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## CONCLUSION

It should be evident that very many of the observations and reflections in this report could be pursued at much greater length. Neither the pastoral nor the theological considerations have been more than touched upon.

Once again it needs to be stated firmly that the effort to limit, in the strictest way possible, the numbers of persons lawfully bound to take the oath is a legitimate and desirable canonical goal. The same can be said of the raising of questions, including flaws and apparent inconsistencies, which seem intrinsic to the two new formulas.

As stated at the beginning of this report, such efforts do not denigrate the profound significance, religious and ecclesial, of the occasions when the profession of faith is made in the assembly of the Christian people by the ordained ministers or other office holders or by the church community itself. The same holds for the sound tradition by which those to be admitted to holy orders are asked to make, in the presence of the Church assembled, their pledge and promise and resolution to fulfill their duties of office.

As this paper is sent to press, a distinguished British theologian, Nicholas Lash, has just articulated, in a different context from the present question, the grave concerns of large parts of the Catholic theological community. He speaks of "the chill wind now blowing from the highest peaks upon all indications of independent Catholic thought and scholarship."<sup>33</sup> While avoiding all alarmist or paranoid tendencies, the canonical community needs to scrutinize, on behalf of and for the sake of theologians and pastors and the Christian people as a whole, every new burden, every new obligation, every new imposition of the canon law.

<sup>33</sup>"Theology on the Way to Stuttgart," *America* 166 (1992) 266-268. The context is the preparation for the first congress of the European Society for Catholic Theology, scheduled to be held in Stuttgart in April 1992. Concerning the new society, Lash adds that "the Congregation for the Doctrine of the Faith does not seem to number us among life's rich blessings."

## THE PASTORAL AND JURIDICAL DIMENSIONS OF DISMISSAL FROM THE CLERICAL STATE AND OF OTHER PENALTIES FOR ACTS OF SEXUAL MISCONDUCT

FRANCIS G. MORRISEY, O.M.I.

Of all the situations faced by the Catholic Church in North America in recent years, the phenomenon of sexual misconduct by clerics and other pastoral workers has probably been the most painful to address. While Catholics and others could bring themselves to understand and condone disagreements that might arise over liturgy or even certain moral practices, there was—and rightly so—little if any acceptance of those who had been involved in instances of sexual abuse with children. The publicity given to such issues, as well as the endless litigation which inevitably follows, has created a crisis situation that is very difficult, if not impossible, to address calmly and lucidly.

Both the United States and Canada have had to face such tragedies, not only within the Church, but also in society as a whole. The response has varied. The Canadian Conference of Catholic Bishops and individual bishops, in an attempt to delve deeper into the phenomenon, have commissioned a number of studies,<sup>1</sup> many of which are not yet completed, attempting to determine the causes of such actions and possible means of avoiding these situations in the future. I have been privileged to have been very closely connected with these studies and have learned much canon law over the past couple of years—a law that was not necessarily the one I studied when I was in class, but one which has to be applied today.

At the very beginning, I wish to make it clear that many of the points I am going to propose are just that—proposals. We cannot expect the Church's legislation to have addressed every possible issue and, as new questions arise, new solutions must be found. It is quite possible, and even probable, that a certain number of the positions I am taking will have to be adjusted in the months and years ahead. For this reason, I would be most grateful for any suggestions you would have to improve upon the stands taken here.

It should be noted that this paper is addressing the sexual misconduct of priests. However, much of what I intend to say could also be applied, with the appropriate adaptations, to other clerics, to religious men and women, and

<sup>1</sup>For instance, see Gordon A. Winter, *The Report of the Archdiocesan Commission of Enquiry into Sexual Abuse of Children by Members of the Clergy*, 3 vol., Saint John's, Archdiocese of Saint John's, Newfoundland, 1990. Likewise, the study conducted in 1986 in the then diocese (now Archdiocese) of Gatineau-Hull, Quebec.

to various pastoral workers. Nevertheless, as such, these persons are not the immediate subject of this study.

Broadening somewhat the scope envisaged in the title of the presentation, I propose to examine the question under five headings, looking at the new context of society, examining what is meant by "sexual misconduct" in the Church, studying the rights of those involved (including the victims), reviewing the situation of priests who have been convicted of sexual misconduct, and, finally, looking at possibilities for the reintegration of such priests into active ministry.

## I. A NEW SOCIAL AND ECCLESIAL CONTEXT

### a. *A broader context*

Over the years since the end of World War II, there has been a renewed emphasis on human rights in their various dimensions.<sup>2</sup> Charters of rights have been promulgated, revised and renewed,<sup>3</sup> there have been many court cases brought before the secular tribunals at all levels to determine the scope and application of various rights.<sup>4</sup> The same has occurred in the Church. The 1983 Code of Canon Law demonstrates clearly the concern of the Church for the rights of its members.<sup>5</sup> The rights of children were given particular attention during the United Nations' "Year of the Child".<sup>6</sup>

At the same time as rights were being studied, 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

<sup>2</sup>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.

<sup>3</sup>Pope John II issued the "Charter of the Rights of the Family" on October 22, 1983; see *The Pope Speaks* 29 (1984) 78-86.

