



Southern African Catholic
Bishops' Conference

PROTOCOL FOR THE
PRELIMINARY INVESTIGATION
OF COMPLAINTS AGAINST
CLERICS AND RELIGIOUS
IN REGARD TO
CANONICAL OFFENCES
(other than Sexual Abuse of Minors)

SACBC PROFESSIONAL CONDUCT COMMITTEE

January 2013

Please send your comments, suggestions and criticisms to the
Chairperson of the SACBC National Professional Conduct Committee care of
Khanya House, 399 Paul Kruger Street, Pretoria, Gauteng 0002, South Africa
or P O Box 941, Pretoria, Gauteng 0001, South Africa
Tel: 012 323 6458. Fax: 012 326 6218. E-mail: sacbclub@wn.apc.org

History of this document

- Version 2: January 2013
Revised edition of the *Protocol for Church Personnel in regard to Sexual Misconduct between Adults* which becomes a *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*
- Version 1: August 2002
Protocol for Church Personnel in regard to Sexual Misconduct between Adults

TABLE OF CONTENTS

	Page
Preface	vi
Part I NATURE AND AMBIT OF APPLICATION OF THIS PROTOCOL	1
1. NATURE OF THIS PROTOCOL	1
2. AMBIT OF APPLICATION OF THIS PROTOCOL	1
Part II COMPETENT CHURCH AUTHORITY, AUXILIARY BODIES AND OFFICIALS	3
3. COMPETENT CHURCH AUTHORITY	3
4. AUXILIARY BODIES AND OFFICIALS: THE PROFESSIONAL CONDUCT COMMITTEES, CONTACT PERSONS, INVESTIGATORS AND SUPPORT PERSONS	4
4.1 At Conference Level: SACBC Professional Conduct Committee	4
4.1.1 Membership of the SACBC Committee	4
4.1.2 Functions of the Committee	5
4.2 At Ecclesiastical Province Level: Provincial Professional Conduct Committee	5
4.2.1 Membership of the Provincial Committee	6
4.2.2 Functions of the Committee	6
4.3 At Other Levels	6
4.4 A Single PCC in Each Jurisdiction	6
4.5 Appointment of the PCC Members	7
4.6 Contact Persons	7
4.7 Specific Duties of Officials	7
Part III VALUES TO BE PROMOTED IN THE PRELIMINARY INVESTIGATION AND GUIDING PRINCIPLES	10
Part IV PRELIMINARY INVESTIGATION	12
10. MAKING AND RECEIVING A COMPLAINT	12
11. ACTION BY THE CONTACT PERSON	13
12. INITIAL ACTION BY THE BISHOPS' DELEGATE AND THE PCC	14
13. INFORMING ALL PARTIES INVOLVED AND TEMPORARY WITHDRAWAL FROM ACTIVE MINISTRY	15
14. ACTION BY THE INVESTIGATORS	16
15. PROCEDURES FOLLOWING THE SUBMISSION OF THE INVESTIGATORS' REPORT	18
15.1 Action by the Bishops' Delegate and the PCC	18
15.2 Action by the Church authority	18
15.3 Further Action by the Bishops' Delegate	19
Part V PASTORAL RESPONSE AND CARE	20
16. IN RESPECT OF THE VICTIM	20
17. IN RESPECT OF THE RESPONDENT	20
18. IN RESPECT OF OTHERS AFFECTED	21
Part VI LEGAL RECOURSE	22
19. RECOURSE AGAINST THE DECISIONS MADE BY THE CHURCH AUTHORITY	22
19.1. The Church authority decides not to investigate complaints received	22
19.2 The Church authority does not make any decision after receiving the reports and conclusions of a preliminary investigation	22
19.3 The Church authority decides to open a preliminary investigation	23
19.4 The investigation considers the complaint credible and a judicial or administrative process is instituted	23
Part VII PREVENTIVE STRATEGIES AND MEDIA RELATIONS	24
20. PREVENTIVE STRATEGIES	24
20.1. The best prevention is that the Church authority care for their priests and religious	24

20.2	Preliminary investigations and processes for the imposition of penalties as pastoral means and deterrents	24
20.3	Testimonial of suitability for ministry	25
20.4	Screening and Formation Preventive Strategies	25
21.	AWARENESS	26
22.	MEDIA RELATIONS	26
APPENDIX I	OVERVIEW OF CANONICAL OFFENCES WHICH CAN BE COMMITTED BY PRIESTS	28
	I. NORMS ABOUT OFFENCES	28
	II. OBLIGATIONS OF PRIESTS	30
APPENDIX II	CANONICAL OFFENCES AGAINST THE 6TH COMMANDMENT	32
	I. SPECIAL OBLIGATIONS	32
	II. THE OFFENCES AGAINST THE 6TH COMMANDMENT IN THE CODE OF CANON LAW	32
APPENDIX III	SOME COMMENTS ON CANON 1717	34
	I. CREDIBLE ALLEGATIONS	34
	II. OBJECT OF THE INVESTIGATION	35
	III. THE INVESTIGATORS' TASKS	36
	DEFINITIONS AND RELEVANT TERMINOLOGY	37

PREFACE

1. In canon law, as in the secular legislative systems, the need is felt for norms whose purpose is to define more precisely the manner of applying a law, or which urge the observance of laws (see Code of Canon Law, canons 31-34). These norms cannot derogate from the law: were they to include provisions which are contrary to the law they would have no force.

In January 1999 the SACBC approved a *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors*. In August 2002 it approved a *Protocol for Church Personnel in regard to Sexual Misconduct between Adults*. The purpose of these Protocols is to determine the way of carrying out the preliminary investigation of allegations against clerics and religious regarding canonical offences to which the Code of Canon Law dedicates only three canons (1717-1719).

While the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors* has had three further editions with amendments in January 2004, July 2007 and December 2010, the *Protocol for Church Personnel in regard to Sexual Misconduct between Adults* has not had other editions. However the need to update it has been felt for a number of years now. Finally it has been possible to do so.

2. This new edition broadens the scope of the *Protocol for Church Personnel in regard to Sexual Misconduct between Adults* making it applicable to the investigation of complaints against clerics and religious in regard to any canonical offence except those of sexual abuse of minors, hence its new title.

A simple glance at the section of the Code of Canon Law dealing with penal canon law is enough to realise that sins against the sixth commandment do not exhaust the field of canonical offences. From the parish priest who does not establish a finance committee in his parish to the parish priest who does not fulfil the norms laid down by his Bishop about the election of members of the parish pastoral council, from the parish priest who refuses to leave a parish when transferred to a new one to the priest who is absent from his parish without the Bishop's permission, there is a wide variety of possible offences. They may need to be investigated a Protocol should regulate the investigation.

At the same time the changes introduced take into account the experience acquired by the Professional Conduct Committees since the publication of the first Protocols, and incorporate some improvements made in the last editions of the Protocol on Abuse while maintaining texts and norms from the *Protocol for Church Personnel in regard to Sexual Misconduct between Adults* which keep their validity.

3. The broadening of the scope of this Protocol to all canonical offences makes it necessary to determine the competence of the Professional Conduct Committees to deal with different type of offences. The circumstances of the ecclesiastical jurisdictions and institutes of consecrated life in the SACBC territory make it practically impossible to think of establishing more than one Professional Conduct Committee in each jurisdiction. Consequently this

Protocol rules that the same Committee will have competence to deal with the preliminary investigation of any canonical offence (see 4.4).

4. As already done in the 2007 and 2010 versions of the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors*, this new version of the 2002 *Protocol for Church Personnel in regard to Sexual Misconduct between Adults* (now called *Protocol for the Preliminary Investigation of Complaints against Clerics and Religious in regard to any Canonical Offence Other Than Sexual Abuse of Minors*) treats the preliminary investigation as the Code of Canon Law does: as an investigation about the facts and circumstances, and about the imputability of the alleged offence, which leads to determine whether there is a strong probability that an offence was committed or not, and therefore whether there is a strongly probable case for the Respondent to answer.

The findings of the investigators are not evidence with a proper judicial character. For them to have a probative value and be used in the sentence, if the preliminary investigation is followed by a judicial process, they will have to be submitted to the judge and weighed by him after hearing the complainant(s), the victim - if there is one - and the accused.

5. The 2002 *Protocol for Church Personnel in regard to Sexual Misconduct between Adults* has been less frequently applied in the SACBC territory than the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors*. This probably does not mean that there are no offenses or very few committed by priests and religious in areas other than sexual abuse of minors. It may mean rather that the prescription of canon 1717 about opening a preliminary investigation whenever the Church authority receives information, which has at least the semblance of truth about an offence, is not always fulfilled.

This edition of the Protocol tries to emphasise that preliminary investigations and processes for the imposition of penalties are pastoral means and they operate as prevention in the sense of deterrents. Penalties, besides helping to reform the offender through their medicinal character, deter others from committing offences. Conversely, the impunity of wrongdoers may lead others to similar misbehaviour.

Fraternal correction or reproof when the first symptoms of an unbecoming behaviour appear will in many instances suffice to avoid the perpetration of canonical offences. The Protocol includes an Appendix with an overview of obligations of priests which along with the instances of unethical or unprofessional behaviours listed in *Integrity in Ministry* (SACBC 2001) can help the Church authority to be alert regarding behaviours that may need their intervention.

