

This Protocol was approved by the Southern African Catholic Bishops' Conference at its Plenary Session at Mariannhill in August 2002 for an initial period of three years. All suggestions for changes in the Protocol, as well as all queries as to the meaning of particular terms or prescriptions of the document, should be submitted in writing to The Chairman, SACBC Professional Conduct Committee, P.O. Box 941, Pretoria 0001.

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**PROTOCOL FOR CHURCH PERSONNEL IN REGARD TO SEXUAL MISCONDUCT BETWEEN ADULTS**

**Preamble.**

As Church and society face the present crisis in regard to the many instances of sexual misconduct and abuse which are being brought to light, we are called to some profound tasks and challenges. These include: 1

Teaching and implementing a sexual ethic grounded in the principles of justice and respect for all persons.

Reconstructive work on our understanding of the virtue of chastity. It is the whole community that is called to be chaste, not only an elite corps of "religious professionals".

Developing a pastoral ministry that heals the effects of clergy sexual misconduct, thereby restoring the Body of Christ to "ontological and sacramental integrity".

Developing a Pastoral Ministry of this nature would mean seeing it in its full theological framework. Pastoral Ministry is both a vocation and a profession. Gula says that as a vocation it is a free response to God's call in and through the community to commit oneself in love to serve others. Pastoral Ministry is a profession in that it involves the commitment to acquire expert

Anne Patrick, *Liberating Conscience*, Continuum, N.Y.

Richard Gula, *Ethics in Pastoral Ministry*, Paulist Press, N.Y./Mahwah, N.J.

knowledge and skills and to serve human needs with good moral character. The positive meaning of being professional connotes a specialised competence, a commitment to excellence, selfless dedication to serve the community and to holding trust.

Gula then holds the two aspects together: "That Pastoral Ministry is a vocation and a profession means recognising that the moral responsibilities of being a Pastoral Minister arise not only from the social conventions of being professional but also ultimately from the invitation of God ..."

The proper model for Pastoral Ministry is the covenantal relationship, which is based on freedom, motivated by love, is respectful of the dignity of the person and is held together by trust. The covenantal minister is trustworthy, accountable to the community, faithful in upholding the rights of the vulnerable and liberating in the use of power.

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## **CHASTITY AND CELIBACY**

### ***Chastity for all***

Many cultures and religious traditions extol both the importance of abstinence from sexual activity before marriage and of fidelity within marriage. As Christians, we believe that each individual has his or her origin in the love of God; that they are created out of love and made for love; that each has a unique dignity because each is made in the "image and likeness" of an all-holy God (Gen. 1 :26). This means that there is a radical equality between all people and that each one is due absolute respect.

Revelation tells us that sexuality is God's gift: "Male and female He created them. And God blessed them and said to them, 'Be fruitful and multiply and fill the earth'" (Gen. 1 :28). The prophets spoke of the relationship between husband and wife as a living symbol of the union between God "and his people. God speaks to Israel and says, "I will betroth you to me in righteousness and in justice, in steadfast love and in mercy" (Hosea 2:19). The metaphor is repeated in the New Testament: the sacrificial love and fidelity of Christ is compared to the unique love of husband and wife. Paul says it is a "great mystery" and calls on husbands and wives to live in love. (Eph.5:31-32).

The Bible warns against the misuse of the gift of sexuality. Our bodies are "members of Christ" so we should "shun immorality" (1 Cor. 6:15-18). We are expected to exercise control "in holiness and honour, not in the passion of lust like heathens who do not know God" (1 Thess. 5:4-5); and we are warned that "no

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immoral or impure man has any inheritance in the kingdom of Christ and of God (Eph. 5:5).

In our own time, the Second Vatican Council speaks of marriage as "an intimate partnership of Hfe and love" and says that "God himself is the author of marriage and has endowed it with various benefits and with various ends in view" (*Gaudium et Spes* 48). It speaks of married love as "eminently human", involving the mutual giving of self and permeating the whole of life: 'This is a far cry from mere erotic attraction, which is formed in selfishness and soon falls away in wretchedness" (*Gaudium et Spes* 49).

God has created us as sexual beings. He calls us to abstinence outside of marriage and to fidelity within marriage.

### *The Vow of Chastity*

Jesus spoke of celibacy as a gift of God given to some who freely accept it "for the sake of the Kingdom of heaven" (Matt. 19:10-11). S1. Paul speaks of how celibacy helps us to be given over to God and the affairs of the Lord with "an undivided heart" (cf. 1 Cor. 7:32-34). The Second Vatican Council says that the perfect continence of virginity or celibacy "for love of the kingdom of heaven has always been held in high esteem by the Church as a sign and stimulus of love, and as a singular source of spiritual fertility in the world" (*Lumen Gentium* 42).

The decree, *Perfectae Caritatis*, speaks of chastity as an "exceptional gift of grace" and for Religious it is a "most effective means of dedicating themselves wholeheartedly to the divine service and the work of the apostolate". It calls on Religious "to be faithful to what they have

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professed", believing in the Lord's word, relying on God's help and not presuming on their own strength (*Perfectae Caritatis* 12).

While chastity is a gift of God's grace, its observance is obligatory for all who join what the Code of Canon Law calls "Institutes of Consecrated Life". Members of these institutes profess the evangelical councils of poverty, chastity and obedience (C.573.2); they belong "to the life and holiness of the church" (C.574.1); they live a life of chastity as "a divine gift which the Church receives from the Lord" (C.575). Canon 579 says that "the evangelical council of chastity, embraced for the sake of the kingdom of heaven, is a sign of the world to come, and a source of greater fruitfulness in an undivided heart. It involves the obligation of perfect continence observed in celibacy" .

## 1.3

### *Clerical Celibacy*

Jesus speaks of perfect continence as a gift of God which people freely accept "for the sake of the Kingdom of heaven" (Matt. 19:12). S1. Paul says that the celibate person is "anxious about the affairs of the Lord". These two aspects, single-hearted commitment to God and total availability to the "affairs of the Lord" and to His people, are central to the understanding and practice of celibacy.