<sup>4</sup>Among the recent decisions of the Supreme Court of Canada regarding human rights and the situation of the Catholic Church, we could note: December 20, 1984, decision no. 17108; March 14, 1985, decision no. 17610.

<sup>5</sup>A simple perusal of the 1983 Code of Canon Law shows how rights and obligations have been grouped together under four sets of canons: canons 208-223, 224-231, 273-289, and 662-672. Likewise, the 1990 Code of Canons of the Eastern Churches devotes a number of canons to rights and obligations: canons 7-26, 367-393, 399-409.

<sup>6</sup>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) 310.

specialists begin to grasp the extent of the damage caused to young people and adults by sexual abuse.<sup>7</sup> As this new knowledge became more generally recognized, so too did the horror and the rage in people's minds against the perpetrators of such acts.

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 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 were called to be and what they were expected to do.

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. The litigious characteristic of some people spilled over into Church matters.

These four factors—concern for rights, recognition of the ravages of child sexual abuse, a new social recognition of the priesthood, and a propensity to bring matters to the courts—added a particular dimension to the question of sexual misconduct by the clergy.

### b. *Combination of secular and canonical procedures*

As the first cases came to light, there was confusion, consternation, and at times even panic, in chancery offices and religious institutes. What was to be done? What could be done to control the damage? What would be the effects of this event upon the Church? Gradually, with time, though, the questions changed: what can be done for the victims, what are the underlying causes of such activity, what long-term remedies can 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 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 very rare.

Eventually, Church authorities became more aware of the fact that the new canonical legislation provided some avenues to be explored in addressing the situation. It was then a matter of having recourse to two parallel legal systems—the secular and the ecclesiastical—to help resolve certain situations.

It is useless to ask which takes priority. Their purposes, methods and results are quite different. Today, it would seem that the words of the Gospel could be accommodated: "These you should have practised, without

<sup>7</sup>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*, 1990, vol. II, A1-A116, with abundant bibliography.

neglecting the others" (Mt. 23: 23).

c. *Fear of loss of money*

When the cases started coming to light, it took some time to have people react to them in a pro-active manner. Without being too naughty, it seems that it was only once the matter started costing money—following court judgments—that certain concrete steps were taken to reduce liability for future situations and to set up appropriate mechanisms to look into the question.

In one sense, then, this fear was a good catalyst because it helped lance the boil and forced people to address the issue.

d. *The law was not drafted in this perspective*

Once Church authorities began to turn to the canon law for assistance—particularly in trying to terminate the ministry of a problem priest—they began to realize that the legislation was not drafted with this particular situation of criminal responsibility and civil liability in mind.

While there were certain general indications found in the code, showing how to proceed, the norms relating to the imposition of penalties were such that they were hardly ever applied. For instance, imputability had to be proven (c. 1321, §1), admonitions or warnings had to be given (c. 1339, §2), proof had to be certain (c. 1728, §1), other means had to have been tried first (c. 1341), and so forth.

Nevertheless, these strict prescriptions should not constitute an insurmountable obstacle. The code contains many useful general principles that can be applied creatively. Of course, we must always keep in mind the prescriptions relating to a strict interpretation of penal law (c. 18) and the limitations imposed on establishing new penalties for crimes (c. 1317).

e. *Need to be creative*

So, as this issue is addressed today, it is obvious that we need to be creative. I do not consider myself to be "creative" in the sense of being a seer who can imagine far beyond the present, or who can open up vistas that have not yet been travelled. Rather, I see myself more as a practitioner who can take legal principles and try to apply them in various appropriate ways. The first does not exclude the second: there is a need for both seers and practitioners in the Church today.

Be that as it may, we must recognize that we are travelling in largely uncharted waters. There are shoals lying underneath ready to ground us if we are not careful; there are sharks there ready to attack if the least little thing goes wrong; there are probably even new storms on the horizon that could upset the delicate balance achieved today in the bark that leads us forward.

But that shouldn't stop our journey. Let us head out now confidently for

these new waters, seeing what might be in store for us.

## II. SEXUAL MISCONDUCT

a. *The crimes*

i. *Types of crimes*

When we use the term "sexual misconduct", three types of situations can be envisaged.

The first would be *sexual abuse*, which, for our purposes, could be understood as the subjection of a child or vulnerable adult, by any person responsible for their care, to any sexual act which is in violation of applicable statutes.<sup>8</sup>

The second would be *sexual exploitation* which, again for our purposes, could be any kind of sexual interaction between a counsellor (such as a priest) and a client, whether initiated by either the counsellor or the client.<sup>9</sup>

The third would be *sexual harassment* which could include unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature.<sup>10</sup>

It is the first of these three types of misconduct that causes the most concern because of the long-term effects on children or vulnerable adults. But the other two dimensions should not be overlooked.