6. The Protocol underlines as well that the best prevention against canonical offences is that the Church authorities care for their priests and religious: helping them by being accessible to listen to them, and being solicitous for their spiritual, intellectual and material welfare. It is quite clear that the more intent Church authorities are on doing this the better will they prevent offences (see 3.9.4; 3.9.5; 5.1; 9; 10.4 and Part VI, Preventive Strategies).
7. The experience of those working in the Professional Conduct Committees shows that, apart from the cases in which a preliminary investigation is not opened when it should be (cf. no. 5 above), sometimes the Church authority

does not act on the conclusions and recommendations of the investigators and the PCC once the investigation is concluded. This edition of the Protocol tries to make clear the possibilities existing in canon law for all parties involved in the preliminary investigation (victims, complainants, respondents, PCC's) to get the Church authority to make a decision. The Protocol also deals with the possible recourses against decisions seen by any party as not in keeping with the prescriptions of the law (see Part V, Legal Recourse).

8. The criterion adopted in the 2007 version of the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors* (see Preface to the 2007 Edition, paragraph 4) about the ambit of application is kept in this new version. The Protocol applies to the preliminary investigation of alleged canonical offences committed by priests, deacons, seminarians, religious and novices. It does not apply to alleged offences committed by the lay faithful although they may work in chanceries, parishes, seminaries, religious houses, novitiates, Catholic schools or other Church bodies. If the alleged offences of these lay faithful correspond to actions typified as crimes in the laws of the land, the victim or other affected parties should lay charges at a Police station (see 2.1 and 2.2).
9. As the Protocol contains norms for the application of canon 1717, it has seemed advisable to include the text of this canon and a brief commentary on its different parts: credible allegations; object of the investigation (facts constitutive of a canonical offence, their circumstances and imputability); the investigators' tasks (see Appendix III).

PROTOCOL

PART I

NATURE AND AMBIT OF APPLICATION OF THIS PROTOCOL

1. NATURE OF THIS PROTOCOL

- 1.1 The norms of this Protocol define more precisely the manner of applying the provisions of canons 1717-1719 of the Code of Canon Law about the preliminary investigation of offences allegedly committed by clerics or religious.
- 1.2 This Protocol does not intend to and cannot derogate from the universal law; rather it urges its observance. In this regard, Ordinaries, major Superiors of lay institutes of consecrated life and Bishops' Delegates should take into account the canons of the Code of Canon Law applicable to the preliminary investigation, among others and in addition to those mentioned in 1.1 above:
 - a) Canons 1321-1330 on the imputability of offences, attenuating, aggravating and excusing circumstances.
 - b) Canon 1341 regarding the criteria to be born in mind by the Church authority when closing a preliminary investigation.
 - c) Canons 1362-1363 about prescription (statute of limitations).
 - d) Canons 1364-1339 about canonical offences.
 - e) Since the investigators have the same powers and obligations as an auditor in a process, canon 1428 on the role of auditors as instructors in a court case and canon 1561 on the auditors as interviewers of witnesses.
 - f) Canon 57 on administrative silence and 1732-1739 on hierarchical recourse against administrative decrees.

2. AMBIT OF APPLICATION

- 2.1 This Protocol applies to the preliminary investigation of alleged canonical offences committed by priests, deacons, seminarians, religious and novices in the territory of the Southern African Catholic Bishops Conference.
- 2.2 The Protocol does not apply to alleged offences committed by the lay faithful although they may work in chanceries, parishes, seminaries, religious houses, novitiates, Catholic schools or other Church bodies. If the alleged offences of these lay faithful correspond to actions typified as crimes in the laws of the land, the victim or other affected parties should lay charges at a Police station.
- 2.3 When the above mentioned offences of lay faithful may deserve a canonical penalty, the matter should be brought to the attention of the diocesan Ordinary. He may decide to open a preliminary investigation as per canon 1717 and this Protocol, after the respondent has been convicted in a criminal or civil court.

- 2.4 This Protocol applies to the preliminary investigation of any canonical offence allegedly committed by the persons mentioned in 2.1 above except those related to sexual abuse of minors. Canonical offences are those typified in Book VI of the Code Canon Law (Sanctions in the Church), Part II (Penalties for Particular Offences) and in other laws outside the Code.

PART II

COMPETENT CHURCH AUTHORITY, AUXILIARY BODIES AND OFFICIALS

3. COMPETENT CHURCH AUTHORITY

- 3.1 The Church authority responsible for the preliminary investigation is:
 - 3.1.2 The diocesan Bishop for allegations against priests incardinated in the diocese or working there on a contract.
 - 3.1.3 The major Superior for priests, brothers, sisters or novices of an institute of consecrated life.
 - 3.1.4 Regarding seminarians, the diocesan bishop in the case of a diocesan seminary or the bishop who sent the seminarian to the inter-diocesan seminary.
 - 3.1.5 When the expression Church authority is used in this Protocol, it should be understood as referring to one of the authorities listed in the above paragraphs. It is to be noted that the term Ordinary can be applied to both Bishops and major Superiors of clerical institutes of consecrated life but not to major Superiors of lay institutes of consecrated life.
- 3.2 Each Ordinary possesses legislative, executive and judicial power (see canon 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. This second possibility is an instance of delegation of executive power.
- 3.3 The Bishops of Southern Africa decided in 2002 to establish Professional Conduct Committees in the different ecclesiastical provinces of the Conference's territory as auxiliary bodies to carry out the preliminary investigation. Each provincial Committee serves the metropolitan see and the suffragan dioceses of the province unless some of them decide to establish their own Committee.
- 3.4 This decision meant that, by adopting the Protocol, bishops opted by the second possibility in canon 1717: doing the preliminary investigation "through another."
- 3.5 Religious Ordinaries and major Superiors of lay institutes of consecrated life are exhorted to adopt the Protocol and make use of the Professional Conduct Committees of each province unless their institute has its own Protocol and Committee.
- 3.6 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.
- 3.7 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.
- 3.8 Although in accord with the universal law (canon 1717) and with this Protocol the Church authority delegates the preliminary investigation to

the Professional Conduct Committee, the responsibility for the whole procedure and for the final decision referred to in canon 1718 belongs, in the first place, to the Church authority. The Professional Conduct Committees are consultative bodies and cannot substitute for the discernment and power of governance of individual church authorities (see Congregation for the Doctrine of the Faith, Guidelines in Cases of Sexual Abuse, 16 May 2011, II § 3 and III § f which refers to sexual abuse but is valid for the investigation of any canonical offence).

3.9 The purpose of delegating the preliminary investigation is that it may be done in an ordered and objective way thus ensuring:

3.9.1 That the Church authority distances himself/herself from the preliminary investigation so that, when he/she is presented with the conclusions and makes a decision, there is not even the perception of bias. This "distance" must be balanced with the need for pastoral care of both Respondent and alleged victim.

3.9.2 That the conclusions and recommendations of the investigation being presented to the Church authority as the work of a collegial body there may be greater guarantee of objectivity.

3.9.3 That the expertise of different specialists is at the disposal of the investigation.

3.9.4 That all allegations or reports of sexual misconduct are investigated and that there is no cover-up.

3.9.5 That the same procedure is used for all cases, thus minimising the danger of personal bias or prejudice on the part of the Church authority and freeing it from local pressures and friendships.

4. AUXILIARY BODIES AND OFFICIALS: THE PROFESSIONAL CONDUCT COMMITTEES, CONTACT PERSONS, INVESTIGATORS AND SUPPORT PERSONS

Provision is made for committees at three levels, namely at the level of the Southern African Catholic Bishops' Conference ('SACBC' or 'the Conference'), the Metropolitan ('Archdiocesan') level, and at Diocesan level. Where resources at Diocesan level do not allow for a separate Committee, the Bishop of the Diocese will seek the collaboration of the relevant Metropolitan Committee.

4.1 At Conference Level: SACBC Professional Conduct Committee

There shall be established by the SACBC, an SACBC Professional Conduct Committee ('SACBC PCC').

4.1.1 Membership

1. The following shall be represented, the:

- 1.1. Bishops' Conference, represented by a Bishop and a Chairperson nominated by the Conference;
- 1.2. Southern African Council of Priests (SACOP); one member;
- 1.3. Leadership Conference of Consecrated Life (LCCL (SA)); two members, one male, one female;
- 1.4. Seminaries: one member;
- 1.5. Religious houses of formation; one member, nominated by (LCCL (SA));

- 1.6. Each of the five Provincial Professional Conduct Committees by its own Bishops' Delegate.
2. Ideally, professionals in the following disciplines will be appointed;
 - 2.1. Canon Law
 - 2.2. Civil Law
 - 2.3. Psychology/Counselling
 - 2.4. Moral Theology/Ethics
 - 2.5. Communication and Media.
3. A reasonable balance between male and female members shall be maintained. A quorum will be five members, which are to include either the Bishops' representative, or the Chairperson.
4. Other members may be co-opted when considered necessary or useful for a particular case.

4.1.2 Functions of the Committee

The functions of the Committee shall be to:

1. study on an on-going basis the literature, and developments at national and international level on structures to deal with the professional responsibility for Church personnel and preliminary investigation of allegations against priests and religious;
2. facilitate the appointment of delegates and the setting up of Provincial Committees;
3. organise meetings at national and provincial level for the ongoing education and training of delegates and Provincial and Diocesan Committees;
4. inform the relevant archbishop and the president of the SACBC if the provincial structures as in 4.2 below are not in place or are not functioning properly;
5. act as adviser to the Bishops' Conference in matters concerning professional standards;
6. maintain a confidential and updated statistical record of allegations investigated by Provincial or Diocesan Committees. Each case's documentation will only be kept by the corresponding Church authority;
7. perform whatever other relevant duties may be assigned to it by the Conference.

4.2. At Ecclesiastical Province Level: Provincial Professional Conduct Committee ('PPCC').

The Ecclesiastical Provinces of the SACBC shall each establish a Provincial Committee under the authority of an appointed Chairman who will be mandated as Bishops' Delegate (see Definitions) for each investigation unless there is a reason to mandate another.

