

WHEN CLERGY ARE ACCUSED OF CRIMINAL ACTS:

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Throughout North America in the last few years there have been a considerable number of cases where clerics and religious have been charged with child sex abuse. The harm to the Church has been enormous. The spiritual damage to those involved and the damage to the image of other clerics and their various ministries is inestimable. Although a secondary consideration compared to the spiritual and moral harm done, the financial burdens placed on dioceses because of these cases have now run into millions of dollars in some North American Dioceses.

Some Australian Canonists are aware of the work of Fr Tom Doyle O.P. and others in this field in the United States. My information is that recently the Canadian Bishops were given a draft to study on procedures to be taken in such cases. They seemed to show little interest. A virtually identical draft was then submitted with a title "Bishop's Protection and Canonical Procedures relating to the Denunciation of a Priest for a Criminal Act". With the new Bishop-centred title the interest was enormous!!

Since similar cases are sure to increase in Australia, it is not unreasonable to suggest that we should take similar action in the not too distant future. In an effort to urge some action in this regard, I have taken the recent draft of these recommended procedures, (courtesy of Canadian Canon Law Society Newsletter of June, 1988) and reproduce these in bold print together with my own comments.

**PROPOSED PROCEDURE TO BE APPLIED IN CASES OF CHILD SEXUAL ABUSE
BY A CLERIC**

INTRODUCTION

1. The following is simply a general outline; it presupposes that the detailed prescriptions of the code of Canon Law are observed by all concerned.

The general prescriptions of the Code are meant for the protection of the rights of all concerned. While bishops have a duty to provide for these cases and the spiritual needs of clerics involved, they have certain obligations to those offended. The purpose of these provisions is not to create a fortress around the clerics involved, but to provide for true justice in the dealings of the Church with the world.

Particular law ought to be established for such contingencies within Australia, whether under the more general title of denunciation for any criminal act or for cases involving sexual abuse will need to be determined by the appropriate authorities. The good name of the Church can only be enhanced when provisions are made for these cases. Law, of its nature ought to be future oriented, even though we hope its provisions will never need to be employed.

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2. Many aspects are involved in situations of alleged child sexual abuse by a cleric: spiritual issues, public relations issues, medical issues, civil law issues and canonical issues.

These aspects will vary from country to country and possibly from case to case. We cannot therefore adopt the guidelines of another country, but must approach this topic with a consideration of all the local conditions and requirements. An awareness of past practices or mistakes, new models of approach and developing civil and canonical legislation in these matters are some of the prerequisites for good particular law. Encouragement of movements like "Ministry to Priests" might be seen as part of a broader base in preventative care of clergy.

3. No one person could have all the required knowledge in these various areas; therefore, a team approach would be required.

A team approach is required in both the drawing up and implementation of these procedures. The counterproductive days of hiding the problems of clergy are past. The problem calls for a new maturity of approach.

I. BEFORE ANY DENUNCIATION IS MADE

1. A team of competent persons should be established under the authority of the diocesan bishop, comprising as a minimum: a canonist, a specialist in civil and criminal law, a medical doctor who is experienced in the treatment of persons who suffer from disorders related to paedophilia and similar illnesses.
2. If it is appropriate, the team could be established for a number of dioceses (for instance, an ecclesiastical province, for dioceses within a given civil jurisdiction, and so forth). In such instances, the team could report to the diocesan bishop directly concerned in a particular situation.
3. The team should establish a basic policy or contingency plan which would take into account existing Church and civil laws applicable to the territory (for instance, in matters referring to reporting obligations, confidentiality, privileged information, and so forth).

Since we lack many resources in Australia, it would be wise to set up guidelines at the level of the Episcopal Conference and then work on regional guidelines and regional teams according to the resources available. Differences in state legislation may require individual state teams or might permit even a national team.

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4. The diocesan bishop should appoint one or more priests who would have responsibility for conducting a preliminary investigation into complaints (c.1717,1) and informing Church authorities of the results of such enquiries. Likewise, suitable persons should be designated to meet with parents, and eventually the children involved, provided the parents so consent.

Clearly, the team has no authority to initiate any proceedings in such cases except when called by the bishop to whom they are responsible and to whom they must report. The one who makes the enquiry in the name of the bishop may not act as judge should the case be admitted to judicial process (c.1717,3). It is probably prudent at this stage of proceedings for the bishop to leave the answering of all questions regarding this matter to the team or their official spokesperson. Because the intervention of the media in such cases is prudently foreseen, then arrangements for a suitable media spokesperson should also be made.

No meeting should take place with the children without the consent of the parents.

5. Selection should be made of eventual referral centres, that would provide psychological testing and assessments, assistance with chemical dependency (if such is the case), and offer complete medical and neurological facilities, etc. Good personal relations should be established with the Directors of such centres.

