

SUBMISSION

by

COLIN McEACHRAN, Q.C.

in respect of

**SCOTTISH LAW COMMISSION
PAPER ON PRESCRIPTION
AND LIMITATION**

1. I am disappointed by the SLC's response to the problem of institutional child abuse as set out in their Consultation Paper. I would like to propose that the Commission recommend an amendment to the existing Prescription & Limitation Act along the lines :-

"The provisions of this Act so far as relating to prescription and limitation shall not apply in cases where the claim is of abuse (whether sexual or physical) occurring when the claimant was a child in an institution".

Alternatively I would propose a provision whereby all issues in institutional child abuse cases are heard at one single hearing (relevancy, timebar and the merits) to avoid the claimant prejudice and the very substantial delays which are building up in these cases.

Note : paras 2 x 3 omitted as confidential

4. Child abuse in institutions is something which has come to light relatively recently. It is not confined to Scotland. I have noted reports of its occurrence in England Wales, South Africa, Australia, Germany and in particular in Ireland where the Government set up a special commission.

I note that as long ago as 1996 the European Court on Human Rights in the case of Stubbings and Others -v- United Kingdom the Court said this at para. 56:-

“There has been a developing awareness in recent years of the range of problems caused by child abuse and its psychological effect on victims and it is possible that the rules on limitation of action applying to member states of the Council of Europe may have to be amended to make special provision for this group of claims in the near future”.

In my view this is a clear pointer to the Commission to come up with a radical solution to a particular problem.

5. In 2002 a Petition was presented to the Scottish Parliament for an inquiry into Child abuse. I was present in the Scottish Parliament on 1st December 2004 when all political parties responded to the Petition. They accepted there had been significant child abuse in institutions in the past and were anxious to help victims so far as they could.

The problem of time-bar was raised and in particular the twenty year prescription rule and one of the reasons for the Executive's remit to the Commission was to try to deal with this problem.

6. **The problems in Scots Law and Procedure in dealing with Institutional Child Abuse cases.**

- 6.1 Extreme delays in the courts in dealing with these case.

There are over 600 summons in such cases in the General Department of the Court of Session. Most of these cases have been in the Court since 2000. To the best of my knowledge, there have been debates in less than 10 cases. In 4 cases there has been a preliminary proof on time bar. Only one case has come to trial and in that case liability was admitted and no time bar point was taken.

There is no procedure for class actions in Scots Law. No judge has been put in charge of these cases to provide any judicial case management. It is doubtful if the cases can be conjoined, because each case is “fact sensitive” and a decision in one will not necessarily decide another. The Scottish Legal Aid Board has taken on itself to decide that certain cases should be treated as test cases, when this has not been agreed between the parties and when as pointed out above, one case is not likely to decide another. As a result many cases are still at the summons stage.

At a conjoining hearing in May 2006, counsel, representing Quarriers Homes where there have been a number of criminal convictions, stated that his clients wishes to have a legal debate in all cases. If that was unsuccessful, then they wished a preliminary proof on time bar and if that was unsuccessful, a proof on the merits. Looking to delays in fixing debates and proofs (18 months) and leaving aside all questions of appeal, it seems unlikely that any case will be resolved before 2010 and many cases will spill over into the second decade of this century.