4.2.1. Membership of the Provincial Committee

The Committee, as far as possible, should consist of the following members:

1. a Chairman who will be a priest appointed by the Bishops of the province as their Delegate
2. a canon lawyer
3. a civil lawyer
4. a social worker
5. a media spokesperson
6. a social/mental health professional
7. a diocesan priest
8. other members may be co-opted, if considered necessary or useful for a particular case.
9. A quorum will be five members, one of whom must be the Bishops' appointee (the Bishops' Delegate).

4.2.2. Functions of the Committee

The duties of the Provincial Committee under the chairmanship of the Bishops' appointee include the following:

1. acting as adviser to all Church bodies in the Province in matters concerning standards of professional conduct;
2. facilitating and assisting with an investigation of any misconduct as requested by any Ordinary of the Province;
3. managing contact with the media as requested by any Ordinary of the Province;
4. compiling a panel of investigators and legal experts, who will be available for consultation;
5. compiling a panel of personnel, and/or investigators and facilities that are available for counselling of complainants, counselling and therapy for victims and their families, and assessment and therapy for the respondent in those cases in which counselling or therapy may be needed;
6. acquiring the services of resource persons;
7. ensuring that names of Contact Persons (see Definitions) are effectively publicised in each diocese.

4.3. At Other Levels

4.3.1. Diocesan bishops may establish a Diocesan Professional Conduct Committee ('DPCC') permanently or ad hoc. Likewise major Superiors may establish a Professional Conduct Committee for a province of their institute or for the whole institute permanently or ad hoc.

4.3.2. Church authorities, in any event, are required to appoint Contact Persons and deputies to whom all allegations of misconduct must be reported.

4.4 A Single PCC in Each Jurisdiction

Given the difficulty involved in finding persons who can be appointed members of the Professional Conduct Committees, it is advisable that at the three levels mentioned above the Professional Conduct Committees

are endowed with competence over any type of offences allegedly committed by Church personnel. Therefore in the Bishops' Conference, in each province and in those dioceses which decide to establish a Professional Conduct Committee there will be only one of these Committees.

4.5 Appointment of the PCC Members

The members of the provincial or diocesan Professional Conduct Committees shall be appointed by the corresponding Archbishop or Bishop. Before appointing the Chairperson, the Archbishop will consult the Bishops of the suffragan dioceses since the Chairperson is the Delegate of all the Bishops in the province. It may be advisable that the Archbishop also hears his College of Consultors before making this appointment. A model decree can be found in the section of Documents of the *Vade-Mecum for Ordinaries and Personnel of PCC*.

4.6 Contact Persons

4.6.1 As said above (4.3.2), archdioceses, dioceses and institutes of consecrated life shall have Contact Persons and deputy Contact Persons to receive complaints. They may be members of the Professional Conduct Committee although not necessarily.

4.6.2 They should be appointed by decree of the corresponding Archbishop or Bishop and chosen among people with the skills needed for the important task they carry out (see 4.7.3 and 11). A model decree can be found in the section of Documents of the *Vade-Mecum for Ordinaries and Personnel of PCC*.

4.7 Specific Duties of Officials

4.7.1 The Bishops' Delegate shall:

1. Convene meetings of the Committee, prepare the agenda and send it to the Committee members.
2. Chair all meetings.
3. Fulfil the duties specified below (see 12) in the preliminary investigation of each case.
4. Liaise with the Church authority having regular meetings with him to discuss the progress of the cases being investigated and other pertinent matters. The Contact Person or other Committee member may also take part in these meetings. The Bishops' Delegate shall keep the Committee members informed about the matters dealt with.
5. Liaise with other Church bodies and professional bodies.
6. Be responsible for the safe-keeping of all relevant documentation.
7. Represent the Committee before the SACBC PCC and inform on the work of the Committee he chairs at the meetings of the SACBC PCC.

4.7.2 Vice-Delegate

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

4.7.3 Contact Persons

1. Contact Persons shall receive complaints and pass them on to the Church authority.
2. They should be skilled listeners, sensitive to the needs of complainants and victims, and be persons of tact, impartiality and sensitivity.
3. It is advantageous if they have medical or psychological training; but above all, they will be persons of good judgement.
4. A deputy Contact Person should be appointed to assist, and/or act, in the absence of the Contact Person.

4.7.4. Investigators

1. It is advisable to have a panel of investigators, with competence indifferent languages, and skills necessary to conduct interviews. They are appointed by the Church authority - or his Delegate - for specific cases from the panel compiled by the relevant Conduct Committee.
2. Investigators shall fulfil the duties specified below (see 14) in the preliminary investigation of each case.. Investigators will also consider any other relevant information.
3. The investigators are appointed in their professional capacity, and act independently of the authority appointing them.
4. The investigators, insofar as possible, shall be professional practitioners - attorneys, social workers, psychologists. It might be advantageous to appoint for each case a male and a female investigator.

4.7.5. Support Persons

1. The Support Person for the victim - in the offences where there is a victim - represents the needs of the victim to the Church authority and assists, where appropriate, with the care of the victim.
2. The Support Person for the respondent represents the needs of the respondent to the Church authority and assists where appropriate with the care of the respondent.
3. The relevant Support Person should be present each time the respondent or victim is interviewed.
4. The victim or respondent can choose to have a legal representative as Support Person or in addition to the Support Person.

4.7.6 The Family

In the offences where there is a victim, the traditional role of families in the settling of disputes should be kept in mind at all stages of the investigation. The Conduct Committee and the Church authority will

decide at what stage and in what way the families of the respondent and the victim should be involved.

PART III

VALUES TO BE PROMOTED IN THE PRELIMINARY INVESTIGATION AND GUIDING PRINCIPLES

5. The Church authority and its Delegates are obliged:
 - 5.1 To ensure that all allegations or reports of alleged offences are investigated and that there is no cover-up.
 - 5.2 To carefully observe the applicable canonical and civil norms.
 - 5.3 To respect and protect the rights of all parties involved including those of the accused, possible victims and the community.
 - 5.4 To open the preliminary investigation and take the successive steps expeditiously aware that justice delayed is justice denied.
 - 5.5 To act with justice, mercy and charity.
 - 5.6 To show pastoral solicitude for all concerned, whether they be complainant, victim, consenting parties, the accused or the wider Church community.
6. Care is to be taken that the preliminary investigation does not call into question anyone's good name, (canon 1717 § 2) whether complainant, victim or respondent, and their right to privacy. In order to ensure this:
 - 6.1 In all matters relating to any conversations and documents and the preliminary and further investigations required under this Protocol, professional confidentiality is to be observed.
 - 6.2. An oath of confidentiality should be made annually by members of Committees and ad hoc by investigators.
 - 6.3. The Church authority and PCC members shall explain whenever necessary that this confidentiality is of the same nature as that required from many professionals (attorneys, judges, prosecutors, doctors...) regarding what they get to know through their work, and does not have anything to do with a secretive manner of handling allegations on the part of the Church.
 - 6.4 This should be accompanied by the diligence of the Church authority to issue public statements when in some cases allegations reach the media. These statements shall rectify possible distortions and inform that a preliminary investigation in accord with Church law will take place or has already begun.
 - 6.5 All clerics and religious should be exhorted by the competent Church authority to safeguard the reputations of those involved in a complaint, including the complainant, victim and the respondent.

7. As regard the respondent:
 - 7.1 His fundamental right to defence will be respected. Therefore unless the Church authority, after hearing the Professional Conduct Committee, thinks that in some case there are serious contrary reasons, the respondent should be informed of the accusation which has been made, and given the opportunity to respond to it. The prudence of the Church authority will determine what information will be communicated to the accused in the course of the preliminary investigation (see Congregation for the Doctrine of the Faith, Guidelines in Cases of Sexual Abuse, 16 May 2011, II § 8 and III § e which refers to sexual abuse but is valid for the investigation of any canonical offence).
 - 7.2 If the Church authority thinks that there are reasons to limit the information to be given to the respondent about the allegations, the respondent should be advised that, if at the conclusion of the preliminary investigation the allegations are not discarded as groundless and a judicial or administrative process is opened, he/she will have full access to all the accusations and proofs and the possibility to refute them. Furthermore, the respondent is to be reminded that in the secular sphere the accused do not have access to all the information gathered by public prosecutors until and if a judicial process is instituted.
 - 7.3 Respondents, complainants and witnesses are to be reminded that a person is presumed innocent until proven guilty. In keeping with this no statements should be made to complainants, victims or any other person implying that:
 - 7.3.1 the accusation is true or not;
 - 4.4.2 there is any liability for damages; or
 - 4.4.3 a particular course of action will follow an investigation.
 - 7.4 At the conclusion of the preliminary investigation, the Church authority shall take whatever steps are necessary to restore the respondent's good name if the investigation showed that the accusations were groundless.
8. As regard civil authorities:
 - 8.1 If the Police are investigating the case or a judicial process has been instituted in a criminal or civil court against the respondent, nothing shall be done that could obstruct or influence those proceedings. Normally the Church authority will postpone the opening of the canonical preliminary investigation until the investigation or court case of the civil authorities is concluded.
 - 8.2 Regardless of the result of the police investigation or the ruling of the court case, the Church retains her right to open a preliminary investigation in accord to canon 1717 and this Protocol.
9. Canon 1341 lays down the principles that should guide the action of the Church authority in the face of offences: to repair scandal, restore justice and reform the offender. They should be kept in mind in throughout the preliminary investigation and especially when making the decision foreseen in canon 1718.

