

APPENDIX II

MEETING WITH VATICAN OFFICIALS
ON THE SUBJECT OF SEXUAL ABUSE

The Vatican officials insisted absolutely on the requirement of canon 1342 that a perpetual penalty may be applied only as a result of a full judicial process before a judge in a tribunal. It is most unlikely that there will be any lessening of this requirement.

Non-perpetual decrees may be applied as the result of an administrative process such as that contained in *Towards Healing*, though even in these cases the law expresses a preference for the judicial process (can.1342 #1)

Henceforth anything that is in fact a penalty will have to be called a penalty and, if the penalty is perpetual, the full procedure of a judicial process will have to be followed. If, because of a sexual offence, a priest is removed from his office and not given another office, this is a penalty and cannot be called by any other name. If it is intended that he will never be given another office, it is a perpetual penalty. If he even might not be given another office, it would in practice have to be considered a perpetual penalty.

This means that, when the Professional Standards Resource Office informs a bishop of a complaint of abuse, there will need to be discussion as to whether the complaint, if proven true, could lead to the imposing of perpetual penalties. If the complaint concerns alleged offences against a minor, the judicial procedure will be the norm.

This requirement of a full judicial process applies to the past as well as to the future. Thus any perpetual penalties imposed on a priest in the past as a result of anything less than a full judicial procedure (e.g. the process of *Towards Healing* or the Melbourne process) are per se invalid. If the priest appealed to the Congregation for the Clergy, his appeal would be upheld.

There will need to be discussion with the personnel of our regional tribunals and national tribunal, as it will be impossible to fulfil these requirements without their assistance. The judge must be a priest and must have a good knowledge of the procedural law of the Code of Canon Law.

The penalties concerned are the so-called expiatory penalties of canons 1336-1338.

Can.1336 #1 Expiatory penalties can affect the offender either forever or for a determined period. Apart from others which the law may perhaps establish, these penalties are as follows:

1. *A prohibition against residence, or an order to reside, in a certain place or territory;*
2. *Deprivation of power, office, function, right, privilege, faculty, favour, title or insignia, even of a merely honorary nature;*
3. *A prohibition on the exercise of those things enumerated in n.2, or a prohibition on their exercise inside or outside a certain place; such a prohibition is never under a pain of nullity;*
4. *A penal transfer to another office;*
5. *Dismissal from the clerical state.....*

Canon 1338 #1 The deprivations and prohibitions enumerated in can.1336 #1 nn.2 and 3 never affect powers, offices, functions, rights, privileges, faculties, favours, titles or insignia which are not within the control of the Superior who establishes the penalty.

#2 There can be no deprivation of the power of order, but only a prohibition against the exercise of it or of some of its acts; neither can there be a deprivation of academic degrees.

PARTICULAR DIFFICULTIES

The major difficulty is that of "prescription" which says that a tribunal can hear a case only if the complaint was received within five years of the time of the offence or the last in a series of offences.

It would be relatively easy to obtain special faculties that would enable the case to be heard if the complaint is lodged before the 28th birthday of a victim who was a minor at the time of the offence. There is a serious danger, however, that the request for this faculty would be taken as acceptance of this faculty as an adequate solution to any problems we may have. Furthermore, the faculty would not be retroactive and would apply only to offences committed after the faculty was granted. For past offences it would extend only to the 23rd birthday.

The judicial procedure enables an accused to be stood aside from his office only after the formal judicial process has been begun. This could create problems if it is not possible or wise to begin the judicial process immediately and it could lead to undue haste in beginning a judicial process in order to stand a person aside.

Furthermore, this process forces a bishop to think in terms of crime and punishment, even in cases where the bishop might well prefer to approach the total problem in a more pastoral manner, responding simultaneously to the victim, the offender and the whole Church community. Great care will need to be taken to ensure that a victim is not "abused" again

by the process itself. It must be remembered that an accused priest will be much more at home in the world of these Church procedures than a victim will be.

If this were not enough, penalties can be applied only when the crime is imputable and, therefore, there is moral guilt. Does such abuse come from psychological factors within the person, such that the offence is not imputable and so no penalty of any kind can be inflicted, or is it the result of free choice by the individual? If the offence is imputable, one kind of legal process must be followed, but if it is not imputable, a quite different legal process is to be used. If the bishop begins a process to inflict a penalty but the lawyer for the defendant proves that the offence is not imputable, the bishop must abandon that process and start the other process from the beginning.

Finally, the public perception that priests judging priests is not a credible process will be difficult to counter.

QUESTIONS FOR THE APOSTOLIC SIGNATURA

There are matters where it seems advisable to ask questions of the Apostolic Signatura.

- 1) If a priest is found guilty of abuse of a minor by a civil court, does the Church then have to hear the case all over again, with a new interrogation of the victim, before it could impose a perpetual penalty on him? Under what conditions may the Church use the finding of the civil trial in deciding on the penalties that must be imposed?
- 2) If a number of accusations are made against the same priest, must there be a separate trial for each of them or can they be considered together? Can there be cumulative proof? For example, in one case four separate little girls from three different Catholic schools, all aged between six and eight years, complained to their parents that the same man had performed identical improper actions on them. He was charged by the police on two separate occasions, but each time it was his word against that of a small girl and he was acquitted. If one takes the four cases together, however, it appears certain that he is guilty. How must a Church court proceed in such a case?
- 3) In the case just given, the man concerned is considered an "unacceptable risk" in Australian law. What is the standing of this concept in canon law? Can a bishop not be placed in a situation where, in appointing a priest to an office, he would not merely be violating the Australian law of unacceptable risk and putting himself in danger of imprisonment, but also violating his own conscience?
- 4) What is a bishop to do when the civil authorities begin proceedings against a priest or deacon and the bishop realises that his continuing in his

office could constitute a danger to young people? He cannot in practice begin a canonical penal process against the priest or deacon while the civil case is being heard and yet he cannot remove him from his office without the canonical process.

5) Canon 1336 says that, when a priest has been found guilty, a tribunal may deprive him, among other things, of "title or insignia", but canon 1338 adds that those titles and insignia must be within the control of the Superior who establishes the penalty. In a number of cases what the priest must be deprived of is the privileged access priesthood gives him to minors. This means depriving him of the right to wear clerical clothes and call himself "Father". Are these titles and insignia within the control of the local bishop? If they are not, how is he to proceed?

There could well be a number of other questions, but these ones occur immediately.

REQUESTS FOR THE HOLY SEE

There are some other matters where specific requests have been made to the Holy See but may need to be repeated:

- On the subject of "prescription" or the statute of limitations;
- On the age of majority;
- On the need to stand a person aside from an office while the matter is heard;
- On some matters concerning professional psychological evaluations;
- On the possible need for a process designed specially for cases of sexual abuse;
- On the need for the process to be sensitive to the needs of victims as well as the rights of offenders;
- On the possibility of the fact of sexual abuse becoming an irregularity for the reception and exercise of orders.