

uniuntur), whereas the Latin Code's vista is more clearly legal and focuses on the couple's consent. The notion of God's action uniting the couple has not been stressed in the Western canonical tradition and is not found in the present Latin Code. In addition, the Eastern Code might be faulted as being untrue to Oriental traditions by not including some notion of the Church's blessing in the "defining" canons, although just how to do so was bound to be very problematic. In the West, the concept of canonical form was very much a legal imposition, whereas in the way the Oriental traditions developed, the sacred rite was something intimately connected with the sacrament itself. How the principle *matrimonium facit consensus partium*, an axiom never explicitly stated in the CCEO, of Western canonical origin but also taught by Popes, is or indeed isn't congruent with the tri-dimensional Oriental view of the formation of the marriage bond remains a point to be investigated further and developed in canonical doctrine.

ADDRESSING THE ISSUE OF CLERGY ABUSE

Rev. Francis G. Morrissey, O.M.I.*

RÉSUMÉ – Depuis quelques années, les abus sexuels par des membres du clergé envers les mineurs ont provoqués une situation douloureuse pour l'Église. Lorsque les évêques ont dû faire face à de graves accusations, les lacunes du droit canonique à ce sujet se sont rapidement faites sentir. L'A., qui est intervenu en tant qu'expert canonique dans plus d'une centaine de cas, livre le fruit de son expérience et soulève quelques questions, tant du point de vue du clerc accusé que de son supérieur. Il situe les déclarations ou accusations d'abus dans leur contexte historiques: les droits de la personne ont été davantage reconnus et revendiqués depuis la dernière Guerre mondiale; les sciences ont approfondi les causes psychologiques des désordres sexuels; l'image du prêtre s'est vue transformée dans l'opinion publique et la société a acquis une plus grande propension pour les litiges. Lorsque confrontés à cet état de choses, les diocèses ont été d'abord pris au dépourvu, mais ont éventuellement réalisé l'urgente nécessité de venir en aide aux victimes et aux accusés. Le droit canonique offrait certaines solutions, comme le congé (cf. c. 1722), mais le droit séculier se développait aussi de son côté, principalement en rapport avec la responsabilité de l'employeur. Certaines conférences épiscopales ont élaboré des procédures en cas d'inconduite morale, soit de clercs soit d'employés diocésains, et des indults ont été accordés par le Saint-Siège à quelques diocèses en ce qui a trait à l'application du droit pénal dans des cas particuliers.

L'A. soulève ensuite quelques points qui devront être examinés éventuellement par l'Église: les enquêtes ecclésiastiques menées parallèlement aux enquêtes civiles qui risquent de s'entrecroiser et de se contredire; les limites des droits résultant de l'incardination; la laïcisation administrative et la procédure développée par la Congrégation pour le Clergé; l'impact sur les victimes et l'ensemble des fidèles; la réintégration du prêtre délinquant au ministère en tenant compte des cc. 1341 et 1395, le renvoi de l'état clérical étant un dernier ressort. Finalement, des points demeurent non résolus, tant du côté du clerc que de celui de l'évêque ou du supérieur: l'étendue et les limites des droits d'un clerc accusé quant à la « rémunération qui convienne » à sa condition (c. 281); le droit au ministère d'un clerc accusé; les obligations et les droits face à la thérapie; les avis canoniques; le paiement pour dommages encourus; l'imputabilité du crime et les limites des peines imposées; les procédures de recours possibles; les dispositions à prendre envers la communauté de fidèles et le presbytérium. L'A. termine en rappelant le caractère pèlerin de l'Église, toujours en chemin vers la perfection mais sans cesser d'être humaine.

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Introduction

Undoubtedly, one of the most painful situations that the Church has had to face in recent years is the issue of clergy involvement in the sexual abuse of minors. At first, accusations were generally met with denial; later on, when it became evident that there was indeed a foundation to at least some of the accusations, grudging steps were taken to address individual cases. With time, though, conferences of bishops began to address the issue on a more systematic basis, eventually issuing protocols and procedures to be applied in such instances and taking into account the well-being of all those involved in this matter.

Church authorities were, obviously, reluctant to recognize the extent of such deviant behaviour. It just did not seem possible that it was widespread; rather, it was considered limited to isolated incidents. In some circles, it was even considered that incidents of this type were reserved to the English-speaking countries,¹ although it soon became evident that such was not the case.

When bishops began to address the issue, they came to realize that the laws of the Church had not been written in the perspective of such cases, especially given the serious financial and public relations consequences arising from criminal and civil proceedings against the offending priest as well as against the diocese or religious institute to which he belonged.² Although some canons, such as c. 1395, alluded to sexual acts committed by clerics against minors, they did little to address long-term issues. Studies are now under way to see what adjustments could be made in the law to enable bishops to act appropriately, all the while safeguarding the rights of all the persons involved.³ This is a delicate balancing act, one that will not satisfy everyone. However, to act otherwise would constitute another injustice, thus compounding the situation.

¹ See letter of the Secretariate of State, 15 April, 1999, (no prot. no.). In addition to highly publicized cases originating in Austria (see *La Documentation catholique*, 95(1998), pp. 393-394), Belgium (see *La Documentation catholique*, 94(1997), pp. 118-129) and France (see *La Documentation catholique*, 97(2000), p. 196), there have also been similar instances in Italy (see, for instance, *L'Osservatore Romano*, 1 November 2000, on-line edition, pp. 6-7).

