

1 March 2001

His Eminence
Cardinal Mario Pompedda
Prefect of the Supreme Tribunal of the Apostolic Signatura
Palazzo della Cancelleria
00120 Vatican City

Your Eminence,

May I firstly offer the congratulations of all the Australian bishops on your elevation to the College of Cardinals. We were pleased to see your name in the list of those nominated.

The members of the Permanent Committee of the Australian Catholic Bishops' Conference are aware of the appeal being lodged by the Diocesan Administrator of the Diocese of Wollongong against a decree of the Sacred Congregation for Clergy in the matter of a priest of that diocese, Father John Nestor. The bishops of the Permanent Committee wish to accompany that appeal with this letter. We do so conscious of the immense harm that widely-publicized examples of abuse of minors have done to the mission and public credibility of the Church and the potential for further damage in this and similar cases.

The Australian bishops fully accept that

- A person must be considered innocent until proven guilty;
- A permanent penalty can be inflicted only by a judicial process;
- The S. Congregation for Clergy has an important role to play in defending the rights of priests against unjust actions by their bishops.

In accordance with these principles, we are aware that the Diocesan Administrator of Wollongong is currently seeking competent canonical advice to see whether a case may be presented before a tribunal in the matter of Fr. Nestor.

At the same time, we are perturbed by the statement in the decree of the S. Congregation that the criterion of "unacceptable risk" is foreign to canon law and cannot be taken into consideration.

Through bitter experience the Australian bishops have learned the following truths:

- sexual abuse of minors can have profound and life-long effects on the victims;
- the offence cannot be reduced to a sexual sin for which the sacrament of confession is an adequate remedy;
- profound psychological forces are at work in offenders and neither morality nor fear of the consequences are sufficient to deter them from the offence;
- once a person has first committed this offence, the rates of recidivism are extremely high;
- offenders usually continue to deny the offence until confronted with overwhelming evidence;
- evidence of the offence is frequently difficult to obtain because:
 - the offence occurs in private;
 - the offender is powerful and chooses a powerless victim;
 - the offender usually threatens the victim;
 - the victim frequently blames him or herself.

For a victim to come forward and make public accusations, either before the Church or before the State, can be quite traumatic for the victim and can lead to a profound feeling of being abused all over again. It not infrequently happens that a victim and his family will tell a bishop what has happened while at the same time refusing to make a public accusation. As a result, a bishop can be presented with the dilemma of having private knowledge of an offence but be unable to prosecute the matter in the external forum. When four families speak to the bishop, all alleging similar actions against the same priest, the conviction of the bishop can be one of moral certainty. This moral certainty can remain even if the evidence is not brought before, or is adjudged insufficient for a criminal conviction by, a civil court of justice.

One of the main reasons for this present letter is to assure Your Eminence that the situation in Wollongong is not unique, but is shared by a number of Australian bishops.

The situation presents a dilemma in law, in conscience and in Church-State relations.

IN LAW

Australian law has the concept of "unacceptable risk", meaning that a person cannot be appointed to an office if this appointment carries with it an unacceptable risk of abuse of minors. Granted the effects of abuse on the young, this seems to be a reasonable law based on the very first principle of morality, "*bonum est faciendum et malum vitandum*". It is not a penalty, but a balancing of the rights of the priest against the rights of minors. (cf. Canon 223,1^o & 2^o). If the rights of the priest are important, the protection of minors against abuse must also be given a very high value. If the idea of unacceptable risk is "foreign to canon law", then should the idea be rejected or should the law be changed?

IN CONSCIENCE

Beyond all considerations of law, either civil or canonical, a bishop can have a conviction in conscience, before God alone, that he cannot give a particular priest an appointment that would give him privileged access to minors. The Australian bishops support the right of an individual bishop to make such a decision in conscience.

IN CHURCH-STATE RELATIONS

If a bishop gives a priest an appointment whom he knows to be an unacceptable risk and the priest again offends, the consequences for the Church can be devastating:

- The bishop could well be sent to prison himself and would receive no sympathy from a single person in the community;
- The bishop would be blamed both by those outside and those inside the Church;
- The whole mission of the Church in that country would be seriously harmed.

In matters affecting the spiritual, moral and physical safety and well being of minors, the bishop must not be placed in a situation where the State is ordering him to do one thing while the Church is ordering him to do the opposite. Granted the heat generated by the issue of sexual abuse, this situation would represent a genuine Church-State conflict .

Your Eminence, we ask that these matters be kept in mind as you consider the appeal from the Diocese of Wollongong.

With best wish and personal regards.
Yours sincerely in Christ,

+ *Francis P Carroll*

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President – Australian Catholic Bishops Conference