The Code of Canon Law does not enter into such distinctions. Rather, it speaks about "concubinage" and "external acts against the sixth commandment of the Decalogue" (c. 1395, §1). It distinguishes among acts committed by force, or by threats, or in public, or with a minor under the age of sixteen years (c. 1395, §2). The law presupposes that, in the case of a cleric, he "continues" or "persists" in such acts. In the case of an isolated incident, there is little that can be found directly in the code to address the issue.<sup>11</sup>

ii. *The legislation*

Most Western countries have enacted legislation—at various levels—relating to sexual misconduct. In particular, laws relating to sexual abuse of children or minors are often accompanied by statutory reporting provisions which, depending on the circumstances, require that anyone having knowledge of a

<sup>8</sup>See, St. Cloud Diocese, "Sexual Misconduct Policy", September 1, 1991, in *Origins* 21 (1991-1992) 194-196, at 195, no. 4.

<sup>9</sup>Ibid.

<sup>10</sup>Ibid.

<sup>11</sup>Of course, the element of scandal (c. 1399) could often come into play.

situation where a child is in danger is obliged to report the matter immediately to the appropriate authorities.

The common law of the Church does not contain such provisions. However, many dioceses have enacted policies or particular legislation requiring reporting to the specified ecclesiastical authorities. Only the seal of confession would prevent a priest from reporting such information if it came to his attention.<sup>12</sup>

#### b. *The penalties*

Like the penalties under applicable secular law which may vary somewhat from place to place, those listed under canon law are also rather numerous and can be applied differently.

Canon 1395, §1 provides for suspension in the case of external sins against the sixth commandment. It also allows for "other penalties" to be applied progressively, eventually leading to dismissal from the clerical state. A similar prescription is found in canon 1395, §2, which speaks of "just penalties".

These penalties are enumerated in canon 1336, and include:

- a prohibition against residence in a certain place or territory; for instance, in the parish where a priest was stationed at the time the abuse occurred;
- an order to reside in a certain place; for instance, in a house of penance or one established for the rehabilitation of clerics (see c. 1337, §2);
- deprivation of office; for instance, that of parish priest;
- deprivation of certain privileges or favors; possibly certain financial benefits attached directly or indirectly to an office;
- a prohibition against exercising certain functions relating to the power of orders; for instance; forbidding a priest from celebrating Mass publicly; removing the faculty to hear sacramental confessions;
- a penal transfer to another office;
- the code also provides in canon 1340 for the application of particular penances—some work of religion or piety or charity.

There are certain limits beyond which an ecclesiastical authority or a Church tribunal cannot go. Thus, for instance, there can be no deprivation of academic degrees (c. 1338, §2). A cleric must not lack what is necessary for his worthy support (c. 1350); we shall return to this matter later. According to a generally accepted reading of canon 1342, §2, dismissal from the clerical state—which is perpetual, except for the provision of canon

<sup>12</sup>See, for instance, the St. Cloud policy, *loc. cit.*, no. 7: "Any personnel of the diocese who knows or has reason to know of an incident of sexual misconduct by any personnel of the diocese shall comply with any applicable reporting or other requirements of state and local laws . . . and shall report as follows: . . . to the appropriate staff . . . with a copy to the vicar general or his designee. The vicar general shall notify the bishop of the diocese."

793—cannot be imposed administratively by a diocesan bishop or a religious ordinary, but requires either a criminal trial, or a rescript from the Holy See—something that is not easy to obtain.

Personally—and notwithstanding the title of this presentation—I feel that we should not be looking too readily at the mechanism of forced return to the lay state. For I could then see a risk of some day broadening this approach to encompass other weaknesses, and eventually overriding the rights of priests, no matter what wrong they have done. Obviously, there are cases where a priest is not apt to carry out the ministry but where he refuses to request a return to the lay state; there are cases where the Church could not under any circumstances allow a priest to function or be identified as a priest; something will have to be done in such circumstances. But canon 1317 reminds us that dismissal from the clerical state cannot be laid down by particular law.

Those who have been involved, though, in trying to apply penalties, have generally found that such remedies do little to address the deeper issues at hand. In spite of a certain sensitivity for the dignity of the priesthood, sometimes the victims, and more especially their families, wish to see the offending priest removed perpetually from ministry. But we must recognize that this approach does not resolve many of the personal issues at stake. The priest remains a priest—unless he has been returned to the lay state—and, as such, should be considered as one.

#### c. *The procedures to be applied*

Experience shows that the Church has to be able to act quickly when such painful situations arise; yet, at the same time it must act prudently and wisely so as not to deprive the person against whom allegations are made of the right to a fair trial, if need be, nor to jeopardize the state's right to see that justice is administered fairly and without prejudice. The imposition of penalties, and particularly of return to the lay state, should be a last resort, a measure not applied until all other possibilities have been exhausted.

Many aspects are involved in situations of alleged sexual misconduct by clerics or other Church personnel: spiritual issues, public relation issues, medical issues, civil law issues, and canonical issues. None of these should be overlooked. Since no one person can be expected, though, to have all the requisite knowledge in these various areas, a team approach will necessarily be required.

Any procedures adopted by a diocese or an institute should embody two attitudes which are to mark the Church's response: compassion and responsibility. Compassion towards those who have been abused will be demonstrated by showing that the Church does care and *will* do something about the situation; the same compassion will be shown towards the person who is accused. Responsibility calls for seeking the truth in the situation and

in bringing about satisfactory remedies. It also calls for forms of reparation and possibly reconciliation through the actions of an authorized representative of the Church. Both compassion and responsibility are facets of the Church's love; the quality of its response will be a determining factor in eliciting positive cooperation on the part of all those involved.

i. *At the diocesan level*

It is recommended today that each diocese have a delegate appointed by the diocesan bishop to be an "investigator" (c. 1717, §1) to whom shall be referred any allegation of sexual misconduct by a cleric, religious, or any other person under ecclesiastical authority in the diocese, whether such allegations are a matter of fact or of suspicion.