² See T.J. GREEN, "Book VI: Sanctions in the Church", in J. BEAL, et al., ed., *New Commentary on the Code of Canon Law*, New York, Paulist Press, 2000, p. 1600: "One must remember that the code was drafted and promulgated in the 1970s and early 1980s, somewhat prior to the notable emergence of the scandal of clerical sex abuse of minors in the United States and elsewhere. At that time church authorities and canonists were much less aware than today of the broad and complex implications of this tragic development."

³ For instance, see the report in *Catholic News Service*, December 4, 2001, "Doctrinal Congregation takes control over priestly pedophilia cases", and related reports and interviews.

This essay, then, would like to examine certain points from a canonical perspective. Certainly there are also spiritual, psychological, medical and social dimensions to the issue, but these are not being addressed here at this moment. This article will begin by examining the context in which these cases first came to light, then review the applicable canonical legislation, the juridical issues that have to be addressed, and a number of points that still remain unresolved.

1 – The Context ⁴

1.1 – Renewed Emphasis on Human Rights

In the years since the end of World War II, there has been a renewed emphasis on human rights in their various dimensions.⁵ Charters of rights have been promulgated, revised and renewed,⁶ in many countries, there have been many court cases brought before the secular tribunals at all levels to determine the scope and application of various rights.⁷ In the same way, the Church, following the example of Blessed John XXIII, recognized rights that belonged to all the faithful.⁸ The 1983 *Code of Canon Law* and the 1990 *Code of Canons of the Eastern Churches* demonstrate clearly the concern of the Church for the rights of its members.⁹ More especially for our topic, the rights of children were given particular attention during the United Nations' "Year of the Child".¹⁰

⁴ Many of the notions in this section, while updated where appropriate, are based on a previous study: F.G. MORRISSEY, "The Pastoral and Juridical Dimensions of Dismissal from the Clerical State and of Other Penalties for Acts of Sexual Misconduct", in *CLSA Proc*, 53(1991), pp. 221-239.

⁵ See, for instance, the "Universal Declaration on the Rights of Man", of the United Nations, Paris, December 10, 1948. On November 20, 1959, the U.N. adopted the "Declaration of Rights of the Child"; see *La Documentation catholique*, 57(1960), col. 728-730.

⁶ For instance, Pope John Paul II issued the "Charter of Rights of the Family" on October 22, 1983; see *The Pope Speaks*, 29(1984), pp. 78-86.

⁷ Among decisions of the Supreme Court of Canada relating to human rights and the situation of the Catholic Church, we could note: December 20, 1984, decision no. 17108; March 14, 1985, decision no. 17610. As for decisions relating to human rights in general, see decisions no. 26013, June 17, 1999; 26014, September 17, 1999; 26041, June 17, 1999.

⁸ See BL. JOHN XXIII, Encyclical Letter, "Pacem in Terris", April 11, 1963, Part I. See also VATICAN II, Pastoral Constitution, "Gaudium et spes", Nos. 62, 68, 92, etc.

⁹ CIC 1983: cc. 208-223, 224-231; 273-289; 662-672. CCEO 1990, cc. 7-26, 367-393, 399-409.

¹⁰ The United Nations proclaimed 1979 as the "Year of the Child". In his address to the United Nations, October 2, 1979, Pope John Paul II drew the attention of his listeners to the significance of concern for children: "Concern for the child, even before birth, from the first moment of conception and then throughout the years of infancy and youth, is the primary and fundamental test of the relationship of one human being to another", in *The Pope Speaks*, 24(1979), p. 310.

1.2 – Questions of Sexual Abuse

As people became more and more aware of what was happening to children, particularly in view of the publicity given to the “Year of the Child”, and when laws were subsequently put in place to provide for reporting of abuses against children, it did not take long until the emphasis shifted to questions of sexual abuse.

At the same time as rights were being recognized and vindicated, other issues were also the object of renewal and concern. Just as specialists began to understand the dynamics operative in certain illnesses such as alcoholism, so too did they begin to grasp the extent of the damage caused to young people and adults by sexual abuse, particularly in cases of incest.¹¹

1.3 – The Authority of the Priest in the Community

A third general factor, which followed unintentionally upon Vatican II’s renewal of the life and ministry of priests, was the levelling of the priest’s authority in the community. No longer in many places is he still placed on a pedestal or exalted above all others. Rather, at times, a number of priests seem to have lost a sense of vision of where they are called to be and what they are expected to do. They are no longer the subject of a taboo, and if people have a legitimate complaint against a priest, they will take action accordingly.

1.4 – Recourse to Courts

A fourth factor which indirectly influenced the situation was the renewed propensity of certain people to have recourse to the courts each time there was a complaint — legitimate or not. Not surprisingly, the litigious characteristic of some people spilled over into Church matters. There certainly have been abuses in this area, with many frivolous suits being introduced, especially against teachers and other public officials, and often ruining peoples’ lives as a consequence.

¹¹ See C. HEBERT and C. WYSE, “Child Sexual Abuse: A Review of the Literature”, in *The Report of the Archdiocesan Commission of Enquiry into Sexual Abuse of Children by Members of the Clergy*, St. John’s, Archdiocese of St. John’s, 1990, vol. II, pp. A1-A-116, with abundant bibliography.

