

BILL 09

5 **A BILL FOR THE HOLY ORDERS (REMOVAL FROM EXERCISE OF MINISTRY) CANON 2017**

10 **EXPLANATORY MEMORANDUM**

General Background

- 15 1. The Doctrine Commission in a report to the Standing Committee of General Synod
(attached) considered the nature and scope of what is referred to as deposition from
Holy Orders.
- 20 2. As a result of that report it became clear that the Holy Orders Relinquishment and
Deposition Canon 2004 needed to be reconsidered and rewritten. Three areas in
particular needed to be addressed clearly and consistently.
- 25 a. The limit of what any process can achieve is to remove a cleric from the *exercise*
of Holy Orders.
- b. Deposition in English canon law (and therefore as used in our Constitution) can
be only from the exercise of *all* orders; however, the Constitution also refers to
prohibition from functioning, and that sentence can include prohibition from
functioning in some only orders of ministry.
- 30 c. Allowing both voluntary relinquishment and disciplinary removal to be from only
some of the offices of Bishop, Priest and Deacon (although only in descending
order, as it were).
- 35 3. The new bill is based on the 2004 Canon, and substantially preserves many of its
provisions. A comparison of the Bill and existing Canon is attached. The Standing
Committee decided that consideration of this proposal by the General Synod would be
facilitated by having it presented in the form of a new Canon rather than as an
amending Bill.
- 40 4. The option of voluntary deposition in the present (2004) Canon has been removed, as
there appears to be no circumstances in which it differs from voluntary relinquishment.

Status of this bill and canon

- 45 5. This canon concerns the discipline of the church and is therefore a special bill for the
purposes of section 28 of the Constitution. Unless the General Synod otherwise
determines, it will therefore become a provisional canon. By section 30 of the
Constitution, the canon once made will not come into force in any diocese unless and
until the diocese by ordinance adopts it.

Notes on individual clauses

Clause 1 contains the title of the Canon.

Clause 2 defines the words and expressions used in the Canon.

“deposition” is defined to refer to the removal of the right to exercise Holy Orders, and to refer to all of those orders.

"national register" has the same meaning as in the present Canon.

"person in Holy Orders" now means not only a person ordained in this church, but also a person received into an order of ministry of this church.

"relevant bishop" for a priest or deacon means the Diocesan bishop of the diocese in which the clerk is licensed, and, for a priest or deacon who is unlicensed, the Diocesan bishop of the diocese in which they reside. In the case of a person who is a bishop, the relevant bishop is the Metropolitan of the Province in which the bishop is a Diocesan bishop or resides, with special provision made for bishops in extraprovincial dioceses and for Metropolitans and the Primate.

“relinquishment” means the voluntary cessation of the exercise of one or more of the orders of ministry.

"tribunal" has the same meaning as in the present Canon, being a tribunal established under Chapter IX of the Constitution or by diocesan legislation.

Further provisions extend the meaning of Diocesan bishop to include the administrator of a Diocese *pro tempore*; and define **"order of ministry"** to be a reference to the Holy Order of bishop, of priest or of deacon.

Clause 3 provides that a bishop may relinquish the order of bishop, or the order of bishop and priest, or the orders of bishop, priest and deacon; a priest may relinquish the order of priest, or the orders of priest and deacon; and a deacon may relinquish the order of deacon. This is done by executing an instrument to that effect that is endorsed with the consent of the bishop of the last diocese in which the person held a license (if that is not the diocese in which she or he now resides) and with the consent of the relevant bishop. That consent cannot be given if the person is currently the subject of a disciplinary investigation or charge.

Clause 4 allows for relinquishment to take place in a liturgical context.

Clause 5 sets out the options available for the sentence of prohibition from functioning. This is the first time a Canon of General Synod has sought to do this.

The options allow for infinite mixing and matching, covering some or all

orders of ministry, conditions, limited or unlimited periods of time, and different roles, places and circumstances. For example, a prohibition could be from the exercise of any order of ministry permanently in Diocese X, from the exercise of the order of bishop in any Diocese, and from the exercise of the order of priest as the incumbent or priest in charge of a parish for the next five years.

Sub-clause (2) makes it clear that a permanent prohibition on the exercise of all orders of ministry must be by deposition.

Sub-clause (3) provides that effect is given to such a sentence by an instrument in the form of Schedule 2.