The delegate (and the deputy delegate if one is appointed) should not be the judicial vicar of the diocese because if a canonical criminal process is later initiated, the person who carried out the preliminary inquiry may not take part in the process as a judge (c. 1717, §3).

The delegate should be empowered and directed to act immediately to investigate and evaluate discreetly and pastorally any allegation of sexual misconduct, so as to determine, within twenty-four hours or as soon thereafter as possible, if there are reasonable and probable grounds to believe that there has been sexual abuse by a priest. If there are such grounds, then any applicable reporting laws would have to be complied with.

The investigator could be assisted by a committee of resource persons, established by the diocesan bishop. Experience seems to show that such a committee should include a canonist, a criminal lawyer, a civil lawyer, a licensed person experienced in the treatment of those who have been the object of sexual abuse. The committee should be as diversified as possible, comprising persons who are well-suited to speak with the family on short notice. There should be men and women; parents and other persons who are qualified to face the situation fairly and objectively. If necessary, the committee could call on other specialized help to address particular situations.

The investigator and the committee should then establish and maintain a current basic policy regarding situations of sexual misconduct.

ii. *The process*

In any process against a cleric, a number of presumptions should be operative. It would seem appropriate for the following ones to be agreed upon:

- taking allegations of sexual misconduct seriously;
- presuming compliance with applicable secular and canonical legislation;
- giving priority to the protection of children and vulnerable adults;
- presuming an accused person's innocence until proven otherwise;

- using all other possible remedies before resorting to penal processes;
- protecting the reputation of persons involved in instances of sexual misconduct.<sup>13</sup>

It should also be noted that, in a canonical inquiry, the accused person is not bound to admit to an offence, nor may the oath be administered to the accused (c. 1728, §2) who should be informed on this provision before being questioned, even in a preliminary inquiry.

It seems quite difficult to be able to hold a canonical trial against an accused cleric unless he had been warned beforehand about the consequences of his actions. For this reason, many dioceses insist today that the priest sign a statement to the effect that he is aware of the diocesan policy relating to sexual misconduct and of its consequences.<sup>14</sup> No censure (such as suspension) can be validly imposed unless the offender has beforehand received at least one warning to purge the contempt, and has been allowed suitable time to do so (c. 1347, §1). Even canon 1395 seems to suppose that we are dealing with on-going actions—it uses the word "eventually"—rather than with one isolated case. For this reason, it would be extremely important, I believe, to keep notes of any warnings given to a priest, even if the acts which brought about a warning do not constitute a "crime" in the full sense of the term.

When a diocese receives a complaint and begins the investigation against a priest, it would be reasonable to allow the priest to engage the services of a lawyer who should not be the diocesan lawyer. Suitable arrangements would have to be made for the covering of legal expenses, taking into account the financial situation of the diocese, and the priest's personal financial situation. It does not seem reasonable, though, for a diocese to have to assume all the expenses related to a trial for a criminal offence, particularly if there is an appeal after the trial court decision has been handed down.

If the priest who is accused is a religious working in the diocese, appropriate arrangements should be made with the proper ordinary to see who will carry out the investigation—the diocese or the institute. Whichever one assumes responsibility for the inquiry, there should be an agreement to inform the other of the outcome.

We could envisage two stages in the preliminary inquiry, or at least a two-tiered investigation. The first stage, whose purpose is to determine whether there is any substance to the allegation, would take place very quickly. It does not entail hearing countless witnesses, or anything similar. Its purpose is

<sup>13</sup>For another example of operative assumptions, see Anglican Diocese of Toront, *Sexual Abuse Task Force Policies*, December 12, 1990, at 2: "Guiding Principles".

<sup>14</sup>See, for instance Diocese of New Ulm, *Sexual Misconduct Policy of the Diocese of New Ulm*, April 1, 1990 (Administration Circular no. 13), appendix A: "Acknowledgement of Receipt".

simply to see whether there is a "fumus" to the allegation. The second, which is in view of conducting a penal trial or having penalties imposed administratively, could be more detailed.

Once the first phase has been completed—within a very short period of time—and if there is substance to the accusation, the matter should then be reported to the appropriate authorities, unless it has already been brought to their attention beforehand. In some places, the Children's Aid Societies and similar organizations insist that they are to be informed even before the Church conducts any internal inquiry. This will be a matter for a prudential judgment on the part of those involved, and calls for the establishment, if possible, of suitable relations with such organizations beforehand.<sup>15</sup>

d. *Certain parameters to be observed*

If the first preliminary inquiry shows that there is indeed matter, and even more so if the accused priest admits to sexual misconduct, then a number of practical steps could be taken.

If, on the other hand, he persists in denying the allegations, it might be more appropriate to begin immediately what we have called the second phase of the inquiry prescribed by canon 1717, ensuring that the rights to due process are fully respected.