There are many disputes in this area. Some would argue away all guilt because of the sickness of paedophilia, while others call for the death penalty; some might suggest a variety of procedures or drugs that might help restore a priest to his ministry, while others argue that it is totally incurable and that return to ministry is impossible. Since the future of the cleric involved depends on one's school of thought, it is advisable that great prudence be used in not rushing to quick decisions. General policies might prove impossible in this area because of a variety of circumstances of cases.

6. A good understanding should be established with the media, agreeing where possible on the format for any eventual press releases or statements, designating a contact person, and so forth.

Often we can be paranoid about the press. Some bad press recently harmed the Church when a bishop allegedly tried to cover up results of a survey about priests. It could have been good publicity to admit that priests are human - it's hard to keep that type of secret. We need to present what we are doing in this field as "good news" for the Church and those who may be involved. There was understandable paranoia when a copy of the Canadian draft was leaked to the press. However, the reaction was most positive, it went something like this: "Look at what the Catholics are doing to face up to a most serious human problem -

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why aren't the other Churches doing something?" Catholics were good news while the other Churches came off second best.

In its dealings with the media, the Church should be seen as a Christian community that is sensitive, caring and responsible in its unquestioned attention and caring for the victims of clergy misconduct. There should appear to be a public separation of the offender from Church authorities. The offender must be made to accept the consequences of his actions. This does not mean that he is abandoned, but that his action is not condoned and viewed as profoundly unfortunate by the Church. Finally all public statements to secular and Catholic Press, to the media, letters of bishops to clergy and faithful, including legal pleadings, must be entirely consistent. The Church should remain open and avoid the impression of being under seige. Cliches such as "no comment" are to be eschewed, as a media policy of silence implies secrecy or a cover-up.

7. Lawyers should be selected (and be on a retainer) who would be able to offer assistance in matters referring both to criminal proceedings and to eventual civil proceedings.

Most Australian bishops would shudder at the thought of keeping lawyers on a retainer. But if a job is to be done well, we should be professional enough to get the best advice possible and be prepared to pay for it - at least in setting up our guidelines. Since much of what follows is in the area of pastoral care, I am sure that many Catholic Lawyers would see it as a privilege to help on such teams. I am sure none of the Priests would be charging for their time!

8. An understanding should be reached with insurance agencies, concerning the extent of medical coverage, procedures to be observed, and so forth.

In the words of the Canadian consulting lawyer Jeffrey King: "It is essential that the existing insurance policies with each diocese be reviewed to determine the terms of obligation imposed on the diocese for early disclosure of any potentially liable situations in order not to be denied coverage for late disclosure. There may be specific terms in such policies regarding the assistance to be given to the insurer in order that it may adequately prepare a defense to any action taken in a court of law."

Malpractice insurance is virtually no longer available to the Church in the United States to cover these cases. However this aspect should be investigated within the Australian context with our own Catholic Church Insurances and other companies as well as the provision of adequate medical coverage for every cleric.

9. The diocese should establish a contingency fund to cover eventual legal, medical and counselling expenses.

This provision of contingency funds is a totally new concept not

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featured in the general law, but a most prudent application of particular law. It depends heavily on how well some of these matters are provided for already within a diocese and within Australian society. It also raises questions of the vulnerability of the patrimony of the Church should our law insanely follow the direction of the common law in the United States where dioceses can now be sued for millions.

10. Once the policy is established, it should be communicated to the clergy concerned.

All clergy should be at least vaguely aware that provisions exist for these cases. It is primarily the bishops who need guidelines to help when cases arise. Many mistakes have been made in this area because it is something that might only occur once in a lifetime. The days of hiding the problem under the carpet or transferring the cleric to another jurisdiction to avoid charges have totally disappeared. Justice works both ways and the Church is not in the business of avoiding justice.

11. In the case of clerics who do not depend directly on the diocesan bishop (v.g., religious, visiting clerics), arrangements should be made with appropriate superiors.

It will be for major superiors of both clerical and lay religious institutes to draw up their own guidelines for such cases. Contracts with dioceses where religious are working will need to be drawn up tightly so that the line of command and responsibility is clear. There is one case in the United States where the bishop and the religious superior and the Church agency for which the religious worked have all individually been sued for millions.

II. WHEN A DENUNCIATION IS MADE

1. As soon as a cleric is accused and the parents' name is known, a person selected for this purpose (see No. 1 above) will meet with the parents on behalf of the diocese. The child in question would not assist at this first meeting, but should instead with parents' consent be interviewed by a mental health professional, familiar with problems of children in this age group. If the parents do not consent, advice should be offered to them as to where to obtain appropriate professional counselling for themselves and the children.