- Clause 6 provides that deposition following the sentence of a tribunal is effected by the form in Schedule 3.
- Clause 7 provides that any of the instruments made under this Canon must be registered in the registry of the relevant bishop and of the diocese(s) in or for which the person was ordained, and registered in the national register.
- Clause 8 provides that the bishop executing an instrument must also give notice of it, and of the reasons for it, to such persons as the bishop considers necessary.
- Clause 9 provides that a prohibition from functioning has effect according to what is in it, and reinforces that by providing that the person prohibited must not act inconsistently with the prohibition.
- Clause 10 provides that a person who has relinquished the exercise of some orders of ministry must not act inconsistently with the terms of that relinquishment.
- Clause 11 provides that a person who has relinquished or been deposed from the exercise of all orders of ministry must not act or present himself or herself as in any way as a person in Holy Orders.
- Clause 12 provides for a process by which a person who has relinquished the exercise or some or all orders of ministry may seek to have that relinquishment revoked.
- Clause 13 provides that clauses 10 and 11 do not apply to a person whose relinquishment of orders has been revoked.
- Clause 14 creates offences where a person who has relinquished an order of ministry holds out that the person continues to exercise that order, or where a person who has been deposed holds himself or herself out to be a member of the clergy.
- Clause 15 provides that Canon 76 of the Canons of 1603 has no effect. Although it is arguable that this is unnecessary given that the 2004 Canon has already provided to that effect, it is considered helpful to carry that provision forward into the current Canon.
- Clause 16 repeals the 2004 Canon.
- Clause 17 states that the Canon affects the order and good government of this Church within a diocese and does not come into force in a diocese unless and until the diocese adopts this canon by ordinance of the synod of the diocese

- Schedule 1 contains the instruments relevant to the relinquishment of the exercise of one or more orders of ministry
- Schedule 2 contains the instruments necessary following the sentence of a tribunal that include prohibition from functioning
- Schedule 3 contains the instruments relevant to deposition.
- Schedule 4 contains the forms of notice consequence on relinquishment, prohibition from functioning or deposition.



The Doctrine Commission of the Anglican Church of Australia

Deposition from Holy Orders – February 2017

1. This report was produced in response to a proposal to promote a Bill to General Synod in 2017 to provide for the option of “deposition/relinquishment by degrees”. Under current canon law, both deposition from Holy Orders and the relinquishment of the exercise of Holy Orders apply to all Orders concurrently. It is not possible, for example, to relinquish the Order of bishop but retain the Order of priest and deacon. The proposal to modify this to allow deposition/relinquishment “by degrees” has prompted our theological reflection on the nature and mutability of Holy Orders.
2. Broadly speaking, there are two main points of view held in Anglican thought. Both views would hold in common that Anglicans recognise three clerical Orders – Bishop, Priest and Deacon – and that Holy Orders are entered into for life. These Orders are cumulative – one must first be a deacon to be ordained a priest, and a priest to be consecrated a bishop. The point of divergence between the two points of view involves the extent to which these Orders can be “removed”. On one view, the effect of deposition/relinquishment is to remove an ordained person entirely from Holy Orders, whereas on the other view the intrinsic character of the Holy Order remains, and the “clergy person” is removed from the exercise of their office.
3. The Scriptures are silent on this question, and our formularies (the *1662 Book of Common Prayer*, the Ordinal and the 39 Articles) do not provide a clear answer either. In light of this, this paper will provide a brief overview of the variations in understanding and practice both within the Anglican Communion and ecumenically, outline the current situation as established by the Constitution and Canons of the Anglican Church of Australia, and conclude with some theological reflections and suggestions for possible ways forward.