PART IV

PRELIMINARY INVESTIGATION

10. MAKING AND RECEIVING A COMPLAINT

10.1 Depending on the different type of offences there may be a victim or not. For instance, there will be a victim in the case of sexual misconduct between adults which involves abuse of power on the part of a priest or lack of responsibility in looking after the financial needs of the offspring in the case of concubinage. There may not be anyone who can be considered as a victim or it could be the entire parish community as in the case of mismanagement of parish funds or absenteeism from the parish.

10.2 Any person who becomes aware of what seems to be a canonical offence committed by Church personnel should report it immediately to the Contact Person or to any Church official unless it has been known through sacramental confession or a conversation of spiritual guidance. Not doing so would entail lack of charity towards the Church, which suffers harm as a consequence of these offences, and towards the respondent who needs to be corrected if he/she has really committed an offence.

10.3 Complaints may be made to the following:

1. The Contact Person or the deputy Contact Person.
2. The Church authority.
3. Any other person, who will report it to the Contact Person or the Church authority.

10.4 Frequently complaints are made in letters addressed to the Church authority:

10.4.1 The latter will expeditiously forward a copy to the Contact Person and the Bishops' Delegate.

10.4.2 The Church authority shall acknowledge receipt of the complaint and inform the complainant that his/her complaint is being passed on to the Contact Person or deputy who will contact him/her with a view to having the complaint investigated. This should be done without delay: within 24 hours if possible.

10.5 Particular action is called for in the following special cases:

10.5.1 If the Contact Person is the respondent, the case will be referred directly to the Bishops' Delegate.

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

- 10.5.3 If a Bishop is the respondent, the President of the SACBC will immediately be informed. He will report the complaint to the Congregation for the Evangelisation of Peoples through the Apostolic Nuncio.
- 10.5.4 If the respondent is a religious major Superior (provincial, etc.), the Bishop of the diocese where that Superior resides will be informed. The bishop will forward the complaint to the supreme moderator of the religious institute.
- 10.5.5 If the respondent is a lay employee of a Church institution or organisation, the complainant is to be advised that the matter should be referred to the criminal or civil authorities (cf. 2.2 above). If the offence may deserve a canonical penalty, it should be brought to the Contact Person for the matter to be investigated after the civil or criminal proceedings conclude in a secular court of justice (cf. 2.3 above).
- 10.5.6 Complaints emanating from the media should be noted and the complainant contacted to verify the existence of a complaint and informed that the complaint will be attended to. The matter will be referred immediately to the Contact Person.
- 10.5.7 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 Bishops' Delegate.
- 10.5.8 The Contact Person and the competent Church authority will decide on what to do about an anonymous complaint.
- 10.5.9 Where the first information of a complaint arises from criminal proceedings (such as an arrest or court appearance of a potential respondent), an investigation in terms of this Protocol must be held in abeyance pending the decision of a court of law (where a prosecution is instituted), or the decision of the prosecuting authority not to institute a prosecution, as the case may be (cf. 8.1).
- 10.5.10 The decision to institute a prosecution, or any verdict of a court of law pursuant to a trial, does not preclude a subsequent investigation in terms of this Protocol (see 8.2).

11. ACTION BY THE CONTACT PERSON

- 11.1 The Contact Person will interview the complainant. This will be done without delay, within twenty-four hours if possible. He or she will prepare a written record of this interview which is to be signed by the complainant and the Contact Person. It is advisable to use the form included in the section of documents of *Vade-Mecum for Ordinaries and Personnel of PCC* for the Contact Person's reports: having this form at sight during the interview will help the Contact Person not to omit questions which the complainant should be asked.
- 11.2 If there is a victim and the complainant is not the alleged victim, the Contact Person will also interview the victim after discerning the appropriateness of such an interview. A written record is to be made,

signed by the victim and the Contact Person, in the form mentioned in 11.2.

- 11.3 All complaints must be received with respect, understanding and, when the complainant is the alleged victim or someone who feels especially affected by the situation reported, with compassion.
- 11.4 The precautions mentioned in 7.3 derived from the presumption of innocence of the respondent until proven guilty are to be observed by the Contact Person in the interviews he/she conducts.
- 11.5 For the same reason, in all discussions with the complainant or the victim, it should be made clear that, if the respondent is temporarily withdrawn from active ministry, this does not imply any presumption of guilt on behalf of the Church authority or admission of guilt on behalf of the respondent.
- 11.6 Having interviewed the complainant, and/or the victim (as the case may be), the Contact and deputy Contact Persons, if possible, will meet to discuss the complaint. The Contact Person will then submit to the relevant Church authority and to the Delegate a copy of the above interviews and, if he/she would like to make any comments or recommendations for further action, shall attach a note with them.
- 11.7 The Contact Person shall keep a register of all the conversations he/she has with complainants, the reports he/she writes on these conversations and his/her comments or recommendations, if there are any. This register will be a numbered list of the interviews including the dates, names of the complainants and respondents, and dates when the interviews were forwarded to the Church authority and the Bishops' Delegate. The Contact Person can write the number entered in the register on the copies she keeps of the interviews.

12. INITIAL ACTION BY THE BISHOPS' DELEGATE AND THE PCC

- 12.1 The Contact Person will discuss his/her report with the Bishops' Delegate. They will consider whether the complaint appears to be valid, frivolous or malicious, whether an investigation is required, or would be superfluous, and the Bishops' Delegate shall advise the Church authority accordingly.
- 12.2 If the Church authority decides that a preliminary investigation is required, he will by decree mandate the Bishops' Delegate to institute a preliminary investigation and to appoint two investigators and an alternate investigator from the listed panel to conduct the investigation. The Bishops' Delegate will inform the PCC within 48 hours of the mandate being given.
- 12.3 Mindful that the preliminary investigation is a difficult and trying time for all concerned, particularly the victim and the respondent, the Bishops' Delegate shall seek to ensure that the principles and values laid down in Part III of this Protocol (see 5-9) are observed and that all parties adhere to them. Specifically the Bishops' Delegate is to:
 - 12.3.1 Ensure that copies of the decree mentioned above are put in possession of the Provincial or Diocesan Professional Conduct Committee, of the complainant and the respondent.

- 12.3.2 Ensure that the investigation is undertaken as quickly as possible, is carried out without unreasonable delay and is as transparent as possible for all concerned.
- 12.3.3 Ensure that the preliminary investigation does not call into question anyone's good name.
- 12.3.4 Advise the Ordinary to consider, in consultation with the PCC and the SACBC Communications Officer, whether it is opportune to make a public statement when the allegations have been echoed by the media.
- 12.3.5 Ensure that appropriate pastoral care as well as counselling or therapy, if needed, is offered to the complainant, to the respondent, and to the other faithful who may be directly affected by the allegations.
- 12.3.6 After hearing the opinion of the PCC, advise the Church authority to consider whether it would be advisable to temporarily withdraw the respondent from active ministry (cf. *Protocol on Sexual Abuse of Minors*, Appendix 1). This precautionary measure, which is frequently adopted (although not always) when there are allegations of sexual abuse of minors, may be advisable sometimes in the case of other alleged offences as well.

13. INFORMING ALL PARTIES INVOLVED AND TEMPORARY WITHDRAWAL FROM ACTIVE MINISTRY

- 13.1. As soon as the Church authority issues a decree opening a preliminary investigation, he/she shall inform the respondent within 48 hours that a complaint has been made against him/her, and will send him/her a copy of the decree opening a preliminary investigation.
- 13.2 The Church authority shall inform also the complainant(s) and the victim, if there is one, and send copies of the decree to them.
- 13.3 All parties involved - clerics, religious, lay faithful - and those who may come to know about the allegations, especially the parishioners when the respondent is a parish priest, should be exhorted by their Bishop or religious Superior to safeguard the reputation of all who may be involved in a complaint, including the complainant, victim and the respondent.
- 13.4 The respondent will be advised of the risks involved in speaking to the media, on or off the record, and to refer questions from the media to the nominated spokesperson.
- 13.5 The respondent will be instructed not to make contact with the complainant(s) and/or the victim/or the family.
- 13.6 In some cases, because of the scandal caused by the allegations or because of the danger that the respondent may interfere with the preliminary investigation, it could be advisable the withdrawal of the respondent from active ministry.

- 13.6.1 See 12.3.6 about the opinion to be given by the PCC.
- 13.6.2 If this measure seems necessary, the Ordinary is to discuss it with the respondent. If the respondent agrees to stand aside, the decision will be communicated to him/her in a letter setting its terms. If the respondent does not agree, the Ordinary can enforce it by a decree which will likewise define clearly its implications. See models of the letter and of the decree in the section of Documents of the *Vade-Mecum for Ordinaries and Personnel of PCC*.
- 13.6.3 See the *Protocol on Sexual Abuse of Minors*, Appendix 1 regarding the nature of this precautionary measure, its conditions and the way of implementing it. The terms of the withdrawal should take into account the directives pointed out there. It is to be made clear that the respondent has not been suspended but is on temporary withdrawal from active ministry, with full pay, while standing aside, and that this measure does not imply an assumption of guilt.

14. ACTION BY THE INVESTIGATORS

The Committee may cause one of its members to act as case manager to make arrangements for interviews.

If the respondent has admitted to the accusation it may be advantageous that the investigators, in considering the interests of the victim, first meet with the respondent.

The investigators shall read the texts *Guidelines for Investigators* and *A Model Investigators' Report (A Hypothetical Case)* in the *Vade-Mecum for Ordinaries and Personnel of PCC* before carrying out the interviews and writing their report. They should also read Appendix III, 5 in this Protocol.