The Second Vatican Council admits that celibacy is not demanded of the priesthood by its nature but it approved and confirmed the law of celibacy for priests of the Roman Catholic Church and reminded all priests that "they are a living sign of that world to come, already present through faith and charity, a world in which the children of the resurrection shall neither be married nor

## 1.4

take wives" (Presbyterorum Ordinis 16). Canon 277 says that the serious obligation of priests is to "perfect and perpetual continence"; celibacy safeguards this primary obligation. Paragraph 2 of Canon 277 reminds priests of their obligation to be prudent "in relation to persons who can be a danger to their obligation of preserving continence or can lead to scandal of the faithful". And the third paragraph is a reminder to bishops of their rights and duty "to establish more detailed rules concerning this matter, and to pass judgement on the observance of the obligation in particular cases".

### *God's Gifts in Earthen Vessels*

While celibacy is one of God's special gifts, nevertheless neither Religious Profession nor Ordination changes human nature: God's special gift and our human weaknesses coexist in the same earthen vessel. Moreover, the sexual revolution of recent times has affected every corner of the world and every institution, including the Catholic Church.

As it was being profoundly influenced by this world-wide sexual revolution, South African society was being changed utterly by the apartheid system:

- . the break up of families,
- . the migrant labour system,
- . the rejection of all authority figures,
- . the break-down of the traditional extended family system
- . and rapid urbanisation.

The results of the two movements are many and varied, but some of them are a great increase in teenage

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pregnancies and in the number of unmarried mothers, a false emancipation of our youth from moral norms and constraints, an unthinking adoption of foreign ways and values propagated by the mass media, violence against women and children and the AIDS pandemic.

The consequences for the Church are many. Three are obvious:

.The young people joining Religious Congregations and entering our seminaries have been influenced by the society from which they come

As priests and Religious who will have to minister in a society that does not appreciate the value of celibacy and that lives by very different norms, we are called to be "signs of contradiction".

Greater care is called for in both the screening and formation of candidates.

Because of the weakness of human nature and because of the forces at work in the society in which we live and work, some of our priests and religious fail to live up to the high demands of their calling; some have been accused of failing to live their vowed life; and others have had allegations of sexual abuse or harassment made against them. The church authorities have an obligation to investigate these accusations so that justice is done and can be seen to be done to all concerned.

## 2.2

## SEXUAL MISCONDUCT

### *Special Obligations*

All people are called to live a chaste life, abstaining from sexual activity before marriage and being faithful in marriage. Priests and Religious have special obligations to a life of perfect and perpetual continence:

- They have freely and publicly committed themselves to celibacy

They preach and teach the ideals of chastity and fidelity

They are at "the forefront of the Church" and, in the minds of many, they stand for the Church

They are seen as ambassadors of Christ (2 Cor. 5:20), speaking and acting in His name

They are in a position of trust with people, and any sexual encounter betrays that trust and often leads to a loss of faith in the priesthood, in the Church and even in God.

### *Some Definitions*

Clergy and Religious are in a privileged position of trust in relation to those in their care. An attempt by a priest or Religious to sexualise this relationship is a breach of trust. It is also an abuse of authority, an abuse of power and professional misconduct. The abuse may be initiated by either men or women and may be in the form of suggestive comments, questions or physical contact.

Failure to reject this conduct does not imply consent.<sup>3</sup>

If the other person initiates the sexualising of a professional relationship, it is the responsibility of the priest or Religious to safeguard the boundary against sexual contact.

A distinction must be made between sexual abuse, sexual exploitation and sexual harassment. Each usually involves an abuse of power or authority.

- Sexual Abuse is sexual contact between a church leader and a minor or a vulnerable adult.

Sexual Exploitation is sexual contact between a church leader and a person who is receiving pastoral care from the church leader.

Sexual Harassment is unwanted sexual conduct or language between co-workers in the church work setting.

Each of the above can take different forms:

Non-verbal:

uninvited, unwanted physical contact such as rape, sexual assault, touching, stripping

suggestions, unwelcome innuendoes, hints, sexual advances, sexual comments, sex-related jokes, unwelcome comments, whistling

unwelcome gestures, indecent exposure, unwelcome display of pictures, unwelcome display of objects.

Physical:

Verbal:

cf. Australian Catholic Bishops' Conference, *Towards Healing*, December 1966

As said above, the church authorities have a duty to investigate reports of sexual misconduct. It has a duty to ensure that the rights of everybody are scrupulously respected.

## SOME CANONICAL RIGHTS AND OBLIGATIONS

### *The Rights of all the Faithful*

1. C.208: The Christian dignity and radical equality of all the faithful are grounded both in the unique value of each person and in the Sacrament of Baptism. Any form of sexual abuse in the Church offends against the human and Christian dignity of the offended person. When it is done by a priest or Religious it is an abuse of their privileged position in society and in the lives of the faithful.

C.212.2: The faithful have a right to make known their needs, especially their spiritual needs, to the church. People have a right to be heard, and therefore the church has an obligation to listen and to have suitable structures in place.

C.220: Each one has a right to his or her good reputation and to privacy. This right of the victim, the accused and the one who makes the accusation must be respected.

C.221.2: Each member has a right to vindicate and defend their rights in a Church court. Administrative cover-ups that deny this to any individual are

C. 383: Each member of the Christian faithful has a right to the pastoral care of the bishop. This includes everybody but especially those who have suffered abuse at the hands of Church personnel.

### *The Rights and Obligations of the Bishop*

1. C.383.1: As the chief shepherd of the diocese, the bishop is to be solicitous for the faithful, especially those "who are not able to benefit from ordinary pastoral care". This implies that those who complain of sexual harassment or abuse must be given special pastoral attention.

C.391: The bishop possesses "legislative, executive and judicial power in accordance with the law". He may exercise executive and judicial power through another. He may make special rules for the priests of his diocese and the Conference may do it for all the dioceses under specified conditions (CC. 277.3, 285.1).