These four factors — concern for rights, especially those of children and vulnerable adults, recognition of the ravages of sexual abuse, a new social recognition of the priesthood, and a propensity to bring matters to the courts — added a particularly acute dimension to the question of sexual misconduct of the clergy. To this we could add an element of greed, the at times excessive awards granted to victims by the courts, which awards often were millions of dollars.¹²

1.5 – Other Abuses

However, given this uncertain context, it is not surprising that abuses of other kinds occurred. For instance, there are numerous cases of persons bringing false or unsubstantiated charges against members of the clergy.¹³ It is not impossible that some of these false accusations arose from the hope of gaining the same type of monetary award as the real victims received. There are also many documented instances where lawyers even went seeking out people, suggesting to them that they were abused in their youth and offering to introduce suits against the Church on their behalf on a contingency basis. In other words, if the alleged victims didn’t receive any award, there would be no payment due to the law firms; if they won, the lawyers would receive a percentage of the award. In other instances, over-zealous police officers began seeking for victims and encouraging people to come forward, but without the promise of pecuniary remuneration to the victims.¹⁴ As suits were introduced, a “deep pocket” approach was adopted. Instead of suing just the perpetrator, others were named as co-defendants. In some instances, not only the diocese, but also the metropolitan, the conference of bishops, and even the entire Catholic Church were named as a co-defendants.¹⁵

¹² For instance, in a well-publicized case against the Diocese of Dallas, Texas, a jury awarded damages of \$120,000,000 against the Diocese. See, CONGREGATION FOR THE CLERGY, Prot. No. 97002053, July 28, 1997.

¹³ Sometimes, even the Catholic press can be involved. For instance, a lawsuit is pending (at the time of writing) in the Ontario Superior Court of Justice against *The Wanderer* for an article which appeared in the August 17, 2000 issue, “Pending Arrest of Pedophiles expected to Implicate Bishop.”

¹⁴ For instance, in England, see R. WEBSTER, *The Great Children’s Home Panic*, Oxford, Orwell, 1998, 69p. In this short work, he addresses the issue of the creation of false allegations. Although the events narrated do not concern the clergy, they give a good indication of the hysteria that can occur when people go looking for faults, overlooking what could be other explanations.

¹⁵ Of the four cases adjudicated by the courts in Canada at the time of writing, two have stated that the “Catholic Church” as a whole could indeed be sued, while two others stated that it could not. In the latter decisions, it was provided that the appropriate civil corporation

2 – The Law

As the first cases came to light in the mid 1980s, there was confusion, consternation, and at times even panic in chancery offices and religious institutes. With time, though, the focus shifted from trying to control the damage to seeing what could really be done for the victims, finding out what were the underlying causes of such activity, and what long-term remedies, if any, could be applied.

In many instances, it was the secular authorities who handled the matter and Church authorities had to stand by and let justice take its course. There was no coordinated plan of action. Fortunately, in one sense, this was an indication of the high respect in which members of the clergy were held; such cases, if they existed, were considered to be relatively rare.

2.1 – Exploration of the New Canonical Legislation

Eventually, Church authorities became more aware of the fact the new canonical legislation — while not written in the perspective of such a mushrooming of cases — provided some avenues to be explored in addressing the situation. For instance, what came to be known as *administrative leave* was used more frequently.¹⁶ Not all the answers based on canon law were appropriate, however, as the abundant literature of the subject shows. At the same time as the matter was being addressed in canonical circles, it was also being studied by the secular legal system, particularly as regards issues of vicarious liability and responsibility for the actions of subordinates. We must recognize, though, that both systems have different perspectives. The canon law is to operate in the sphere of “*salus animarum*”, seeking for truth, while the secular law was more immediately concerned with justice than with truth.¹⁷

(such as the Roman Catholic Episcopal Corporation of N.N.) could be sued. For instance, see Court of Queen’s Bench of Alberta, Action No. 9901-15362, January 21, 2000 (overturned on appeal); Supreme Court of British Columbia, *K.(W.) v. Pombacher*, [1998], 3 W.W.R. 149 (B.C.S.C.); Ontario Court of Justice, *Swales v. Glendinning*, July 17, 2000, Court File 33504; etc. For an overview of the general principles invoked in the early 1990s, see M.E. CHOPKO, “Ascending Liability of Religious Entities for the Actions of Others”, in *American Journal of Trial Advocacy*, 17(1993), pp. 289-350.

¹⁶ See J.P. BEAL, “Administrative Leave: Canon 1722 Revisited”, in *Studia canonica*, 27(1993), pp. 293-320. The author carefully notes some of the canonical difficulties arising from an indiscriminate use of this canon.

¹⁷ See F.G. MORRISEY, “Canon Law Meets Civil Law”, in *Studia canonica*, 32(1998), pp. 183-202, at p. 202. See also Z. GROCHOLEWSKI, “Iustitia ecclesiastica et veritas”, in *Periodica*, 84(1995), pp. 7-30, where the author analyses the relationship between truth and justice as it is expressed in the addresses of four Popes to the Roman Rota.

One of the first canonists who attempted to apply the then new canonical legislation to the situation, was Father Thomas P. Doyle, who at that time was working at the Apostolic Nunciature in Washington.¹⁸ He did so after a very painful case came to light in the Diocese of Baton Rouge, Louisiana. Nevertheless, his overall proposals were not immediately accepted by the United States’ bishops, although in later years many of his insights were integrated into diocesan protocols.¹⁹

2.1 – Canadian Initiatives

In Canada, in 1987, and building on Father Doyle’s work, an initial protocol was prepared and received by the bishops, leaving each diocese free, however, to accept it or adapt it as required.²⁰ As a result both of the experience gained in applying this procedure and of the study of various other initial proposals put forward by dioceses and institutes, the Canadian Conference of Catholic Bishops (CCCC) asked in 1990 that the procedure be updated and, if necessary, revised. This was part of an overall task assumed by the CCCC to address in depth the issue of sexual misconduct by members of the clergy and Church personnel.²¹

Around the same time, what came to be known as the Winter Commission in St. John’s, Newfoundland, also recommended a revision of the diocesan protocols, trying to give them a more pastoral tone.²²

This eventually led to the publication of *From Pain to Hope*,²³ a document which has well served the Canadian Church, but which will

¹⁸ For references to his initial work, see J. PAULSON, “The Clinical and Canonical Considerations in Cases of Pedophilia: The Bishop’s Role”, in *Studia canonica*, 22(1988), pp. 77-124, esp. pp. 106 and 109.