14.1 Meeting the complainant (if this is not the victim)

- 14.1.1 The two investigators may discuss the matter in full with the Contact Person before interviewing the complainant.
- 14.1.2 They will interview the complainant.
- 14.1.3 Under no circumstances shall there be any attempt to improperly influence or intimidate the complainant or dissuade him/her from proceeding with the complaint or to offer him/her financial compensation to terminate the procedure.
- 14.1.4 A written account of this interview will be signed by the complainant and the two investigators.

14.2 Meeting the victim

- 14.2.1 If there is an alleged victim, the two investigators will meet him/her in the presence of the Support Person and/or a legal representative (cf. no. 4.7.5).

14.2.2 Under no circumstances shall there be any attempt to improperly influence or intimidate an alleged victim or dissuade him or her from proceeding with the complaint or to offer him/her financial compensation to terminate the procedure.

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

14.2.4 A written report of the interview will be signed by the alleged victim and the two investigators.

14.3 Meeting the respondent

14.3.1 The Bishops' Delegate or the case manager, if any, will arrange for the investigators to interview the respondent. Ideally two investigators are to be present for this interview; if that is not possible, the interview, for that reason, is not invalid.

14.3.2 When the interview is arranged, the respondent will be informed of the right to obtain independent legal advice and to have other person present during interviews (his/her Support Person and/or a legal representative). Legal advice shall be at the expense of the respondent. If the respondent is a religious, his/her institute will be responsible; if he is a diocesan priest, the Ordinary may decide to assist with legal fees.)

14.3.3 The respondent will also be informed of the right to remain silent, that he/she may admit to an offence but is not bound to do so, nor may an oath be administered (canon 1728 § 2).

14.3.4 The investigators shall remind the respondent that, in both civil and Church law, a person is presumed innocent until proven guilty.

14.3.5 A written account of this interview will be signed by the respondent and the two investigators.

14.4 Meeting Others as Required

14.4.1 The investigators shall interview any other person or persons who could be of assistance, keeping in mind the need for confidentiality.

14.4.2 In the case of complaints or rumours about consensual sexual misconduct between a priest or religious and a lay person, the investigators shall interview the lay person if he/she is willing to be interviewed.

14.5 Support Persons

The victim Support Person and the respondent Support Person or their respective legal representatives shall have ready access to appropriate information from the investigators. Regarding the possibility of this information being limited in some cases, see 7.1 and 7.2. The Support Persons or legal representatives shall have the responsibility of keeping

the victim and the respondent respectively informed of the progress of the investigation.

14.6 Submission of Report

14.6.1 After the investigation, the investigators shall consider the facts and circumstances before them and whether they can come to the conclusion that the allegations made against the respondent are credible and that the alleged offence is imputable to the respondent.

14.6.2 They shall provide the transcriptions or accounts of the interviews to the Bishops' Delegate along with a written report expressing their conclusions and recommendations. Perusing the texts of the *Vade-Mecum for Ordinaries and Personnel of PCC* mentioned in 14 above will ensure that the report is complete and in keeping with the purpose assigned by canon 1717 to the preliminary investigation.

15. PROCEDURES FOLLOWING THE SUBMISSION OF THE INVESTIGATORS' REPORT

15.1 Action by the Bishops' Delegate and the PCC

1. Before submitting the report and documentation to the Church authority the Bishops' Delegate and the Committee shall consider whether the investigation was adequate and complete and that there were no irregularities.
2. The Delegate and the Committee shall add their own comments and recommendations to the Church authority. They shall also do so when it is only to say that they agree with the conclusions and recommendations of the investigators.
3. Mindful that the opinion of a collegial body like the PCC is a valuable support in the exercise of the Church authority's power of governance, the Delegate and the other PCC members shall take care to form and express their opinion with a deep sense of responsibility.
4. Before handing the documents to the Church authority, the Delegate shall ensure that:
 - i. The statements or transcripts of interviews have been signed and dated by the investigators or the Contact Person and the interviewees.
 - ii. The conclusions and recommendations of the Contact Person, investigators and PCC are also signed and dated. The conclusions of the PCC are to be signed by the Delegate and accompanied by a covering letter.
 - iii. Any other documents of the preliminary investigation are included: the decree with which it was opened as well as letters received by the Church authority, Contact Person, complainants, investigators, etc. which are relevant for the investigation.

15.2 Action by the Church authority

1. The Church authority will examine the written reports of the Contact Person, the investigators and the Professional Conduct Committee.
2. The Church authority shall assess conscientiously the allegations and the reports and recommendations of the investigation. When doing so, the Church authority may meet with the Delegate to discuss the documentation received.
3. The Church authority may refer the case back to the Committee and the investigators for clarification or further investigation.
4. Once the Church authority is satisfied with the conclusion attained, he/she shall make one of the decisions foreseen in canon 1718.
5. If the result of the preliminary investigation is that the allegations are credible and that therefore an offence seems to have occurred, the Church authority shall choose either to open a judicial or administrative process to impose or declare a penalty (canon 1718 § 1, 1) or to have recourse to the penal remedies of warning (canon 1339 §1), correction (canon 1339 §2) or public penance (canon 1340), which do not require a process (canons 1718 § 1, 2 and 1341).
6. In making this choice the Church authority shall carefully weigh if the solution to be adopted meets the requirements of canon 1341: that the scandal be sufficiently repaired, justice restored and the offender reformed.
7. The Church authority is to issue a decree to close the preliminary investigation. This applies also to the case that the allegations are considered groundless or not possible to substantiate. The application of penal remedies needs to be recorded in writing (cf. canon 1339 § 3).
5. The Church authority shall send copy of the decree to the Committee, the Complainant and the Respondent.

15.3 Further Action by the Bishops' Delegate

The Bishops' Delegate is to ensure that:

1. The Ordinary sends a copy of the decree with which he/she has closed the preliminary investigation to the PCC, the complainant(s) and the respondent.
2. If the investigation is not followed by a judicial or administrative process, all the documents related to the case are kept in the secret curial archive (cf. Code of Canon Law, canon 1719) unless it seems advisable to hand them to an attorney in order to be protected by the attorney-client privilege when it seems possible that litigation may ensue (see section on *Attorney/Client Privilege: Lodging the Case Record* in the *Vade-Mecum for Bishops and Personnel of PCC*).

PART V

PASTORAL RESPONSE AND CARE

16. IN RESPECT OF THE VICTIM

In the cases where there is a victim, especially in offences of sexual misconduct between adults, the Church authority, or a mediator appointed by him or her, will make the following response to the victim:

- 16.1. Arrange a meeting between the Church authority and the victim to inform him/her of the outcome of the investigation. Both victim and Church authority will have one other person present with them.
- 16.2. If the accusation does not seem to be credible, the alleged victim will be informed of this. He/she will be treated with compassion and given whatever help and support are considered necessary and reasonable.
- 16.3. If the allegations have been found to be credible the Church authority or his/her mediator will outline the findings of the Committee and will seek to know:
 - 16.3.1 The needs of the victim and a possible response of the Church to these needs. As already stated (cf. no. 5.6), if appropriate, counselling or other pastoral support may be offered. This is not to be interpreted as an admission of guilt by the respondent or assumption of guilt by the Church authority.
 - 16.3.2 The needs of the child if pregnancy has resulted from the sexual misconduct.
 - 16.3.3 Outstanding issues concerning which the victim is not yet satisfied. The mediator will seek to explore with both parties (victim and Church authority) the best means of confronting these issues.
 - 16.3.4 The Bishops' Delegate (or the mediator) will make a written report to the Provincial Committee and the Church authority on outstanding areas of disagreement and comment on the reasons for the disagreement.

17. IN RESPECT OF THE RESPONDENT

- 17.1. If the preliminary investigation showed that the allegations were not credible or if, as a result of a police investigation no prosecution was instituted or the respondent was acquitted by a court of law and the Church authority concurs, the Church authority shall take whatever steps are necessary to restore his or her good name and to repair the damage that has been done. These steps may include:
 - 17.1.1 a public and well-publicised statement that the respondent has been found innocent and is returning to full ministry;

- 17.1.2 a visit by the Church authority to the parish or religious community of the respondent and a declaration that the accusations were false or could not be substantiated;
 - 17.1.3 an offer of spiritual and psychological help to enable the respondent deal with the inevitable trauma;
 - 17.1.4 clear supportive structures that will facilitate full recovery and reintegration into the community.
- 17.2. If the respondent has admitted to the offence or has been found guilty in a court of law or the complaint has been found to be proven at the conclusion of the canonical judicial or extra-judicial process which follows the preliminary investigation, a just penalty will be imposed taking into account the prescriptions of the Code of Canon Law about the different offences (canons 1364-1399). In some cases the penalty could be dismissal from the clerical state.

18. IN RESPECT OF OTHERS AFFECTED

- 18.1 The diocese, the Parish and/or Religious Community experience shock, shame and embarrassment as a consequence of offences committed by priests or religious. Clerics, religious and laity may be divided in their loyalties.
- 18.2 Keeping in mind the confidentiality to be observed regarding the details known through the investigation and/or the ensuing process, as well as the demands of justice, the Church authority will discuss with relevant individuals and groups the best response to the above.
- 18.3 Generally, a personal visit by the Church authority to the affected community is necessary for healing to take place.

PART VI

LEGAL RECOURSE

19. RECOURSE AGAINST THE DECISIONS MADE BY THE CHURCH AUTHORITY

19.1. The Church authority decides not to investigate complaints received

19.1.1 The complainant(s) may address a written communication to the Church authority expressing their disagreement with his/her decision, pointing out the reasons why they think that their complaint should be investigated and requesting a written answer from the Church authority.

19.1.2 If in his answer the Church authority confirms his/her decision not to open an investigation, the complainant(s) can lodge a hierarchical recourse to the Congregation for the Evangelization of Peoples.

