



Southern African Catholic  
Bishops' Conference

A VADE-MECUM FOR  
ORDINARIES AND  
PERSONNEL OF  
PROFESSIONAL CONDUCT  
COMMITTEES

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SACBC PROFESSIONAL CONDUCT COMMITTEE

Version 1.2  
May 2013

#### History of the Document

- Version 1: 24 July 2007 - A Vade-mecum for Ordinaries and for personnel of Professional Conduct Committees.
- Version 1.1: 18 October 2007 - A Vade-mecum for Ordinaries and personnel of Professional Conduct Committees. Incorporating corrections until 18 October 2007.
- Version 1.2: May 2013 - A Vade-mecum for Ordinaries and personnel of Professional Conduct Committees. Incorporating corrections until May 2013.

Comments and suggestions for future editions of this vade-mecum are welcome and can be sent to the Chairperson of the SACBC Professional Conduct Committee, 399 Khanya House, Paul Kruger Street or PO Box 941, Pretoria, Gauteng, 0001, South Africa, Tel: (012) 323-6458, Fax: (012) 326-6218, E-mail: [sacbclub@wn.apc.org](mailto:sacbclub@wn.apc.org).

## PREFACE TO THE 2013 EDITION (VERSION 1.2)

The present version has benefitted from experience and, as a result, many additions have been made:

The main changes have taken place in the section of *Documents (decrees, letters, reports, etc.)*, which has passed from 12 documents in the previous edition to 23 in the new one. Now they cover most of the actions - mainly decrees and letters of the Church authority - carried out in a preliminary investigation from its opening to its conclusion, and also the appointment of the Bishops' Delegate, Contact Person and Investigators. A *form for the report on allegations received by the Contact Persons* can help the latter to ensure the integrity of this important document.

A *Model of Contract between Investigators and the PCC*, included in the section of Documents, intends to establish their Professional Independence and to distance them from the obligations of the Ordinary. In line with this, the Decrees opening an Investigation have been amended to give the Delegate the authority to appoint the Investigators from a Panel approved by the Ordinary as foreseen in nos. 7.6.4.2 and 18.2 of the *Protocol for the Investigation of Complaints against Clerics and Religious in Regard to Sexual Abuse of Minors*, and nos. 4.7.4.1 and 12.2 of the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*.

The section of *Guidelines for Investigators* have been completed with the purpose of helping them do their work according to what canon 1717 of the Code of Canon Law lays down.

There is a new section on *Integrity of the Investigation*. It underlines the duty of the Ordinary to close the preliminary investigation in one of the ways foreseen in canon 1718 of the Code of Canon Law, and the right of the people involved in the preliminary investigation (complainant, respondent, etc.) to know the decision made by the Ordinary. It refers to the sections of the Protocols that deal with the possible actions against both the decisions of the Ordinary or in the absence of a decision, i.e. the so called, in civil and canon law, administrative silence of the Church authority.

A new section on *Attorney / Client Privilege: Lodging the Case Record* has been added. It explains the advantages of lodging the acts of the preliminary investigation with an attorney for them to enjoy the protection of the Attorney / Client Privilege.

References to the *Protocol for the Investigation of Complaints against Clerics and Religious in Regard to Sexual Abuse of Minors* have been updated to reflect the last edition of the Protocol. The Vade-mecum also includes references to the new *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*

References to the *motu proprio Sacramentorum sanctitatis tutela* of 30 April 2001 have been updated in keeping with the amendments made by Benedict XVI on 21 May 2010 in the normative section of the *motu proprio*.

The following information has been included:

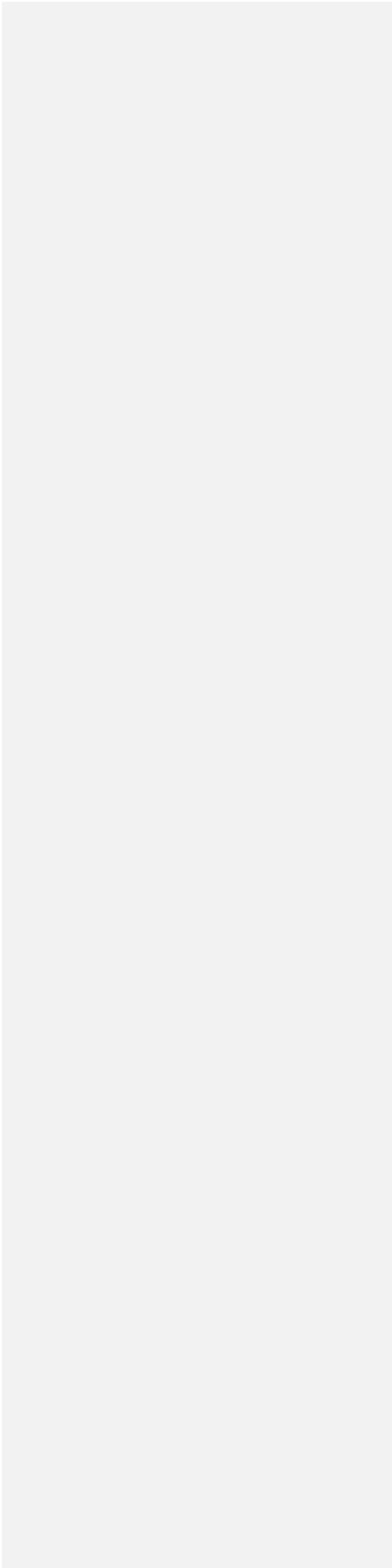
- The *motu proprio Sacramentorum sanctitatis tutela* of 30 April 2001 with the amendments made by Benedict XVI on 21 May 2010: only those sections of greater interest for the preliminary investigation.
- The *Procedure and Praxis of the CDF regarding "Graviora Delicta,"* by Mgr. Charles J. Scicluna, until recently Promoter of Justice of the same CDF.
- Protection of Children and Others in RSA Law.
- Prescription in Canon and Civil Law.

Stylistic corrections and improvements have also been made. It is hoped that Ordinaries and members of Professional Conduct Committees will find the Vade-mecum useful.

## **PREFACE TO THE 2007 EDITION (VERSION 1.1)**

The vade-mecum, it is intended, will assist ordinaries and PCC personnel to put into practice the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors*, as amended, and the *Protocol for Church Personnel in regard to Sexual Misconduct between Adults*.

The guidelines are in harmony with the new approach; they describe the Delegate's role, make it clear that the investigation is limited to just an investigation into strong probability, or not; they emphasise that the consequent judgment and action are the Ordinary's, and suggest ways of speeding up the investigation.



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## OVERVIEW OF AN UNPROFESSIONAL CONDUCT EVENT

### 1. Receiving Information

The Ordinary receives information, about an Offence, from the Contact Person, which, at least, has the semblance of truth; the Complaint.

### 2. Preliminary Investigation

A careful preliminary enquiry about the facts and circumstances and about imputability is made through some suitable person or persons, the Investigator/s, unless an Investigation appears to be entirely superfluous;

### 3. Report of Investigation

When the facts have been assembled, a Report of the Investigation, as to whether there is a strong probability of the truth of the Complaint, is made to the Ordinary.

### 4. Action by the Ordinary

- 4.1 If the Complaint is about sexual abuse of minors, refers the case to the CDF.
- 4.2 In cases of sexual misconduct between adults or other canonical offence, the Ordinary, having consulted two judges or other legal experts, if he considers it prudent, is to decide
  - 4.2.1 whether the initial credibility of the allegations has been confirmed by the preliminary investigation
  - 4.2.2 whether, by fraternal correction, or reproof, or by any method of pastoral care, scandal can be sufficiently repaired, justice restored and the offender reformed, failing which
  - 4.2.3 whether to initiate a judicial or administrative process for imposing a penalty, the Penal Process,
  - 4.2.4 and in any event, whether help and support for the Complainant and the Respondent is considered desirable, and the modus operandi for such a process.

NB The task of the Investigation handled by Professional Conduct Committees ceases with the Investigation and does not extend to 4.2, save where the Ordinary requests advice.

## A PRELIMINARY INVESTIGATION: GUIDELINES FOR ORDINARIES

What follows is a summary of the procedures laid down in the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors* and in the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*.

### 1. Receipt of Information

An Ordinary, Diocesan or Religious, or a major Superior of a lay religious institute (male or female) receives directly or from the Contact Person, information, which has at least the semblance of truth, about an Offence; the Complaint. If the information is received by mail, the addressee -Ordinary or Contact Person- should acknowledge receipt in writing as soon as possible and indicate that he/she is going to act on it.

### 2. Protection of Complainant and good name of Respondent

Immediate action may have to be taken to protect a Complainant, preserve the good name of the Respondent, or avoid scandal.

### 3. Cooperation with civil authorities

3.1 If the alleged victim of sexual abuse (or the parents or guardians if the victim is still a minor) refuse to report the abuse to the Civil Authorities, the Church authority will do so.