¹⁹ See, for instance, the extensive work of the United States’ bishops in *Restoring Trust*, 3 vol. 1994-1996, with bibliography and comments on diocesan protocols that were analyzed.

²⁰ The text of this initial protocol may be found in J. PAULSON’s study, pp. 121-124.

²¹ For background material, see F.G. MORRISEY, “Procedures to be Applied in Cases of Alleged Sexual Misconduct by a Priest”, in *Studia canonica*, 26(1992), pp. 39-73.

²² See *The Report of the Archdiocesan Commission of Enquiry into the Sexual Abuse of Children by Members of the Clergy*, St. John’s, Archdiocese of St. John’s, 1990, vol. III, p. 28, recommendation 29: “[...] that the Archdiocese review and reflect on the policy and procedures for handling complaints of sexual abuse in the diocese of Baton Rouge with the intention of producing a revised protocol which has a clearly enunciated victim-oriented philosophy, where the spiritual well-being of people is of primary concern (c. 1752).”

²³ See CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *From Pain to Hope. Report of the Ad Hoc Committee on Child Sexual Abuse*, Ottawa, CCCC, 1992, 91p.

probably be revised in the near future in the light of recent developments and court decisions.²⁴

One difficulty that arose with the application of the protocols was that they were specifically designed for incidents involving minors. However, in some places, they were also applied to situations involving consenting adults, or other forms of misconduct, such as addiction to pornography on the internet. It would have been preferable had distinct protocols be established for such matters.

Other conferences of bishops also initiated studies on the matter and developed their own protocols that would take into account the applicable secular legislation, particularly in regard to reporting rules.²⁵

In view of the proliferation of protocols trying to address the issue, and because of the number of complaints received by the Congregation for the Clergy from priests who felt that they were unjustly treated by bishops, the Congregation initiated in 1997 a study of these various protocols and documents. To date, no public formal report has been issued as a result of this study.

Some bishops' conferences applied for and received particular indulgences, making it somewhat easier for them to handle the cases presented to them.²⁶ Among the canonical difficulties encountered, we could mention the following: the statute of limitations (c. 1362), the proof of imputability, especially when dealing with a constitutional illness (c. 1321), the fact that the age of majority in canon law is not necessarily the same as in the secular law (c. 97 compared also with c. 1395), the legal consequences of incardination (c. 265), and so forth.

Thus, for the United States, the Holy Father granted an indulgence on April 25, 1994, extending to 18 the age for which c. 1395 applies, and

²⁴ See CANADIAN CONFERENCE OF CATHOLIC BISHOPS, Canon Law - Inter Rite Committee, May 31, 1999, Document No. 7. In particular, the implications of Supreme Court of Canada decisions (noted above) relating to vicarious liability would have to be taken into account.

²⁵ For instance, see *Child Sexual Abuse: Framework for a Church Response*, Report of the Irish Catholic Bishop's Advisory Committee on Child Sexual Abuse by Priests and Religious, Dublin, Veritas, 1996, 67p. See also, AUSTRALIAN CATHOLIC BISHOPS CONFERENCE AND CONFERENCE OF LEADERS OF RELIGIOUS, *Towards Healing. Principles and Procedures in Responding to Complaints of Sexual Abuse Against Personnel of the Catholic Church in Australia*, Canberra, 1996, 17p; and *Integrity in Ministry. A Document of Principles and Standards for Catholic Clergy and Religious in Australia*, Canberra, June 1999, 27p.

²⁶ A meeting of representatives of Conferences of Bishops involved in the resolution of these cases was held in Dublin, May 18-21, 1998. Conferences involved included some from North America, Europe, Africa, the Caribbean, and Oceania.

also extending to what could amount to ten useful years the period for the statute of limitations.²⁷

3 - The Issues

Leaving aside for the moment the actual text of the canons, the whole question of sexual abuse of minors raises a number of issues that must all be faced if the Church is to give a reasoned answer to this painful situation.

3.1 - Civil Law Accusations

First of all, there is the relation with the secular law. It is not always good for the Church to conduct a parallel inquiry when a similar one is taking place in the secular sphere. There is a risk of meddling, of raising contradictory evidence, and even obstructing the course of justice. However, awkward moments arise when a priest is found "not guilty" by the secular courts, but where the Church has information that shows that the cleric did indeed commit the action (or something similar), even though proof of it is not available publicly. Generally speaking, the courts do not find a person "innocent", but simply "not guilty". The presumption of innocence remains until the contrary is proven. In some countries, however, there is also another possible decision: "not proven".

A number of priests today feel that if the secular courts did not find them guilty, then they have a right to return to their parish and their previous ministry. It must be kept in mind that the diocesan bishop is not bound by the decision of the secular court and may act on the basis on what he knows.