C.1276.1: The bishop must look after the patrimony of the diocese "like a good householder" (C.1284.1). If negligence on his part can be proved in civil courts, he may be liable for claims brought against offending priests.

C.392: The bishop is responsible for discipline in the diocese and he must show concern for all the faithful entrusted to his care (C.383.1). Problems arise if the bishop is perceived to be preoccupied with the protection of the institutional church, his diocese, his priests or himself. The scandal of a cover-up of an abuse may be more damaging

than the scandal of the abuse itself.

C.1446: All the faithful, and especially bishops, should try to avoid law suits. This must not result in

injustice being done to anybody. The bishop is to institute a penal process only if scandal cannot be repaired, justice restored and the accused reformed in a pastoral way (C.1341)

CC.1740 & 1741: Parish Priests may be removed if their ministry becomes harmful and ineffective, if they are causing grave harm, or have lost their reputation among "serious-minded" parishioners.

### *The Rights and Obligations of an Accused*

1. C.277.1: Clerics are bound to perfect and perpetual continence "and are therefore bound to celibacy (see 1.3 above).

C.276: Clerics are obliged to seek holiness and to fulfill the obligations of their pastoral ministry.

C.221: All have a right to a fair trial and to vindicate and defend their rights before the competent forum. (This competent forum will be the tribunal of CC 1404 - 1416, 1671 - 1673, or the organ of administrative recourse of CC 17321739).

No canonical penalties may be inflicted except in accordance with the law.

C.1341: Penalties are a last resort. If (a) scandal can be repaired, (b) justice restored and (c) the offender reformed by fraternal correction or a formal reproof, then penalties cannot be inflicted. (cf. C.1466)

C.1481.2: In a penal trial, the accused must have an advocate, either appointed personally or by the judge if the accused fails to do so.

C.1341: Penalties are a last resort.

CC.220 & 1717.2: Everyone has a right to his or her reputation, so an investigation must be carried out with care, discretion and even secrecy so as not to call into question another's good name.

C.1728.2: Each one has a right to protect his or her privacy (cf. C.220). Canon 1531.2 requires that people legitimately questioned tell the whole truth, but C.1728.2 says an accused is not obliged to admit guilt, nor may an oath be administered.

C.1719: The rights to privacy (C.220) and to a fair trial (C.221) cannot be upheld if everyone who has a right to know the facts does not keep professional secrecy. Investigation documents must be kept in a secret file (C.489).

C.1722: Administrative leave may be the only way to protect the accused from further accusations, to protect others from further wrongdoing and to ensure the integrity of the investigation. If it is imposed or requested, it must be done in such a way that it is seen as routine and in no way presumes guilt.

## THE PRELIMINARY INVESTIGATION (C.C.1717-1719)

### *Searching for the Truth*

Each bishop possesses legislative, executive and judicial power (C.391). He may delegate his executive and judicial powers to others. Canon 1717 says that as soon as the ordinary receives a complaint he is to investigate it either personally or through another. However, the Bishops of Southern



Africa have decided that the investigation should be done in an ordered and objective way using the following prescriptions. The purposes of this objective investigation are many:

to ensure that all allegations or reports of sexual misconduct are investigated and that there is no cover-up

that the same process is used for all cases, thus minimising the danger of personal bias or prejudice on behalf of the Ordinary or Religious Superior

to ensure that the truth is ascertained

to protect the rights of all parties concerned, including those of the accused, possible victims and the community

to distance the Ordinary and/or Superior from the preliminary investigation so that when he is presented with the facts and makes a decision, there is not even the perception of bias<sup>4</sup>

This "distance" must be balanced with the need for pastoral care of both accused and alleged victim.

that the expertise of different specialists are at the disposal of the investigation

that the Ordinary is freed from local pressures and friendships.

#### *values to be Promoted*

The following values must be respected by all involved in the investigation of complaints:

Respect for the rights and obligations listed in Chapter 3 of this document

4.2.2 Acting with justice, mercy and charity

4.2.3 Showing pastoral solicitude for all concerned, whether they be complainant, victim, consenting parties, the accused or the wider church community

4.2.4 Keeping in mind the values of C.1341: to repair scandal, restore justice and reform the perpetrator. <sup>5</sup>

#### *Questions to be Answered*

Canon 1717.1 says that the Ordinary is to do the preliminary investigation "either personally or through another". By adopting this protocol, the Ordinaries and Religious Superiors have decided that it should be done

"through another". <sup>6</sup> The decision on what action to take at the conclusion of the investigation rests with the Ordinary and/or Religious Superior.

The purpose of the Preliminary Investigation is to assemble the evidence so that the Church authority will be in a position to decide on three questions:

- has an offence taken place?

has the time of prescription lapsed? (cf. CC.197, 199 & 1362 and Appendix IV)

- was there malice or culpability?

Particular questions to be answered by way of the investigation include:

~ If the cleric or religious has attempted a marriage,  
even civilly (cf. C.1394)

If the cleric or religious is living in concubinage or if he/she continues in some external sin against the sixth commandment (ct. C.1395.1)

If there is scandal, what is its extent? (cf. C.1395)

Was the sexual activity truly consensual or was there sexual abuse, exploitation or harassment (cf. C.1395.2 and 2.2 above)

...An individual bishop or Religious Superior retains the right to investigate a complaint personally or through one personally appointed by him. Nevertheless all are exhorted to follow the Protocol. If the Protocol is not followed in a particular case the principle that those who have a right to know should be kept informed must be adhered to.

-Was the abuse a crime according to civil law and is a civil or criminal case pending or in progress??

Did either party become infected with a disease? Did pregnancy result from the offence?

