

Professional Standards Resource Group

For the Bishops and Leaders of Religious Institutes
of the Catholic Church
in NSW and the ACT

276 Pitt Street
Sydney NSW 2000

Telephone: (02) 9287 1542

29 June, 1998

Most Reverend P Wilson,
Bishop of Wollongong,
PO Box 1239
Wollongong SCMC NSW 2521

Dear Bishop Wilson,

Re: formal advice in the case of Rev John Nestor

In reply to your request for a formal advice from the Resource Group in this matter I present the following:

INFORMATION AVAILABLE

The Resource Group notes that the assessors, Elizabeth Hannan and Howard Murray, have completed their work and that they submitted their report to you on 16 May 1998.

The assessors report that Fr Nestor denies categorically that any of his behaviour has been blameworthy and he alleges that those who have made accusations against him are not telling the truth. He had indicated his willingness to meet the assessors but subsequently agreed, apparently after seeking legal advice, that since he intended only to deny all accusations, there seemed little point in his attending such a meeting. Their only contact with him was by phone.

Fr Nestor claims that you have behaved unfairly towards him, that the process has been unnecessarily delayed, that steps have been taken to identify people who are prepared to make complaints against him, and that some people have been approached before they spoke to the assessors, with the possibility that their evidence was influenced by these prior conversations.

The information presented by the assessors in regard to the accusations is summarised below:

Three people have made accusations about unacceptable behaviour of a directly sexual kind against Fr Nestor.

One complainant pursued the matter to Court where he was a witness in a criminal prosecution. This resulted in Fr Nestor's conviction by a Magistrate in 1996 on the charge of aggravated indecent assault upon an under aged boy and a sentence of 15 months imprisonment.

On 22 October 1997 Fr Nestor appealed against his conviction and the District Court upheld his appeal and set aside the penalty.

Bishop of Wollongong		
30 JUN 1998		
Bishop	CAUTION	DFA
Refer		
File	Reply	

The Appeal Judge noted that Fr Nestor in an interview on 1 May 1996, (videod and tendered in evidence), admitted that he, together with the complainant and his brother had watched videos, that they had slept together, and that this had been a common practice. The Crown had submitted to the Court that this behaviour was imprudent and the Judge agreed. He added the comment, "*The dictates of prudence should have been clear to the appellant in his priestly position, and this is the more so when the appellant himself told the police that he suspected that the complainant could have been the past victim of sexual molestation of some sort.*"

In the matter of the original trial and in the appeal the Crown had no other witnesses and the case rested entirely on the evidence of this one complainant. In support of his evidence the Crown pointed to his youth, his lack of sexual experience, his embarrassment, the fact that he regarded Fr Nestor as like a second father, that it was a big decision to lay such a serious complaint against the status of a priest, and that when he told his parents Fr Nestor was absent in America. The Judge stated his conclusion that the complainant was conscientious, caring and a pleasant young man. He noted that Fr Nestor made no allegations that the complainant had any grudge against him. The accused's counsel's primary criticism of the complainant related to his admission that on three occasions he had seen ghosts.

In concluding that there was some doubt about the credibility of the complainant the Judge appears to have been principally influenced by his admission that he believed in ghosts, opening the possibility for the Judge that reality and imagination in the complainant's mind may at times merge.

Finally, in the question of awarding costs the Judge stated: "*It seems to me in this case that whilst the appeal has been upheld that it was not unreasonable to bring the proceedings in the light of all the information that has been presented to the court and therefore I reject the application (that the costs be paid by the Crown)*".

A second complaint relating to a matter of a sexual kind was from a person who stated that some four years ago, during a camp run by Fr Nestor, he had witnessed Fr Nestor molesting his younger brother then aged ten years. The witness is prepared to make a formal statement to this effect; he has not done so, so far, because of his fear that he would be subject to the degree of harassment that others have experienced, at Fr Nestor's instigation when they spoke out against him.

The third accusation of a sexual nature was made by a young man who stated that while attending a camp organised by Fr Nestor he was taken off by himself and treated in a way that he believed that was sexual in intent and from which he quickly moved away.

There were five other complainants interviewed by the assessors. The matters attested to related mostly to events in camps organised by Fr Nestor during which it was alleged that he told sexual jokes "appropriate to the age of the boys", swore and made frequent sexual innuendos, 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.

The complaints included comments that Fr Nestor had been dismissive of critical comments by parents on these inappropriate competitions, but that he made no attempt to deny that the incidents in question had taken place. It was alleged that he had been dismissive of complaints of parents that some of the staff at some of these camps were homosexual.

The assessors' recommendations were:

1. *That before Fr Nestor be allowed to engage in any public ministry, he be subjected to an appraisal as to his fitness to do so, such as that offered through the Church's Encompass program.*
2. *That all parties who have taken part in the assessment process be visited by a senior diocesan representative, preferably Bishop Wilson, and advised of the outcome of the assessment and what follow-up action is being taken with Fr Nestor .*
3. *That all parties who have taken part in the assessment process be offered in writing the opportunity of counselling arranged through Centacare or another appropriate provider.*
4. *That, once recommendation 2 has been implemented, local media outlets be informed of the conclusion of the assessment process and what subsequent action is being taken.*

RESOURCE GROUP ADVICE

The Resource Group advises that it is its view that :

1. *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,*
2. *consequently that the Bishop is left with little choice but to demand reassurance from Fr Nestor that he is a fit and proper person suitable to be reappointed, and where the Bishop could be confident in making such a reappointment that he was not thereby placing at risk any member of the community that he wished Fr Nestor to serve,*
3. *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 that reassurance,*

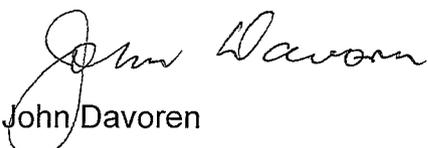
4. *the assessors' remaining recommendations (numbers 2 to 4) should be implemented, subject to the outcome of the appraisal (or refusal to undertake such an appraisal) with the recommendation that any public statement on the case be made with legal advice.*

REASONS FOR THIS ADVICE

In the opinion of the Resource Group the assessors' report provides a significant amount of information from a variety of sources with no indication of collusion among the parties, or any evidence of attempts to influence the information provided by the significant number of complainants. The picture presented is one of serial inappropriate behaviour from which Fr Nestor apparently refused to resile over a period of time.

The Resource Group notes that in accord with the Church's duty of care the standard of proof that it must apply in this kind of situation is not that of "beyond reasonable doubt" but the lesser standards of "balance of probabilities" and "unacceptable risk". Consequently Judge Phelan's decision that the offences of which Fr Nestor was charged were not proved beyond reasonable doubt, falls far short of clearing his name or establishing that he is a person suitable for further appointment.

The Resource Group is of the opinion that the information currently available is a cause of such grave concern that you have 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 Australasia.


John Davoren
Convenor