This pastoral approach or lack of it can produce much good or permit huge harm to the faith of individuals. It is rare that non-catholics are involved in these cases. In numerous cases the family is prepared to forgive the weakness of the cleric involved, but remain extremely bitter towards the bishop of the diocese who mismanaged the case from the outset and was forced into a corner with his duplicity. The counselling needs to be professional and this could prove to be a huge draw on the contingency funds of the diocese.

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A private response from the Prefect of the Congregation of the Clergy in 1983 referred to the bishop's obligation to directly involve himself in disputes regarding priests. The bishop may see fit to involve trusted advisors in the process, but he should supervise and directly participate in the investigation. Canons 1717-1719 offer a wide discretion to the bishop in the investigation of complaints while canons 1720-1728 outline the manner of proceeding if there is a probability that a canonical delict has been committed.

Following the procedures outlined in these canons shows that the Church has a process for the protection of rights and provides an answer for the courts should they demand to know if the ecclesiastical superiors took responsible action.

2. The diocese should provide the accused cleric immediately with a trial lawyer, who is distinct from the diocesan attorney.

A list of names of lawyers in each state who are familiar with this type of case will need to be available to the bishops and the team/s involved. There should be a thorough understanding by the bishops and those involved in the preliminary investigation of the laws of privileged evidence in our courts. The position of the secret archives of the Chancery should also be ascertained.

3. A meeting could then be held with the appropriate civil counsel present: the diocesan bishop, the diocesan attorney, the accused priest, his lawyer.

Planning strategy might be a bigger deal in North America than in Australia. But as a principle, it is best to act in unison in these cases and use a multi-faceted approach. Every case will be different, laws will change, other solutions may become available.

4. At no time after the denunciation has been made should the diocesan bishop or any of the priests involved hear the sacramental confession of the accused cleric.

The bishop or other priests involved could find their testimony compromised if they should have acted as confessor to the accused cleric. Being advised against such action will ultimately benefit the process of justice rather than impede it. Inability to reveal confessional material could well preserve the sacramental seal but compromise the accused and leave the Church open to a charge of "cover-up".

5. Three situations can be envisaged at this time: the cleric admits that the allegations are true; the cleric denies the allegations, but is willing to cooperate; the cleric denies the allegations and is obstinate in proclaiming his innocence.

Depending on the attitude of the cleric, some or all of the following steps should then be taken.

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6. The cleric is to be given immediate leave of absence; likewise, an appropriate place should be chosen for him to reside pending the outcome of the investigation. At no time should he return to the parish where he was assigned (if such is the case). (Possibly a precept is given).

At this point it would seem that it is the Church that needs to be protected. It is in this area that the original American proposals made the serious mistake of recommending suspension of the cleric accused just to preserve the name of the Church. However, due process is necessary and the provisions of law for the imposition of penalties must be observed. In this context then, the leave of absence arrangement made possible under c.1722 is a most acceptable compromise for both parties (diocese and accused). At this point the cleric is "accused" and only that. The care of the Church and its love for those who have done wrong is not to be overlooked. Canon 1350 ensures that the accused is cared for financially.

7. The matter is then turned over to one of the designated priests (see above, I,4) who will handle the preliminary enquiry. The lawyers designated above (II,2) should attend.
8. If the designated priest, after hearing those who are bringing the complaint, is of the opinion that there is indeed reason to proceed with the case, the accused cleric is to be heard.
9. Once the enquiry is completed -- saving the good name of all concerned (c.1717,2) -- the designated priest is to present a report to the diocesan bishop. He can either find that there appears to be no substance to the accusations and that the case should be considered closed; or, that indeed there is matter for further action. In this latter case, the cleric's faculties to preach are to be removed (c.764), and, if the cleric is a priest, the right to hear confessions is also immediately removed (c.974,1). If appropriate, a penal precept (cf. c.1319) can be issued forbidding the cleric from approaching the parish or institution to which he was attached.

It is a priest who acts as notary and presents the report to the bishop. Canon 483,2 provides that in cases involving the reputation of a priest, and these records of a preliminary investigation, the notary should be a priest.

Canons 1718 and 1341 provide a reasonable canonical background for the prudent step of an extrajudicial decree imposing penalties. Canons 1342-1349 provide for what has been done at this stage of proceedings. The penalties are not permanent as a full judicial trial would be necessary for such action.

10. The cleric is then to be referred immediately (no later than the next day) to the selected treatment centre for medical and psychological evaluation.

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The emphasis in this document would appear to be on medical and psychological care. The American proposals included spiritual care. This might be presumed and can certainly not be imposed, but it is something to which the accused has a right.