...Was there an abortion? Whose decision was it? (ct. C.1398)

#### **4.4 Structures Required** 4.4.1 At Conference Level

There shall be established by the SACBC a Professional Conduct Committee.s

##### *Membership*

The following shall be represented

The Bishops' Conference, represented by a Bishop and a Chairman nominated by the Conference

The Southern African Council of Priests (SACOP): 2 members

The Leadership Conference of Consecrated Life (LCCL(SA)): 2 members

Normally the church procedures are suspended until the completion of a civil or criminal action

This is the same committee as described in the Protocol in Regard to the Sexual Abuse of Children.

-The Seminaries: 2 members

Religious Houses of Formation: 2 members

Experts in the following disciplines shall be appointed:

- Canon Law
- Civil Law
- Psychology/Counselling
- Moral Theology

A reasonable balance between male and female members shall be maintained.

#### *Functions of the Committee*

The functions of the committee shall be to:

-study on an on-going basis the literature, **the** findings and developments at national **and** international level on Sexual Abuse and on issues of Professional Responsibility for Church Personnel

facilitate the appointment of Bishops' Delegates and the setting up of Provincial Committees

organise meetings at national level for the on-going education and training of Bishops' Delegates and Provincial Committees

---act as adviser to the Bishops' Conference in matters concerning professional standards

-perform whatever other relevant duties may be assigned to it by the Conference.

#### **4.4.2 At Ecclesiastical Province Level**

A committee shall be established by each of the Provinces of the SACBC to which, under the authority of the Bishops' Delegate, shall be referred any issue of sexual misconduct or allegation of such misconduct. 9

##### *1. Membership of the Committe#*

The Committee shall consist of the following members:

The Bishops' delegate

The Bishops' vice-delegate

A social worker in this area or a

Professional Therapist

A Canonist

An individual bishop or Major Religious Superior may

appoint his own committee to serve his particular diocese or Congregation. The Provincial Committee may be the one that already exists for child abuse cases, expanded to, include at least the above.

¶The committee may be enlarged. When a particular case is being investigated, members relevant to that case will be asked to attend, e.g., if it involves a Religious, then the LCCL should be represented. If it is the same committee as that for Child Sexual abuse, then it should include a Child Welfare Officer.

A civil lawyer

A media spokesperson

A professional therapist experienced in the treatment of those who have been sexually abused

Representatives of LCCL (SA) (one female, one male)

Representative of SACOP

#### *Functions of the Committee*

The duties of the committee include the following:

Acting as adviser to all church bodies in the Province in matters concerning professional standards, in sexual matters both in general and in relation to specific cases

--Assisting with an investigation Managing contact with the media

--Compiling a list of medical and legal experts who will be available for consultation

Compiling a list of personnel and facilities that are available for counselling of complainants, counselling and therapy for victims and their families, and assessment and therapy for the accused

--Facilitating meetings between victims and church authorities concerning what the church body can and should do to assist the victim

.Conducting an investigation of any professional sexual misconduct as requested by any Bishop of the Province.

#### *4.4.3 At Diocesan Level*

A Contact Person and Deputy will be appointed in each Diocese to whom all reports of sexual misconduct must

be reported. If the Contact person is male, the Deputy

should be female, and vice versa. They must be skilled listeners, sensitive to the needs of complainants, victims and accused. The names of the contact persons are to be publicised throughout the diocese.

#### *4.4.4 Specific Duties of Members of the Committee*

## 1. *Bishops' Delegate*

The Bishops' Delegate shall:

- Convene meetings of the committee
- Chair all meetings
- Liaise with the committee, with individual

church bodies and other *professional* bodies

Have an overview of all matters dealt with by the committee

Be responsible for the safe-keeping of *all* relevant documentation.

### *Bishops' Vice-Delegate*

The Bishops' Vice-Delegate shall fulfil the above duties in the absence of the Bishops' Delegate.

### *Contact Persons*

Contact Persons shall be the usual persons to receive complaints and pass them on to the appropriate church authority

They shall be skilled listeners, sensitive to the needs of complainants and victims, persons of tact, impartiality and sensitivity

It is preferable that they have medical or psychological training; but above all they must be persons of good judgement.

It is advisable to have a number of resource people because of the variety of languages in a diocese and the sensitive nature of the issue

- **It is recommended that if the complainant** is female, the contact person be also.

### *Assessors*

-----It is advisable to have a panel of assessors, with competence in different languages and skills necessary to conduct interviews. They are to be appointed by the Ordinary from the list compiled by the Provincial Committee.

Assessors shall be responsible for interviewing the victim and accused, providing a written report to the church authority and the committee.

The assessors must be independent of the church authority and have no connection with the victim or the accused.

-The assessors should be *widely* known for *their integrity*.

### *Support Persons*

-Support Person for the *victim* represents

the needs of the *victim* to the church

*authority* and assists where appropriate,  
*with* the care of the *victim*.

Support Person for the accused

represents the needs of the accused to  
the church authority and *assists* where  
appropriate with the care of the accused.

The Support Person should be present  
each *time* the Accused or Victim is  
interviewed.

### *The Family*

The *traditional* role of *families* in the *settling* of  
disputes should be kept *in* mind at all stages of  
the investigation. The Provincial Committee and  
the Church Authority will *decide* at what stage  
and in what way the families of the accused and  
the victim should be involved.

## INVESTIGATING A COMPLAINT CONSENSUAL SEXUAL ACTIVITY

### *Introduction*

- 5.1.1 It is very important to keep in mind what was said in 2.2 above. Even if the "victim" of sexual abuse appears to give consent and may even believe they are consenting, the carer and the one being cared for are in a position of unequal power. The priest and a parishioner, the spiritual director and the directee are in a professional relationship and it is the duty of the former to ensure that the relationship remains professional.
- 5.1.2 During the entire Preliminary Investigation, the issue of fault, liability or the particular course of action that may follow the investigation should not be commented on. Any comment on these issues must always be referred to the church authority and its professional advisors.
- 5.1.3 Professional Confidentiality is observed in relation to all documents and interviews required under this

protocol (cf. Chapter. 3 above).

### *5.2 Step One: Making a Complaint*

5.2.1 All complaints received by the competent church authority or by a religious superior, must be received with respect and understanding.

