

The Statute of Limitations and Persons of Unsound Mind

In the Republic of Ireland a Plaintiff must in the normal course issue a Personal Injury claim within 2 years from the date on which the cause of action arose. By way of example, if the Plaintiff was assaulted by the Defendant on the 1st January 2010 and contemplated issuing Civil Proceedings against the Defendant seeking compensation for personal injuries sustained, those Proceedings would be statute barred unless the Plaintiff issued her Claim against the Defendant by the 31st December 2011. This statutory time limit arises under Section 48 of the *Statute of Limitations Act 1957*, as amended by the *Civil Liability & Courts Act 2004*.

However, what if the Plaintiff was suffering from a mental illness / was of unsound mind, to the extent that her illness prevented her from issuing those Proceedings within the 2 year statutory limitation period? Is there an exemption provided in those circumstances?

Where a person is under a disability the limitation period is suspended until the disability ceases. Section 48(1) of the *Statute of Limitations Act 1957* provides for infants, persons of unsound mind, convicts and victims of sexual abuse. The period within which the action must be brought is 6 years except in the case of an action for personal injuries based upon negligence, nuisance or breach of duty where the period has now been reduced to 2 years. The court however retains the right to dismiss a cause of action for delay.

In the HIGH Court case of ***Dana Doherty a person of Unsound Mind Not So Found – v- Michael Quigley*** [HC 2007 / 9323P; Judgment delivered on the 5th July 2011] the plaintiff Dana Doherty, a schoolteacher in her early 40s from Co. Donegal sued the defendant Michael Quigley who was in his late 60s and also comes from Co. Donegal. From early childhood the plaintiff was a very successful Irish dancer; she was very keen and showed great promise. The defendant was a noted teacher of Irish dancing and taught children all over Donegal. The plaintiff was brought to his classes when she was very young and he quickly identified her as a rising star. From the age of twelve until the plaintiff was nineteen, she engaged intensively in practising and performing Irish dancing under the close personal tutelage of the defendant. This involved travelling around to different venues in County Donegal where the defendant held classes and also to outside venues for competitions. An indication of the plaintiff's success is that she competed in the Irish Dancing World Championships and came second during this period.

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

As a result of this abuse, the plaintiff claimed that she was seriously traumatised and that she continued to suffer. She had been diagnosed as suffering from post traumatic stress disorder of a very serious degree with a dissociation complex, which meant that she had not processed many of the experiences that she underwent with the defendant into memories. Instead, they lived with her as actual recurring events when they were

recalled or when they come to her attention. This was the evidence of Prof. Ivor Browne who examined the plaintiff many years later. The defendant denied all of these allegations.

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

Section 48A of Statute of Limitations 1957.

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

Mr Justice Ryan stated that the issues in the case could thus be summarised as follows: -

1. Did the defendant commit the acts of sexual abuse or any of them that were alleged by the plaintiff?
2. If so, was the plaintiff or was she at a material time a person of unsound mind so that s. 48 of the Statute of Limitations operates?
3. If not, did s. 48A of the Act apply?
4. If the acts or some of them were in fact committed and if s. 48 or s. 48A applied, assess damages.

The Facts

It was found that the abuse commenced as early as August 1982 and continued thereafter. As the events of abuse continued the level of sexual activity increased. The plaintiff said that the abuse progressed to a point where the defendant got her to give him oral sex, which soon became a regular occurrence. He could sometimes behave roughly during these encounters. She said that he abused her every time he was in contact with her, that it became constant, once twice or three times a week, that oral

sex became a regular thing at a usual place in the woods. All this continued to take place until 1989, when the plaintiff finished school and went to University in Coleraine.

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

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

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

The Plaintiff's subsequent years at University

The plaintiff went on to third level education at the New University of Ulster at Coleraine where she graduated in 1992 with a degree in Irish studies. During her time as a university student she became increasingly concerned about her experiences with the defendant. She attended Dr. Maria Murray in Letterkenny and discussed the matter with her over six sessions.

Between 1992 and 1994 the plaintiff was at home in Letterkenny doing casual work as a substitute teacher in local secondary schools. During this time she received counselling from a Mr. Seamus Gordon extending over a period of eighteen months. He and a social worker persuaded the plaintiff to report her experiences at the hands of the defendant. On the 29th August, 1993, the plaintiff made a statement of complaint to Garda Sarah

Hargadon of Letterkenny in which she related the sexual abuse that she alleged she was subjected to by the defendant in the relevant period as disclosed above.