But, no matter which approach is adopted, after the first part of the investigation is completed, there could at this time be a meeting between the diocesan bishop and the accused; both of these could be accompanied by their legal counsel. An interim disposition would be made at this time in respect of the functions of the accused priest in the diocese. If it were to the advantage of the diocese, or of the priest himself, and if the matter is sufficiently serious, this would include an immediate administrative leave, with an appropriate place chosen for him to reside pending the outcome of a more formal investigation. If sexual abuse of children was the issue, at no time should he return to the parish or to the pastoral work where he is assigned (if such is the case). If appropriate, a penal precept (cf. c. 1319) could be issued to this effect. Furthermore, the priest's faculties to preach and the right to hear confessions should be revoked (cc. 764; 974, §1) for the time being. The priest would be asked not to celebrate Mass publicly. While such measures could be painful to the priest, they are usually necessary to protect the good of the community. He should continue to receive his salary, including car allowance if there are payments due on his car, and other benefits such as

<sup>15</sup>The Winter Report recommended "that the Archdiocese inform the community of its legal responsibilities to report any suspected form of child abuse and of the legal protection available to victims and informants alike, so that community members can act quickly and effectively whenever concerns about child abuse arise" (recommendation no. 28).

health insurance. A few years ago it was thought appropriate to invoke these measures even before the first phase of the inquiry, but experience seems to show that it is preferable to wait at least until it is completed before placing the priest on administrative leave, and invoking other measures.<sup>16</sup>

If criminal proceedings are taking place in the secular courts, it might be preferable at this point to delay any further canonical investigation and process until the matter has been resolved before the courts.

One of the difficulties experienced during this period is maintaining an appropriate discretion, particularly if the facts are not yet known publicly. Indeed, canons 1717, §2 and 220 remind all persons involved of the care to be taken not to call into question anyone's reputation or good name.

### III. THE RIGHTS OF THOSE INVOLVED

As with any other issue affecting the Church, there are a number of rights to be considered.

a. *The rights of the Church as a whole*

As a moral person (c. 113), the Catholic Church has a right to its reputation and good name (c. 220). Therefore, steps must be taken to see that because of negligence, alleged cover up, or other factors, the Church does not suffer long-term damage. Obviously, there will be short-term negative fall-out whenever a situation of misconduct is made public.

The Church also has the right to see that its clerics seek holiness in their lives (c. 276, §1), that they observe the basic rules of law relating to their life and ministry (see c. 277) and "shun completely everything that is unbecoming to their state" (c. 285, §1).

b. *The victims*

The Church must show that it truly cares for the victims of sexual misconduct of priests, most particularly if they are children.

Pastoral support should be offered to the children if the parents are consenting and if such is allowed by the appropriate secular authorities.

Obviously, great care should be taken to make certain that no pressure is placed on the children, or any judgment made about their actions, or those of the priest for that matter.

No matter what their age or experience, minors should not be blamed for

<sup>16</sup>See J.E. Paulson, "The Clinical and Canonical Considerations in Cases of Pedophilia: the Bishop's Role", in *Studia Canonica* 22 (1988) 77-124, at 122, no. 2.6, where he mentions a procedure first outlined by F. Morrissey in August 1987. J.E. Paulson recommends the newer approach to this matter (106) and which the present study adopts.

causing, or encouraging the actions of the priest, even if at times they appeared to be somewhat responsible. The priest is presumed to be in a position of fiduciary trust and, no matter what the circumstances, he is the one to be blamed for the abuse if it occurred.<sup>17</sup>

As is often the case, though, the Children's Aid Society (or similar organization) might have processes in place to address the issue and does not want any outside contact with the victims. In such instances, the Church can agree to help by assuming at least some, if not all, of the costs.

### c. *The priest*

When the fact of sexual misconduct by a priest comes to light, he is often relegated to the sidelines and even abandoned. While there can be no condoning of sexual misconduct, it must be remembered that the priest remains a treasured member of the diocese or the institute, a person in whom the diocese or the institute has invested much, and someone who has—and has a right to have—his personal dignity.

We could first look at some of the recognized rights of priests who are caught up in this situation. There are four which come to mind.

(1) The first right of the priest is to his *reputation*, no matter how bad the situation or repulsive the activity. Until proven otherwise, he is to be presumed innocent.

(2) Even if he did commit the act, the question of *imputability* must also be examined carefully. At times, we might be placing too many burdens on priests' shoulders, or leaving them in impossible living conditions, and they simply snap under the pressure. For some, the break could be manifested by an abuse of alcohol; for others, it is problems with money; for others, sexual difficulties with various categories of persons, and so forth. Without overlooking the existence of sin and evil, it would be important to determine whether the priest is solely to blame for what happened, or whether other factors have been quite significant in leading up to the events.

I could note in passing that in a high percentage of the situations of child sexual abuse in which I have had to intervene, alcohol has been a factor.

(3) The priest has a right to *canonical counsel* (this would be part of the natural *right of defence*), particularly if there is to be a penal trial (see cc. 1481, §2; 1723, §1).

