



Kathy McMahon, Founder
Irish First Mothers Facebook Group

cc. An Taoiseach, Dep. Enda Kenny;
Pres. Sinn Fein, Dep. Gerry Adams;
Leader Fianna Fail, Dep. Michael Martin;
Leader Labour Party, Dep. Joan Burton;
Dail Cmtee on Health and Children.

3/3/2015

Dep. James Reilly,
Minister for Youth Affairs and Children.

**Re: Notice of Intent to seek judicial review
of Mother and Baby Homes Inquiry.**

Dear Minister Reilly,

I write to appraise you of the deep concerns of myself and the over 50 mothers in our group - ever since the government press conference at which you announced the Mother and Baby Homes and related matters inquiry.

Those concerns hinge around statements by the Acting Secretary General (now Assistant Secretary) of the Department of Children and Youth Affairs, Ms. Liz Canavan to the public assembly at that announcement; and around the administrative and legal issues arising from her roles in the administrative structure both prior to and subsequent to the institution of the inquiry.

Ms. Canavan in her remarks to journalists and activists on that day, assured all that the **scope** of the inquiry under the minister's order could and would be adjusted to reflect matters of concern which arose.

Furthermore, this assertion was couched as a personal assurance, with the weight of personal conviction. The intimation, we believe reflects the simple reality that as Acting Secretary General, Ms. Canavan is in a personal position to influence the scope of an inquiry which must examine her own roles.

We draw to your attention that these statements crystallised the failure of the Department to heed the strictures surrounding the legal dictum of “*Nemo judex in causa sua*” viz. that one cannot be judge in one's own case.

Ms. Canavan, is a former head of the Adoption Authority of Ireland. She has had a senior and respected career in adoption issues in more than one government department. Yet the inquiry must investigate not only the adoption authority but also delve into Ms. Canavan's prior domains of administrative competence and oversight??

We cast no reflection of Ms. Canavan; her diligence; her intent, or her good name. Our view is that the matters we now bring under question are simply factual matters of faulty process which do not reflect on the integrity of participants.

Our understanding is that the Mother and Baby Homes and related matters inquiry is not an unleashed judicial process independent of the administration. The inquiry, we understand is instituted by way of a ministerial order; and such orders can be varied or adjusted by his administration.

The inquiry is therefore a quasi-judicial mix of adjudication and administrative direction. And wherever and when Ms. Canavan touches the inquiry process she, like any constituted officer places herself in the quasi-judicial domain and is then subject to judicially-high strictures of legal probity, and pivotally: of clearly visible probity.

If such is the case, at least two questions arise:

Will the High Court extend its protection to persons of good standing seeking a review, based on undisputed issues in our *prima facie* assertions.

With no formal legal training we have, no doubt erred in the legal expression of our concerns, but even the laywoman can understand the principles of the law, and “justice seen” is a basic principle.

We understand it to mean that there cannot be allowed to exist unaddressed a valid body of public scepticism about any public judicial process. We feel Ms. Canavan's role and remit sustain a scepticism impossible to dismiss.

The inquiry can be expected in prudence to examine administrative behaviour and identify error, omission, neglect and malfeasance. Ms. Canavan's high-level roles in administration and her current position in respect of the inquiry may belie its thrust.

Thus we cannot now see how the High Court can avoid exercising review and/or restraint on the inquiry process, on application from a person(s) of standing. We rely on the court to adjudicate, because we have no established competency to adjudge any rebuttal the department might offer as to the current integrity of the process.

Furthermore we will ask the court to consider the department's failure to be aware of the probity issues around having Ms. Canavan appear as a public representative of the department in respect of the inquiry. If the court accepts that this administrative failure was surprising, then it might wish to review the substance of the process whereby the terms of reference came about within the department.

We reiterate that it is the integrity of the process which we call into question, not the integrity of the persons. What is done is done. We must now deal with it.

We await any clarification you can offer that we are in substantive error on the basic facts outlined, and failing that we will proceed. We do not intend to imply duress on the department - we are simply in prudence affording your office of an opportunity to exhaust our administrative remedy.

Yours,

Kathy McMahon, Founder - Irish First Mothers Facebook Group

Website: <http://IrishFirstMothers.com>

Facebook Public Group: <http://bit.ly/VoiceForIrishFirstMothers>

Email: firstmothersvoice@gmail.com

References Attached below:

- **Extract from Adoption Rights Alliance briefing on press conference.**
<http://bit.ly/ARA-ToR-Briefing27Jan2015>

- **News article on the proceedings of the press conference announcing the Mother And Baby Homes inquiry by Susan Lohan of Adoption Rights Alliance.**
<http://irishexaminer.com/ireland/unmarried-mothers-find-themselves-forced-out-once-again-306157.html>

- **Bio Highlights - Elizabeth Canavan**

ARA BRIEFING EXTRACT:



" **DCYA assertions regarding the scope of the investigation**

When closely questioned by Susan Lohan at the official briefing Minister for Children and Youth Affairs, Dr James Reilly initially half suggested that all organisations, all agencies, all individuals involved in boarding out/adoptions **would be covered by the investigation**. When pressed to give an exact answer, the then acting Secretary General of the DCYA, Liz Canavan (a former CEO of the Adoption Authority of Ireland) shook her head and passed notes to Minister Reilly. When Ms Lohan pointed out her reaction to Minister Reilly he asserted that 'no reasonable person could expect the Investigation to go beyond Mother and Baby Homes, given the scale of such an Inquiry'⁸ "

News article on the proceedings of the press conference
announcing the Mother & Baby inquiry by Susan Lohan

Unmarried mothers find themselves forced out once again

Saturday, January 10, 2015 by Susan Lohan

Children's Minister James Reilly yesterday published the terms of reference for an inquiry called on for many years to no avail.