A Garda prosecution did not result from her Complaint. In January 1994, the plaintiff left for the United States of America where she remained until 1997. During this time she met and married her husband who was a teacher of Irish dancing. She herself acquired a qualification to teach Irish dancing and did so with her husband in the United States. In 1995, she was at home and went to Lough Derg on a pilgrimage with her sister where she said she spoke to a priest about the abuse that the defendant had perpetrated on her. In 1997, she returned to Ireland from the US. She worked from 1997 until 2000 in the Customer Care section of Bank of Ireland at Shannon, Co. Clare.

On the 12th July, 1998, the plaintiff made a second statement to the Gardai. The investigating sergeant described how extremely upset the plaintiff was at the time when she made this second statement. She said that she had observed the defendant at a dance competition in Ennis and became very apprehensive when she saw him with other children that he would be doing the same thing with one of them. When the Sergeant resubmitted the file with the new statement the Director decided that there should be a prosecution.

The Criminal Trials 2000 & 2007

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

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

The Civil Proceedings

In March 2006, the plaintiff consulted a solicitor, who obtained authorisation from PIAB / Injuriesboard.ie for a personal injuries claim by Authorisation of the 22nd February, 2007. On the 13th December, 2007, proceedings were instituted by way of Personal Injuries Summons in the name of Dana Doherty a Person of Unsound Mind Not So Found. The Statement of Claim was delivered on the 12th February, 2008. The plaintiff saw Prof. Ivor Browne in October and in November 2008 he diagnosed severe post traumatic stress disorder and marked personality dissociation with the condition of frozen present.

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

Professor Ivor Browne

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

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

"Furthermore it is essential to understand that the only way that she could survive this continuous abuse was to dissociate and to freeze the experience so that she was unable to feel the emotion which would have been appropriate to such experiences at the time they were happening. Thus Dana like so many others in this situation was observing what was going on as if it was not really happening to her. Evidence of this is to be seen in the 'out of body' and other depersonalised behaviours which she describes in her statements.

This is the phenomenon which I have termed 'unexperienced experience' and which was referred to by the great French psychiatrist, Pierre Janet, over a 100 years ago as 'unassimilated happenings'. When a person is subjected to a serious trauma, an immediate, non conscious, biological mechanism may be invoked which will suspend the experience, either partly or completely, thus blocking further integration into long term memory. It is now as if a part of the external world is within the person but not part of them. This internalised 'stressor' now exists outside time, in a potentially unstable state. I have referred to this as the 'frozen present', which may well be held in that state for years or even a lifetime."

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

Browne expressed the view that what finally led to Ms. Doherty deciding to take the action against Mr. Quigley – which he described as a “difficult decision” – was the realisation that other girls might be at risk.

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

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

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

Prof. Browne’s overall clinical diagnosis was that Ms. Doherty suffered from PTSD at the severe end of the spectrum. As regards how this had affected her daily life up to and including the present, Prof. Browne expressed the view that Ms. Doherty could go about her daily business and do normal things for a large amount of time but her condition was there continuously and could be activated at any moment, at which point she would show all the disorganisation and emotion of the traumatic experience. He described it like there were two dimensions to the one person. Both of these dimensions were there at any given time, although not always apparent. Prof. Browne took the view that having seen Ms. Doherty give evidence in these proceedings, the core of her dissociation and her PTSD were still active and had not been resolved.

Prof. Brown accepted that a person suffering from this condition may act normally and enjoy periods of lucidity and intellectual clarity but he said the other dimension was always there and could activate at any moment. So in the context of bringing these proceedings, Ms. Doherty could have been able to list the facts quite clearly in her PIAB claim application or through instructions to her legal representatives but it did not follow therefore that the other dimension of her personality had gone away.

The Judge’s Conclusions

Mr Justice Ryan concluded that the plaintiff had established on the balance of probability that the defendant committed acts of sexual abuse against her on the particular occasions and also in the general circumstances described above as claimed.

The Impairment Issue

Mr Justice Ryan stated that the relevant parts of the section may be extracted as follows:

s.48.—(1) For the purposes of this Act, a person shall be under a disability while—

(b) he is of unsound mind.

Noting that the plaintiff was capable of conducting her affairs, achieving a university degree, embarking on a career, having a relationship that led to marriage, working in this country and in the United States, becoming an Irish dancing teacher and acquiring a professional qualification as a teacher, Mr Justice Ryan stated that there was no evidence in the case to suggest that the plaintiff was anything other than a person who was capable of looking after her own affairs in the ordinary way. He concluded that the plaintiff could not be considered to be a person of unsound mind.