Parallel to this point, we could mention the fact that many accusations have been found to be without any foundation.²⁸ This is particu-

²⁷ See text in CLSA, *Roman Replies and CLSA Advisory Opinions 1994*, Washington, CLSA, 1994, pp. 20-21. On November 30, 1998, Pope John Paul II extended this provision for ten years until April 25, 2009 (see T. Green, "Book VI: Sanctions in the Church," p. 1599, fn. 290). This provision was extended to the entire Church in a document dated May 18, 2001, by the Congregation for the Doctrine of the Faith, "Epistula... de delictis gravioribus eidem Congregationi pro Doctrina Fidei reservatis".

²⁸ For instance, the accusations against Cardinal Joseph Bernardin of Chicago received great publicity. See, for instance "A Story of Reconciliation", in *Origins*, 24(1994-1995), pp. 513, 515.

larly so in cases of so-called "recovered memories". Such "memories" are being given less and less credence by the courts and professionals.

3.2 – The Rights Arising from Incardination

Another issue, and which is a most sensitive one, is a determination of what are the rights arising from incardination. It seems strange to consider that it is a "meal ticket for life" and, no matter what the cleric does, the diocese remains responsible for him until he dies. Nevertheless, in a certain sense, canon 1350 can be interpreted in this way. Yet, this seems to be manifestly unfair since it places an undue burden on the diocese. A seminarian, for instance, could observe all laws and regulations, be ordained, and then immediately begin to molest children. To say that the diocese is responsible for him for life does not seem appropriate. The same applies when a priest, because of denial or for other reasons, refuses to receive therapy or even go for an evaluation. However, the present practice of the Holy See is that a cleric cannot be sent for treatment against his will, and therefore the bishop has few means at his disposal to have the situation addressed in an appropriate manner.²⁹

3.3 – Administrative Laicizations of Convicted Priests

Another issue arose from the fact that, quite often, a priest who was convicted of molestation of children refused to request laicization, and was too psychologically ill to be judged fully responsible for his actions. He remained incardinated in the diocese (or institute). Not surprisingly, then, for years, bishops have been requesting that priests who cannot be returned to ministry after having served jail sentences, but who refuse to request laicization, be laicized by decree of the Pope. One of the reasons for this was to reduce liability on the part of the diocese for further actions by the priest if such were committed.³⁰

After much discussion, a policy to this effect was indeed put into effect, although no formal document on the subject has been officially

²⁹ See G. INGELS, "Protecting the Right to Privacy when Examining Issues Affecting the Life and Ministry of Clerics and Religious", in *Studia canonica*, 34(2000), pp. 439-466, where he refers in particular to the Instruction of the Secretariate of State, 6 August 1976, and to the Decision of the Congregation for the Clergy, 8 October 1998.

³⁰ See, for instance, K.A. HALL, "Abuse Litigation And Its Impact on Future Charitable Work: An Update on Recent Canadian Rulings", in CANADIAN COUNCIL OF CHRISTIAN CHARITIES, *CCCC Bulletin*, August 2000, pp. 4-7.

issued. Some of the first cases received much publicity in the secular press. The Congregation for the Clergy has recently developed a procedure to be applied in such cases, and which protects the rights of the priests in question.³¹

3.4 – Impact on the Victims and on the Faithful at Large

Among other issues to be considered, we could mention the impact of the abuse on the victims. While counselling and appropriate therapy are offered, and oftentimes significant court settlements are imposed in favour of the victims, this does not necessarily heal the harm that has been done to a minor.

There is also the impact of such actions on the Catholic faithful at large. It will never be possible to determine what effect the years ahead will reveal in relation to the consequences of broken trust towards the clergy.³²

3.5 – Eventual Return to Ministry

One issue that cannot be easily resolved is the question of the reintegration of offending priests into ministry. This seems to be the one unforgivable sin and parents are most unwilling to have a convicted pedophile priest function in parishes. This means that some other form of ministry must be found, if the priest is to minister at all.

In this regard, it should be noted that, given the present climate, it is almost impossible today for a bishop to reintegrate a convicted priest. Nevertheless, canon 1395, which is the basic canon of the *Code of Canon Law* on this subject, takes a slightly different approach. We should remember, though, that It is not our role to apply the law as we would have liked it to be, but rather as it is.³³

³¹ See CONGREGATION FOR THE CLERGY, private reply, prot. No. 2169/98, November 11, 1998. "[...] this Dicastery would like to confirm that there is the possibility of seeking, through these same offices, dismissal from the clerical state *ex officio* and *in poenam* from the Holy Father for priests who refuse to freely request the dispensation. The judgement of the exceptional nature of a particular case is based upon thorough examination of the merits of each one. [...]"

³² On this whole area, see N.P. CAFARDI, "Stones Instead of Bread: Sexually Abusive Priests in Ministry", in *Studia canonica*, 27(1993), pp. 145-172, esp. pp. 157-158.

³³ See, for instance, the editorial in *The Tablet*, 29 July 2000, 254(2000), No. 8343, "Facing up to sex abuse", p. 1007, and the section entitled "Documentation. Sex abuse and canon law", p. 1034.

Canon 1395 speaks of “progressive penalties”, and, after warnings, eventual dismissal from the clerical state. It also provides that if a cleric offends against the sixth commandment of the Decalogue, if the crime was committed with a minor under the age of sixteen years, he is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants. Whether we agree with this approach or not, we must recognize that the law does not provide for immediate dismissal from the clerical state. Canon 1341 considers this process as the final stage in a process of correction. Furthermore, canon 696, when speaking of cases perpetrated by religious involving minors, specifically states that dismissal need not be applied if provision can be made in some other way for the amendment of the member, the restoration of justice and the reparation of scandal. So, although people are clamoring for the dismissal of priests, the Code takes another approach: it is trying to find ways for the perpetrator to amend his ways and begin anew. In other words, a Superior’s hands are sometimes tied: if other means are available, dismissal is to be considered as the last step. When the Code speaks of “just penalties”, it includes prohibition against residence in a certain place or territory; an order to reside in a certain place; deprivation of office, prohibition against the exercise of offices; penal transfer to another office; and, eventually, dismissal from the clerical state. (see c. 1336).

