

The Possibility of a New Assignment to Ministry for a Cleric after a Criminal Conviction on a Sexual Charge.

It is obvious that there is a variety of types of sexual misbehaviour and, within each type, variations of degree. It follows that each case must be studied individually.

There is a wide variety of non-criminal actions of a sexual nature that a cleric can perform. There will be cases where a bishop or religious superior would not even think of removing a cleric from his ministry (e.g. placing a hand once on another person's hand or telling a somewhat off-colour joke once). And there will be cases where, even though no crime has been committed, he would have to remove the cleric permanently (e.g. the predatory seeking of consenting adult sexual partners throughout a parish).

In assessing these matters, I would expect him to consider the degree of seriousness of the offence, whether it was a one-off or a repeated offence, whether the cleric now seemed to appreciate any harm he had caused, the treatment he had received and the safeguards that had been put in place. If there was any seriousness at all to the offence, I would expect the person who had been harmed to be consulted.

However, the paper of Fr. X specifically limits itself to cases where "the cleric has a criminal conviction in common law" (p.3, para.5). This refers particularly to sexual activity with a minor and non-consensual activity with an adult. It is also a sexual offence for a sixteen year-old boy to have sexual intercourse with his fifteen year-old girl friend. Further down the scale, a person arrested for swimming naked at a public beach after a late night party, if later convicted, may also be described as having "a criminal conviction under common law".

While a cleric would be considered for reassignment following a conviction for "scandalous" behaviour at a public beach, his bishop or religious superior would be less inclined to re-appoint him if he did it again. If it later came to light that a cleric had once been convicted for having sexual intercourse at sixteen with his fifteen year old girlfriend, the bishop or religious superior would have to make an assessment of all the circumstances. At the top end of the spectrum, on the other hand, if he had been found guilty of paedophilia or aggravated sexual assault, there are no reasonable grounds for offering him a new assignment, and the act of re-assigning him could itself be an offence leading to a criminal conviction.

Fr. X does not give any concrete examples of cases where he believes that, despite a criminal conviction, a new assignment should be considered. Granted the variety of situations that can arise, it is difficult to assess his argument. However, basing myself on his words, I believe that it would require very considerable proof to show that a criminal conviction for a non-consensual act had involved no more than a "relatively minor example of sexually inappropriate behaviour" (p.3, para.6) or a "trivial" offence (p.9, para.3). No question of a new pastoral assignment for a cleric should ever be based on minimising the seriousness of the offence.

The paper appeals to forgiveness and compassion. However, forgiveness and a new assignment to ministry are not one and the same thing. Forgiveness is given on the basis of a person's repentance for past wrong, while a new assignment must consider the future and the good of the whole community.

In the somewhat analogous situation of a bank teller found guilty of stealing money, the bank may decide not to prosecute, and in this sense to forgive the offence, but that does not mean that it will or should offer re-employment.

A new assignment is not the only form of forgiveness and is not essential to forgiveness. A cleric can be forgiven by God and the community and still not be given a new assignment. A superior who refuses a new assignment is not, for that reason alone, unforgiving or lacking in compassion.

FACTORS THAT A BISHOP/RELIGIOUS SUPERIOR WOULD HAVE TO BEAR IN MIND IN CONSIDERING A NEW ASSIGNMENT

Other Offences

It is well known that sexual offences do not often exist alone, for a number of taboos have to be broken before the first offence occurs, and a second offence is far easier. It is also well known that many sexual offenders will vehemently deny the existence of any offence other than the one that has been proved against them. So the first factor the superior would have to consider is whether, if he gives a new assignment, further offences from the past might come to light.

The rates of reoffending in sexual crimes are very high, especially in crimes against minors. There were too many cases in the past where a bishop was moved by the tears of repentance of an offender and re-appointed him, only to see him offend again. Because of this long history, the Church must today give crystal clear evidence that it has decisively broken away from this practice. Admittedly, in reacting against one extreme, there is always the danger of going to the opposite extreme and not allowing for any possibility

of change in anyone. Nevertheless, because young and innocent people were severely harmed through the Church's ignorance and negligence, we must be particularly cautious today. I admit that this means that there will be cases where the Church will have to be stricter than it might have been if this history did not exist.

Not all offences carry an equal risk of re-offending, and the treatment available today is superior to that of former years. Also, the prospect of some form of restoration can greatly help in treatment, and so make the treatment more effective, while the exclusion of any hope of restoration can make treatment less effective. Despite these factors, no one can categorically say that there is no danger of further offences and a superior must be aware of the dangers.

Supervision can give no guarantees. It is possible to put such a person in a job where he is supervised while he is at work, but it is virtually impossible to provide supervision at nighttime and weekends. Fr. X's idea of putting a cleric in a parish "close to the cathedral" is, I am afraid, totally inadequate as a means of effective supervision by the bishop.

Indeed, the problem does not ultimately lie in the work the person does, but in his being able to dress as a cleric and call himself "Father" or "Reverend". If one compares two people with an equal inclination to offend against minors, a cleric and another man, the cleric is more likely to offend because he has three things the other man does not have. Through his work as a cleric and his contacts with families, he has greater access to potential victims. The potential victim will have a greater trust in him than in the other man. And the cleric will have a spiritual authority over the potential victim that the other man does not have. In brief, the cleric has a privileged access to victims that the other does not, and this privileged access comes from the clothes he wears and his ability to introduce himself as "Father" or "Reverend". These factors are far more important than the particular work he carries out.

