

SECTION 1

Background to Events Surrounding the Reconstitution of the Investigation Committee

On the 2nd of September 2003 the Investigation Committee of the Commission to Inquire into Child Abuse suspended its work and ceased to gather evidence in accordance with its statutory powers. On the same date the then Chairperson, Ms. Justice Laffoy notified the Government of her decision to resign to take effect from the date of the publication of the Third Interim Report. On the 26th September 2003, the Minister for Education announced the appointment by the Government of Mr. Sean Ryan, S.C. as Chairperson designate of the Commission. The Minister also announced that Mr. Ryan had been requested to undertake his own independent review of the Commission and to make all necessary recommendations having regard to the following:

1. “The interests of the victims of abuse;
2. The completion of the Commission's work within a reasonable period of time and in a manner consistent with a proper investigation; and
3. To achieve objectives without incurring exorbitant costs.”

Mr. Justice Ryan's Review into the working of the Commission to Inquire into Child Abuse and the Review of the Attorney General were published on the 14th January, 2004.

The Third Interim Report of the Commission was published on 30th January, 2004. This Report outlined the work of the Investigation Committee from its inception to the date of cessation together with a history of the difficulties encountered by the Committee in its attempt to fulfil its statutory remit.

Amongst such difficulties highlighted by the Third Interim Report were the delay in setting up of a compensation scheme and the difficulty surrounding the issue of the provision for the costs of legal representation.

These difficulties had a consequential knock on effect on the work of the Committee, for example Complainants (and/or their legal advisors) refused to

submit statements of their proposed evidence in compliance with requests from Inquiry Officers in accordance with Section 23 of the Act until these matters had been finalised. These difficulties were ultimately addressed in the Redress Act of 2002.

The Investigation Committee then imposed a deadline of the 30th June, 2002 for receipt of Complainant statements. At the expiration of this date, statements had been provided by 1,800 Complainants. In early January 2003 in an effort to accelerate the preliminary inquiries, a final date for Respondent statements was imposed — which deadline was 2nd May, 2003. However, in exceptional cases the deadline was extended to September, 2003.

The Third Interim Report also highlighted practical difficulties inherent in the nature of the complaints themselves. For example where single Complainants referred to a number of institutions and a number of Respondents. The investigation of complaints was further complicated by the age of the Complainants and the number of deceased, incapacitated and untraced Respondents.

The time delay between the commencement of the Review process of the Investigation Committee's Mandate in December, 2002 — and publication of the Review reports in January, 2004 further inhibited the work of the Committee.

Ms. Justice Laffoy's resignation took effect on the 12th December, 2003 and Mr. Justice Ryan's chairmanship commenced on the 15th December, 2003.

As I have previously indicated Mr. Justice Ryan's Review into the workings of the Commission to Inquire into Child Abuse was published on 14th January, 2004 and in that review he made the following recommendations.

- That the Investigation Committee would write to Complainants asking if they wished to proceed with their - complaints.
- That the Investigation Committee would carry out a preliminary review/examination of complaints so as to eliminate those which had no prospect of being proven in evidence: and would then write to solicitors

on record for those Complainants and suggest that those Complainants should consider transferring to the Confidential Committee;

- That work would be divided into smaller units of inquiry
- That all Complainants in a particular unit of inquiry might be represented by the same Solicitor;
- That the proceedings in each unit of inquiry would be by way of joint hearings;
- That counsel for the committee would conduct the questioning of witnesses – this is in contrast to the practice to date where questioning was conducted primarily by members of the Investigation Committee;
- That evidence would be taken in written form;
- That non-controversial evidence would be heard by a sole member of the Committee and,
- That Interim Reports would be published at the conclusion of each unit of inquiry.

Mr. Justice Ryan furthermore suggested a number of statutory amendments to the legislation which he set out in some detail in his review. There is no need for me to detail those proposals at this point.

