

PART II
Section D

DECREES OF BISHOP PHILIP WILSON
RECOURSE TO THE CONGREGATION FOR THE CLERGY
and to the
APOSTOLIC SIGNATURA
COMMUNICATION WITH OTHER BISHOPS

A. DECREE OF BISHOP PHILIP WILSON: 22nd January 1998

1. On 30 April 1996, Fr Nestor was stood aside from the exercise of public ministry and placed on administrative leave until further notice as a result of an allegation of a serious sexual nature received by the Diocese. There had been no restrictions on Fr Nestor's ministry prior to him being stood aside.
2. On 1 May 1996, Fr Nestor was charged with aggravated indecent assault (person under 16 years).
3. On 12 December 1996, Wollongong Local Court (Magistrate Paul Johnson): JGN found guilty of charges.

In the course of the court case, it became clear that on the night in question, Fr Nestor and ABA and ABB had slept on mattresses that had been placed together on the floor. The Magistrate also noted that the Defendant [Fr Nestor] did not deny "that the boys had stayed overnight at his home on a number of occasions, that they had slept in the way that the boys have said on mattresses on a bedroom floor, watching a video, particularly on this night, the night in question. He was asked questions about those sleeping arrangements and the necessity, to use his own words for prudence when having young people stay overnight in his home ... He at that time I think thought that there was nothing imprudent in what he did so far as the sleeping arrangements were concerned". (*Judgement of Magistrate Paul Johnson*, p. 12)

4. On 18 February 1997, Fr Nestor was sentenced to a sixteen month gaol term. He was granted bail pending an appeal of the conviction.
5. On 22 October 1997, the NSW District Court of Appeal, Criminal Jurisdiction (Judge J B Phelan), upheld Fr Nestor's appeal and he was acquitted of the charges.
6. On 7 November 1997, Bishop Philip Wilson, then Bishop of Wollongong, initiated an assessment process focused on the question of Fr Nestor's suitability for a future pastoral appointment in the Diocese or elsewhere.

Bishop Wilson's concern arose from the sleeping arrangements referred to in 3 above (which Fr Nestor had not denied during his earlier interview with Senior Constable Beck, *Transcript*, pp. 10-11).

Fr Nestor was required to remain on administrative leave until the process was completed.

7. On 19 December 1997, in the light of new information received by the Diocese, Bishop Wilson repeated his personal request for Fr Nestor to continue to stand aside from public ministry and informed him of his intention to initiate an assessment in accordance with Section 6 of *Towards Healing*.

Bishop Wilson stated that "This assessment procedure will also fulfil, in part, the function of the preliminary investigation required by c. 1717 of the 1983 Code of Canon Law".¹

8. On 28 December 1997, Fr Nestor wrote to Bishop Wilson indicating that he was willing to consider standing aside from public ministry if and when informed of any specific complaint against him, if this is recommended by appropriate assessors and dependent upon the provision of signed statements from the persons making the complaints.

Further, Fr Nestor requested that any assessors appointed be mutually-agreed assessors, reporting to a mutually-agreed and independent bishop.

9. On 8 January 1998, Bishop Wilson appointed Elizabeth Hannan and Howard Murray as assessors. The *Towards Healing* investigation concerning Fr Nestor related to both (i) the matters that had gone before the court and (ii) other allegations involving a number of other children in the past that had been received by the Diocese in recent times. A number of these other allegations had been reported to civil authorities also.

10. On 21 January 1998, Bishop Wilson wrote to Fr Nestor, acknowledging his letter of 28 December 1997. Bishop Wilson stated that he had "no alternative but to comply with the procedures of *Towards Healing*" and repeated "my call for you to stand aside from public ministry as I explained to you when we last met".

11. On 22 January 1998, following an occasion when Fr Nestor celebrated a Sunday Mass in a Parish of the Diocese and preached the homily, Bishop Wilson issued a decree instructing Fr Nestor, under obedience, "to cease functioning publicly as a priest in any place" until he is given permission to do so.²

This was a disciplinary decree enacted under c. 273 – *Clerics have a special obligation to show reverence and obedience to the Supreme Pontiff and to their own Ordinary*. It was not a penal decree.