(4) The priest also has a right to certain *material benefits*. Canon 1350 provides that when penalties are imposed on a cleric, care must always be

<sup>17</sup>The Winter report recommended "that future communications . . . reflect a more sensitive understanding and awareness of the dynamics of child sexual abuse and the impact it has on victims" (recommendation no. 26).

taken that he does not lack what is necessary for his worthy support.<sup>18</sup> Even in the case of dismissal from the clerical state, if the priest is truly in need, the ordinary is to provide in the best way possible. In order to avoid serious misunderstandings, it would be important, it seems, for a diocese to have a policy prepared beforehand, determining what type of assistance would be given to a priest. It would seem, though, that a diocese is not bound for life to provide for a priest who is guilty of serious sexual misconduct, particularly after a warning. While there might be exceptions to the norm, couldn't we say that if a priest is in good health and is reasonably young, he should be able to earn his own living. It would seem that a two-year (or some other appropriate) period would be sufficient in which to provide transitional assistance. Today's dioceses do not have bottomless wells of funds enabling them to subsidize every priest who, because of crimes committed in the past, is unable to carry out ministry.

In addition to these rights, there are certain other matters to which a priest does not have a right as such, even though the diocese or institute may offer such services.

(1) As regards *therapy*, a priest does not have a right to residential or long-term therapy, particularly if the financial situation of the diocese or institute is somewhat precarious.<sup>19</sup> Nevertheless, it should be part of any diocesan policy that, where possible, evaluation or assessment will be offered to the priest, as well as the opportunity to undergo appropriate therapy. This should certainly be a pre-condition to any eventual return to ministry after being found guilty of sexual abuse of minors.

(2) It does not seem that a priest has a right to have all his *legal expenses* assumed by the diocese or institute. At times, he might have to rely on legal aid. A diocese cannot be expected to be obliged to assume excessive costs for trials and rehabilitation.

(3) A priest does not have a right to a *penal trial* to clear his name.<sup>20</sup> He is presumed to be in good standing unless stated otherwise. It is up to the proper ecclesiastical authority to determine whether or not there will be a

<sup>18</sup>The Code Commission was asked to state that a cleric dismissed from the clerical state would lose any pensions to which he had a right. This was not accepted: "Plures dixerunt privationem pensionis esse contra aequitatem, quae omnino in hodierno contextu sociali admitti non potest. Consultores concordant, et ideo admittunt ut deleatur verbum 'pensionibus.'" In *Communicationes* 9 (1977) 158.

<sup>19</sup>The Winter Report recommended that "convicted priests be offered therapy after they have completed prison terms and that rehabilitative costs be borne by the Archdiocese" (recommendation no. 32).

<sup>20</sup>See *Communicationes* 12 (1980) 191: "Nonnulli proposuerunt ut in fine §1, n. 3 addantur verba 'nisi reus expresse petat processum iudicalem'. Suggestio non placet Consultoribus."



penal trial, not the individual in question

(4) Also, according to the Latin Code, a priest does not have a right to be assigned a *ministry*.<sup>21</sup> In passing, though, it could be noted that the 1990 Eastern Code, in canon 371, §1, provides for such a right.<sup>22</sup> In the Latin law, priestly functions can be given to him only if he is found to be qualified for the task (see c. 521, §2, for parish priests). Thus, even if a priest underwent therapy and received an excellent report, the diocesan bishop is not bound to give him an ecclesiastical office. In passing, it could be noted that it is not good to promise, before a priest goes to therapy, that he will receive a parish upon his return. It would be preferable to await the discharge report of the treatment centre.

(5) Finally, a diocesan priest does not as such have a right to *reside* in a rectory or other Church-related institution. A bishop may decide that it is necessary for a priest convicted of sexual abuse to live away from any rectory or institution for some time.<sup>23</sup> In the case of a religious priest, the norms regarding community living and forced excommunication would have to be observed.

#### d. *The rights of the parish*

The code does not spell out in detail the rights of parishioners. Probably, by looking at the obligations of parish priests and of other priests assigned to parochial ministry, we could find a corresponding right on the part of the faithful.

Certainly, if the parishioners have been scandalized by the activities of the priest, they would have a right to expect from the diocese some type of healing process. Such could last a long time. Indeed, it might even be a long time before the local community is ready to begin such a process. But, since

<sup>21</sup>The Winter Report recommended "(a) that the Archbishop ask the Archdiocesan Interdisciplinary Committee on Sexual Abuse to initiate an investigation of convicted priests to determine whether they should be retired or have canonical penalties imposed; (b) that in the event a convicted priest is not retired or had canonical penalties imposed, there be a periodic and mandatory re-assessment of his ministry in consultation with appropriate parish councils" (recommendation no. 34).

<sup>22</sup>"Canon 371, §1 — Ius habent clerici obtinendi a proprio Episcopo eparchiali praemissis iure requisitis aliquod officium, ministerium vel munus in servitium Ecclesiae exercendum."