It is possible that if canons 696 and 1395 were re-written today, the wording would be somewhat different. But, until the Legislator intervenes, the law remains as it is.³⁴

4 – Unresolved Questions

From a canonical perspective, there are many unanswered questions, although by analogy of law (c. 19), we can derive possible approaches to these issues. Many of the points to be mentioned here have arisen from the actual situations of the more than one hundred priests

³⁴ See T.J. GREEN, “Book VI: Sanctions in the Church”, pp. 1598-1601 for additional commentary on canon 1395. Msgr. Green tries to weigh carefully both sides of the issue. He writes: “At times the most beneficial approach may be pastoral and therapeutic in character rather than penal, especially if the cleric’s imputability is notably diminished. Concerns about his dignity, well-being, and future ministerial options are key legal-pastoral considerations. However, one must also seriously consider the significant damage possible done to the ecclesial community and certain individuals within it, especially the most vulnerable. Furthermore, there may be legitimate community outrage regarding the serious betrayal of trust involved in clerical sex abuse of minors. This may heighten the imputability of the offending cleric (c. 1326, §1, 2°).”

in whose cases I was asked to intervene. Each question refers to a practical situation that had to be addressed; the answer given depends on my own reading of the situation, and could easily be contradicted by other facts. It is not always easy to determine which course of action is appropriate. Add to these the queries arising from other sciences, and we see that we are still a long way from reaching *the* solution to such issues. Some of these points can be indicated at this time.

4.1 – The Rights of the Accused Cleric

1. Does the expression “things necessary for decent support”³⁵ mentioned in the Code refer simply to a place to live and to food and medical expenses, or is the concept a broader one and does it entail more (for instance, a car allowance, vacation money, etc – see canon 1350, §1)? What is involved in applying the prescriptions of canon 281 with regard to the remuneration a priest has a right to receive? Are there formulas that could be adopted to provide for clerics when they are not eligible for membership in a diocesan compensation fund? It often happens, for instance, that although a priest does not need a car for ministry, he still has payments due on the one he has. To deprive him of means of mobility might be harsh and unnecessary in some cases. Of course, the diocese can offer him a place to reside (as well as provisions for food and medical needs). If he refuses to accept this offer, then it seems he would have no canonical claim against the diocese. Much depends on the age of the priest; the situation is quite different if he is still in his forties and able to work, or already in his seventies and is retired.

2. Although the Oriental Code speaks of a right to ministry (CCEO, c. 371), there is no similar canon in the Latin Code. Does it follow, then, that a cleric in the Latin Church has no right to exercise ministry, particularly if he has been found to have offended seriously against his

³⁵ For instance, the Supreme Court of Canada decision, *R. v. Marshall*, No. 26014, September 17, 1999, in paragraph 50 describes the concept of “necessaries”: “The concept of ‘necessaries’ is today equivalent to the concept of what Lambert J.A. in *R. v. Van der Peet* (1993), 80 B.C.L.R. (2d) 75 (C.A.), at p. 126, described as a ‘moderate livelihood’. Bare subsistence has thankfully receded over the last couple of centuries as an appropriate standard of life for aboriginals and non-aboriginals alike. A moderate livelihood includes such basics as ‘food, clothing and housing, supplemented by a few amenities’, but not accumulation of wealth [...]. It addresses day-to-day needs. This was the common intention in 1760. It is fair that it be given this interpretation today.”

clerical obligations? In such instances, a ministerial assignment would depend on the bishop's good will and understanding.

3. Although it is recognized that a bishop (or the major superior) cannot oblige a cleric accused of sexual misconduct to undergo therapy, would he have the right to insist on this before allowing the priest to continue in ministry or return to it? And, if so, can he force the cleric to make progress reports from the centre available to the diocesan bishop and perhaps also to the personnel board? This is particularly sensitive when the diocese or institute is paying the costs of the therapy. Today, many of the centres working with priests will not accept a patient who does not authorize communication with his superior. The situation is more delicate, though, when a priest is seeing a counsellor on his own, and is not part of a regular programme for rehabilitation. A bishop would be acting irresponsibly if he simply placed back in ministry a priest who refuses to seek help, but who has been found responsible for his past actions.

4. Must a cleric who is accused go to the centre that the bishop (or major superior) chooses, or does he have a right to choose his own specialists? The Code recognizes the right of a person to choose a spiritual director or confessor,³⁶ but it sometimes happens that a priest wishes to receive counselling from someone who is not acceptable to his superior.³⁷ Again, if the superior is paying for the services, it seems as though there should be some right to select the institution or the form of therapy.

5. If a cleric is accused, does he have a right to civil and canonical advice? If so, who is to pay the expenses? Canon 1481 provides that in a penal trial before the Church courts, the accused must always have an advocate, either appointed personally or allocated by the judge. However, it makes no mention of payment of fees. This takes on special significance when a case is heard before the Roman tribunals.

6. Is a cleric personally responsible for the damage awarded against a diocese, if he has personal money, or is this the responsibility of the diocese? It seems evident that, if the priest has personal finances, these should be used first, because it was not the diocese that perpetrated the offence. But, what often happens is that the case takes on a higher profile because the diocese is also named as a co-defendant, and the legal costs rise accordingly.