Matters began to come to a head initially as a result of the Oscar-nominated film *Philomena*, which chronicled the experiences of a young Philomena Lee and her son Anthony at the Sean Ross Abbey mother and baby home in Tipperary.

The film showed how Philomena and her son were effectively imprisoned for three-and-a-half years before Anthony was trafficked to the US for adoption to a well-off family.

Her research could not be so quickly diminished, nor could eyewitnesses, where locals recounted the many entry points to an underground network of tunnels – probably a former sewage system – which housed those remains.

Despite the best efforts of the Bon Secours Order to rubbish her findings and protest their ignorance, an international press smelled blood and demanded action.

Unfortunately, the die was cast before James Reilly assumed his portfolio as the Dáil had rushed to pass a motion calling for an investigation solely into mother and baby homes.

A more considered approach would have been to examine the institutional experiences of unmarried women and their children irrespective of where their human rights were ignored.

Mr Reilly yesterday attempted to fudge the issue, initially claiming no reasonable person could expect all institutions such as children's homes, infant hospitals, adoption agencies, doctor surgeries, and State maternity hospitals to be included.

The acting secretary general of his department, Elizabeth Canavan – a former chief executive of the Adoption Authority – tried to smooth the creases by saying she hoped the commission could possibly, all going well, fingers crossed, transition into other bodies once the tiniest link is established. All the while ignoring the first and vital paragraph of the terms of reference – "the commission is directed to investigate... the mother and baby homes listed in appendix 1".

I'd like to hear from the minister on how he can rationalise this to tens of thousands of women and their now adult children, how it remains reasonable to exclude their experiences merely on the labelling of their chamber of horror. The unmarried mothers forced to go away decades ago will not go so readily today.

Susan Lohan is director of the Adoption Rights Alliance.

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Elizabeth Canavan

Assistant Secretary, Department of Children and Youth Affairs

October 2011 – Present (3 years 6 months)

- Project lead for the 31st Amendment to the Constitution (Children) Bill, 2012
 - Responsibility for policy development for the Government's programme in respect of child welfare, protection and family support in Ireland
 - Responsibility for the legislative programme for the Department of Children and Youth Affairs
 - Policy and project lead for the reform programme for children's services in Ireland, in particular, the establishment of the Child and Family Support Agency
 - Oversight, monitoring and performance management for child and family services under the remit of the Minister for Children and Youth Affairs
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Chief Executive Officer

Adoption Authority of Ireland

April 2011 – October 2011 (7 months)

- Advising and supporting the Board in exercising functions of a judicial nature conferred on the Authority under the Adoption Act, 2010
 - Ongoing general management and control of the administration and business of the Authority including change management associated with new legal framework
 - Liaison with the Health Services Executive, Stakeholder Groups and National and International Statutory Bodies involved in adoption including the Hague Conference on Private International Law;
 - Managing press and media response and briefing the Department of Children and Youth Affairs and the Minister as required in respect of parliamentary affairs
 - Representing the Authority and the Government in international negotiations on a bilateral and multilateral basis
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Principal Officer / Deputy Director National Children's Office

Department of Health and Children

2004 – 2011 (7 years) | Office of the Minister for Children/National Children's Office

- Giving strategic leadership to and promoting the modernisation agenda for children's services including:- the Working Together for Children Initiative; the Prevention and Early Intervention Programme for Children; fostering collaborative relationships between statutory, non-statutory providers, philanthropy and academic interests in prevention and early intervention science; building capacity research to policy and practice in children's services
 - Leading policy development in the the 28th Amendment to the Constitution Bill, 2008 (2007-8); supporting the development of adoption policy and the Adoption Act, 2010 (2008-10); providing leadership in the areas of youth work (2009-11) national play and recreation policies (2007-11);
 - Monitoring Ireland's international obligations and reporting in relation to children's rights (2004-2011)
 - Providing policy advice to the Minister on these matters including in politically highly sensitive areas relating to children's rights, the constitutional amendment and adoption policy.
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Principal Officer/Assistant Principal Officer

Department of Health and Children

2001 – 2004 (3 years)

- Supporting the development and implementation of policy for the Health Reform Programme
- Supporting the Secretary General in the establishment of the interim Health Service Executive.

- Member of the project team for the development of the National Health Strategy for Ireland (2001) with project management and policy writing roles
- Leading communications programme to disseminate the Health Strategy
- Developing and implementing arrangements for assessing progress on the implementation of the Health Strategy