5.2.2 Complaints may be made directly by a victim, by a member of the victim's family or religious congregation, by a friend or by an acquaintance.

5.2.3 As soon as a complaint is received, the complainant will be told that he/she will be visited by the contact person

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5.2.3 As soon as a complaint is received, the complainant will be told that he/she will be visited by the contact person

.(cf. 4.3.3C) skilled in this area so that the complaint can be investigated.

5.2.4 It is important that the accused and victim be sympathetically supported by the bishop (in the case of a diocesan priest) or his/her religious superior (in the case of a Religious)

5.2.5 Particular action is called for in the following extraordinary circumstances:

If the Contact Person is the subject of the allegation, the case will be referred directly to the Bishops' Delegate.

If the Bishops' Delegate is the accused, the Bishops' Vice-Delegate assumes the duties of the Bishops' Delegate until the case has been concluded.

If a Religious Superior is involved, the next highest Religious Superior will be informed.

If a Bishop is accused, the President of the SACBC will be informed immediately.

5.2.6 The person making the complaint will be assured that confidentiality will be observed with only the investigating committee learning of the details.

5.2.7 Every attempt should be made to offer assistance to the victim and his/her family where necessary, by way of confidential counselling or other pastoral support as soon as the complaint is received. This must not be interpreted as an admission of guilt by the accused.

5.2.8 Complaints that come from the media should be noted and the complainant informed that the complaint would be investigated. The matter shall be referred

immediately to the Contact Person. General inquiries from the media should be referred to the nominated media spokesperson who shall be fully briefed by the competent Church authority and/or the Delegate. The Contact Person and the competent church authority will decide on what to do about an anonymous complaint.<sup>11</sup>

5.2.9 The competent Church authority shall consult with the relevant Provincial Committee and nominated spokesperson, as to the advisability of any public statement and its scope, content and form. The minimisation of scandal as well as the reputations of all involved should be taken into account. The possibility that silence may be interpreted as an attempt to 'coverup' the truth should also be taken into account. Any statement that explains a period of administrative leave should make it clear that such leave is a routine requirement that does not "imply any admission or presumption of guilt.

Within 24 hours of receiving it, the complaint will be passed on to the Contact Person. The Contact Person will interview the person who made the complaint without delay.

5.3.2 In the case when the person who made the complaint is

The general principle is that even an anonymous complaint should be investigated. The complainant may have valid reasons for wishing to remain anonymous. An investigation may be the best way to restore the good name of the accused.

not the victim of the misconduct, the contact person will meet with the victim.<sup>12</sup>

5.3.3 No admission should be made to the complainant or the victim. or any other person

that the accused is guilty  
that there is any liability for damages  
that any particular course of action will follow the investigation.

5.3.4 In all discussions with the complainant or victim, it should be made clear that if the accused is placed on administrative leave this does not imply any presumption of guilt on behalf of the Church Authority or admission of guilt on behalf of the accused.<sup>13</sup>

5.3.5 The Contact Person shall take written notes of the details of the complaint. These are made in the form of a report and confirmed by the signature of the victim and countersigned by the Contact Person. A copy will be

In dealing with adults, the accusation must be made by the victim, no matter how difficult or stressful this may be. .



Action may also be considered in terms of CC.1 041 & 1044.2.2. See also CC.1740, 1741. The Church Authority has to decide in each case if administrative leave is necessary. Factors to be considered include: actual or possible scandal; the extent to which the alleged offence is known; the reaction of the local community; the danger of interference with the investigation; the time when the alleged offence occurred; the danger of recurrence of the alleged offence.

submitted to the appropriate church authority and the Bishops' Delegate.

#### *Step Three: Initial Action of the Provincial Committee*

The Contact Person will discuss his/her report with the Bishops' Delegate. If they agree that further investigation by way of a formal assessment is called for, the Bishops' Delegate will:

1. inform the appropriate Church Authority <sup>14</sup>
2. convoke a meeting of the Provincial Committee within 48 hours.

5.4.2 If the Provincial Committee agrees that a formal assessment is necessary, it will appoint two Assessors from the listed panel for full investigation of the case, taking into account the professional qualifications and gender of the two assessors.

5.4.3 Mindful that the assessment process is a difficult and trying time for all concerned, particularly the victim and the accused, the process of assessment shall be undertaken as quickly as possible and the process shall be as transparent as possible for all concerned. The Bishops' Delegate shall seek to ensure that all parties adhere to this principle.

In this document, "Church Authority" means the Ordinary for Diocesan clergy and the Major Superior for Religious.

#### *Step Four: Informing the Accused and Administrative Leave*

The appropriate Church authority shall inform the accused that a complaint has been made against him/her.

5.5.2 All clerics and religious should be exhorted by their competent Church authority to safeguard the reputation of all who may be involved in a complaint, including the complainant, victim and the accused (cf. 3.3 above).

5.5.3 The Committee may recommend to the Church Authority that the accused be asked to stand aside from a particular office or from all offices in the Church. Administrative leave is not to be considered automatic. It is to be made clear that the accused is on administrative leave and full pay while standing aside. The terms of this administrative leave should be given in writing, stating place of residence and what duties may or may not be performed. If the accused refuses to take administrative leave, action may be taken in accordance with C.1319.

#### *Step Five: Action by the Assessors Meeting the Victim*

1. The two Assessors shall discuss the matter fully with the Contact Person before interviewing the alleged victim.<sup>15</sup>

ole of Assessors outlined in 4.4.4.4, on page 22 above.

The victim shall have another person present at the interviews (eg the Victim Support Person or legal representative).<sup>16</sup>

Both assessors will be present when interviewing the victim.

Under no circumstances shall there be any attempt to intimidate a victim or to dissuade a victim from proceeding with a complaint or to offer financial compensation to stop the process.

Victims will be reminded of their right to report to the civil authorities.

#### 5.6.2 *Meeting the Accused*

1. The Assessors shall arrange an interview with the accused. Both Assessors are to be present for interviews with the accused.

