

THE HIGH COURT

[2009 No. 184 MCA]

IN THE MATTER OF SECTION 38(2) OF THE COMMISSIONS OF INVESTIGATION ACT, 2004,
AND IN THE MATTER OF A REPORT OF A COMMISSION ESTABLISHED TO INVESTIGATE AND REPORT ON THE HANDLING BY CHURCH AND STATE AUTHORITIES OF A REPRESENTATIVE SAMPLE OF ALLEGATIONS OF SUSPICION OF CHILD SEX ABUSE AGAINST CLERICS OPERATING UNDER THE AEGIS OF THE ARCHDIOCESE OF DUBLIN

THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM

APPLICANT

JUDGMENT of Mr. Justice Gilligan delivered on the 15th day of October, 2009

1. The Commission established pursuant to the Commissions of Investigation Act 2004, to investigate and report on the handling by church and state authorities of a representative sample of allegations of suspicion of child sex abuse against clerics operating under the aegis of the archdiocese of Dublin over the period 1975 to 2004 submitted its report to the applicant herein on the 21st July, 2009.
2. Following receipt and review of the report and a covering letter from the Commission and consultation with the garda authorities, the office of the Director of Public Prosecutions and the office of the Attorney General, the applicant considered

that publication of extracts from the report might prejudice criminal proceedings pending or in progress. Accordingly, the applicant brings this application pursuant to s. 38 of the Commissions Investigation Act 2004, which states as follows:-

“38.—(1) Subject to *subsection (2)*, the specified Minister—

(a) shall cause a commission's final report to be published as soon as possible after it is submitted to him or her, and

(b) may, at his or her discretion and following consultations with the chairperson or, if the commission consists of only one member, with the sole member, cause an interim report to be published, unless publication would hinder or impair the commission's investigation

(2) If the specified Minister considers that the publication of the final report or an interim report of the commission might prejudice any criminal proceedings that are pending or in progress, he or she shall apply to the Court for directions concerning the publication of the report.

(3) Before determining an application under *subsection (2)* in respect of a report of a commission, the Court shall direct that notice be given to the following:

(a) the Attorney General;

(b) the Director of Public Prosecutions;

(c) a person who is a defendant in criminal proceedings relating to an act or omission that is mentioned in the report or that is related to any matter investigated by the commission and mentioned in the report.

(4) On an application under *subsection (2)*, the Court may—

(a) receive submissions, and evidence tendered, by or on behalf of any person mentioned in *subsection (3)*, and

(b) hear the application in private if the Court considers it appropriate to do so.

(5) If, after hearing the application, the Court considers that the publication of the report might prejudice any criminal proceedings, it may direct that the report or a specified part of it be not published—

(a) for a specified period, or

(b) until the Court otherwise directs.”

3. The essential role of this Court is that if after hearing the application the Court considers that the publication of the report might prejudice any criminal proceedings, it may direct that the report or a specified part of it be not published for a period of time.

4. As is apparent from its terms the relevant provision does not envisage that elements of the report capable of prejudicing criminal proceedings pending or in progress never be published, or that the Court can permanently censor elements of the report.

5. Pursuant to s. 38(4)(b) of the Act the Court considered it appropriate that the application herein be heard in private and so directed. The Court takes the view that it is appropriate that its direction on publication of the report be given in open Court. In accordance with the provisions of the Act notice of the application was given to the Attorney General, the Director of Public Prosecutions, and the relevant persons who are defendants in criminal proceedings relating to an act or omission that is mentioned

in the report or that is related to any matter investigated by the Commission and mentioned in the report.

6. At the hearing of the application the applicant, the Attorney General, the Director of Public Prosecutions, and the relevant notice parties as referred to in s. 38(3)(c) of the Act were represented by counsel, and the Court has considered the various affidavits as filed on behalf of several parties and the submissions both written and oral as presented on behalf of several parties.

7. The Court has to balance in order of priority the paramount importance of an accused's right to a fair trial, the right of the community through the DPP to prosecute and the public interest in the publication of the subject matter of the report which the applicant herein is under a duty to publish as soon as possible.

8. The Court considers that it cannot in the course of this judgment set out the specific details of each of the ongoing criminal proceedings involving the notice parties by reason (as submitted on behalf of the DPP) of the right of the community to prosecute and the accused person's right to a fair trial.

9. The Court has had regard to the nature of the offences which the notice parties are facing by way of criminal proceedings, the present state of those proceedings and any relevant surrounding circumstances. The Court has also had regard in particular to the likely trial date taken in conjunction with the content of all the material that is in any way relevant to each particular notice party and the general content of the report. The Court also takes into account the facility available for appropriate rulings, directions and charge on the part of a trial judge and the robustness of the jury system.

10. Having considered these various factors, the Court comes to the conclusion that a specified part of the Commission's report might prejudice criminal proceedings and accordingly, in the exercise of its discretion, directs that the part of the report

which is presently entitled “Chapter Nineteen” and all other references in the Commission’s report which refer in any way to the person, the subject matter of Chapter Nineteen, be not published until the Court otherwise directs.

11. The Court does not consider that any separate direction is required with regard to the various other notice parties.

12. The Court accordingly will put the matter of the deferred publication of the specified parts as referred to herein in for mention before this Court on the 5th day of May, 2010.

13. The Court will hear the submissions of counsel for the relevant parties as to the form of the order and direction to be drawn up.