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AUSTRALIAN CATHOLIC BISHOPS' CONFERENCE

CLERGY AND CHILD SEXUAL ASSAULT

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CONFIDENTIAL

These brief notes raise some of the main issues connected with clergy and child sexual assault.

1. CIVIL LAW

Child sexual assault is widely defined and will constitute a criminal offence in all States. The gravity of the offence depends on the nature of the assault and the age of the child. The relationship of trust between victim and offender may be an aggravating factor.

1.1 Criminal Proceedings

These may be instigated if the police have sufficient evidence. It is likely that the investigation will result from a complaint by a victim or victim's family.

It is essential that the offender have access to competent legal advice at the very beginning. No statement, or conversation should take place with the authorities unless in accordance with that advice.

To avoid conflict of interest my opinion is that this advice should be obtained from a different lawyer than the one who acts for the diocese or religious congregation.

While it is clearer that a religious order will be obliged to bear the costs of a member, the diocesan bishops should take the decision as a matter of uniform policy to cover these costs.

If a case goes to court I would envisage the possibility of costs in the tens of thousands of dollars.

Bishops and major superiors and other church officials must be careful not to hamper police inquiries, act as accessories or attempt to cover-up an offence.

1.2 Damages Claims

The question of a claim for damages against the Church is unclear. The United States experience is only of limited application in Australia.

In a general the Church will not be liable for the actions of the offender which are criminal and quite clearly outside the scope of any employment or agency relationship.

A claim against the Church by a victim or victim's family as a 'pay-off' to avoid criminal action or publicity should be resisted. It is a form of extortion.

It is possible that a claim could be brought against the Church on the basis of negligence in that the authorities reasonably could foresee the likelihood of a child being at risk and negligently failed to take steps to prevent this. The possibilities for such negligence could be at the time of recruitment into the seminary, at the time of investigation prior to ordination or inappropriate action following a complaint such as further appointments or inadequate treatment.

I recommend that Catholic Church Insurances be alerted to this question.

2. CANON LAW

The questions that arise in canon law are complex and I do not claim any expertise in this area.

The first issue is whether the priest should remain in his appointment after a complaint and before the finalisation of legal proceedings. Each case will turn on its own facts but in general the considerations are firstly, the avoidance of further possible offences and, secondly, the question of scandal to the faithful. In general the priest should be required to take a leave of absence at least from the time of a criminal charge. The good of individuals, and of the Church overrides the possibility that this leave of absence is interpreted as an admission of guilt.

The decision of the bishop, after following the proper canonical process, does not necessarily have to depend on the verdict in the civil court.

The question has been raised about the confidentiality of the canonical process. In general the Church will not be able to protect its documents from the civil process. However I suggest the following procedure: As soon as there is a complaint the Church authority briefs its lawyers and advises them of the possibility of a claim. They in turn instruct the Church to make its inquiry and report. All documentation created from that time on forms part of that

report and is incorporated into the correspondence between the Church and its lawyers, thus, hopefully, attracting legal privilege. Documentation created at an earlier time, such as a letter of complaint as well as any reply would not be privileged. Replies to complaints should be in accordance with legal advice.

3. PUBLIC RELATIONS

The problems here are the most complex:

3.1 The local community.

It is naive to expect that the complaint will not become widely known.

The Church authority has a responsibility to the victims, victims' families, the local parish/school community, to ensure that justice is done. There will be a lot of anger and confusion. Every effort must be made to allow the complainant to receive a sympathetic hearing.

The worst charge against the Church will not be the offence but the fact that the Church did not take the complaint seriously or act decisively.

I recommend that all complainants be given the opportunity for a personal interview with the bishop, superior or other nominated official.

3.2 Mass Media

These cases will be sensationalised. There are some limits while the case is before the court. What the media will search for is the cover-up, or the failure of the Church to act appropriately.

Likely times for media interest are at the time of complaint, formal charge, trial and sentence.

Those who are likely to want to take the case to the media could include: the victims, families or friends, investigative journalists, disgruntled Catholics, disgruntled clergy/religious. The media will be likely to seek a reaction from: the offender, the bishop/superior, those attached to the parish/school, seminary staff, spokesmen.

I do not think that we can hide for long from the media. A willingness to be open to the extent that this is reasonable may enable the Church to influence the agenda. Accordingly I recommend that those authorised to speak to the media be as

narrowly defined as possible. What we must avoid is well-meaning but inexperienced individuals trying to be helpful. The way in which the story is handled will depend on the type of programme: news, light current affairs (e.g. Hinch, A Current Affair, 7.30 Report) or more in depth programmes (60 Minutes, Four Corners). There should be particular attention given to providing information for the print media, especially in local press.

Consideration should also be given to providing information to the Catholic press so that Catholics do not feel that the only information they are given comes from the secular press. They may have more confidence in the Church in the long term if there is a spirit of honesty and openness. This will depend on the extent to which there is widespread publicity.

Some of the approaches which the Church could take are as follows: it is easy to make allegations, the Church has to be sure that the allegation is serious before it can act otherwise it does not do justice to the alleged offender; as soon as the complaint was made the Church acted decisively to prevent any possible further offences; the priest requires help which will be provided; the Church is concerned about the victims and has facilities to help them; there is no place in the priesthood for such offenders; everything possible is being done to identify offenders in the selection and training but the nature of the offence is such that detection is not easy;

4. Some other comments

The bishop/superior must resist the natural inclination to take sides with the alleged offender.

The bishop/superior has responsibilities not only to the alleged offender but also the victims, families, the community and other priests. He must be and be seen to be acting in the best interests of all relevant parties.

It is likely that there will be a number of these cases in the next few months. We should learn from experience.

I recommend that there be a national committee established forthwith by the Australian Catholic Bishops' Conference and the Major Superiors which will monitor cases and be a resource for individual bishops. All complaints should be brought to its attention so that there is a consistency of approach.

A more thorough study of these issues should be prepared and made available to all bishops and major superiors.