<sup>23</sup>Canon 1746 provides that when a parish priest has been removed from his parish, the diocesan bishop is to ensure that he is either assigned to another office, if he is suitable for one, or is given a pension in so far as the case requires this and the circumstances permit. Furthermore, canon 1747, §2 provides that if it is question of a sick priest who cannot be transferred elsewhere from the parochial house without inconvenience, the diocesan bishop is to leave him the use, even the exclusive use, of the parochial house for as long as this necessity lasts.

their trust was betrayed, no reasonable effort should be spared to restore their faith in the Church, in its ministers, and in its capacity to be of assistance.<sup>24</sup>

It is asked today whether parishioners would have a right to know if a priest being appointed to their parish has a past history of sexual abuse, particularly with minors. While some people are calling for total disclosure, even from the pulpit, followed by some kind of vote by the parishioners, this to me does not seem reasonable or practical. On the other hand, certain members of the parish council should be informed of the situation, at least in general terms, so that they can assist their priest in whatever way possible.<sup>25</sup>

#### IV. THE SITUATION OF PRIESTS WHO HAVE BEEN CONVICTED OF SEXUAL MISCONDUCT

As such, a priest who has been convicted of sexual misconduct in the secular courts does not labor under any automatic canonical sanction. However, it would appear that a conviction by the courts would enable a bishop or a superior, if he saw fit, to impose some type of penal remedy.

Thankfully, most bishops and superiors have avoided the "penalty" approach, possibly because it appears vindictive, possibly also because the processes are unwieldy, or possibly because the priest has already suffered enough harm and shame.

However, it should be noted that if the diocese takes no remedial action of any kind, and if the priest offends again, then the bishop incurs greater liability.

It would seem reasonable to have at least a certain temporary period of restriction imposed upon the priest (for instance, at least one or two years without being appointed to a formal ecclesiastical office); this could be lifted if good behaviour is verified.

Some dioceses are issuing a declaration (under c. 1044, §2, 1°) that a priest who is a pedophile is irregular for the exercise of orders already received because of his psychological infirmity. It would be important, though, before issuing such a declaration to make certain that we are indeed dealing with an "infirmity" and not simply with a tragic lack of self control.

But, no matter what the canonical or secular status of the priest may be, there remain the emotional scars that just cannot seem to go away. These

<sup>24</sup>A number of programs are being devised to assist parishes in initiating reconciliation processes. For instance, the programmes prepared by the Holden Valley Health Center in Minnesota, or those prepared by the Canadian Conference of Catholic Bishops.

<sup>25</sup>The Winter Report recommended "that convicted priests never be assigned to pastoral responsibilities in a parish unless the parish council is informed and consulted about the assignment" (recommendation no. 35).

sometimes make it impossible for a priest to minister in his own diocese or territory. Yet, at the same time, very few bishops are willing to accept into their dioceses, even on a temporary basis, a priest who has a history of sexual misconduct elsewhere.

I am saddened to say it, but I believe that probably the best service we can render to a priest today once he has been convicted of sexual misconduct, is to lead him to the realization that it will be many years—if ever—before he will be able to function again in ministry. Thus, we should be providing or offering some type of job retraining for him if he is not qualified to take up other work. *Time* magazine's articles last summer on "Busybodies and Crybabies" explains the situation that many priests, and others, have to face because of certain persons who simply will not mind their own business.<sup>26</sup>

My heart goes out for such priests, but our people are quite unforgiving when it comes to sexual matters involving the clergy. Until attitudes are changed—hopefully, with some good nudging on our part—there is very little that can be done. We should be able to distinguish between a constitutional pedophile who has molested many children, and a person who made one serious mistake. We should be able to distinguish between a case where there was much publicity and one that was not publicized.

One thing wrong in our legal system—and I might make some enemies by saying this—is that we publish a person's name once that person has been charged with an offence. At times, we even publish the name before charges are laid. It would seem reasonable to allow publication of the name once a person has been found guilty, but not before. Because, as we all know, once a person's name has been made public, no matter how innocent that person is found to be, the stigma remains. Also, at some time, statute of limitation laws should be examined so that we don't spend our time digging up cases from a distant past.

Since it is most difficult, given the present practice of the Holy See, to obtain an administrative return to the lay state when a priest refuses to ask for a dispensation from his clerical obligations, if it is absolutely necessary that the person no longer be recognized as a priest, and if suspension or the declaration of an irregularity do not suffice, then a criminal canonical trial must be held. It might be appropriate to have a certain core or team of judges specially versed in this type of trial who could be appointed, on an *ad hoc* basis, to assist a diocese contemplating carrying out a penal process.<sup>27</sup>

<sup>26</sup>See "Busybodies & Crybabies. What's happening to the American character?", in *Time*, August 12, 1991, theme articles on pages 14-23.

<sup>27</sup>On this question, see also T.J. Green, "Involuntary Dismissal from the Clerical State", in *Roman Replies and CLSA Advisory Opinions 1991* (Washington, D.C.: Canon Law Society of America) 118-121, and G. Ingels, "Another Opinion", *ibid.*, 121-123.

## V. THE REINTEGRATION OF CLERICS INTO MINISTRY<sup>28</sup>

In spite of what was said above, we should still be optimistic and think that some day we might be able to reintegrate convicted priests back into ministry. If so, certain criteria would have to be met and certain types of ministry avoided. There is no easy solution to the question.

These points could be summarized under fifteen different headings. Some of these are put forward on a tentative basis, pending further research into the matter. Others seem to be matters of common sense.