The Needs of Victims

I agree with Fr. X that any consideration of a new assignment should require conversation with the victim. The Church must realise that, if it reappoints an offender to a position of trust in ministry, all victims, and not just the victim in the particular case, can feel that their pain is not being taken seriously, and they can feel abused all over again.

I would be very hesitant to speak of "encouragement" towards forgiveness, for encouragement all too easily becomes a "reminding of moral duties" that is quite inappropriate in this field. Forgiveness is very personal, it takes time and cannot be hurried.

The Nature of Trust

The Church's document setting out its response to complaints of sexual abuse, *Towards Healing*, speaks of "a breach of trust, an abuse of authority and professional misconduct" (no.1). It then says that, "Serious offenders will not be given back the power they have abused" (no.27). The word "power" must here mean that they will not be given back the access, the trust or the spiritual authority they once held, that is, they cannot be given back the privileged access that they once possessed and then abused.

It is a special and sacred trust that is given to clerics. If it is abused in a serious manner through sexual abuse and then given back to that same cleric again, the trust given to all clerics is lessened and harmed, not just in the eyes of those who might wish to hurt the Church, but also in the eyes of good and devout Catholics. I believe that clerics will have to learn to accept that there can be only one chance at a trust as sacred as that given to them. They cannot seriously demand a second granting of trust when, through abuse of that trust, they have harmed a victim, every other cleric, the whole Church community and the message of Jesus Christ himself. After saying that serious offenders will not be given back the power they have abused, *Towards Healing* adds, "Those who have made the best response to treatment recognise this themselves and no longer claim a right to return to ministry."

Sexual abuse would always cause serious damage to the Church but if, when the very first cases came to light, the Church had responded decisively, compassionately and openly, the damage done would have been far less. The main complaints were of cover-up, denial, placing clerics above victims and moving clerics from one assignment to another. If trust in all clerics is to be restored, then it is precisely in these areas that the Church must now clearly and openly change its ways.

On 15th March 2002 the Prime Minister, Mr Howard, was interviewed on radio concerning the allegations of sexual impropriety made against a High Court Judge by a member of Federal Parliament. In the midst of other remarks he said, "Any kind of misbehaviour involving people underage would disqualify people in a whole lot of positions, not just being a High Court judge." It may be confidently said that the Prime Minister was here expressing a very widely held view in the community. It may be said with equal confidence that "a whole lot of positions" would include working as a priest. Can the priests have lesser standards of integrity than judges?

Useful Ministry

All ministry must be useful to the community. Canon 1740 provides that "When the ministry of any parish priest has for some reason become harmful or at least ineffective, even though this occurs without any serious fault on his part, he can be removed from the parish by the diocesan bishop." It surely follows, with far stronger force, that a bishop should not appoint a priest in the first place when his ministry would be "harmful or at least ineffective" through a serious fault of his own. I believe that these conditions would apply after any offence against a minor, even a "one-off" offence. Parents are today very concerned to protect their children against sexual abuse and will react strongly against a person with a criminal conviction for this offence. Some speak of "hysteria", "demonising" and "scapegoating", and there may well be a measure of truth in these words, but the facts remain. Between the media and popular attitudes, it is very hard to see how a cleric with a criminal conviction for an offence against a minor could ever exercise an effective ministry. I agree with Fr. X's paper when he says that the people would have to be told of the appointment but, if the offence involved a minor, I could not advise a bishop to contemplate such an action.

While a non-consensual act against an adult might not arouse the same level of passion, the community would still consider it quite unacceptable. There would be many cases where the gravity of the offence was such that a useful and effective ministry was no longer possible.

State Law

In some states in Australia a person with a criminal conviction for a sexual crime is a "prohibited person" for any form of employment that involves children and will be considered an "unacceptable risk". Leaving aside all other considerations mentioned above, this fact alone means that a cleric with a criminal conviction cannot be given a position that involves access to children. And, as I have pointed out, the very fact that he can wear clerical clothes and call himself by a clerical title gives him privileged access to children.

A person with a criminal conviction for smuggling drugs across national boundaries will not be able to travel to most countries again, even though the offence was a relatively small one and the person is now a reformed and model citizen. A person with a criminal conviction, no matter how minor, cannot stand for parliament, even though now the most upright of persons. A police officer who is convicted of a crime, no matter how minor, must leave the force and no amount of repentance or good behaviour will allow him back.

These laws may be "blunt instruments" that can be harsh for particular cases, but the community sees the wisdom in them. It surely follows that a person with a criminal conviction for non-consensual sex cannot be given back any form of privileged access to potential victims.

If a bishop appoints such a person to a position of ministry, no matter how overwhelming the proofs may be of change and reform, and the cleric offends again, the bishop may well end up in prison, there will be massive punitive damages and the whole Church will be harmed.

It was for all of the reasons given above that the bishops and religious leaders of Australia made the promise that "Serious offenders will not be given back the power they have abused" (no.27). They said that "this document (*Towards Healing*) establishes public criteria according to which the community may judge the resolve of Church leaders to address issues of abuse within the Church. If we do not follow the principles and procedures of this document, we will have failed according to our own criteria."

The absence of examples in Fr. X's paper makes a full response difficult, but I hope I have pointed out a number of the factors to which a bishop or religious superior would have to give the most serious consideration before he could consider a new assignment.