I have therefore concluded that there was inordinate delay in this case. Having regard to the length of time involved no other conclusion could be reached. However for the reasons which I have analysed in some detail I have come to the view that, on the assumption that the alleged offences occurred, both complainants were subject to dominance from their uncle. Having regard to their psychological state I am also satisfied, for the reasons set out, that they remained under a psychological inhibition, (at least partly attributable to the alleged offences on the assumption that they occurred), until an external catalyst gave rise to circumstances whereby they were in a position to make the complaints which they did to An Garda Síochána.

I am also satisfied that there is no specific prejudice on the facts of this case but that, having regard to the lapse of time involved, there must necessarily be some not insignificant general or presumptive prejudice.

10.2 However having regard to all the circumstances of the case it does not seem to me that the general prejudice concerned is sufficient to allow me to reach a conclusion that a fair trial cannot occur.

10.3 In all those circumstances I propose refusing to make the order sought.