The *accused* will be informed of the right to obtain independent legal advice and the right to remain silent. Legal advice shall be at the expense of the accused.

Role of Support Person outlined on page 23, 4.4.4.6 above

If the accused is a Religious, the congregation will be responsible; if he is a Diocesan Priest, the Bishop may decide to assist with legal fees.

The accused person may be invited to admit to an offence but is not bound to do so, nor may an oath be administered (C.172R2)

The Assessors shall inform the accused that in both civil and Church law, a person is presumed innocent until proved guilty.

The accused person is entitled to have other persons present during interviews (e.g. the Accused Support Person or legal representative).

Any interview with an employee shall comply with grievance procedures, if any, of the employment contract.

In so far as they apply, the provision of CC.1717 1719 shall be observed.

#### 5.6.3 *Meeting others as required*

The Assessors shall interview any other persons who could be of assistance, bearing in mind the need for confidentiality.

#### 5.6.4 *Support Persons*

The Victim's Support Person and the Accused's Support

Person shall have ready access to appropriate

information from the Assessors and shall have the

responsibility of keeping the victim and the accused respectively informed of the progress of the assessment.

#### 5.6.5 *Submission of Report*

After the assessment, the Assessors shall provide a written report with recommendations to the Church

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Authority. The Assessors shall also provide a copy of the report to the Provincial Committee.

#### *Step Six: Procedures Following Assessment*

5.7.1 The Provincial Committee shall meet to discuss the report and make its own written recommendations to the Church authority.

5.7.2 The Church Authority will examine the written reports of the contact Person (cf. 5.3.5 above), the Assessors (d. 5.6.4 above) and the Provincial Committee (cf. 5.7.1 above) and will meet with the Bishops' Delegate. Taking the recommendations of the Provincial Committee into account, the Church Authority shall assess conscientiously the substance of the allegation. He/she will decide if the evidence proves that a sexual offence did in fact occur and what action must be taken. The Provincial Committee shall be informed of the decision.

#### *Step Seven: Outcome Related to the Victim*

In the event of proven guilt, or on admission of guilt, the Bishops' Delegate, or a mediator nominated by the Provincial Committee, will arrange a meeting between the Church authority and the victim. Both victim and Church authority may have one other present with them. This mediator will outline the findings of the Committee and will seek to know:

1.

the ongoing needs of the victim and a possible response of the church to these needs<sup>18</sup>

the needs of the victim's family

the needs of the child if pregnancy has resulted from the sexual misconduct

in the case of Religious, the needs of the victim's community

the needs of the Parish community

outstanding issues concerning which the victim is not yet satisfied and will seek to explore with both

parties (victim and church authority) the best means of confronting these issues.

5.8.2 The Bishops' Delegate (or the mediator) will make a written report to the Provincial Committee on outstanding areas of disagreement and comment on the reasons for the disagreement.

### ***Step Eight: Outcome related to the Accused***

The values of C.1341 are to be kept in mind: the reparation of scandal, the restoration of justice and the reformation of the offender.

5.9.2 If a diocesan cleric has admitted to an offence or been found guilty, the church authority will meet with the offender to discuss the outcome and the options (cf. Appendix I). The offender will be accompanied by his/her Support Person.

appropriate, counselling may be offered.

5.9.3 If a Religious has admitted to an offence or been found guilty, the appropriate Religious Superior will meet the offender to discuss the outcome and options (cf. Appendix II). The offender will be accompanied by his/her Support Person.

5.9.4 The church authority will discuss with the offender his/her obligation towards the victim and any child who may be the result of the offence.

5.10 5.10.1

### *Response to the Parish and/or Religious Community*

The diocese, the Parish and/or Religious Community experience shock, shame and embarrassment as secondary victims of sexual misconduct. Clerics, Religious and laity may be divided in their loyalties.

5.10.2 Keeping in mind the right to privacy and the demands of justice, the church authority will discuss with relevant individuals and groups the best response to the above.

5.10.3 Generally, a personal visit by the church authority to the affected community is necessary for healing to take place.

### *Response to the Falsely/Mistakenly Accused*

The anger, humiliation and embarrassment of the falsely/mistakenly accused must be acknowledged and responded to. The support of family, priest friends, peers, the Religious Congregation and the church authority is essential.

5.11.2 The possibility of false accusations point to the need for a practical presumption of innocence until guilt

is established and for scrupulous confidentiality.

5.11.3 The church authority will discuss with the innocent cleric or Religious, with the Bishops' Delegate and the Contact Person what needs to be done to repair the scandal and restore the good name of the injured party. Depending on the circumstances these may include:

1. as soon as innocence has been declared, issuing a statement to that effect

2.

accompanying the priest to the place or community of ministry and declaring before the community that the accusation was false/mistaken

offering whatever spiritual and psychological help is considered necessary.

## **INVESTIGATING A COMPLAINT OF CONSENSUAL SEXUAL ACTIVITY**

6.1

Guidelines Regarding Complaints or rumours about consensual sexual activity

The purpose of the investigation is to establish the facts of the case so that the Church Authority may be in a position to decide if a cleric or religious has violated Canons 1394 and/or 1395 (ct. No. 4.1 to 4.3 above).

The investigation will seek to establish if the sexual misconduct is truly consensual or if it falls under one of the categories described on pg. 6 above, namely abuse, exploitation or harassment.

If the sexual misconduct is between a cleric or Religious and a lay person, the assessors will see the lay person (cf. 5.6.2 above), but it cannot force compliance or impose sanctions as in the case of the cleric or Religious.

If both parties are clerics or Religious, both will be interviewed as described in 5.6.2 above. If a Bishop or Religious Superior exercises their right not to make use of the structures of this Protocol, but to follow their own procedure, then all concerned must be kept fully informed of the progress (of the case and the outcome).<sup>19</sup>

The outcome related to each party, the response to the Parish and/or Religious Community and the response to

the falsely accused will be as described in 5.9 to 5.11 above.