(1) Any decision regarding the reintegration of a priest into ministry should be reserved to the diocesan bishop, regardless of any recommendations put forth by others. In the case of a religious, however, appropriate arrangements would have to be made by the major superior (usually in conjunction with the diocesan bishop). Nevertheless, the diocesan bishop and the major superior are encouraged to seek advice from competent lay persons and clerics before making any decision. Each case must be looked at individually.

(2) Professional assessment, after therapy, would be a pre-condition to any decision regarding reintegration to ministry. Also, participation in recognized after-care programmes should be mandatory. The diocesan committee, or some other persons chosen for this purpose, should be involved in making recommendations in this regard. If the treatment centre is opposed to re-entry into active ministry, then it would seem improper to consider readmission at this time.

(3) If the cleric is authorized to return to ministry, provision should be made for him to participate in one or other self-help groups.

(4) Upon return of a cleric to active parochial ministry, it would be important to provide appropriate information to those having a need to know, avoiding unnecessary or regrettable publicity.

(5) A written record should be kept of all steps taken following re-admission or a decision not to re-admit at this time.

(6) The priest should have a monitor, a priest acceptable to both the diocesan bishop and the priest—and not a confessor or spiritual director—with whom he would meet regularly to assess progress. The monitor would have complete and unrestricted freedom to report to the bishop and to advise him concerning the continuation of the individual's ministry. He would also have the right to make appropriate recommendations concerning the cleric.

(7) In certain cases, it might be appropriate not to restore all the priest's

<sup>28</sup>On this matter see L.M. Lothstein, "Can a Sexually Addicted Priest Return to Ministry after Treatment? Psychological Issues and Possible Forensic Solutions", in *The Catholic Lawyer* 34 (1991) 89-113.

incursion, but only certain cases necessary for his ministry as assigned.

(8) The priest could be asked to meet with a mental health counsellor (psychiatrist, psychologist, etc.) on a regular basis as another form of support and ongoing evaluation. The priest's permission could be sought to allow the counsellor to speak candidly with the bishop concerning the priest's suitability for involvement in some form of ministry.

(9) Where the assessment of the treatment centre, the individual's comportment, and feedback from others suggest working towards reintegrating the priest into some form of ministry, attention should be focused on identifying those facets of ministry that could be appropriate. I don't think it would be fair to fill our chanceries and tribunals with priests who cannot be placed elsewhere; obviously, some priests will fit very well into such structures, but care must also be taken to protect the good name of the diocesan offices.

(10) Assurance must be secured that any ministerial function will be so defined as to avoid any assigned responsibilities that would entail associating with individuals or groups similar to those with whom he has had difficulty.<sup>29</sup>

(11) Reintegration to ministry must be sensitive to, but not determined by, public sentiment. Care must be taken to allow for a slow, but continued re-entry program so as to avoid sensationalism.

(12) Because of the long-term difficulties often experienced by the children and their families, it often would happen that the priest would have to be assigned to some other place where he is less known. Although this is difficult for him, it could be to his eventual benefit.

(13) Before reintegration takes place, some contact between the bishop or his delegate and those involved in sexual misconduct and their families should be initiated which could, a) defuse any element of surprise, b) display sensitivity to the children and their families, and c) allow for antagonism to be defused beforehand.

(14) The diocesan bishop or the religious superior must take great care to ensure that following the conclusion of each incident, every effort is made to address ongoing long-term effects. The continued care and concern for all parties must not end with the re-admission of the priest to ministry, or with his decision to discontinue active ministry. An on-going process of healing and spiritual growth is necessary.

(15) Finally, the diocese should continue to monitor the effects of the incident on the community, including spiritual, moral, and legal dimensions. Care should be taken not to trivialize or over-play the incidents. Discussions with leaders of other churches and ecclesial communities could be profitable.

<sup>29</sup>The Winter Report recommends: "That convicted priests never be given a pastoral responsibility for children" (recommendation no. 36).

## CONCLUSION

As can be seen from these observations, there is no easy or simple solution to the question of sexual misconduct by priests and, indeed, by other clerics and pastoral workers. We are caught up in the pressures of the issue at this moment in the life of the Church and it is possible that some of our optimistic solutions will prove themselves not to be beneficial to the priest themselves or to the greater Church community.

As can be gathered, I am very reluctant at this time to recommend using the penal process whereby priests are returned to the lay state. However, I recognize that in some exceptional cases it might be necessary. In which case, the norms of law should be carefully observed.

At this moment, I feel that, if possible, we should be welcoming of our brother priests who have had sad experiences. Possibly many others who were never denounced for similar or different activities are as guilty as those who have been punished. Perhaps those who have not had the misfortune of being involved in sexual misconduct, might at some future time even find themselves in a similar situation. Let us not feel smug, then, about the issue. As we read in the breviary on Saturday of the seventeenth week of the year, in the letter from St. Ignatius of Antioch to Polycarp, "If someone can't remain in chastity in honor of the flesh of the Lord, let him remain in humility."<sup>30</sup>

The golden rule, "Do to no one what you would not want done to you" (Tobit 4: 16) could guide us in our search for an answer.

<sup>30</sup>See Ignatius of Antioch, Letter to Polycarp, chapter 5. The English breviary provides a somewhat different translation of this statement.