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4. Within the Western churches, there is a long tradition that emphasises the permanence or “indelibility” of Orders. This was given classic expression by Thomas Aquinas, who spoke of Holy Orders as one of three catholic sacraments that made “an indelible mark” on the soul of the recipient.¹ Despite some debate at the time, the Thomistic view became the standard in the Roman Catholic Church. The Council of Florence in 1439 affirmed the indelibility and unrepeatability of these three “character-conferring” sacraments and the seventh session of the Council of Trent in 1547 anathematised those who did not hold to this position.² So while the Roman Catholic Church speaks of deposition and “laicisation”, it is clear that this involves cessation of the rights and obligations of the ordained, while the indelible character of ordination is retained (this is evidenced by an exceptional provision for a laicised priest to give absolution to someone in the danger of death). The other important aspect of the Thomistic approach to Orders is that because each Order is part of one “sacrament” of Orders, there is an intrinsic unity between them.
5. The nature of Eastern Orthodoxy, as a communion of autocephalous churches, means some qualification may be needed in speaking of a single “Orthodox” position on doctrinal matters. It is clear, however, that within Orthodox churches the distinctive status resulting from ordination is intended to last permanently, although this is not couched in the language of the “indelibility” of Orders as in parts of the Western tradition. An Orthodox cleric, however, may be the subject of deposition because of serious sin that creates a permanent canonical hindrance to performing his sacred function. In such a case, even though there may be repentance, the priest cannot be restored to clerical status. On the other hand, there are some offences for which the penalty of deposition is foreseen, but which are not necessarily an obstacle to canonical restoration.³
6. A number of other denominations see ordination as a life-long calling. The Uniting Church of Australia (UCA), for instance, describes ordination as a changed relationship with the

¹ *Summa Theologiae* III, 63, 5.

² Excerpts from these councils in *The Christian Faith in the Doctrinal Documents of the Catholic Church*, eds. Josef Neuner, S.J. and Jacques Dupuis, S.J. 6th edition (New York: Alba House, 1996), 520-23.

³ “Ordination”, Joint Committee of Orthodox and Catholic Bishops, Boston 1988. Retrieved 13 Feb 2017 from <http://www.assemblyofbishops.org/ministries/dialogue/orthodox-catholic-bishops/1988ordination>

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Church “normally for life”,⁴ and the Presbyterian Church in Australia maintains that a person, once ordained, remains so for life, unless removed through disciplinary processes.⁵ In the instance of withdrawal of recognition (UCA) or removal from office in these churches, there does not seem to be an assumption of a residual character of ordination in the person so removed.

7. In Anglicanism, the nature of the ordination vows in various rites, with their shared heritage in the *Book of Common Prayer*, would support the affirmation that ordination is normally for life. The lack of any provision for re-ordination would seem to confirm this conclusion. However, there are Anglicans within some traditions who would want to go further than this and, for them, the language of the “indelibility” of Orders would find comfortable acceptance. An alternate position is represented within a 2001 report to the General Synod of the Anglican Church of Australia which noted that, for some Anglicans, “ordination (which is not a sacrament) is very different from baptism (which is), and there is no necessary or essential reason to regard the former as ‘for life’”.⁶
8. Some Churches within the Anglican Communion have formally articulated an understanding of the enduring character of Orders. Canon C 1.2 of the Church of England, for instance, states:

No person who has been admitted to the order of bishop, priest, or deacon can ever be divested of the character of his order, but a minister may either by legal process voluntarily relinquish the exercise of his orders and use himself as a layman, or may by legal and canonical process be deprived of the exercise of his orders or deposed therefrom.

At the same time, it must be noted the Church of England has in recent times chosen not to use the terminology of “deposition” in regard to the removal of clergy from ministry. The *Clergy Discipline Measure 2003*⁷ provides for a range of sanctions up to life-long prohibition

⁴ “Docbyte: Ordination”, National Working Group on Doctrine, Uniting Church of Australia, 2009. Retrieved 13 Feb 2017 from <https://assembly.uca.org.au/doctrine/item/856-docbytes>.

⁵ “How the Presbyterian Church Functions”, Presbyterian Church of Australia. Retrieved 13 Feb 2017 from <http://www.presbyterian.org.au/index.php/functions>

⁶ “The Three-Fold Ordained Ministry in the life and Mission of this Church – An Interim Report to the General Synod”, 2001. Retrieved 13 Feb 2017 from http://www.anglican.org.au/community/working-groups/defunct/documents/ordained_ministry_wg_interim_report_july_2001.doc

⁷ Found at <http://www.legislation.gov.uk/ukcm/2003/3/section/40>.

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(which is arguably equivalent to deposition, given the affirmation of Canon C 1.2 and probably reflecting concern in the Church of England about the lack of a right of appeal after deposition should further information come to light that might lead to an acquittal in a secular court).