SECTION 2

What has been done since

Upon Mr. Justice Ryan's appointment to chair the Investigation Committee, the Committee resumed its work and proceeded with its gathering and assessment of evidence. Its work included:

- The recruitment of administrative staff and legal counsel to fill vacancies created by the suspension of the work of the committee in September, 2003.
- As already stated by the Chairperson in his Review, one of the immediate concerns of the Committee was the absence in the Commission's team of an experienced solicitor. The Committee has made arrangements for an in-house solicitor with the sanction of the Departments of Education and Science and Finance and she will take up office later in the year when she becomes available. In the meantime, there was urgent need for short-term provision of services of a solicitor. We now have sanction to deal with this.
- The existing system for case and document management employed by the Committee is inadequate for the purposes of the inquiry. Efforts have been made to identify and to procure the most appropriate system available to deal with the type and volume of documentation generated and received by the Committee.
- The Commission is mindful that a considerable body of work has been done by solicitors for parties to the Investigation Committee - including the preparation of statements and sometimes the preparation for and the conducting of hearings over a prolonged period of time, without receipt of any payment until very recently. This has now been addressed.
- Members of the Investigation Committee and its legal team have reviewed voluminous international literature and have made contact with experts and persons in other jurisdictions experienced in and with the area of child abuse. The Committee has found these contacts to be helpful and informative and intends to continue to liaise in relation to matters of common interest.
- Submissions in relation to Mr. Justice Ryan's Report and the Attorney General's Review were widely sought from all parties registered with the Investigation Committee. This is something to which we will return later.

- Members of the legal team have been meeting on a continual basis with victims' groups, their representatives and with the representatives of the Respondents and of government departments. These meetings have been conducted informally and with openness; views have been exchanged sometimes with some force. The legal team and the Committee have gained enormously from these meetings and have tried to clarify as best they can issues and concerns raised at these meetings. The legal team has considered all representations made in formulating the approach set out this morning. This informal process must now move on to a more formal plane, which will allow an early finalisation of all questions relating to the direction of and way forward for the Investigation Committee.
- Members of the Committee's legal team have visited the archives of Regulatory and Managerial Respondents for the purpose of assessing the nature, type and volume of documentation situated therein to facilitate the discovery process.
- The Chairperson of the Investigation Committee has issued sixty (60) discovery directions since January, 2004. These directions have issued to the Department of Education, Department of Finance, the Department of Justice, religious congregations and congregational managerial authorities responsible for the management of Industrial and Reformatory Schools. Thirty eight (38) of the directions are institution specific and encompass the Industrial and Reformatory Schools in relation to which twenty or more complaints are pending before the Investigation Committee.
- The Committee's legal team has identified additional potential witnesses, a number whom have been and are in the process of being interviewed
- The Committee's legal team has commenced preparatory work identifying "units of inquiry" with a view to scheduling potential institutions for hearings.

- The Christian Brothers have appealed the decision of Mr. Justice Abbott to the Supreme Court. The hearing of the appeal is scheduled for the 29th June, 2004. The Committee's legal team is preparing for this appeal.

SECTION 3

A review of the submissions received

Seventeen (17) written submissions requiring consideration were furnished. These were submitted by the following parties:

Individual Complainants: (1 submission)

Solicitors for Complainants (4 submissions)

Survivor group(s) (4 submissions)

Solicitors for individual Respondents (1 submission)

Solicitors for congregations, who are management Respondents in the process (6 submissions)

Chief State Solicitor

Minister for Education and Science

These submissions, although apparently small in number, in fact represent the views of a substantial number of individual participants. For example, the solicitors for Complainants who made submissions represent between them more than one thousand and fifty four individual Complainants.

In general these may be divided into two categories; those from or representing the views of Complainants, and those from or representing the views of Respondents.

A. Nine submissions were made by or on behalf of Complainants:

- Four of these submissions are against any form of sampling;
- Three of these want the Committee to ask all Complainants whether they wish to continue within the Investigation Committee. Of these, one suggested that the Complainants should be furnished with the Respondent statements prior to or at the same time as when they were asked whether they wished to continue;
- Two of these submissions request "naming and shaming". Of these, one contended that it would be unfair to "*all the good people*" who worked in institutions to be tarred with the same brush;
- One of these submissions accepts that although in some circumstances it would be inappropriate to name an individual, the institution nevertheless should be named;
- One of these submissions objects to joint hearings;
- One of these submissions maintains that the main reason for past difficulties was inadequate resources.