19.2 The Church authority does not make any decision after receiving the reports and conclusions of a preliminary investigation

19.2.1 If, after receiving the reports and conclusions of a preliminary investigation the Church authority does not make any decision, the complainant(s) have the right to demand it from him following the steps foreseen in canon law:

- a) Addressing a written petition to the Church authority requesting that he issue a Decree as foreseen in canons 1718 §§ 1-3 and 57 § 1 of the Code of Canon Law.
- b) If in three months the Church authority does not answer this request nor issues a decree, the provisions of the Code about administrative silence would apply and the lawfully concerned parties would be entitled to lodge a hierarchical recourse to the Congregation for the Evangelization of Peoples.

19.2.2 If the complainants do not wish to proceed according to what is said above, the PCC shall take action aimed at urging the Church authority to make a decision.

- a) First the PCC, through its chairperson, should discuss the matter with the Church authority in order to see the reasons why he/she is delaying the decision and try to clarify them.
- b) When this is not enough, the PCC should consider sending a letter of the chairperson asking the Church authority to close the investigation in one of the manners laid down by canon 1718.

- c) If the Church authority does not act in spite of the written petition, a further step could be, when the Church authority is an Archbishop, to inform another Archbishop (in the case of a diocesan PCC the metropolitan) and/or the Apostolic Nuncio and ask him whether he would be willing to talk to the Ordinary who does not act on the conclusions of the preliminary investigation. If the Church authority is a religious Superior, the same petition could be made to the supreme Moderator of the institute.
- d) Eventually it would be possible for the PCC to lodge a hierarchical recourse against the Church authority: see no. 19.2.1, b) above.

19.3 The Church authority decides to open a preliminary investigation

19.3.1 The decision made by the Ordinary to open a preliminary investigation cannot be challenged. The respondent will be able to explain to the investigators why the complaint is groundless.

19.3.2 Were the allegations to be considered as credible at the conclusion of the preliminary investigation and a judicial or administrative process to ensue, the process would provide the defendant further possibility of proving the falsity of the complaint.

19.4 The investigation considers the complaint credible and a judicial or administrative process is instituted

19.4.1 In the case of a judicial process an appeal against the sentence is possible following the norms of canons 1628-1640 (see also canon 1727).

19.4.2 In the case of an administrative or extra-judicial process the respondent will have the right to lodge a hierarchical recourse at the Congregation for the Evangelisation of Peoples (cf. canons 1732-1739) as well as a contentious-administrative recourse at the Supreme Tribunal of the Apostolic Signatura were the Congregation for the Evangelisation of Peoples to confirm the Church authority's decree (cf. canon 1445 § 2 and Apostolic Constitution 'Pastor bonus,' art. 123 § 1).

PART VII

PREVENTIVE STRATEGIES AND MEDIA RELATIONS

20. PREVENTIVE STRATEGIES

- 20.1. The best prevention is that the Church authorities care for their priests and religious
 - 20.1.1 The Decree of Vatican II about the pastoral office of Bishops, when referring to the duties of Bishops towards their priests, first of all points out the importance of helping priests by being accessible to listen to them, and being solicitous for their spiritual, intellectual and material welfare. It is quite clear that the more intent bishops are on doing this the better will they prevent offences.
 - 20.1.2 However negligence and lack of the struggle needed to live up to the demands of the priestly or religious vocation will always exist and the same text of Vatican II urges Bishops to pursue with active mercy priests who are involved in any danger or who have failed in certain respects (cf. Decree “Christus Dominus” on the Pastoral Office of Bishops, no. 16).
 - 20.1.3 Fraternal correction or reproof when the first symptoms of an unbecoming behaviour appear will in many instances suffice to avoid the perpetration of canonical offences. In Appendix I of this Protocol an overview of obligations of priests is included. As well as *Integrity in Ministry* (SACBC 2001) it can help the Church authority to be alert regarding behaviours that may need their intervention.
 - 20.1.4 Caring in this way for his priests with the necessary fortitude should be a top priority for bishops and major Superiors.
- 20.2 Preliminary investigations and processes for the imposition of penalties are pastoral means and they operate as prevention in the sense of deterrents.
 - 20.2.1 When pastoral means do not stop the wrongdoings, recourse to a judicial or administrative process will be needed with the awareness that these juridical means are also pastoral as Blessed John Paul II made clear: *It is opportune to pause to reflect on a mistaken idea. Perhaps it is an understandable one, but not thereby less harmful, for unfortunately it often conditions one’s view of the pastoral nature of Church law.*
 - 20.2.2 *This distortion lies in attributing pastoral importance and intent only to those aspects of moderation and humanness in the law which are linked immediately with canonical equity (“*æquitas canonica*”) – that is, holding that only the exceptions to the law, the potential non-*

recourse to canonical procedures and sanctions, and the streamlining of judicial formalities have any real pastoral relevance.

20.2.3 *One thus forgets that justice and law in the strict sense –and consequently general norms, proceedings, sanctions and other typical juridical expressions, should they become necessary– are required in the Church for the good of souls and are therefore intrinsically pastoral (John Paul II, Address to the Roman Rota, 18 January 1990, no. 3).*

20.2.4 Penalties, besides helping to reform the offender through their medicinal character, deter others from committing offences. Conversely, the impunity of wrongdoers may lead others to similar misbehaviour.

20.2.5 The names of diocesan Contact Persons must be announced in every parish and Church institution.

20.3 Testimonial of suitability for ministry

20.3.1 Before a cleric or religious is transferred from one jurisdiction to another, the receiving Church authority will ask for a written guarantee that he has never been suspended or otherwise canonically disciplined, that no criminal charges have ever been brought against him, and he has no criminal record. This and all similar documents must remain confidential and be kept in the Ordinary's secret archives.

20.3.2 This statement will be requested from the sending Ordinary and from all other jurisdictions in which the transferring person worked. A possible form for this testimonial can be found in the *Vade-Mecum for Ordinaries and Personnel of PCC*.

20.4 Screening and Formation Preventive Strategies

Screening and Formation Preventive Strategies should include the following:

20.4.1. Prior to acceptance, prospective candidates for a seminary or institute should be asked to warrant that they are not aware of any circumstances which might lead to an allegation of criminal behaviour.

20.4.2 “Clerics have a special obligation to seek holiness in their lives, because they are consecrated to God by a new title through the reception of orders, and are stewards of the mysteries of God in the service of His people” (canon 276). During the seminary or novitiate years as in the rest of their lives, the more priests and religious grow in the awareness of this obligation and strive to fulfil it the better protected will they be against becoming offenders.

20.4.3 In this regard it is important that seminarians and novices:

- a) May develop from the years of seminary or novitiate a life of prayer and sacrifice by having assiduous recourse to the ascetical means mentioned in canon 276 § 2.
- b) May be helped through personal spiritual guidance to get used “to behave with due prudence in relation to persons whose company can be a danger to their obligation of preserving continence or can lead to scandal of the faithful” (canon 277 § 2).

20.4.4 The Canon Law courses that the seminarians and novices do as well as those on the Protocols shall help them understand the need for processes and penalties in the Church and their pastoral character (cf. 20.2.1 - 20.2.4 above).

21. AWARENESS

21.1 Each Ordinary and major religious Superior will ensure that the following documents are distributed to all priests, deacons, religious, full-time lay Church personnel and Parish Councils: *Safeguarding our Children, Integrity in Ministry; Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors* and *Protocol for the Preliminary Investigation of Complaints against Clerics and Religious in Regard to Any Canonical Offence Other Than Sexual Abuse of Minors*. After distributing the new editions of these documents to the personnel in the diocese or institute, copies will be given to new personnel joining it.

21.2 In-service workshops will be conducted on the above documents for all Church personnel.

21.3 Workshops will also be conducted for Diocesan and Parish Pastoral Councils.

22. MEDIA RELATIONS

22.1. To keep the public informed and to ensure active cooperation with media practitioners, the Church authority directly or through the SACBC will ensure that:

22.1.1 The names and contact details of the Conference Spokesperson and its Media Officer are communicated to all media houses in his jurisdiction.

22.1.2 Each diocese appoints a Media Spokesperson and that such name and contact details are made known at diocesan and national level.

22.1.3. Copies of the documents *Safeguarding our Children, Integrity in Ministry*, of the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors* and of the *Protocol for the Preliminary Investigation of Complaints against Clerics and Religious in Regard to Any Canonical Offence Other Than Sexual Abuse of Minors*, will be made available to the media.

- 22.1.4. All changes in policies and Protocols will be published in the form of a press statement.
- 22.2 Due attention should be paid to what has been said above about the publication of statements when allegations are echoed in the media, when a preliminary investigation concludes that the complaints were groundless, etc.: cf. 6.4, 12.3.4 and 17.1.1.
 - 22.2.1 The competent Church authority shall consult with the relevant Provincial Committee, with the SACBC and diocesan spokespersons, as to the advisability of any public statement, and its scope, content and form.
 - 22.2.2 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 cover-up the truth should also be taken into account.
 - 22.2.3 Any statement that explains a period of temporary withdrawal from active ministry should make it clear that such leave is a routine requirement, which does not imply any admission or presumption of guilt.
 - 22.2.4 Where the matter is being dealt with by the police, or where legal proceedings are pending, no public statement should be made before legal advice is sought.
 - 22.2.5 The respondent and the alleged victim should be informed of their interests and rights in the event of being interviewed by the media.

APPENDIX I

OVERVIEW OF CANONICAL OFFENCES WHICH CAN BE COMMITTED BY PRIESTS

This Appendix includes a listing of some canonical offences that can be committed by priests and of some obligations of priests. It may facilitate the responsibility incumbent on Bishops and major Superiors to watch over the priests entrusted to their care (cf. 20.1).