¹ MOST REV PHILIP WILSON, *Letter to Fr Nestor*, 19 December 1997, Vol. 1, Appendix UV, p. 10.

² MOST REV PHILIP WILSON, *Decree*, 22 January 1998, Vol. 1, Appendix T.

B. DECREES OF BISHOP PHILIP WILSON: 7th August 1998

12. On 29 June 1998, following the investigation under the *Towards Healing* protocol, the NSW Professional Standards Resource Group issued its report and formal advice to Bishop Wilson. The Group stated that “in light of the available evidence of his continuing and seriously imprudent and ambiguous behaviour, significantly at variance with any reasonable understanding of the obligations of his role, there are serious grounds for concern about Fr Nestor’s suitability for pastoral ministry”. It advised that Fr Nestor “should be requested as *a conditio sine qua non* for further appointment to undergo a full appraisal by *Encompass Australasia* as the means of providing reassurance”.³
13. On 7 August 1998, Bishop Wilson issued a decree restricting Fr Nestor from celebrating the liturgy publicly “(1) as Fr Nestor is to be appraised concerning his fitness to engage in any further public ministry, (2) and because I [Bishop Wilson] must exercise solicitude for all Christ’s faithful committed to my care”. This restriction applied to all places within and without the Diocese until such time as it is abrogated by a decree of the Bishop of Wollongong.⁴

This was a disciplinary decree, not a penal decree. This decree has not been rescinded.

A second decree, issued by Bishop Wilson on the same date, required Fr Nestor to undergo a “full appraisal by *Encompass Australasia* as a prerequisite to any further ecclesiastical appointment”.⁵

Bishop Wilson also decreed that “the *Report and Recommendations of the NSW Professional Standards Resource Group of 29 June 1998* is to be included in the Acts of the preliminary investigation of matters concerning the Rev J Nestor, the investigation having commenced by virtue of the decree of 19 December 1997”.⁶

C. RECOURSE TAKEN BY FR NESTOR AND RESPONSE OF THE CONGREGATION FOR THE CLERGY: 21st December 2000.

14. On 30 October 1998, Fr Nestor took recourse to the Congregation for the Clergy against Bishop Wilson’s decree of 7th August 1998.
15. On 12 December 1998, the Congregation for the Clergy notified Bishop Wilson that Fr Nestor had taken recourse. The Congregation requested any input Bishop Wilson might like to put forward, together with the Acts of the canonical process.

³ PROFESSIONAL STANDARDS RESOURCE GROUP, *Formal Advice*, Vol. 1, Appendix UV, pp. 1-4.

⁴ MOST REV PHILIP WILSON, *Decree*, 7 August 1998, Vol. 1, Appendix UV, p. 5.

⁵ *Ibid.*, pp. 6-9.

⁶ *Ibid.* p. 10.

16. On 12 August 1999, the Congregation for the Clergy wrote to Bishop Wilson requesting that he enter into dialogue with Fr Nestor to resolve the matter by 30 November 1999. A similar letter was sent to Fr Nestor. Bishop Wilson and Fr Nestor had several communications in relation to this, both in person and by letter, but were unable to reach a mutually acceptable process to resolve the situation.
17. On 22 December 1999: Bishop Wilson wrote to Fr Nestor and invited him to enter into, with him, a transformative justice conference designed to overcome the impasse and to create an acceptable solution. Fr Nestor declined.⁷
18. On 24 March 2000, Bishop Wilson again tried to initiate a process to resolve the situation. Fr Nestor declined.⁸
19. On 21 December 2000, the Congregation for the Clergy upheld the recourse of Fr Nestor and instructed that Fr Nestor “is to be restored immediately to the full exercise of his priestly ministry in the Diocese of Wollongong and restitution is to be made of that of which he was deprived in keeping with the diocesan norms for remuneration of the clergy and canon 281”.⁹

In a letter to the Apostolic Signatura of 14 January 2001, Fr Nestor indicated that correct remuneration had been restored to him. Hence this requirement of the Decree of the Congregation’s decree of 21 December 2000 was fulfilled.