B. Six submissions were made by or on behalf of Respondents

- Three of these submissions call for the abolition of "naming and shaming";
- Two of these submissions object to the concept of joint hearings;
- Three of these submissions object to any dilution of the private nature of the hearings;

- Two of these submissions state that they agree to the Committee writing to Complainants in order to ascertain whether they wish to continue in the process;
- Most of the congregational Respondent submissions are of the view that the Committee should have discretion as to who it decides to hear. Some however express a wish to reserve their rights regarding those who are not heard.
- Some of the congregational Respondent submissions seek to have their members names publicly exonerated in circumstances where no finding of abuse has been made. One of the concerns expressed is that if the Committee does not adopt this approach there could be an “assumption of collective guilt”.
- Three of the Respondent submissions call for context and memory hearings and for the provision of expert reports.
- Many of the Respondent submissions dwelt on the issue of identifying persons who are alleged to have committed abuse and this is an issue to which I will return.

SECTION 4

The Way Forward - The Next Steps

A. Obligation of the Investigation Committee to hear all Complainants

Everybody in the process recognises and acknowledges the need for closure. Many but not all recognise the importance of achieving closure within a reasonable period of time. As matters currently stand the Investigation Committee has in excess of 1,700 Complainants, each of whom make allegations against a number of Respondents. Heretofore, the Investigation Committee has conducted what in essence is a mini-trial in respect of the

allegations made by each of these individuals. If each of these mini-trials were on average to conclude within just two days, it would take the Investigation Committee in excess of 10 years to hear all complaints assuming that hearings were conducted six days a week without any break during that period.

It is self evident that the Investigation Committee does not have the capacity to hear 1,700 mini-trials.

The indications are that there is likely to be some drop off in the number of Complainants who actually wish to proceed before the Investigation Committee. It is not known to what extent this drop off will occur.

The question in this context is whether it is necessary to hear all Complainants who wish to give evidence before the Investigation Committee.

Complainant representative groups have said in consultation that all those who wish to be heard should be entitled to a hearing. It is fair to say that they were almost unanimous on this point.

However, the Commission in papers submitted to the Attorney General dated 29th January 2003 and 12th February 2003, the Attorney General in his review to the Government (published 14th January 2004) and Mr. Justice Ryan in his Review (published 14th January 2004) all agree that the Investigation Committee should not be under an obligation to hear all Complainants who wished to be heard, and that it is necessary to confer on the Committee a discretion in determining which cases need to go to a full hearing.

The Inquiry is mandated to determine the causes, nature, circumstances and effect of abuse. It is mandated to determine the extent to which the institutions themselves contributed to the occurrence or instance of abuse having regard to their systems of management, administration, supervision and the regulation of those institutions. This Inquiry should be about broader issues than questions of personal individual culpability.

If the Investigation Committee is required to conduct a large number of mini-trials, then its capacity to inquire into the abuse of children at an institutional

level in a meaningful and purposeful way having regard to the spirit of the legislation is effectively defeated.

The legal team proposes that the Investigation Committee should hear as much evidence as required to establish whether abuse took place in any given institution. For this purpose it may well be that it will have to hear all Complainants who make allegations against that institution. However, it is desirable that the Investigation Committee would have a discretion as to the Complainants whom it wishes to call. In essence, the main focus of the inquiry should be whether abuse took place at an institutional level and in any given institution and how much and of what nature. The evidence of witnesses should be at the discretion of the Investigation Committee with the advice of its legal team, and in those circumstances it may be unnecessary to hear all available witnesses in respect of a given institution.

Accordingly, the legal team has proposed that the Investigation Committee will ask the Government to introduce the appropriate amending legislation to the Act of 2000 to provide it with the required discretion.

B. Decision to conduct a hearing into “Naming and Shaming”

I now return to the issue of “Naming and Shaming”. In his review Mr. Justice Ryan had the following to say:

“The inquiry into child abuse can survive a prohibition on naming individuals. But it cannot survive a prohibition on naming institutions. The Investigation Committee would be entirely toothless in its capacity to inquire and would be confined to reporting that abuse of a particular kind happened on some occasion somewhere in Ireland.”

Later when considering this issue in the context of the Christian Brothers challenge to the Act he points out:

“The question of course is bound to come up for consideration at the inquiry even if the Courts entirely reject the challenge.”

The question is whether in fact the Investigation Committee should continue with its previously expressed policy (irrespective of its power to do so) of naming individual perpetrators in the majority of cases.