I. NORMS ABOUT OFFENCES

A. CODE OF CANON LAW

The following list does not include all the offences that the Code mentions in canons 1364-1399. When not having a copy of the Code at hand it can also be consulted on line in the Vatican website:

http://www.vatican.va/archive/ENG1104/_INDEX.HTM

<i>Canons</i>	<i>Offence</i>
1371 § 2	Non-compliance with lawful commands or prohibitions
1377	Alienation of Church goods without permission
1381 § 2	Retention of Office after being deprived of it
1387	Solicitation in Confession
1388	Violation of Confessional Seal
1389	Abuse of Authority - Negligence (see below text of this canon)
1392	Engaging in trading or business contrary to the provisions of the canons (see canon 86)
1395	Offences against the 6th commandment (see below text of this canon)
1396	Violation of Residence Obligation (see canon 533)
1398	Procuring an abortion

The text of two canons on offences which may be more frequent follows: canon 1395 on offences against the sixth commandment and canon 1389 on offences related to one's ecclesiastical office: culpable negligence or abuse of power in discharging the role of parish priest, chaplain, etc.

Canon 1395: §1 Apart from the case mentioned in can. 1394, 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, is to be punished with suspension. To this, other penalties can progressively be added if after a warning he persists in the offence, until eventually he can be dismissed from the clerical state.

§ 2 "A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be

punished with just penalties, not excluding dismissal from the clerical state if the case so warrants”.

See a commentary on this canon in Appendix II, II.

Canon 1389 §1 A person who abuses ecclesiastical power or an office, is to be punished according to the gravity of the act or the omission, not excluding the deprivation of the office, unless a penalty for that abuse is already established by law or precept.

§ 2. A person who, through culpable negligence, unlawfully and with harm to another, performs or omits an act of ecclesiastical power or ministry or office, is to be punished with a just penalty.

B. OFFENCES AGAINST LITURGICAL NORMS

The legal texts quoted below refer to offences foreseen in the Code of Canon Law, which can be committed in the celebration of the sacraments, or abuses against liturgical norms, for instance the General Instruction on the Roman Missal.

a) Most serious crimes in the celebration of the Eucharist or the administration of the sacrament of Penance:

- BENEDICT XVI, NORMS ON MOST SERIOUS CRIMES, 21 MAY 2010, Articles 3-4.
- CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, INSTRUCTION *Redemptionis Sacramentum on certain matters to be observed or to be avoided regarding the Most Holy Eucharist*, 25 March 2004, no. 172.

b) Grave matters in the celebration of the Eucharist:

CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, INSTRUCTION *Redemptionis Sacramentum on certain matters to be observed or to be avoided regarding the Most Holy Eucharist*, 25 March 2004, no. 173.

c) Other abuses in the celebration of the Eucharist:

CONGREGATION FOR DIVINE WORSHIP AND THE DISCIPLINE OF THE SACRAMENTS, INSTRUCTION *Redemptionis Sacramentum on certain matters to be observed or to be avoided regarding the Most Holy Eucharist*, 25 March 2004, nos. 174-175.

The Norms on Most Serious Crimes of 21 May 2010 were included as Appendix II in the Protocol on Sexual Abuse. Moreover they can be read on line in the Vatican website:

http://www.vatican.va/resources/resources_norme_en.html

The INSTRUCTION *Redemptionis Sacramentum* can be read on line in the Vatican website:

http://www.vatican.va/roman_curia/congregations/ccdds/documents/rc_con_ccdds_doc_20040423_redemptionis-sacramentum_en.html

II. OBLIGATIONS OF PRIESTS

Some obligations of priests, among those laid down in the Code of Canon Law, are listed below for ease of reference. Failing to observe them is not necessarily an offence but persistence in such misbehaviour could easily become an offence. In any case conducts of this kind call for the pastoral means referred to above in 20.1.3. The same can be said of the “ethical standards” and “mandatory behaviours” contained in *Integrity in Ministry* (SACBC 2001) when they do not coincide with the obligations listed here.

<i>Canons</i>	<i>Obligations of priests</i>
273	Obedience to the Bishop
274 § 2	Accept and faithfully fulfil the office committed to them by their Ordinary
277 § 2	Celibacy. Prudence to avoid the company of persons who can be a danger to preserve continence or can lead to scandal of the faithful
278 § 3	Refrain from joining associations whose purpose or activity cannot be reconciled with the obligations proper to the clerical state, or which can hinder the diligent fulfilment of their office
279 § 2	Attend courses, theological meetings or conferences, arranged for them after their ordination, in accordance with the provisions of particular law, which offer them an occasion to acquire further knowledge of the sacred sciences and of pastoral methods
282 § 2	Proper use of goods which they receive on the occasion of the exercise of an ecclesiastical office, and which are over and above what is necessary for their worthy upkeep
283 § 1	Not to be absent from their diocese for a considerable time without the at least presumed permission of their proper Ordinary
285 §§ 1-2	Shunning completely everything that is unbecoming to their state even when it is not unseemly
285 § 3	Not assuming public office whenever it means sharing in the exercise of civil power
286	Not practising commerce or trade, either personally or through another, for their own or another’s benefit, except with the permission of the lawful ecclesiastical authority
287 § 2	Not playing an active role in political parties or in directing trade unions unless, in the judgement of the competent ecclesiastical authority, this is required for the defence of the rights of the Church or to promote the common good
532	Proper administration of Parish goods
533 § 1	Residing in the parochial house, near the church, unless allowed by the local Ordinary to reside elsewhere
534 §1	Parish priests may each year be absent on holiday from their parish for a period not exceeding one month
534 § 1	Advising the local Ordinary for an absence from the parish of more than a week

535 § 1	Keeping parochial registers up to date and carefully preserved
536	Establishing a pastoral council in the parish if the Bishop so decides for the diocese
537	Establishing a finance committee in the parish

APPENDIX II

CANONICAL OFFENCES AGAINST THE 6TH COMMANDMENT

I. SPECIAL OBLIGATIONS

1. It is advisable to always consider these offences against the backdrop of the special obligations freely undertaken by priests and religious.
2. 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:
 - a) They have freely and publicly committed themselves to celibacy.
 - b) They preach and teach the virtues of chastity and fidelity.
 - c) They are at "the forefront of the Church" and, in the minds of many, they stand for the Church.
 - d) They are seen as ambassadors of Christ (2 Cor 5:20), speaking and acting in His name.
 - e) 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.

II. THE OFFENCES AGAINST THE 6TH COMMANDMENT IN THE CODE OF CANON LAW

Canon 1395: §1 Apart from the case mentioned in can. 1394, 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, is to be punished with suspension. To this, other penalties can progressively be added if after a warning he persists in the offence, until eventually he can be dismissed from the clerical state.

§ 2 "A cleric who in another way has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants".

3. Cf. commentary to this canon in the *Code of Canon Law Annotated*, Wilson and Lafleur, Montreal. Canon 1395 § 1 typifies two different offences. The first one is concubinage: a stable sexual relationship with a person of a different sex.
4. The second one is any other external sin against the sixth commandment in so far as:
 - a) it is permanent;
 - b) it causes scandal;

5. Canon 1395 § 2 refers to any other form of external sin against the sixth commandment if it is committed by force, threat, publicly or with minors. The offences against minors are not the object of this Protocol. The following numbers can be helpful regarding the determination of offences committed by force or threat.
6. 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 (Cf. Australian Catholic Bishops' Conference, *Towards Healing*, December 1966).
7. 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.
8. A distinction must be made between sexual abuse, sexual exploitation and sexual harassment. Each usually involves an abuse of power or authority.
 - a) *Sexual Abuse* is sexual contact between a priest or religious and a minor or a vulnerable adult.
 - b) *Sexual Exploitation* is sexual contact between a priest or religious and a person who is receiving pastoral care from him/her.
 - c) *Sexual Harassment* is unwanted sexual conduct or language between co-workers in the Church work setting.
9. Each of the above can take different forms:
 - a) *Physical*: uninvited, unwanted physical contact such as rape, sexual assault, touching, stripping.
 - b) *Verbal*: suggestions, unwelcome innuendoes, hints, sexual advances, sexual comments, sex-related jokes, unwelcome comments, whistling.
 - c) *Non-verbal*: unwelcome gestures, indecent exposure, unwelcome display of pictures, unwelcome display of objects.

APPENDIX III

SOME COMMENTS ON CANON 1717: CREDIBLE ALLEGATIONS; OBJECT OF THE INVESTIGATION; THE INVESTIGATORS' TASKS

Canon 1717: §1 Whenever the Ordinary receives information, which has at least the semblance of truth, about an offence, he is to enquire carefully, either personally or through some suitable person, about the facts and circumstances, and about the imputability of the offence, unless this enquiry would appear to be entirely superfluous.

§2 Care is to be taken that this investigation does not call into question anyone's good name.

§3 The one who performs this investigation has the same powers and obligations as an auditor in a process. If, later, a judicial process is initiated, this person may not take part in it as a judge.

Regarding whether the Church authority enquires personally or through some suitable person, and that the investigation does not call into question anyone's good name, see 3.2-3.9 and 6 above respectively.

I. CREDIBLE ALLEGATIONS

1. Canon 1717 §1 says: *Information, which has at least the semblance of truth, about an offence.*
 - a) This means that the information received seems credible and leads to consider as probable the commission of an offence.
 - b) The purpose of the preliminary investigation is to see whether the semblance of truth (credibility) of the allegations is confirmed.
 - c) However, it will only be in the judicial or administrative process which may follow the preliminary investigation where the moral certainty needed to impose a penalty is to be attained (cf. canon 1608).
 - d) That is why at the end of the preliminary investigation the accused is not considered guilty, except when he/she has admitted to the commission of the offence.