20. On January 2001, on his own initiative, without reference to Bishop Wilson, Fr Nestor moved to the United States of America.

D. RECOURSE TAKEN BY THE DIOCESE OF WOLLONGONG AGAINST THE DECISION OF THE CONGREGATION FOR THE CLERGY

21. On 12 January 2001, Bishop Wilson, by then Diocesan Administrator of Wollongong and Bishop-Elect of Adelaide, wrote to the Congregation for the Clergy requesting them to review their decision of 21 December 2000 on two grounds: “(1) That the recourse of Rev Nestor was invalid as it had been made after the legal period of time had expired. (2) That scandal, which could follow the activation of the Congregation’s Decree, be avoided in the Diocese of Wollongong”.

Bishop Wilson informed Fr Nestor of this on that same day.

The Congregation apparently did not reply to Bishop Wilson’s letter within thirty days.

22. On 22 February 2001, the new Diocesan Administrator, Fr Bryan Jones, appealed to the Apostolic Signatura against the decree of the Congregation of the Clergy.

⁷ BISHOP WILSON – FR NESTOR, *Correspondence*, Vol. 1, Appendix C.

⁸ BISHOP WILSON – FR NESTOR, *Correspondence*, Vol. 1, Appendix D.

⁹ CONGREGATIO PRO CLERICIS, *Decree*, 21 December 2000, Vol. 1, Appendix

23. On 19 May 2001, the Congregation for the Clergy rejected the submission of 12 January 2001.¹⁰
24. On 22 April 2002, the Apostolic Signatura suspended the requirement in the Decree of 21 December 2000 that “the Rev Nestor is to be restored immediately to the full exercise of his priestly ministry in the Diocese of Wollongong”.¹¹
25. On 25 July 2001, Bishop Peter Ingham was installed as Bishop of Wollongong, replacing Bishop Philip Wilson.
26. On 27 July 2006, Bishop Ingham received the definitive response from the Apostolic Signatura. It stated that “the violation of the law both in procedure and in discernment in the decision of the Congregation for Clergy of 21 December 2000, and confirmed on 19 May 2001, has been proven”.¹²

E. COMMUNICATION OF BISHOP INGHAM IN RELATION TO MINISTRY APPOINTMENT FOR FR NESTOR

27. On 28 February 2003, Bishop Korir of Kenya wrote to Bishop of Wollongong stating that he had “received an application from America, from a priest of your diocese who is living there and wishes to work in this Diocese of Eldoret. His name is Fr John Gerald Nestor.” Bishop Korir was seeking the Bishop of Wollongong’s approval.
28. On 4 June 2003, Bishop Ingham replied to Bishop Korir of Kenya stating that Fr Nestor “does not have faculties” to minister.
29. On 26 June 2003, Bishop Ricken of Wyoming, USA, emailed Bishop Ingham and stated that Fr Nestor had indicated an interest in serving in the diocese of Wyoming and requesting any necessary information.
30. On 1 July 2003, Bishop Ingham wrote to Bishop Ricken of Wyoming and informed him of Bishop Wilson’s decree.
31. On 17 July 2003, Bishop Biguzzi of Sierra Leone emailed Bishop Ingham to enquire about Fr Nestor’s standing as a priest as Fr Nestor had been recommended to him.
32. On 10 August 2003, Fr Nestor emailed Bishop Ingham and expressed his “concern that you had apparently informed another bishop that I did not have priestly faculties at present”. He added: “I thought that you would be quite aware that since my ordination to the priesthood on November 11, 1989, I have always had faculties in the diocese of Wollongong and that this is still the situation”.

¹⁰ CONGREGATIO PRO CLERICIS, *Decree*, 19 May 2001, Vol. 1, Appendix A1. p. 1.

¹¹ SUPREMUM APOSTOLICAE SIGNATURAE TRIBUNAL, *Decree*, 22 April 2002, Vol. 1, Appendix A1, pp. 2-4.