9. The Episcopal Church uses the terminology of deposition, but makes it clear that the person is “removed from the Ministry of this Church and from the obligations attendant thereto, and ... is deprived of the right to exercise in The Episcopal Church the gifts and spiritual authority conferred in Ordination.”⁸ In this understanding deposition does not remove the intrinsic character of Orders but does remove the opportunity and responsibilities of exercising those ministerial gifts within the life of that Church. Ordination is thus assumed to be for life.⁹

THE ANGLICAN CHURCH IN AUSTRALIA

10. The current situation in Australia is regulated by the *Holy Orders, Relinquishment and Deposition Canon 2004*. The Canon provides three alternative pathways – relinquishment from the exercise of Holy Orders, deposition with consent, and deposition resulting from a sentence of a tribunal. There is a distinction in terminology in this canon, in that one **relinquishes the exercise of** Holy Orders (e.g., clause 3), whereas one is **deposed from** Holy Orders (e.g., clause 4). However, notwithstanding this distinction in terminology in the Canon, relinquishment and deposition are functionally equivalent, in that clause 9 applies to both in equal terms:

Effect of relinquishment or deposition¹⁰

9 A person who has relinquished the exercise of Holy Orders or who has been deposed from Holy Orders in accordance with this or another Canon or following the sentence of a tribunal

(a) may not:

- i. officiate or act in any manner as a bishop, priest or deacon of this Church; or

⁸ The Episcopal Church Canon IV.16(B).4. found at http://www.episcopalarchives.org/sites/default/files/publications/2015_CandC.pdf

⁹ In the Canadian Church, the position is less clear. In a glossary of terms, deposition is described as being from the “office and character conferred by ordination”, while the Discipline Canon of that Church refers to deposition as only from the *exercise* of ordained ministry. The fact that following deposition there can be a process of appeal would suggest that some character of Orders is retained. (Anglican Church of Canada, Handbook of the General Synod, available at <http://www.anglican.ca/about/handbook/>).

¹⁰ This definition is (largely) reflected in s.72 of the model Professional Standards Ordinance.

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- ii. accept or hold any office in this Church capable of being held only by a person in Holy Orders;
- (b) ceases to have any right, privilege or advantage attached to the office of bishop, priest or deacon;
- (c) shall not hold himself or herself out to be a member of the clergy;
- (d) may not hold an office in a diocese which may be held by a lay person without the consent of the bishop of the diocese.
- (e) shall be considered to be a lay person for the purposes of all laws, canons, rules, ordinances and regulations of the Church except for any provision enacted under Chapter IX of the Constitution.¹¹

11. The language of the 2004 Canon *permits* the view that the intrinsic character of Orders cannot be removed, but it does not *require* it. This allows the inclusion of the various viewpoints held in our Church about the nature of the Orders. The fact that the effect of both relinquishment and deposition is identical (see clause 9, quoted above) may be seen as supportive of the conclusion that deposition, like relinquishment, is from ***the exercise of*** Holy Orders (notwithstanding the difference in terminology in the 2004 Canon).

12. The 2004 Canon does not make provision for “relinquishment/deposition by degrees”. Furthermore, any contemplated changes to the Canon need to be consistent with the limits imposed by the Constitution, which stipulates that deposition resulting from a sentence of a tribunal is “from Orders” (i.e., every Order, not some Orders). According to Section 60(1)

A tribunal shall make such recommendation as it thinks just in the circumstances, but shall not recommend any sentence other than one or more of the following:

- (a) deposition from orders;
- (b) prohibition from functioning;
- (c) removal from office;
- (d) rebuke.

According to *Canon Law in the Anglican Communion*, six forms of censure are commonly used which, in order of severity, are as follows.

- ***Deposition*** is the permanent taking away of the right to perform the duties of every office for which Holy Orders is required,

¹¹ The phrase “considered to be a lay person” does not necessarily imply that the clerical character remains after relinquishment/deposition. This clause is a merely a “deeming provision” that ensures that former clergy could still be subject to disciplinary proceedings under Chapter IX of the constitution. The jurisdiction of a diocesan tribunal is limited “to a person licensed by the bishop of the diocese, or any other person in holy orders resident in the diocese” (s.54(2)). A deposed clergy person no longer holding a bishop’s licence might otherwise be outside the jurisdiction of a tribunal.