Given that the Investigation Committee has already indicated an interpretation of the Legislation which tends to require the naming of perpetrators in the majority of cases, the view of the legal team of the Investigation Committee is that a change in this position should not take place without affording interested parties an opportunity to be heard on the issue.

Accordingly, the Investigation Committee has circulated a paper which is available today and will appear on the Commission's web site. The Paper details the policy which the Commission has adopted to date, the procedural implications of that policy, it identifies the approach taken in other inquiries internationally, identifies the arguments for and against naming and the likely consequences of maintaining or alternatively, changing the status quo.

It is proposed that the Investigation Committee will afford interested parties an opportunity to make submissions on this issue in open session commencing on May 24th 2004 at a The Distillery Building, Church Street, Dublin 7.

SECTION 5

The Intention to Conduct an Initial General Public Hearing into "The Emergence of Child Abuse"

Pending the determination of the challenge to the Act which is listed for hearing in the Supreme Court on June 29th and the implementation of any legislative change(s) which may be required it is proposed that the Investigation Committee convenes a public hearing, the purposes of which will be fourfold:

- To establish on a historical basis how child abuse as an issue emerged in the State. It is intended to call witnesses with expertise in the area of

social history to address this issue and to give an account of institutional child care during the relevant period.

- To invite representatives of victims' groups to recount how their particular group came into being, its objectives and the manner in which it has to date set about achieving those objectives.
- To call representatives of Government and of the relevant Government departments to explain the context and meaning of the apologies which have emanated from the State and to place in context the establishment of the Redress Board.
- To call representatives of relevant religious congregations to explain the meaning of the apologies which they made to victims of abuse and to place in context the contributions they have made to the Statutory Redress Scheme

It is envisaged that evidence in relation to these matters will be adduced in a non-adversarial manner. It is intended that this will be an information seeking process and whilst questions from parties will be entertained, the need for cross-examination is not expected to arise at this stage.

This part of the inquiry will take place in June and will be held in public at the Distillery Building, Church Street, Dublin 7. The Committee looks forward to receiving the cooperation and assistance of all parties.

SECTION 6

An Outline of the Approach to Procedure Generally

I think it is fair to say that in so far as hearings are concerned, the difficulties encountered by the Investigation Committee have centred on:

- The duration of hearings where a person's reputation is at risk.
- The legal challenges to the work of the Investigation Committee (including possible repercussions) and the fact that a successful

outcome for the Committee, does not necessarily mean that the issues raised are going to go away.

- In recognition of the fact that to put participants through the process of giving evidence more than once is abhorrent it is essential to do everything possible to ensure that procedures are right before embarking on the commencement of hearings.

The paramount concerns of the Investigation Committee must include the desirability of closure and the reduction where possible of the adversarial nature of the process of inquiry.

The Law Commission of Canada identifies a guiding principle in this context

“Do no further harm.”

This principle should be seen as a guiding star to help us navigate through the task which lies ahead.

It is apparent that much of the difficulty encountered in attempting to put in place procedures which comply with the law and are satisfactory to all parties, have stemmed from the very disparate nature of the types of issues which have to be considered.

For example, procedures that may be appropriate and effective to deal with an issue arising from a direct complaint against a named individual of serious sexual abuse may be wholly inappropriate in dealing with a largely collective contention of serious neglect and deprivation on the part of a number of persons who were present in an institution at a relevant time. It might properly be commented that a "one size fits all" approach to procedures just will not work.

To move from a position where naming is the norm to one where naming is the exception is likely to result in a whole range of other aspects of the process going ahead on a basis which is different to heretofore.

- As previously stated, under the chairmanship of Mr. Justice Ryan, the Investigation Committee has resumed the pursuit of documents and

records through the process of discovery, the completion of which will take some time.

The procedures regarding the timing of the provision of documentation to the parties is under review and the legal team has proposed to the Investigation Committee that it will circulate all statements and accompanying documentation as soon as practicable.

When the Committee is in receipt of documentation furnished by way of discovery, it is proposed that such documentation as is relevant will be furnished to each interested party. Once all parties interested in a particular institution have received relevant documentation, the Committee will convene a preliminary hearing in respect of that institution.

- At that hearing, the Respondents will be invited to stipulate in respect of the allegations contained in the Complainant's statements and to indicate which, if any, of the allegations made are considered to be well founded, whether in part or in their entirety and to identify those which remain in serious dispute.