The rights of each party in Canon Law (c. NO.3 above) and in natural justice must be respected.<sup>20</sup>

A Major Superior may decide to follow the Protocol of the Religious Congregation, but if the actions of Religious in a Diocese affect that Diocese the local bishop must be kept informed of the progress of the case and its outcome.

<sup>19</sup>

This includes, for example, the right of a Religious Sister who has to leave the community because of pregnancy and the right of the child.

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## **Conclusion**

All Church authorities should conduct workshops on this Protocol so that its principles and procedures are known to all clerics and Religious.

Pastoral Councils should be made aware of the existence of the Protocol and all should know the name of the Diocesan Contact Persons.

Appendix I:

Appendix II:

## **APPENDICES**

The Canonical options available to the Bishop for responding to the sexual misconduct of his priests.

The Canonical options available to Religious Superiors.

Appendix III: Prescription in Civil and Canon Law

Appendix IV: Children in Civil and Canon Law

**APPENDIX I**  
**CANONICAL OPTIONS AVAILABLE TO BISHOPS**

The Protocol is an instrument for investigating accusations of sexual misconduct between adults when at least one of the people involved is a priest or religious. If the accused is a diocesan priest and he has been found guilty, the bishop has to decide what action to take.

C1718 says the Bishop has to answer three questions: Has a crime been committed? Has the time of prescription lapsed?

Was there grave malice or culpability? He then has to decide which route to follow:

-The Pastoral  
Administrative non-penal Administrative penal  
Judicial penal  
or direct appeal to the Holy See

----1.

***The Pastoral Way***

**C.1341** says the Bishop must be concerned about three things:

- Repairing the harm caused by the scandal
- Restoring justice
- Reforming the accused.

If these can be achieved in another way, the penal process cannot be undertaken. These other ways are:

1) Removing certain diocesan pastoral faculties,  
e.g. confessions (C.974.1), preaching (C. 764) , officiating at marriages (C.1111)  
Attaching a specific penalty to an order (C.1319)

2)

.3) 4) 5) 6)

A warning (C.1339.1)

A reprimand (C.1339.2) Imposing a penance (C.1340) Fraternal correction (C.1341)

2.

*The Administrative Non.Penal Way* These include:

1)

dispensation from celibacy and return to the lay state (CC.290 - 293)

prevention from exercise of Orders (CC.1 041.1, 1044.2.2)

2)

The Bishop must:

- consult experts in the field
- consult two qualified advisers (C.1718.3)
- listen to the accused cleric
- give the decree in writing (cf. C.55)
- allow the right of appeal (CC.1732 - 1739)
- rescind the decree if it is judged the cleric has been fully rehabilitated.

3.

*Administrative Penal Action*

It is to be noted that the law prefers the judicial process in penal cases (cf. C.1342.1). If dismissal from the clerical state is the desired result, the judicial process must be followed (cf.C.1342.2)

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The following is a summary of the process:

1) The Ordinary issues a decree initiating the process (C.1342, 1718)

He informs the cleric of the accusation and the evidence against him.

The cleric has a right to a lawyer.

The Ordinary consults two qualified advisers

He issues a decree imposing either a censure (CC.1331 - 1333) or a temporary expiatory penalty (C.1331)

He gives the cleric the right to appeal.



3) 4) 5)

6)

4.

### ***The Judicial Penal Process***

The following are some relevant canons: G.1598.1: the right to be heard

C.1728: Canons on trials in general (e.g. CC.1531, 1728.2)

C.1718: the decree of the Ordinary

CC.1501 - 1505: Presentation of the case

C. 1505: C.1723: C.1722:

Accepting the case Calling the accused Administrative leave

CC.1513 - 1516: Questions to be answered ("The Joinder of the Issues")

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.1437: Appointment of a Notary

C.1628: Gathering and presenting proofs

CC.1517 -1597: Discussing the case' . CC 1607 – 1618: The Decision

CC.1650 – 1651: Carrying out the sentence CC.1717, 1353, 1644.1: The appeal

CC. 1620 & 1622: A complaint of nullity

C. 1645: Total reinstatement.

5.

### ***Appeal to the Holy See***

The Bishop may appeal to the Holy See for dismissal of a priest from the clerical state if the priest himself is not willing to apply in accordance with CC.290 - 293. The appeal is made through the Papal Representative to the Prefect of the Congregation for the Evangelisation of Peoples.

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~APPENDIX II

**THE CANONICAL OPTIONS AVAILABLE TO RELIGIOUS SUPERIORS**

The relevant canons on sexual misconduct by a religious are:

Canon 695 - §1. A member must be dismissed for the offences mentioned in C. 1397, 1398 and 1395, unless, for the offences mentioned in C.1395 §2, the Superior judges that dismissal is not absolutely necessary, and that sufficient provision can be made in some other way for the amendment of the member, the restoration of justice and the reparation of scandal.

C.1395 §1 speaks of a cleric living in concubinage and a cleric who continues in some other external sin against the sixth commandment of the Decalogue which causes scandal. Such a religious is to be dismissed.

C. 1395 §2 speaks of a cleric who has offended in other ways against the sixth commandment of the Decalogue, if the offence was committed by force, or by threats, or in public, or with a minor under the age of sixteen years.<sup>1</sup> The Superior may decide that, in such a case, dismissal is not absolutely necessary, and make provision for the amendment of the member, the restoration of justice and the reparation of scandal.

C.695 §2. In these cases the major Superior is to collect the proofs concerning the facts and the imputability of the offence. The accusation and the proofs are then to be presented to the member, who shall be given the opportunity for defense. All the

Now changed to eighteen years. Cf. Appendix III

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acts, signed by the major Superior and a notary, are to be forwarded, together with the written and signed replies of the member, to the supreme Moderator.

C.696 §1. A member can be dismissed for other causes, provided they are grave, external, imputable and juridically proven. Among such causes are: habitual neglect of the obligations of consecrated life; repeated violation of the sacred bonds; obstinate disobedience to the lawful orders of Superiors in grave matters; grave scandal arising from the culpable behaviour of the member; other reasons of similar gravity which are perhaps defined in the institute's own law.