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- **Deprivation** is the permanent taking away of the right to perform the acts and functions of a particular office or appointment held by an ordained or lay minister,
- **Suspension** is the temporary taking away of the right to perform acts and functions of the Ministry, or of a particular clerical or lay office or appointment.
- **Inhibition** disqualifies a person from exercising certain ministerial functions.
- **Admonition**, or monition, is a formal written warning, order, or injunction.
- The least severe censure is **rebuke**.¹²

Taking “deposition from orders” in s. 60(1)(a) to mean “the permanent taking away of the right to perform the duties of **every** office ...”, the implication is that a Tribunal has no power to impose a sentence that only takes away “a **particular** office” (i.e., deprivation). However, the same result can be achieved by another route, because of the breadth of “prohibition from function” in 60(1)(b).

13. This brief survey of the current situation, both within the Anglican Church of Australia and more broadly, provides the context for further theological reflection.

THEOLOGICAL THEMES

14. Ordained ministry is a particular expression of the priesthood of Christ manifest in the priesthood of all believers. “There is one priesthood in the Church, the priesthood of Christ”, and all “Christian priesthood is directly related to Christ’s priesthood.”¹³ Similarly, through the Holy Spirit, all Christians participate in Christ’s priesthood, as “the whole Church is taken into the movement of Christ’s self-offering and his eternal praise of the Father.”¹⁴ In and by ordination, the Church recognises that some members from within the priesthood of all believers are called by Christ and empowered by his Spirit to exercise their priestly calling by serving a Christian community as messengers, shepherds and stewards of the Lord.
15. Although ministerial ordination occurs in and through the Church, it recognises the prior call and gift of God through the Holy Spirit.¹⁵ The opening prayer in the service for the ordination of both deacons and priests in *A Prayer Book for Australia* begins with the

¹² Norman Doe, *Canon Law in the Anglican Communion*. Oxford, OUP: 1998, pp.88-89.

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acknowledgement that ordained ministry is above all the call and gift of God:

Almighty God, giver of all that is good,
by your Holy Spirit you have appointed
various orders of ministry in your church...

16. In response to God's call and gift, the Church has a threefold responsibility in Ordination – to discern, recognise and authorise. This threefold response is reflected in the structure and shape of the Ordinal.¹⁶ The culmination of the discernment process occurs in the public context of the ordination service. In response to this discernment, the Church then recognises God's gift and call to ordained ministry, and authorises the ordinand to exercise the office of deacon, priest or bishop. The expectation that ordained ministry is for life speaks of the nature of God's gift and calling within the person. This gift and calling is not just functional. It is a call to serve; more than that, it is a wholehearted response to the love of God (1 John 4:10). Ordained ministry is not extrinsic to the individual, as an activity or task, but is an expression of who the person is and is becoming under God.

17. The Church's role in deposition from / relinquishment of the exercise of Holy Orders parallels its role in ordination. Through a process of examination that ends with a public act, the Church makes a discernment about a person's fitness to exercise an office, and accordingly may withdraw its recognition and authorisation. In the case of relinquishment, a variation of the same threefold process occurs.¹⁷ The hesitancy in some parts of the Church

¹³ *The Church of the Triune God*, (the Cyprus agreed statement from the International Anglican-Orthodox Theological Commission), Section VI, para 1

¹⁴ *The Church of the Triune God*, Section VI, para 11.

¹⁵ The Ordinal consistently places the ministry of the ordained into the context of the whole People of God, so statements about the nature of ordained ministry are usually best heard in relationship to statements about all baptised believers.

¹⁶ The process of discernment is formally acknowledged in the Ordinal during the presentation of candidates. The Ordinal in *A Prayer Book for Australia* reflects earlier rites at this point, with the bishop asking whether the candidates are "suited by their learning and godly living" (The Ordination of Priests, section 12) and those presenting providing the assurance that "Enquiries have been made among the people of God ... and we believe that these candidates are fit for this office". The process of discernment continues through the Exhortation and Examination. This culminates in a question to the congregation: "Will you accept them as ...?", and the response, "We accept them gladly!" (section 16). Discernment thus culminates in recognition and authorisation. In the laying on of hands with prayer (section 18) the focus is on the work of God through the Holy Spirit within the People of God. Those upon whom hands have been laid are authorised as they are presented with a copy of the Scriptures and hear the words, "Take authority to preach the word of God and to minister the holy sacraments" (section 19). Recognition is expressed by the newly ordained being "appropriately vested" before the congregation, and in the presentation of the newly ordained to the congregation (section 20).