Section 48A

Mr Justice Ryan isolated the essential relevant elements of s. 48A as follows, with his emphasis added.

48A.—(1) A person shall, for the purpose of bringing an action— be under a disability while he or she is suffering from

any psychological injury

that—

*(i) is caused by any act of the perpetrator **and***

*(ii) is of such significance that his or her **will** to bring the action is **substantially impaired** or*

*his or her ability to make a **reasoned decision** to bring the action is **substantially impaired***

He noted that the section provides for **impairment**, not prevention, of capacity. He commented that it seemed obvious that one cannot simply say that a person who brings an action is necessarily outside the scope of the provision. Nor will it always be possible to say with any confidence when impairment ended. The fact that the plaintiff did actually bring proceedings or have them instituted on her behalf in 2007 did not mean that she was obliged to prove that there was a date when her condition changed from previous impairment to non-impairment.

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

Mr Justice Ryan was satisfied that the plaintiff was suffering from a serious psychological injury that was inflicted by the defendant. She suffered from a serious psychiatric condition in the form of Post Traumatic Stress Disorder of severe degree as a result of

the abuse she suffered. That constituted a psychological injury within the meaning of section 48A. The injury had caused the plaintiff to be severely affected in her psychological health and it was continuing to do so. He considered that the circumstances of the abuse made it even more difficult to take action: the status and authority of the defendant; the long duration of the abuse; the plaintiff's conflicted emotions brought about by the defendant; the fact that during the period of the abuse she lived a normal life concealing what was happening; and that he distorted her thinking and subverted her moral sense. The evidence was that the defendant's exploitative relationship with the plaintiff continued to affect her for many years after the physical acts ceased and still did so. He was an authority figure to whom she formed an emotional attachment. He was her trainer and mentor in the world of dancing in which she hoped to excel. He sedulously groomed her for sexual gratification and she responded by submitting to his wishes or demands. These features, according to the Judge, co-existing with the severe psychological injury represented additional impairments of Ms Doherty's capacity to sue Mr. Quigley.

Contrary to what Counsel for the defendant had suggested, carrying on one's life with a semblance of normality does not preclude the possibility that there may be a myriad of complex and debilitating psychological problems lurking beneath the surface

Mr Justice Ryan stated that he was satisfied that the plaintiff's psychological health had been profoundly injured. Her will to bring the action or her ability to make a reasoned decision to bring the action were and indeed still were substantially impaired. She had been impaired as Prof Browne reported and testified particularly by reason of the dissociation which affected the plaintiff's ability to address the abuse and the action was all about the abuse. Her psychological make-up had also been substantially impaired more generally, including her will to bring an action and her ability to make a reasoned decision to do so, because the ever-present condition had not abated and represented impairment within the meaning of s. 48A.

His conclusion was that s. 48A applied and the plaintiff's action was not statute-barred.

Damages

The Judge commented that it was difficult to overstate the profound and lasting effects of prolonged sexual abuse on a person whose childhood was blighted by this conduct. She was obviously entitled to a substantial award of damages both in respect of past pain and suffering and for future general damages and he awarded general damages of €400,000.00, assessing the figure for the past loss at €250,000 and for the future at €150,000.

Conclusion

The Statute of Limitations is very strictly interpreted by the Irish Courts. Even in the cases of persons of unsound mind an inordinate delay will not be tolerated. In **Kelly v O`Leary** [2001 IR 526] a delay of 50 years in bringing an action for child sexual abuse was held to be both inordinate and inexcusable; yet in **McH v M** [2004 3 IR 556] a delay of 54 years was not statute barred under the *Statute of Limitations (Amendment) 2000*. Despite being an inordinate delay it was excusable due to the psychological and psychiatric damage the plaintiff suffered as a result of the sexual abuse.

What is of interest is that in the case of Dana Doherty she tried, insofar as possible, to live a normal life; albeit that she was constantly traumatized by the events of sexual abuse which she had suffered at the hands of the defendant. Plaintiffs may often be discouraged from bringing Proceedings in these circumstances where they are told to

"get on with their lives", as if they should be able to recover from the events of the abuse without a means of bringing those events to a conclusion. This case will offer some comfort to those Plaintiffs who have suffered abuse but who have continued to suffer despite their best efforts to return to a normal life.

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