

CLERICAL CHILD ABUSE: THE IRISH EXPERIENCE

JUDGE YVONNE MURPHY*

Between 2006 and 2009 I chaired a Commission of Inquiry into the child sex abuse scandal in the Catholic Archdiocese of Dublin. Shortly after the bulk of the Report was published, in November 2009, Ireland's largest newspaper published an article entitled, 'The Age of Our Craven Deference is finally over'. This article was written by Ronan Fanning, Professor of Modern History in University College Dublin. He wrote:

Historic is a term from which professional historians traditionally recoil, and rightly so. The banalities of popular usage have debased its meaning beyond redemption. But there are still rare events that not only deserve but demand to be described as historic. The publication of the Murphy Report is one such event: a truly historic landmark in the sad and squalid story of Church-State relations in independent Ireland¹.

Let me try to put this in context. Ireland has been overwhelmed in the past two decades by what the Catholic Church itself has called 'a tsunami' of revelations of clerical child abuse – physical as well as sexual – of the meticulous concealment of abuse and abusers and of a long-established, and almost universal policy of protecting the assets and reputation of the Church, in preference to exposing the abusers.

There have been several judicial inquiries of varying sorts into this tsunami starting with Mr Justice Ryan's inquiry into abuse in residential institutions, generally Church-run, which sat from 2000 to 2009. Mr Justice Murphy's inquiry into the Diocese of Ferns, and my own two Commissions of Inquiry, first into clerical abuse in the Archdiocese of Dublin and, just as that was ending, a separate Commission into the Diocese of Cloyne in the south of the country, where the Bishop Dr John Magee was a former Private Secretary to three Popes. The country changed massively as the result of all this. By way of example, when in 1988 Mr Brian Burke, former Premier of Western Australia, was appointed Australian Ambassador both to Ireland and simultaneously to the Holy See in Rome, no aspect of that appointment seemed untoward in either country. Now, Ireland has closed its Embassy in the Holy See after a thorough on-going attack by the Prime Minister on that institution. Dealings are now conducted by a civil servant in Dublin, who has other tasks as well. Priestly ordinations, once running in the hundreds annually, are now at an all-time low as is the Church-going population. And it appears that the Church faces a financial crisis in the medium term. Attitudes to contraception, divorce and more recently abortion and homosexuality, once set in stone along sternly Catholic lines, have changed beyond recognition. The first ever permissive Irish abortion law was passed in July 2013, something unthinkable even a few years ago.

* Circuit Court Judge, Ireland, 1998–2012. Commissioner of Inquiry 2006–11. This article has been adapted from the 3rd Michael Kirby Justice Oration, delivered at the College of Law & Justice, Victoria University, Melbourne on 7 March 2013.

¹ Ronan Fanning, 'The age of our craven defence is finally over', *The Independent* (online), 06 December 2009 <<http://www.independent.ie/opinion/analysis/the-age-of-our-craven-defence-is-finally-over-26588891.html>>.

I: THE TURNING POINT – 1993

1993 was the year the dam burst, as far as allegations of clerical sexual abuse were concerned. Not all of them, it is important to stress, involved priests, but abuse by priests became the focus of most media attention, with a phrase ‘Paedophile Priest’ becoming so common that a distorted impression was given of child abuse in Ireland.

In 1993 Fr Brendan Smith, a Norbertine monk, was convicted on numerous counts of the sexual abuse of children going back more than 35 years. The clerical authorities, it transpired, had known about this for a long time, but just kept moving him or letting him move around from his monastery just south of the border, to various locations north of the border and back again. His activities were eventually exposed by an Ulster Television programme called Counterpoint. A request by the Northern Ireland Authorities for Smith’s extradition had lingered in the Republic’s Attorney-General’s Office for seven months. This transpired to be due more to a ‘cock-up’ than a conspiracy, but brought down the Government of the day all the same, and the then Attorney-General, who had become President of the High Court.

The allegations against Brendan Smith, on both sides of the Republic of Ireland/Northern Ireland border, were found in the end to have extended from 1948 to 1989. In a typical pattern, Smith himself did not deny the charges when brought to court. His charging followed unprecedented media publicity in which Smith would often be provoked by shouted remarks, and then photographed, with the resulting snarling image sometimes occupying a half page of a broadsheet publication. His angry, suffused face is probably still the most potent image of clerical child abuse. He died in jail.

The report of my Commission was later to emphasise the great importance of the Fr Brendan Smith case. We found that the controversy and drama surrounding the Fr Brendan Smith case in 1994 brought clerical sexual abuse to public attention. It is probable that this was the first time that many members of the public became aware of the possibility of clerical child sexual abuse.