³⁶ See, for instance, cc. 239, §2; 630, §1.

³⁷ The reasons for non-acceptance can be multiple. For instance, the counsellor does not accept the Church's teachings on a number of matters; the counsellor does not believe in clerical celibacy or is not aware of ecclesiastical requirements; the counsellor is known to establish dependency relations with clients, and so forth.

7. When a cleric is accused, and has to be given "*administrative leave*" (because of the requirements of the diocesan insurance policy), are his rights duly protected? In fact, at times, it seems as though it is the insurance companies which are dictating personnel policies of dioceses. For this reason, a number of dioceses have banded together to establish their own cooperative forms of insurance to cover such situations.

8. If a cleric is involved in sexual misconduct, can he use the defence that he suffers from an illness, so that imputability is lacking (canon 1321)? The Code presumes that if a person carries out a criminal act, he is responsible for his actions. Therefore, the presumption would have to be reversed in each case if such a claim were to be made.

9. Can a cleric be suspended or removed from office if the events which have now come to light took place fifteen or twenty years ago and there has been no repetition of the acts? This is especially important in cases where the cleric has carried out excellent ministry in the intervening years. There are statutes of limitations in the Code, but the current climate is such that people tend to overlook them because of the social consequences.

10. Can a cleric protest to the Holy See against a decision to request administrative laicization? He has a right to present his case, but because such a procedure is penal by nature, and the decision is ratified by the Pope, there is no appeal. Of course, the possibility of recourse to the Holy Father for a reconsideration always exists.

4.2 – The Rights and Obligations of the Diocesan Bishop

1. As noted above, is incardination a "meal ticket" for life, or is there some point when a diocese's obligations towards a priest cease? Must the diocese continue to support a priest for the rest of his life, when he did not observe his part of the "contract"? Although we are not dealing with a formal contract, when a priest accepts ordination, he does so in accordance with the applicable legislation. If he does not uphold his part of the agreement, it does not seem fair to bind the other party to it.

2. Even if a priest wishes to be re-assigned, but the people in the area are unwilling to forgive him, is the bishop justified in preventing him from returning to ministry? What is commonly known as "*odium populi*" constitutes a reason for removal of a priest from ministry (see canon 1741); thus it seems that the same would apply when it is question of a ministerial assignment.

3. If a cleric categorically denies the accusations and they can't be

proven civilly, is a bishop nevertheless justified – on the basis of the accusations – to prevent a priest from returning to ministry? It would be important not to tip the balance the other way and presume guilt in all cases, but, if there is a prudent doubt, the well-being of children and future victims should prevail.

4. Can a bishop force a parish priest to resign his parish if he is accused of sexual misconduct with minors or with other persons? If the priest accepts voluntarily to resign, this is fine. If he refuses, then the bishop must apply the procedures of the Code, based on satisfactory proofs.

5. If the diocese's (or the institute's) insurance coverage does not cover the diocese when a cleric, who has been found guilty of sexual misconduct, returns to ministry, is the bishop justified for this reason in preventing his return to ministry? The bishop is the steward of the ecclesiastical goods of the diocese (see c. 1284); therefore, he must make certain that these goods are not dilapidated in endless court cases and legal fees. If there is a reasonable proportion between the two, it seems that the bishop would have the right not to admit the priest to ministry, unless other means could be taken to protect diocesan assets. (In passing, we could note that it is essential these days to have the clergy pension and benevolent fund registered separately from the funds of the diocese, in case of lawsuits against the diocese).

6. What type of announcement should be made to the parishioners when an accusation has been laid against a cleric, but he has not yet been found guilty – even though he is now on leave from his assignment (canon 220)? It would seem that the people, who have a right to the services of their parish priest, would have the right to know that an accusation has been made against their priest, but care should be taken not to call his good name in question (see c. 171, §2).

7. To what extent can a bishop inform others of the nature of a cleric's previous difficulties when he applies to move elsewhere? It seems that it would be essential that the parish priest of the new parish be made aware of the situation. Also, if there is a parish school, the principal should be notified discreetly. In some cases, the president of the parish pastoral council is also advised, so that support can be given to the priest who is back in ministry.

8. Can a priest who is found guilty of sexual abuse be declared irregular for the exercise of orders (see canon 1044, §2, 2°)?³⁸ In gen-

³⁸ See, for instance, W.H. WOESTMAN, "Restricting the Right to Celebrate the Eucharist", in *Studia canonica*, 29(1995), pp. 155-178.

eral, it seems as though we are dealing with two different matters. The irregularity for the exercise of orders already received arises from mental illness, or some similar state, not from crimes that were committed.

9. If a bishop orders a penal trial against a cleric, and if he tells the court that he wants the cleric to be laicized, does the decision bind – since the court is not really free? Fortunately, in recent times, dioceses have been designating judges and court personnel from outside the diocese to handle such cases, so as to assure neutrality.

10. If a cleric is not admitted back to ministry, yet refuses to request laicization, can the bishop impose restrictions on him in relation to place of residence, work undertaken, etc? As long as a person is a cleric, he remains subject to his ordinary, to whom he owes obedience and respect (see c. 273).