2. A possible equivalence between the terminology of the Code of Canon Law and that of civil law would be:

Canon Law	Civil Law
What is needed	
a) To open a preliminary investigation: semblance of truth (credibility) of the information received	Credibility of the information received
b) To open a process: initial credibility reinforced after the investigation	There is a strongly probable case for the Respondent to answer, a <i>prima facie</i> case
c) For Judges to convict an accused: moral certainty (canon 1608)	Judges consider the allegations proved beyond reasonable doubt

3. Canon 1717 §1 says: *unless this enquiry would appear to be entirely superfluous*. The investigation would appear to be entirely superfluous if, for instance, the Respondent has admitted to having committed the alleged offence, or in the case of public and notorious offences. However in the latter case it will be necessary to gather evidence to be used in the penal process (cf. commentary on canon 1717 in *Exegetical Commentary on the Code of Canon Law*, Gratianus Series, Montreal/Chicago, Wilson & Lafleur/MWTF, 2004).

II. OBJECT OF THE INVESTIGATION

4. As regards the purpose of the preliminary investigation, canon 1717 §1 says: *to enquire carefully... about the facts and circumstances, and about the imputability of the offence*.

A. FACTS

- 4.1 The investigation shall try to establish whether the facts seem to have happened or not (bearing in mind the standards referred to in nos. 1-2 of this Appendix) and:
- a) if they correspond to behaviours categorised in the Code of Canon Law as offences which can or should be punished with some penalties;
 - b) or rather correspond to inappropriate behaviours which are referred to in the SACBC *Integrity in Ministry* protocol or are contrary to the duties of clerics and religious laid down in the Code of Canon Law.

B. CIRCUMSTANCES

- 4.2 The investigation should consider the circumstances surrounding the facts which may increase or decrease the gravity of the offence or its imputability. They could be attenuating, aggravating or excusing circumstances. See canons 1323-1330.

C. IMPUTABILITY

- 4.3 The investigation shall analyse if the facts alleged seem imputable to the Respondent. Imputability is the quality of an action or omission which makes it attributable to its author in so far he/she has intentionally or negligently violated the law.

4.4 In Penal Canon Law there are two forms of imputability: intentional violation of the law and violation of the law out of negligence. The Code of Canon Law deals with these two forms of imputability in canon 1321:

§1 No one can be punished for the commission of an external violation of a law or precept unless it is gravely imputable by reason of malice or of culpability.

§2 A person who deliberately violated a law or precept is bound by the penalty prescribed in that law or precept. If, however, the violation was due to the omission of due diligence, the person is not punished unless the law or precept provides otherwise.

§3 Where there has been an external violation, imputability is presumed, unless it appears otherwise.

III. THE INVESTIGATORS' TASKS

5. Concerning the investigators, canon 1717 §3 says: *The one who performs this investigation has the same powers and obligations as an auditor in a process. If, later, a judicial process is initiated, this person may not take part in it as a judge.*

5.1 In a judicial process auditors can be appointed by the judge as instructors of the court case (cf. canon 1428). Instructing a case means gathering the proofs:

a) hearing the parties - victim and respondent -, witnesses (cf. canon 1561) and experts,

b) and receiving whatever documents are of interest to find out the truth (cf. canons 1539-1546).

5.2 In a judicial process once the auditor completes his task, he submits the proofs to the judge. In the preliminary investigation the investigators submit their findings to the Professional Conduct Committee which will pass them on to the Church authority.

5.3 However the findings of the investigators are not evidence with a proper judicial character. For them to have a probative value and be used in the sentence, if the preliminary investigation is followed by a judicial process, they will have to be submitted to the judge and weighed by him.

5.4 As already said (see nos. 1-2 of this Appendix), when doing so the judge will use a standard of proof (moral certainty, beyond reasonable doubt) which is more demanding than the standard of discernment (not of proof) in the preliminary investigation (credible allegations).

DEFINITIONS AND RELEVANT TERMINOLOGY

For the purpose of this Protocol, the following definitions apply:

BISHOPS' DELEGATE A person appointed by decree of an Ordinary to look after the investigation of a complaint. He is usually the chairperson of the Professional Conduct Committee. In the case of provincial Professional Conduct Committees he is the Delegate of all the Bishops of the ecclesiastical province. He is appointed by decree of the metropolitan Archbishop after consultation with the Bishops of the suffragan dioceses. In the case of a diocesan Professional Conduct Committee he is the Delegate of the diocesan Bishop only.

CANONICAL OFFENCE (ALSO CALLED DELICT) A crime in canon law; an external violation of a law or precept gravely imputable by reason of malice or negligence. See Title VI Part II of the Code of Canon Law.

CHURCH AUTHORITY See no. 3.1 of this Protocol. As used in this Protocol "Church authority" includes:

- The diocesan Bishop for allegations against priests incardinated in the diocese or working there on a contract. Regarding seminarians, the diocesan bishop in the case of a diocesan seminary or the bishop who sent the seminarian to the inter-diocesan seminary.
- The major Superior for priests, brothers, sisters or novices of institutes of consecrated life or societies of apostolic life.
- It is to be noted that the term Ordinary can be applied to both Bishops and major Superiors of clerical institutes of consecrated life but not to major Superiors of lay institutes of consecrated life. Since it is addressed also to lay institutes of consecrated life, this Protocol uses the expression Church authority.

CHURCH PERSONNEL Clerics (including deacons), and members of Religious Institutes.

COMPLAINANT: The person who has alleged misconduct against Church personnel. The context will indicate if the complainant is also the victim.

CONTACT PERSON: The person appointed in terms of 4.7.3 above to receive complaints.

DELEGATE: See **Bishops' Delegate**.

DELICT: See **Canonical Offence**.

DIOCESAN PCC: A Professional Conduct Committee established by a Diocesan Ordinary in terms of 4.3 above.

IMPUTABILITY: The quality of an action or omission which makes it attributable to its author in so far he/she has intentionally or negligently violated the law.

INVESTIGATION, PRELIMINARY: An enquiry or probe into facts, circumstances and imputability of an alleged canonical offence, and whether the allegations seem credible.

INVESTIGATOR: A person or persons appointed by the Church authority, usually through the Professional Conduct Committee, to investigate a case reported to the Committee by the Diocesan Contact Person.

LEGAL REPRESENTATIVE: A canon or civil lawyer chosen by the respondent or the victim to assist them during the preliminary investigation either in addition to or instead the Support Person (see 4.7.5 above).

MEDIATOR: A person who is to set up and lead a meeting between the Church authority and the victim at the end of the investigation.

ORDINARY

1. the diocesan Bishop if the alleged offender is a diocesan priest, a deacon, or a seminarian;
2. the major Superiors (regional, provincial or general) of clerical religious institutes of pontifical right and of clerical societies of apostolic faith of pontifical right, who have at least Ordinary executive power (cf. Code of Canon Law, canon 134 §1).

OFFENDER: A person who has admitted to an offence, or who has been found guilty in a court of law or by due process of Canon Law.

PASTORAL CARE: The action aimed at helping someone in his/her spiritual life by means of preaching, administering the sacraments, providing personal spiritual guidance, etc. In this Protocol it is applied to the special spiritual help needed by complainants, alleged victims, respondents, witnesses, etc. of alleged offences.

PCC: Professional Conduct Committee.

PROFESSIONAL MISCONDUCT: This term is used in the Protocol as synonymous with the term canonical offence

PROVINCIAL PCC: A Professional Conduct Committee set up at ecclesiastical Province level. It is chaired by the Ordinaries' appointee who is called the Bishops' Delegate (see 4.2 above).

RECOURSE ACTION: Action which can be undertaken by the complainant or the respondent in order to challenge the decision of the Church authority in terms of Canon Law. See no. 19 above.

RELIGIOUS: This term is used in the Protocol as equivalent to the more precise one of member of an Institute of Consecrated Life or a Society of Apostolic Life. Therefore, it includes the members of Religious Institutes (cf. Code of Canon Law, canons 607-709), Secular Institutes (cf. canons 710-730) and Societies of Apostolic Life (cf. canons 731-746).

RESPONDENT: A Church person (see Church Personnel) against whom a complaint of professional misconduct has been brought.

SACBC PCC: A Committee established by the Bishops' Conference to advise the Conference on Professional Conduct issues involving Church personnel. Its Chairman is appointed and its members approved by the Conference (see 4.1 above).

SEXUAL EXPLOITATION: In this Protocol it means sexual contact between a priest or religious and a person who is receiving pastoral care from him/her (see Appendix II, 8 above).

SEXUAL HARASSMENT: In this Protocol it means unwanted sexual conduct or language between co-workers in the Church work setting (see Appendix II, 8 above).

SEXUAL MISCONDUCT: In this Protocol it means an external sin against the sixth commandment in so far as: a) it is permanent and causes scandal; or b) is committed by force, threat, publicly or with minors (see canon 1395 and Appendix II, 3-5 above). Sexual misconduct can be a canonical offence also when it is consensual because it violates the special obligations freely undertaken by priests and religious, and because 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 may also entail abuse of authority, abuse of power (see Appendix II, 6 above).

SUPPORT PERSON: A person who acts as a support to the complainant or respondent during the course of the Investigation, keeping them informed and providing whatever pastoral care is needed and possible and responding on behalf of the Church to ongoing needs (see 4.7.5 above).

VICTIM: The person against whom the offense was directed. In some offences there is no victim or it is the entire Church, a parish, an institute of consecrated life, etc.