



AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

General Secretariat

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His Excellency
Most Rev Mario Pompedda
Prefect of the Supreme Tribunal of the Apostolic Signatura
Palazzo della Cancelleria
00120 Vatican City

Your Excellency,

The Australian Catholic Bishops' Conference has received a report of the meeting held in Rome from 4th to 7th April of this year between a number of officials of the Holy See and representatives of nine Bishops' Conferences from English-speaking countries on the subject of sexual abuse by priests and religious.

The two Australian representatives, Bishops Geoffrey Robinson and Philip Wilson, reported that the meeting was a good beginning of a dialogue between the Holy See and the Bishops' Conferences, though a number of important questions remain to be resolved.

The major outstanding question is that of "prescription" or the statute of limitations. On this subject I enclose some information that will show the difficulty of our situation. These statistics will also show why the Australian Bishops have so far not requested the faculties given to the Bishops' Conferences of the U.S.A. and Ireland. We would not wish it to be thought that the granting of these faculties would solve our problems, when the statistics clearly show that the faculties would make only a very small difference.

The two bishops also reported that the paper presented by yourself on behalf of the Apostolic Signatura was a most helpful contribution. We are grateful for this paper and assure you that we are doing our best to implement it.

In this process, however, we have encountered a number of difficult questions and I write to seek the assistance of the Apostolic Signatura. We would be grateful to hear your answers to these questions.



QUESTIONS CONCERNING THE PROCEDURE TO BE FOLLOWED
IN CASES OF SEXUAL ABUSE

- 1) If a priest is found guilty of abuse of a minor by a civil court, must the Church then hear the case all over again before an ecclesiastical tribunal, with a new interrogation of the victim, before it could impose a perpetual penalty on him? Under what conditions may the Church use a) the evidence and b) the judgement of the civil trial in deciding whether perpetual penalties may 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 teacher 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. How must a Church court proceed in such a case?

- 3) In the case just given, the man concerned, even though he has been twice acquitted, is considered an "unacceptable risk" in Australian law. This implies two things. Firstly, when it comes to a question of "unacceptable risk", the four cases are in fact considered together by the civil law. It is then argued that there is clear evidence of a serious risk of future offences and so all privileged opportunity to offend must be taken away from the man, that is, he must be denied the privileged access to children that his position as teacher gives him. Secondly, in a criminal case the accusation must be proved "beyond reasonable doubt", while the principle of "unacceptable risk" is based on "the preponderance of evidence".

The law is, of course, based on the importance of protecting children from the serious harm of sexual abuse. The law is prepared to tolerate the risk that an innocent person might be denied the right to be a teacher because of the founded suspicion that children might be put at risk of sexual abuse. There are dangers in this law, but the protection of innocent children against the founded danger of abuse must be a very high priority for any society. In the case described, can there be an "acceptable risk" of sexual abuse?

Under this law a bishop can be placed in a situation where, in appointing a priest to an office, he would be violating the Australian law of unacceptable risk and putting himself in danger of imprisonment. When the bishop perceives that the risk of abuse is truly present, he can also be violating his own conscience, and this obligation of conscience must prevail over canon law.

It is surely important also to the Church that children not be placed at risk of sexual abuse, so what is the standing of this concept of "unacceptable risk" in canon law?

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 to exercise his office or even his sacred ministry would 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 forbid him the exercise of 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 the bishop does not wish to deprive the cleric of his entire priesthood but believes that 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?

The Australian Bishops look forward to your response and the opportunity of continued dialogue on these difficult issues.

With best wishes,

Yours sincerely in Christ



Francis P. Carroll
Archbishop of Canberra and Goulburn

President
AUSTRALIAN CATHOLIC BISHOPS CONFERENCE

ENCLOSURE 1.