



CONGREGATIO PRO CLERICIS

DECREE

Prot. N. 20001201

Whereas on 30th October 1998 recourse was entered into by the Rev. John Nestor of the Diocese of Wollongong, against the provisions of a Decree issued by the then Bishop of Wollongong, Australia, His Lordship, the Most Rev. Philip Wilson, on 7th August 1998, wherein the Rev. Nestor is denied any further ecclesiastical appointment subject to the condition of a full psychological appraisal to be carried out by *Encompass Australia*, and

whereas application was made to revoke said decree on 23rd August 1998 and refused by the Bishop on 11th September 1998, and,

whereas the issuance of the abovementioned Decree had been preceded by an investigation by the Most Rev. Ordinary after an accusation of sexual abuse made against the priest had been heard and adjudicated by the civil system as being unfounded in civil law, and

whereas the priest had willingly cooperated in acceding to the Bishop's request that he absent himself from the active ministry during this period of time, and

whereas subsequently the Bishop, indicated in a letter to the priest dated 19th December 1997, that "The weight of information made available to me, including significant additional material that I have received during this past month, has been a cause of worry concerning your suitability for a further pastoral appointment in this diocese or any other", and decided to initiate an investigation according to the norms of canon 1717, at the same time citing a procedure in accordance with a local policy entitled *Towards Healing* and states, "In the light of this new information, I repeat my personal request... that you continue to stand aside from public ministry", and

whereas canon 221, #3, assures the Christian faithful that "... *ius est, ne poenis canonicis nisi ad normam legis plectantur*", then it is clear that any procedures employed in an investigation leading to the imposition of a penalty, must be congruent with those envisioned by the Code of Canon Law, and

whereas the subsequent "Preliminary Investigation" followed a course of action that is not clearly recognizable as that prescribed by canon law: the Bishop did not carry out the investigation himself, however under these circumstances he must appoint a single Delegate to act on his behalf, as is envisioned by canon 1717, #2, but the "Acta" do not indicate any such appointment congruent with the canon; there is no indication that the purposes of the

“Preliminary Investigation”, outlined in canon 1718, were clearly arrived at; no decree of closure of the “Preliminary Investigation”, as envisioned by canon 1719 form part of the “acta” presented, nor is there indication of the placing of the materials in the secret archive of the Diocese, and

whereas investigations were carried out, in the name of the Diocese, by individuals not appointed in accordance with the law, and following procedures not consistent with those of the Code of Canon Law: the “Acta” presented do not show any verification of the identity of the accusers; there is no written, sworn testimony from them, indicating dates, times, places and witnesses; there is no indication that individual accusations were verified by recognizable legal means; accusations appear to be taken at face value, overturning any presumption of innocence which must be afforded the accused by natural law; public statements are made that, at least appear to aggravate the provisions of canons 220, and 1717, #2, and

whereas despite the fact that no decree is presented in the “Acta” opening either an administrative or judicial process, (canons 1720, 1721), thus possibly allowing the application of the provisions of canon 1722, the priest was effectively excluded from active ministry and has remained in that state to the present, and

whereas, having begun the “Preliminary Investigation” in accord with canon 1717 on the 19th November 1997, which carried out as indicated above, the Most Rev. Ordinary issued his decision in a Decree dated the 7th August 1998, in which he required Father Nestor, “as a prerequisite to any further ecclesiastical appointment”, to undergo “a full appraisal” of a psychological nature at an Institution named “Encompass Australia”, this decision being arrived at in a fashion not in conformity with canons 1717 and following, and

whereas the Most Rev. Ordinary cites as reasons for his action the assessment of an Elizabeth Hanna and a Howard Murray, which, despite the acquittal of Fr. Nestor by the civil authorities, re-presents that matter as indicative of a problem on the part of the priest and list other accusations of a “sexual nature”, which were never verified, the only information being presented was the word of a “complainant” who would not “formalise the complaint”, nor is the nature of the accusation explained; another accusation made by a “young man” was that he “believed” the priest acted in a manner which was “sexual in intent”, without again there being any verification of the accusation; there are “five other complainants” mentioned, the nature of whose complaints were that the priest told sexual jokes “appropriate to the age of the boys”, that he “swore and made frequent sexual innuendoes, encouraged group urination and genital size contests, swam naked with the boys, insisted that they shower naked in his presence, indicated an interest in and discussed the physical development of some boys with them”, and,

whereas the priest had previously responded to all these accusations, denying them in writing, and asking for canonical process in order to prove his innocence, (as he had in the civil forum, at a personal cost of \$75,000), there is no indication that such an opportunity was ever afforded him, and

whereas the Most Rev. Ordinary in his decree states that the criteria of proof to be applied “is not that of ‘beyond reasonable doubt’ but the lesser standards of ‘balance of

probabilities' and 'unacceptable risk'", all of which criteria are foreign to Canon Law and its processes, and from such processes, no dispensation is possible, (canon 87,#1), and

whereas the Most Rev. Ordinary indicates in his decree, (quoting and without question, accepting the report presented to him), that he had "no choice but to place on Fr. Nestor the onus for him to establish to your satisfaction that he is a person of integrity, whom you could confidently reappoint to a priestly ministry and without fear that you may be exposing the community to any risk by so doing. It is also the opinion of the Resource Group that the only effective and acceptable way for Fr. Nestor to establish these matters to your satisfaction is by his submitting to a comprehensive appraisal by Encompass Australia", and such conclusions were arrived at in a manner not consistent with canonical investigation, and

whereas the priest had been found "idoneous" for ministry so as to be ordained, he had worked with youth both before and after his ordination without any question being raised as to his behavior, had successfully defended himself against an accusation of sexual abuse in the civil forum, which action was promoted by officials of his diocese, had been exonerated by the civil judicial system, has expended \$75,000 personally in his own defence, has furthermore defended himself in writing against the accusations presented, sought canonical trial in order to vindicate his rights in the ecclesiastical form, which was denied him; has been deprived of his ministry as a priest for a number of years, suffered loss of his good name, has not received the remuneration assured him by canons 281, 1 and 2, and has been forced to seek employment in the secular world as a bus driver in order to support himself and his sick mother,

this Congregation, mindful of its many attempts to have Diocesan authority remedy this situation, to no avail, hereby decrees:

that the recourse of the Rev. Nestor against the administrative act dated the 7th August 1998 issued by the Ordinary of the Diocese of Woolongong, is upheld due to lack of compliance, *de procedendo* with the norms of the Code of Canon Law for canonical process, and in regard to *de decernendo*, in that it lacked basis in law and in fact, thus said decree lacks any juridic effect; furthermore in keeping with the discipline of canon 128, the Rev. Nestor is to be restored immediately to the full exercise of his priestly ministry in the Diocese of Woolongong and restitution is to be made of that of which he was deprived in keeping with the Diocesan norms for remuneration of Clergy and canon 281.

Given at the Seat of the Congregation for the Clergy
Vatican City, 21st December 2000.

Dario Card. Castrillon H.



+ h. h. Gumpel
Secr.