11. Once this evaluation has been received, and if it shows that the cleric is at least partly imputable for his actions (cf. c.1321), the team (see above No I,1) should meet to decide whether it is appropriate to recommend that the matter should be referred to the diocesan Promotor of Justice in order to begin a canonical penal trial.
12. If it is judged opportune to begin a canonical trial, the provisions of c. 1722 can then be applied: the accused can be prohibited from the exercise of sacred ministry or of some ecclesiastical office and position, or residence in a certain place or territory can be imposed or forbidden, and so forth.

Paragraph 11 is poorly worded. If the cleric is only partly imputable then c.1321,1 would appear to indicate that the full penalty should not be imposed. Canon 1324 indicates reasons why a penalty must be diminished or a penance substituted and certain schools of thought would argue for this. However, canon 1722 in the name of the prevention of scandal, provides for prohibition of the exercise of sacred ministry or an ecclesiastical office and even for imposition or forbidding of residence in a certain place or territory and even public participation in the Eucharist.

13. If after the canonical trial the cleric is found guilty, then the appropriate canonical penalties are to be applied (not excluding the eventual possibility of depriving the cleric of the clerical state).

In dismissal from the clerical state there is no longer need to support the guilty cleric. Charity will provide the correct answer at the local level. No penalty can be imposed unless there is a legal provision for it. In the case of sexual offences against minors c.1395,2 provides for this penalty. To impose the penalty a collegiate tribunal is required according to c.1425.

III. IF SEXUAL ABUSE HAS BEEN VERIFIED

1. Assistance should be continued in various ways for the child (or children) involved, for the family, and so forth.

Awareness of the long-term moral, physical and psychological damage done by such a crime to individuals, parishes and the diocese means that pastoral after-care is an essential on-going dimension that is part of the aftermath of the case for years after it has been solved by the courts. The concrete circumstances of each case should be weighed up and taken into account along with the resources of the diocese to provide this

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after-care.

Sexual abuse by a cleric, especially a priest, can have a devastating effect on the child's short and long term perception of the Church and its clergy. The victim's capacity to develop trusting relationships with clergy will be impaired as will the child's faith in the sacraments as sources of communication with Christ. Church attendance by the victim, their families and other members of the faithful may decline.

2. Any eventual return to ministry could not be considered until assessment is available (after therapy). The team (see above, No.I,1) should be involved in making any recommendations in this regard. If the cleric is authorised to return to ministry, provision should be made for him to participate in one or other self-help groups (or something similar).

This is one area where all bishops in Australia should arrive at a common policy. The damage, contradiction and seeming injustice possible where one bishop could advocate dismissal from the clerical state, while another pushes for a quick return to the ministry and yet another imposes precepts of taking certain medication for life need to be weighed up carefully.

Help must be given to the offenders to determine their commitment to the priesthood or religious life, the reasons for their vocation, their hopes and dreams for the future and the real possibility that they may be almost unfit to be priests.

One area unmentioned in this document is the effect of these crimes on other priests and clerics who are not affected with sexual problems. They may experience a severe hampering of their ability to minister without suspicion or to minister to young children. They can become fearful of touching children even in the act of blessing them or in giving normal signs of affection.

The image of the Church as a haven for homosexuals or sexual perverts easily damages the faith of priests and adherents as does the mishandling of these cases by Church authorities.

IV. OTHER FACTORS TO BE NOTED.

1. In contemplation of litigation and for the benefit of the legal counsel of the diocese, it is recommended that a written record be kept of all steps taken at the diocesan level from the moment the denunciation was first received. Care should be taken to protect the confidentiality of such documentation, depending to a large extent on the prevailing civil legislation. The written record shall be endorsed as being prepared for the benefit of and assistance of the diocesan counsel.

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2. A strict observance of the canonical norms should protect the diocesan authorities by enabling them to show that all necessary steps were taken. Likewise, if the cleric has recourse to the Holy See against the action of the diocesan bishop or of the other persons involved, it can be shown that the cleric's rights were fully respected.

Canon 1719 provides that the acts of the investigation are to be kept in the secret curial archive unless needed for a penal process. This documentation is most important as proof to ensure that true justice has been done.

CONCLUSION

1. There is no easy solution to such a painful situation.
2. Special care should be taken to show the Church's concern for the victims of such actions, even though the matter is painful. The spiritual well-being of the children and of the parents is of primary concern -- "Salus animarum suprema lex" (c.1752).

This Canadian document is a fine attempt to provide guidelines that are most needed in cases where clerics are charged with sexual abuse of children. We are fortunate that we can now use such a document as something of a springboard to encourage our own bishops to see the need to produce a multi-disciplinary approach that should be even more adaptable to the conditions of Australia.