An opportunity will be given to parties to address procedural issues specific to the institutional hearing then proposed. It is hoped that all issues in relation to procedural matters can be agreed between the parties. Where this is not possible it is proposed that the Investigation Committee will rule thereon.

- It is proposed that after that preliminary hearing the Committee will issue a list of witnesses whom it intends to call, the order in which such witnesses will be called and it will specify a date on which the matter will commence.

When all of the parties have had a reasonable opportunity to consider the evidence likely to be presented, it is proposed that hearings in respect of a relevant institution will take place. It is likely that these will commence with a public session, which will have the effect of setting

the scene in respect of that institution, and placing on the record any general non-controversial evidence concerning the nature of the institution.

- After such public hearing, the Investigation Committee will go into private session for the purposes of hearing evidence of specific instances of abuse. It is proposed that the way in which such evidence will be heard may be the subject of discussion between the Investigation Committee's legal team, and all interested parties, and may be tailor-made for the issues which arise in that institution, having regard, amongst other things to any concessions that may have been made.

It is proposed that the Investigation Committee will conduct as much as possible of the hearings in public so that general questions which do not involve going into the detail of individual instances of alleged abuse, will, as a matter of normal practice, be the subject of public hearings.

SECTION 7

Expert Evidence

A number of written submissions included reference to the question of expert evidence. This matter also came up for discussion in the course of the consultation process.

The Investigation Committee recognises that there is a range of areas of expert evidence where the conclusions reached have the capacity to be relevant to all or to a significant number of institutions. One of the difficulties encountered in the past in attempting to put forward working procedures stemmed from the competing requirements to: -

- Avoid repeating expert evidence or permitting the same area of expertise to be re-litigated in a series of cases, on the one hand; and

- The importance of ensuring that any person potentially affected by a determination (and in respect of whom it may, therefore, be said that the expert evidence forms part of the "case" against such person), is given a reasonable opportunity to be heard in respect of such expert evidence.

The legal team is of the view that the following would be an effective and appropriate means of dealing with most if not all such areas.

- A. The Committee should identify areas of general application which would benefit from obtaining an expert view. The Investigation Committee is actively seeking to identify such areas and an invitation is issued to all concerned parties to propose areas which would benefit by early expert evidence.

At present the legal team has identified the following areas of expertise which the Investigation Committee may feel suitable to be dealt with in this manner:

- Memory and the effect of lapse of time on memory — This may be a matter of general application.
- Funding and how such funding was dispersed — This may be a matter of general application insofar as the availability of State funding is concerned. It may also be a matter of concern to a specific institution insofar as an institution may have had its own specific source of funding, for example, a commercial enterprise or a series of enterprises carried within that institution or from other sources of funding specific to that particular institution.
- General health issues such as and including bed-wetting or infestation dealing with the prevalence of such conditions in the public at large and the recognised and medically accepted best practice for the treatment of such conditions at the relevant point in time. Again such issues may be of general application but also of specific application in that they may be specific to a Complainant or institution in question.

- B. It is envisaged that the Investigation Committee will commission from an independent expert a report on the "state of knowledge" in respect of any given area, including where appropriate, a report setting out competing views which are widely held within the expert community.
- C. In the event that the expert report shows a clear preponderance of expert opinion in respect of the matter concerned, the Investigation Committee will communicate the contents of the expert report to all interested parties, invite them to comment thereon, and indicate in general terms that, in the absence of any contest in respect of any or all of the contents of such report, it will be the intention of the Investigation Committee to continue with its hearings on the assumption that what is stated in the expert report concerned is correct. The Investigation Committee will in any event reserve to itself the entitlement to review that matter should the circumstances require.
- D. In the event that the expert report itself discloses significantly different competing expert views or in the event that any interested party puts forward a competing expert view which differs to a significant and material extent from the Committee's report, then it is proposed that the Investigation Committee may consider making provision for an appropriate hearing or hearings to resolve any such issues

The legal team is of the view that a distinction may be made between expert evidence which has the potential to be relevant to a significant number of separate institutions, and may thus, be said to be of general application, expert evidence that may be relevant only to a single institution, and expert evidence which may be relevant to an individual accusation. Evidence relevant only to a single institution can be dealt with as part of the general scene setting evidence for that institution and it does not require to be attended to with the same degree of urgency as evidence of more general application. The same applies with even greater force in respect of evidence likely to be relevant only to one, or a small number of individual allegations of abuse. It is however important that areas of general application are identified in early course so that they may be the subject

of specific public hearings in accordance with the process suggested above, at an early stage, if the Investigation Committee considers that to be appropriate.