11. If, after careful examination of the situation, a bishop re-admits a cleric to ministry after he has served his prison sentence, is the bishop considered canonically irresponsible because of the danger of future lawsuits against the diocese? The answer to this will often depend on the secular courts. However, as noted above in Section III, we should not overlook the reactions of the faithful in such situations.³⁹

12. If a cleric feels that he has been unjustly treated by his bishop, and brings the case to the Holy See, is he responsible for the court costs within the Church, particularly if it is found that the bishop acted unjustly or unfairly? When a religious who is dismissed from the institute takes the case before the Apostolic Signatura, the Signatura is of the opinion that, until the dismissal process is complete, the religious remains a member of the institute, and therefore the institute is responsible for at least part of the legal costs.⁴⁰ Therefore, by analogy, the same could apply in the case of a bishop.

13. In canon law, is a bishop responsible for the actions of a cleric who is incardinated in the diocese, or has been accepted for ministry in

³⁹ See, for instance, *Catholic World News Service, Daily News Briefs*, 20 October, 2000 (on internet), p. 2: "Calls for Resignation of Archbishop of Cardiff over Sex Abuse Charge." In the case at hand, it was alleged that the archbishop had ordained a priest who "was already suspected of child abuse" before his ordination. The archbishop is quoted as saying: "I've acted, I believe, very prudently and very sensibly." But, unfortunately, this is not always sufficient in the minds of some people. (The archbishop's resignation was subsequently accepted by the Holy Father and a new archbishop appointed).

⁴⁰ For instance, a letter from the Apostolic Signatura, March 4, 1995, Prot. N. 25156/94 CA, states that "since [...] X] is under the vow of poverty, according to the practice of the Apostolic Signatura in such matters, your Congregation has the obligation to contribute toward the expenses of the trial..."

the diocese (*"respondeat Superior"*)? If the bishop's actions led to a dilapidation of the assets of the diocese because of court suits, then he would be responsible (see c. 1389, §2)

14. Can a cleric be dismissed from his religious institute if he refuses to go for counselling, because he considers that he has been unjustly accused of sexual misconduct? To date, and to my knowledge, such dismissal actions have not been upheld.

15. To what extent can the major superior invoke the vow of obedience requiring an accused cleric to collaborate with treatment centres and other professionals? We are dealing here with a fine line between respect for the individual (c. 220) and for the common good (c. 223). The practice of "tough love" would be applicable, but it does not seem that this is a matter for which the vow of obedience can be invoked.

Conclusion

Many issues have been addressed in this short essay. The answers given to canonical questions are tentative at best, given the uncertainty of the law in many cases. They focus mostly on the priest offender and on the bishop (or major superior).

This does not mean that we are overlooking the breach of trust that has taken place.⁴¹ Law is not always the most appropriate means whereby such matters should be treated. What is called for is a caring, loving and understanding response. We can never legislate for such attitudes.

The Church will weather this crisis. It is already taking means to adjust its formation processes for seminarians and priests.⁴² It will take years, though, for the wounds caused by these events to heal. Nevertheless, the Church is a pilgrim Church, on the road to perfection.⁴³ This pilgrim Church is and remains subject to human weakness and to the strength that comes from a recognition of this fact. It awaits the perfection of heaven.

⁴¹ See, CANADIAN CONFERENCE OF CATHOLIC BISHOPS, *Breach of Trust. Breach of Faith. Child Sexual Abuse in the Church and Society. Materials for Discussion Groups*, Ottawa, CCCB, 1992, 47p., plus supplements.

⁴² See JOHN PAUL II, Apostolic Exhortation, "*Pastores dabo vobis*", April 7, 1992, in *Origins*, 21(1991-1992), pp. 717, 719-759, esp. par. 50.

⁴³ See VATICAN II, Dogmatic Constitution, "*Lumen gentium*", No. 48.

LES PAROISSES ET L'AVENIR

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SUMMARY - This article brings into question the theoretical foundation and practical utility of subdividing a diocese into multiple parishes. The modern, pluralistic, mobile, and democratic society in which Christianity is now called to evangelize calls for a new way of setting up the territorial limits of a parish. The parish is defined by the stability of its establishment and the nature of its pastoral care. The territory is not an essential element and it has become increasingly questionable to define a parish according to civil boundaries. Several parishes are no longer able to fully accomplish this mission, either because of the society's estrangement from parish life or the shortage of priests or both. Accordingly, the A. suggests a remodelling of the parish network. He maintains that the simple suppression of old parishes is not the answer but rather the creation of new parishes which have the means of offering essential pastoral care, of building the ecclesial community, and of fulfilling their mission in a particular area. As a first step, a single pastoral unit can be formed by a joint cooperation between existing but now inadequate parishes and the pooling of activities and resources. Gradually, this pastoral unit will become the *new parish*, a community of communities (churches, homes, schools, etc.) ensuring the *plena cura animarum* but flexible enough to evolve with the inevitable demographical variances within a population. The A. also draws attention to the fact that the parish is not the only means of evangelization today; base communities - associations, retreat centres, theology faculties, temporal Christian institutions - have assumed an important role and, with the parish, form the entire diocesan Church. He ends his article by underlining the importance of placing the community before services to be rendered. A parish must not become a *convenience establishment* for the celebration of sacraments. It must foster the involvement of all, priests, deacons and lay people, working as a team in a diversity of ministries.

Introduction

Durant de longs siècles, en Europe d'abord, et depuis le 16e siècle dans les «nouveaux mondes», du fait de l'expansion coloniale de l'Occident et de ses efforts d'évangélisation, ce sont concrètement les paroisses qui ont en grande partie assuré la visibilité du fait chrétien. Aujourd'hui encore, la présence de l'Évangile donnant corps à des communautés chrétiennes est *principalement* repérable, sociologiquement parlant, dans le réseau des paroisses : une église avec

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