¹² SUPREMUM SIGNATURAE APOSTOLOCAE TRIBUNAL, *Sententia Definitiva*, 27 July 2006, Vol. 1, Appendix A1, pp. 5-11.

33. On 15 August 2003, Bishop Ingham confirmed in a letter to Fr Nestor that he continued to act in accordance with the decrees issued by Bishop Wilson in August 1998.
34. On 23 November 2003, Bishop James Keleher of Kansas wrote to Bishop Ingham and enquired about the possibility of Fr Nestor serving in his diocese.
35. On 23 January 2004, Bishop Ingham replied to Bishop Keleher's letter and stated that he was not able to recommend Fr Nestor for ministry. Bishop Ingham informed Fr Nestor of his response to Bishop Keleher's request on 27 January 2004.
36. On 17 February 2004, Fr Nestor emailed Bishop Ingham and requested a letter stating the he was a priest in good standing in the diocese (Wollongong). He had been asked to officiate at the marriage ceremony for a couple in Chicago and the Bishop of Chicago required the letter. He stated: "I have even recently celebrated marriages of university students in the diocese of Peoria with no objection from the Bishop".
37. On 4 March 2004, Fr Nestor again emailed Bishop Ingham and requested a letter stating the he was a priest in good standing in the diocese (Wollongong). He added that "I have done weddings regularly in various dioceses".
38. On 8 March 2004, Bishop Ingham emailed Fr Nestor and stated that he was not able to give him a letter stating the he was a priest in good standing in the diocese (Wollongong).
39. On 10 March 2004, Fr Nestor emailed Bishop Ingham and asked him to reconsider his decision whereby he refused to grant Fr Nestor permission to celebrate the marriage of the couple in the United States.
40. On 24 April 2004, Fr Nestor wrote to Bishop Ingham and expressed his distress that Bishop Ingham was not willing to give him a statement saying that he was a priest in good standing in the diocese (Wollongong). Fr Nestor accused Bishop Ingham of "continuing calumny of me to bishops who wish to use me in pastoral service in the United States". Fr Nestor concluded by stating that "I will continue to carry out the priestly work for which I was ordained".
41. On 28 April 2004, Bishop Ingham emailed Fr Nestor and acknowledged his letter of 24 April 2004. Bishop Ingham stated that "this whole matter is before the Apostolic Signatura and that is where it will be resolved".
42. On 15 August 2004, Bishop Ingham wrote to Fr Nestor and informed him that he had replied to a letter from Bishop Korir of Kenya in which the latter had enquired about the possibility of Fr Nestor serving in his diocese. Bishop Ingham stated in his reply that "he [Fr Nestor] currently does not have faculties".

In the same letter, Bishop Ingham informed Fr Nestor that he had written a similar letter to Bishop Ricken of Wyoming, USA, in response to the latter's enquiry as to the possibility of Fr Nestor ministering in his diocese.

43. On 20 August 2004, Fr Nestor wrote to Bishop Ingham and again requested a formal letter stating that he was a priest in good standing in the diocese.
44. On 17 September 2004, Bishop Ingham replied to Fr Nestor's letter of 20 August 2004 and stated that he could issue such a statement.
45. On 21 September 2004, Fr Nestor wrote to Bishop Ingham and formally requested that Bishop Ingham reconsider his decision not to grant him a statement stating that he was a priest in good standing in the diocese.
46. On 2 September 2005, Bishop Vasa of Oregon, USA, emailed Bishop Ingham and stated that he would be willing to consider Fr Nestor for a pastoral assignment, if Bishop Ingham were agreeable.
47. On 6 October 2005, Bishop Ingham replied to Bishop Vasa's email of 2 September 2005 and indicated the situation with regard to Fr Nestor.
48. On 18 March 2006, the Apostolic Signatura issued an interim decree upholding the recourse of the Diocese against the decree of the Congregation for the Clergy. A definitive decree confirming the decision (and any action flowing from it) would be issued at a later date.
49. On 23 March 2006, Fr Nestor informed Bishop Ingham via email that he had returned to Australia.

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