SECTION 8

“Otherwise than in Public”

One of the questions which will determine the way in which private hearings of evidence relating to specific instances of abuse are conducted is the question of the interpretation of the requirement that those hearings be "otherwise than in public".

The legal team has recommended to the Investigation Committee that this requirement should not be applied in a way that prohibits the presence, at a particular unit of inquiry, of more than one person who makes an allegation of abuse against the institution under investigation. The purpose of this recommendation is to allow all relevant evidence, in respect of the particular unit of inquiry, to be conveniently heard together and in the presence of all interested parties.

Section 9

The Schedule of Hearings in Respect of Individual Institutions

The legal team has prepared a suggested schedule of hearings which it will endeavour to follow over the course of the forthcoming months. It is not possible at this remove to be absolutely certain as to the duration of any particular phase of the inquiry. The Committee has already received a very large volume of documentation pursuant to discovery directions which have issued. The process of identifying and obtaining documents of relevance continues and the Investigation Committee's ability to keep to its proposed dates will be effected by its capacity to process the documentation which is received.

The schedule sets out the order in which it is proposed the Committee will conduct its inquiries into the named institutions. Insofar as alterations to dates are required, such alterations will be posted on the Commissions website and parties will obtain adequate notice.

The following is the proposed schedule of hearings:

24th – 28th May:	Public hearings on discussion document
16th June:	Decision of the Investigation Committee on discussion document Hearing
18th June:	Issues – St. Joseph’s Industrial School, Ferryhouse
21st – 30th June:	Hearings:- The emergence of child abuse
5th – 23rd July:	Hearings: -St Joseph’s Industrial School, Ferryhouse
26th July:	Issues – Artane Industrial School
28th July:	Issues – St. Vincent’s Industrial School, Goldenbridge
4th September:	St Joseph’s Industrial School, Ferryhouse continued; urgent hearings; discrete cases Issues:- St Patrick’s Industrial School, Upton
5th October:	Artane Industrial School

Decision to Write to Individual Complainants

In his review, Mr. Justice Ryan indicated that he would write to all of the Complainants to inquire whether it was their intention to proceed before the Investigation Committee. In the course of submissions and consultations interested parties have asked why this has not yet been done.

The reason is that it seemed unfair to ask Complainants to indicate their wishes in this regard before they knew the nature of the changes that were proposed.

The Investigation Committee intends now writing to each Complainant. Such a letter has been prepared and it will go out next week. Efforts have been made to set out in a clear succinct and transparent manner the choices available and the likely consequences of exercising these choices.

Representations have been made to the Investigation Committee as to the manner in which it should communicate this letter to Complainants. There is a lack of agreement as to whether the Committee should notify Complainants personally or whether they should be notified through their solicitors. Most Complainants have made their application to the Investigation Committee through solicitors. However, the representatives of victims' groups have asked that this letter be sent to Complainants personally.

It has been decided that this letter will be sent to all Complainants individually. It will be sent to the address which they gave in their initial application unless notification of a change of address has been furnished in which case it will go the new address.

At the same time, the Committee will also write to each Complainant's solicitor notifying them of the position and enclosing a copy of its letter to their clients.

In conclusion, I wish to put on record at this stage something which emerged in the course of the consultations conducted with many of the interested parties. What emerged from those meetings was a unified view that this Commission faces a difficult but important and valuable task. It was clear that there is a willingness and desire from all concerned parties to be of assistance to the Commission and a desire that the Commission establish the truth of what happened so that lessons may be learned to the benefit of future generations.

On behalf of the legal team I wish to express our gratitude to the parties for the assurances and good wishes, which they have expressed. Whilst many may find the changes proposed difficult, it is hoped that the need for such changes will be recognised, and that the Investigation Committee will be able to proceed with its work to an appropriate conclusion.

Mr. Chairman, members of the Committee, ladies and gentleman the only other thing which I wish to say at this time thank you for your patience.