C.696 §2. A member in temporary vows can be dismissed even for less grave reasons determined in the institute's own law.

Repeated sexual misconduct, grave, external, imputable and juridically proven, certainly falls under C.696.

C. 697 deals with the process to be followed regarding C.696 and dismissal of a member.

C.698 - with regard to CC.695 and 696 - grants the right to the member to communicate with, and send replies directly to the supreme Moderator.

In any complaint of non-consensual sexual activity or complaint or rumour of consensual sexual activity, the Religious Superior can either make use of the SACBC's structures OR he/she may investigate the complaint personally or through one personally appointed by him/her OR he/she may establish his/her own committee. However, in the interests of justice, equity and transparency, it would seem wise to

follow the Protocol (ct. Footnote 3 on page 9; also cf. 6.4).

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Canon 703 must be noted here since it could be of practical value:

In a case of a grave external scandal, or of extremely grave and imminent harm to the institute, a member can be expelled forthwith from the house by the major Superior. If there is a danger in delay, this can be done by the local Superior with the consent of his or her council. The major Superior, if need be, is to introduce a process of dismissal in accordance with the norms of law, or refer the matter to the Holy See.

After such a complaint has been investigated and the facts established, the steps outlined in 5.9 (particularly 5.9.3 and 5.9.4) and 6.5 are to be followed.

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## APPENDIX III PRESCRIPTION IN CIVIL AND CANON LAW 2

1.

### *In Civil Law*

#### The Right of the State to Action

In South African law, the right of the state to institute action against an offender is limited by time:

1) The right to start a criminal action lapses after a period of twenty years from the time the alleged crime was committed.

2)

Civil action for damages may not be instituted if three years have elapsed after the date of the action. In the case of an offense against a minor, prescription is completed three years after majority is attained.

2.

### *In Canon Law*

Canon 197 defines prescription as a means of acquiring or losing a subjective right or as a means of freeing oneself from an obligation.

Canon 1362 says that criminal action may not be brought after three years. There are three exceptions to this general rule:

1) an offence reserved to the Congregation for the Doctrine of the Faith may be initiated any time

cf. Dossier on Child Sexual Abuse, pp.39-44

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2)

after the offence

the time of prescription is increased to five years  
for certain offences:

i)

attempted marriage by a cleric or religious in perpetual vows (C .1394)  
serious sexual offences by a cleric (C.1395)

ii)

murder, abduction, imprisonment, mutilation (C.1397)

iv) actual procurement of abortion (C.1398)

An offence not punished by the universal law and a particular law has prescribed a particular period of prescription.

The sexual offences of canon 1395 include an offence "with a minor under the age of 16". No criminal action can be brought after five years. Following canon 203.1, if it involved a single action, the prescription time begins the day after the offence was committed. If the offence is continued for some time, prescription begins on the day after it ceased.

It is to be kept in mind that the law of prescription does not apply to the offences reserved by C.1362.1.1 reserved to the Congregation for the Doctrine of the Faith. The Congregation may be willing to admit cases after the normal prescription time has lapsed.

In its letter of May 2001, the Congregation for the Doctrine of the Faith made a significant change to Canon 1395:

iii)

3)

the age of a minor for this offence is changed from 16 to 18.

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The same letter changes canon 1362§ 1.2°: the prescription time is now ten years. This in effect means:

- the age of a minor for the crime of 1395.2 is now  
18 years

-the time of prescription is ten years

so no criminal action may be taken against a priest offender if the victim has completed his/her 28th year.

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The Code speaks of "minors" rather than of children. Canon 97§1 says "a person who has completed the eighteenth year of age has reached majority; below that age, a person is a minor". A cleric who commits an offence against the sixth commandment with a minor is to be punished with a just penalty, even dismissed from the clerical state, but in this case the minor must be "under the age of sixteen". An offence with one over the age of sixteen would still be a grave evil but would not be punishable in terms of canon 1395§2. In May 2001, the Holy See changed the age for a crime of C.1395.2 from sixteen years to eighteen.<sup>3</sup>

Just as the Code modified the definition of minors when dealing with offences,<sup>4</sup> so the law of South Africa modifies the definition of a child when speaking of certain statutory<sup>5</sup> sexual offences.

<sup>3</sup>cf. Canon 1395§2

<sup>5</sup>cf. Canons 97§ 1, 1395§2 and Appendix III

There exist offences at Common Law (such as Rape and Indecent Assault) which are not restricted by the ages referred to in the supplementary statutory penal provisions. In addition, Law sexual intercourse with a female of or under the age of 12 years constitutes the crime of Rape.

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(1 )

Any male person who

(1) has or attempts to have unlawful carnal intercourse with a girl under the age of 16 years; or commits or attempts to commit with such a girl or with a boy under the age of 19 years an immoral or indecent act; or solicits or entices such a girl or boy to the commission of an immoral or indecent act,

(2)

(3)

shall be guilty of an offence.

(1 ) (2)

Any female who

(1) has or attempts to have unlawful carnal intercourse with a boy under the age of 16 years; or commits or attempts to commit with such a boy or with a girl under the age of 19 years an immoral or indecent act; or solicits or entices a boy or girl to the commission of an immoral or indecent act, shall be guilty of an offence" <sup>6</sup>

(2)

(3)

6Statutes of the Republic of South Africa, *Sexual Offences Act* 23 of 1957, Section 14. This Act was revised by the Immorality Amendment Act 2 of 1988, but the above remains unchanged.

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This in effect means that a priest who even attempts to have intercourse with a girl under sixteen, or who performs an indecent act with a girl under sixteen or a boy under nineteen or solicits or entices a girl under sixteen or a boy under nineteen to perform such an act has committed an offence.

Section 22 of the same Act provides for a maximum penalty of "imprisonment for a period not exceeding six years with or without a fine not exceeding R 12 000 in addition to such imprisonment. 7

7Ibid