The media attention surrounding the Father Brendan Smith case in turn led to further media attention and some of the programmes were particularly significant. In this category I would put the Counterpoint programme which first exposed the activities of Brendan Smith, the BBC programme ‘Suing the Pope’², which brought to public attention the predatory activities of Fr Séan Fortune, a curate in South Wexford who abused an astonishing number of young boys under the guise of his ‘youth ministry’. Fortune eventually committed suicide while awaiting trial on 66 charges in early 1999. The ‘States of Fear’³ documentary concerning the treatment of children in orphanages also led to Mr Justice Ryan’s Inquiry. Furthermore, the RTE documentary ‘Cardinal Sins’⁴ in 2002 started the process which led to my first Commission.

² ‘Suing the Pope’, Correspondent, BBC Television, March 2012.

³ ‘States of Fear’ (directed by Mary Raftery, Raidió Teilifís Éireann, 1999).

⁴ ‘Cardinal Sins’ (directed by Mary Raftery, Raidió Teilifís Éireann, 2002).

In the intervals between the famous or notorious cases mentioned above, and their fall-out in the media, there were constant, less well-publicised allegations from different parts of the country, including Dublin, of historic child abuse. Some of the people making these allegations themselves became well-known media figures from their appearances in documentaries and on Current Affairs programmes. One of the best known of Fr Fortune's victims, Colm O'Gorman, wrote a ground-breaking book about his experiences, 'Beyond Belief'⁵, and headed up the abuse survivor's charity 'One in Four'. He became a national figure, dabbled in politics and is now the head of Amnesty in Ireland.

Some of the priests against whom allegations were made were popular and gregarious individuals; well-known in their districts and sometimes beyond. Over time, the focus of the allegations broadened to include not merely the priests and their superiors; but the civil authorities, notably the police and the Health Boards, who were seen by complainants as not having responded adequately.

In parallel to these developments, other, less obvious, changes were taking place. The Church itself became much more severe and much quicker to act in relation to accused priests. Historically, there had been a pattern of transferring the priest either within the diocese, within Ireland or abroad, typically without telling his new superiors of the events which triggered his transfer. From the mid-90s, many priests complained a new policy was instituted, requiring a priest against whom a complaint had been made to stand down from his functions, something which would of course be quite obvious to his parishioners. Priests felt, with some justification, that their treatment was much worse than that of people in ordinary employment who are accused of offences. This, more or less, was the situation in Ireland, and in Dublin in particular, when in March 2006 I was asked to head a Commission of Inquiry into clerical child abuse in the Dublin Archdiocese and the reaction of the authorities, civil as well as ecclesiastical, to it.

II: THE DUBLIN INQUIRY

I was appointed to chair the 'Commission of Investigation into the Dublin Diocese' in March 2006. This appointment was made under the *Commission of Investigation Act 2004*, for the purpose of examining the manner in which allegations of child sexual abuse by Priests over the period 1975 to 2004 were dealt with by Church and State authorities. It was not the job of the Commission to establish whether abuse actually took place or not.

I must record with gratitude that the authorities of the time took my advice in appointing the other two members of the Commission. Ms Ita Mangan was a non-practicing barrister with extensive experience in the social services and health areas, and Mr Hugh O'Neill, a practicing solicitor who was the legal advisor to the Labour Court, Ireland's principal industrial relations forum.

⁵ Colm O'Gorman, *Beyond Belief: Abused by His Priest. Betrayed by His Church. The Boy Who Sued The Pope*, (Hodder & Staughton, 1st ed, 2009).

Now for a very brief synopsis of the findings of the Commission of Inquiry:

- a) The Commissions which I chaired were concerned with abuse by diocesan priests, mostly in Parish roles but some in other public roles such as hospital chaplain or teacher. That is to say, it did not include members of religious orders who had no diocesan role.
- b) The Commission found that there were 102 priests against whom complaints of child sexual abuse had been made and who appeared to be within our remit from a temporal and geographical point of view. Our remit, however, required us to inquire only into a 'representative sample' of these cases, in a cost saving measure. The Commission retained the services of an eminent statistician and heard submissions on the question of 'representative sample'. It transpired that, whereas the overall number was quite low (102), a sample, if it was to be representative, had to be a high proportion of that number, eventually fixed at 46. As the work progressed, the Commission became aware of allegations against 172 priests but the sample transpired to be sufficiently robust to cope with that number. It must also be pointed out that the number of children involved was much larger than the number of priests. One priest freely admitted to having abused, by his own count, over 100 children and another claimed to have abused about fortnightly over a 25-year period.
- c) Amongst the victims of this group, boys outnumbered girls in the proportion of 2.9 to 1. There are various theories as to the reasons for this and I will not speculate about it here.
- d) This problem of clerical child abuse has been known and recognised in the Church for 2000 years. There is a 2000-year history of Biblical, Papal and Holy See statements showing awareness of child sexual abuse. Over the centuries, strong denunciation of clerical child sexual abuse has been articulated by Popes, Councils, and other Church sources. A list of such statements covering the period 153AD to 2001 is included in an article by the Promoter of Justice in the Vatican Congregation for the Doctrine of the Faith, published in 2003, and referenced in our Report.
- e) Based on this, the Church itself evolved various legal and procedural measures to deal with the problem. The most recent of these specific measures was the 1962 instruction *Crimen Solicitationis*. Total confusion was revealed by our inquiries about the actual status of this document.
- f) One aspect of Canon Law which was certainly taken seriously in Ireland was the obligation of secrecy involved in it. All participants, including complainants, were bound to secrecy and a notorious feature of Irish Canonical procedures was that children in their early teens, without legal representation, were compelled to take oaths or give promises of secrecy which they can hardly have understood. This inhibited complaints to Civil Authorities.
- g) Only two cases of child sexual abuse by clerics ever proceeded to a penal canonical trial over the 30-year period, notwithstanding the fact that a number of the most influential clerics in the Archdiocesan administration were qualified as canon and sometimes civil lawyers.
There was in this group virtually no experience of operating the penal provisions of Canon

Law. It appeared to the Commission that respect for the Canon Law in church administrative circles had collapsed following the Vatican council in the 1960s.

- h) We found that the general attitude of Church Authorities to allegations of child sexual abuse by clerics is summed up in the American phrase ‘Don’t ask, don’t tell’. The problem as a whole was never discussed openly by the Archbishop and his auxiliary Bishops until the 1990s. Complainants were told as little as possible. A note of advice for people investigating such cases for the questioning of witnesses read: ‘Gain his knowledge. Tell him nothing’. We felt this typified the attitude of the Archdiocese.
- i) In the course of our inquiries, the Church’s attitude generally was that they had been overcome by a suddenly arising problem of which, previously, they had known little or nothing. This led to the claim that the institutional Church was ‘on a learning curve’. Indeed, the very use of the term ‘tsunami’, described in a clerically produced document as ‘an earthquake deep beneath the surface hidden from view’, is suggestive of a Church suddenly ambushed by this problem. We were unable to accept this account. This disbelief is particularly based on the action of the then Archbishops of Dublin in the 1980s in making inquiries about insurance cover against civil awards of compensation for clerical sexual abuse in the mid-1980s. Cover for this was put in place in 1987. Prior to that Senior Counsel’s opinion on the question of vicarious liability for the actions of priests was obtained. At that time, however, the Dublin Archdiocese had knowledge of 20 priests against whom there were allegations or about whom there were suspicions and concerns.
- j) This insurance policy was terminated in 1994 by the insurer. In the following year they negotiated a substantial payment to the Archdiocese in consideration of having declined cover. This payment was in the amount of about AUD 4 million. These findings in relation to insurance were very central. They demonstrated an awareness of the potential for civil claims, posited on the Archdioceses vicarious liability for the actions of delinquent priests, going back to the early or mid-1980s.

We concluded:

The Commission has no doubt that clerical child sexual abuse was covered up by the Archdiocese of Dublin and other Church Authorities over much of the period covered by the Commission’s remit. The structures and rules of the Catholic Church facilitated that cover up. The State Authorities facilitated the cover up by not fulfilling their responsibilities to ensure that the law was applied equally to all and allowing the Church institutions to be beyond their reach of the normal law enforcement processes. The welfare of children, which should have been the first priority, was not even a factor to be considered in the early stages. Instead, the focus was on the avoidance of scandal and the preservation of the good name, status and assets of the institution and of what the institution regarded as its most important members – the priests.⁶

⁶ *The Dublin Archdiocese Commission of Investigation Report* (2009), Article at 1.113.

As already stated the Church did not start to report complaints of child sexual abuse to the gardaí until late 1995. The Commission noted that the gardaí were happy with the co-operation they received from Archbishop Connell in 2002. For many complainants, it was a gesture that came too late.