¹⁷ The elements of discernment, recognition and authorisation are not as public in the relinquishment of or deposition from Holy Orders, but are still present. Deposition involves a formal disciplinary process of examination (i.e., discernment) which may result in the formal and public removal of both recognition and authority. Relinquishment involves a private discernment, in that the Bishop is required to consider the application for relinquishment and to give consent. The bishop must give public notice of relinquishment in the manner prescribed by section 7(2) of the Holy Orders, Relinquishment and Deposition Canon 2004.

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to presume that it has the power to remove in entirety what God has given recognises the limits to the Church's role in ordination. Given that the Church should not exceed its own nature, it can deal only with the expression of ministry in its midst, through discernment, recognition and authorisation or withdrawal of the same.

18. The hesitancy, which is prepared to remove a minister from exercising the ministry of the ordained but which is unwilling to claim to remove the inner character of the Order, also reflects an appropriate modesty about the nature of the Church. Even in its holy calling, the knowing of the Church is, as Paul puts it, a knowing "in part" (1 Cor 13:12). What the Articles point out about General Councils is true of churches: they can err. Even in an area as important as clergy discipline, poor or inadequately informed decisions can occur and weakness of human process can produce failings.
19. The affirmation of the ministerial call to ordination as a call for life can be seen to be expressive of important themes: that ministry above all comes as the call and gift of God; and that it involves not just the activity of an individual, but that person's very being. The hesitancy noted above recognises that the Church, waiting its final fulfilment, is incomplete, contingent and susceptible to making inadequately formed and erroneous decisions.
20. These are important theological themes to be affirmed in the context of Holy Orders. But they must also be placed alongside the great and grave responsibilities of those Orders:

Remember that you will be called to give account before Jesus Christ; if it should come about that the Church or any of its members, is hurt or hindered as a result of your negligence, you know the greatness of the fault and the judgement that will follow.¹⁸

¹⁸ APBA p. 794.

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That some actions or omissions by those in ministry are regarded as justifying the severest censure is not merely a matter of public expectation. It is the accountability of faithfulness to a Lord who warned his followers:

If any of you put a stumbling-block before one of these little ones who believe in me, it would be better for you if a great millstone were hung around your neck and you were thrown into the sea (Mark 9:42).

21. The grace and forgiveness of God always awaits those who repent, but some acts (or inactions) have consequences that can be life-long, not just for those who have been sinned against, but also for the person whose action or inaction has caused harm. The Ordinal gives particular emphasis to this responsibility on the part of the ordained.

CONCLUSION

22. The view of the Doctrine Commission is that the provision for deposition should continue to have as its focus the withdrawal of recognition of and authorisation for the exercise of all ordained ministry. This approach recognises the theological affirmations associated with ordination outlined above and maintains continuity with the wider Church. It remains within the limits imposed by s.60 of the Constitution and appropriately recognises the gravity of serious failings by the ordained.
23. We further suggest that Canon be amended to include the category of “prohibition from functioning”, to provide a mechanism for a tribunal to stipulate a permanent or temporary taking away of the right to perform the acts and functions of a particular office (equivalent to ‘deprivation’ and ‘suspension’ in the list in paragraph 12). The Canon might also be amended so that “relinquishment” might be from the exercise of all Orders, or of a particular Order.
24. The Commission also suggests that the proposed amendments to the *Holy Orders, Relinquishment and Deposition Canon 2004* should make clear that both relinquishment and deposition are from the *exercise of* Holy Orders, leaving open the question as to whether there remains any underlying character of Orders.

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25. Providing for deposition, prohibition from functioning, and relinquishment in this way would allow for the effective removal of the exercise of an Order of ministry, while allowing continued participation in other Orders.¹⁹ The overall unity and inter-connectedness of Holy Orders, in terms of their essential character would be retained, while the recognition and authorisation of a particular Order could be removed or prohibited for life.

¹⁹ There is a sequential aspect to this, of course. Priestly/presbyteral ministry presumes ordination to the diaconate, just as episcopal ministry presumes ordination the Order of priests. Removal of Diaconal Orders from a priest would not be contemplated any more than removal of Priestly Orders from a bishop.