The Commission accepted that Church Authorities had put in place protocols for dealing with complaints of clerical child abuse as far back as 1996, and had invested time and money in the training of appropriate personnel to deal with such complaints. It was disappointing to discover those protocols were not followed when the Commission completed its investigation into the smaller Diocese of Cloyne⁷.

III: COMMISSION TO INQUIRE INTO INSTITUTIONAL CHILD ABUSE

Following the broadcast of the *States of Fear* programme, the Prime Minister of the day issued what he described as a sincere and long overdue apology to the victims of childhood abuse and for our collective failure to intervene to come to their rescue.⁸

This led to the setting up of the Commission to Inquire into Child Abuse in the main church-run institutions and reformatory schools. This Commission ran for nine years from May 2000 to May 2009.

It was given three primary functions; namely

- a) To hear evidence of abuse from persons who allege they suffered abuse in childhood, in institutions during the period from 1940, or earlier to May 2000
- b) To conduct an inquiry into abuse of children in institutions during that period and, where satisfied that abuse occurred, to determine the causes, nature, circumstances and extent of such abuse; and
- c) To prepare and publish reports on the results of the inquiry and on its recommendations in relation to dealing with the effects of abuse.

Other important points:

- a) A High Court Judge chaired the Commission.
- b) Initially Department of Education officials believed it would last up to two years and would cost in the region of AUD 3 million.
- c) The Commission lasted nine years and while the costs are still being sorted they are likely to be in the region of over AUD 100 million.

⁷ Known as the *Cloyne Report*, released in 2011.

⁸ Official transcript of former Irish Prime Minister Brian Cowen's Apology is available at <<http://www.fiannafail.ie/news/entry/1584/>>.

- d) The task the Commission faced was enormous. Complaints were received in relation to over 200 institutions.
- e) The remit was changed. Investigations were conducted into all institutions where the number of complaints was more than 20.
- f) The investigations committee heard evidence from former residents of institutions and from respondents-individuals Religious Orders and others – at both public and private hearing. Most hearings were held in private. (All hearings in the Dublin, Cloyne and Ferns Archdioceses were held in private).
- g) In addition to an investigations committee there was also an opportunity for survivors to speak with a confidential committee where their stories were recorded unchallenged. Over 1000 survivors availed of this opportunity.

The report catalogued severe physical abuse of young children in nearly all the institutions investigated. Punishment was excessive, pervasive and because of its arbitrary nature led to a climate of fear among the children.

Sexual abuse of boys, in particular, was a chronic problem. Steps taken by those in charge to avoid scandal and publicity protected perpetrators of abuse.

Neglect and emotional abuse were features of the care provided.

IV: COMPENSATION

From early on in the Commission's study, lawyers for the survivors complained that they had difficulty in advising clients in relation to cooperation with the Commission in the absence of a statutory redress scheme.

A separate Board entitled the Redress Board was established to deal with compensation for survivors. It was totally independent of the Commission.

To date over 16 000 applicants have sought compensation. Over 14 000 have received awards. Over 1000 applicants received no award. In total, between awards and costs, the Board has paid out over AUD 1.2 billion to date. Initially it was believed that religious institutions would share the cost 18 religious institutions agreed to pay approximately AUD 154 (in property transfers and monies) which officials at the time estimated would amount to almost half the cost.

Since the publication of the Commission's report and the reality of the actual compensation costs involved they have indicated more money will be forthcoming. But matters appear to be at a stalemate with differences emerging between Government officials and church authorities as to the extent of that additional contribution. It is very much work in progress.

V: POST REPORTS

A number of developments took place following publication of the reports. Here are some:

- a) Four Bishops who had worked in the Dublin Archdiocese tendered their resignations to the Holy Father. Two were accepted.
- b) The Bishop of Cloyne also resigned, as did the Bishop of Ferns.
- c) New legislation⁹ was enacted making it an offence to withhold information on certain serious offences where those offences are committed against a child or vulnerable adult. They include most sexual offences.
- d) New vetting procedures for those working with children were enacted.
- e) The Pope issued a pastoral letter of apology¹⁰ to the people of Ireland and arranged for an apostolic visit by Vatican appointed officials to help the local church on its path to renewal.
- f) New guidelines for safeguarding children were introduced by the Catholic Church and audits conducted on their implementation.
- g) A number of successful prosecutions were taken against perpetrators.
- h) A Memorial is being erected in memory of those children who were abused.

⁹ *The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012.*

¹⁰ Pope Benedict XVI issued a letter entitled 'A Pastoral Letter of Apology from Pope Benedict XVI to the Catholics of Ireland' on 19 March 2010.