3.2 If the Police is 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.

### 4. Delegation of the investigation

4.1 Canon 1717 of the Code of Canon Law says that as soon as the Ordinary receives a complaint he is to investigate it either personally or through another. 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.

4.2 Still an individual Bishop retains the right to investigate a complaint personally or through one personally appointed by him. Before opting for this possibility it is advisable to ponder carefully the advantages of delegating the investigation to the Professional Conduct Committee (see *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors*, 6.3 and

Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors), 3.9).

## **5. Opening the Investigation**

5.1 A Decree opening the Investigation is issued by the Ordinary mandating the Delegate, usually the Chairperson of a Professional Conduct Committee, to enquire carefully about the facts and circumstances of the Offence, and about imputability, unless the enquiry would appear to the Ordinary to be entirely superfluous.

5.2 The Delegate will also appoint, from a list approved by the PCC, two Investigators, who will be a civil lawyer, and a psycho/social professional to carry out the Investigation.

## **6. Informing the Respondent**

Simultaneously with issuing the Decree, the Ordinary shall inform the Respondent of the Decree. For the decree and the letter to the Respondent see the Documents Section.

## **7. Temporary withdrawal from active ministry**

As a cautionary measure, in the case of allegations of sexual abuse of minors the Ordinary can «prohibit the accused from the exercise of the sacred ministry or of some ecclesiastical office and position, or impose or forbid residence in a certain place or territory, or even prohibit public participation in the blessed Eucharist» (canon 1722).

## **8. Report of Investigation**

When the Investigators conclude their work, they will make a reasoned Report in writing, on whether, in their opinion, there is a case for the Respondent to answer, and will hand it on to the Delegate, along with the reports on the interviews they held with the Complainant, the Respondent and any witnesses.

## **9. Action by the Ordinary**

Once the Delegate receives the documentation from the Investigators, and the PCC considers that it is fair and properly done, the Delegate will inform the Ordinary, who,

9.1 If the case is about sexual abuse of a minor by a cleric the Ordinary will refer the matter to the CDF. The Respondent and the Complainant should be informed that the matter has been forwarded to the CDF.

9.2 If the matter is about sexual abuse of a minor by a non-ordained religious or about a Canonical Offence (other than sexual abuse of minors), the Ordinary will choose one of the possibilities foreseen in the Code of Canon Law, canon 1718:

- a. opening a judicial process;
- b. opening an administrative process;
- c. not opening any process, but making use of fraternal correction or reproof or some method of Pastoral Care in order to repair scandal sufficiently, restore justice and reform the offender.

9.3 If the Ordinary considers the Complaint to be groundless, he may close the case without having recourse to any of the possibilities mentioned.

## 10. Decrees

Any of the decisions mentioned in 5 and 9 above require the Ordinary to issue a Decree: see the Documents Section. Canon 1718 § 3 of the Code of Canon Law states that in making these Decrees, the Ordinary, if he considers it prudent, is to consult two judges or other legal experts. Copies of these Decrees should be sent immediately to the Respondent and the Complainant.

## 11. Cautions

The Ordinary is advised to deal with these matters quickly, at arms-length, and to avoid public statements not vetted by a legal expert.

Case Records are to be kept in the secret files of the Chancery.

## 12. Legal Recourse against the decisions made before and after the preliminary investigation

- 12.1 The decisions of the Church authority when closing an investigation on allegations of canonical offences other than sexual abuse, and the sentence or decree in the judicial or extra-judicial process that may follow a preliminary investigation on any offence can be challenged.
- 12.2 The lack of a decision of the Church authority after receiving the report and recommendations at the end of an investigation can also be challenged.
- 12.2 The norms which regulate the administrative recourse or the appeal in the cases mentioned above are contained in the Code of Canon Law and in other pontifical laws. They are referred to in the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors*, Part VI, Legal Recourse, no. 26, and in the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*, Part VI, Legal Recourse, no. 19. They can also be found in the section of documents at the end of this Vade-mecum, in the sample decrees nos. DC 16-19.

## 13. Preventive Strategies

- 13.1 The best prevention is that the Church authorities care for their priests and religious. 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).

- 13.2 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 the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)* 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.
- 13.3 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.
- 13.4 Before a cleric or religious is transferred from one jurisdiction to another, the receiving Church authority will ask the sending Bishop or major religious Superior for a Testimonial of Suitability for Ministry (see possible form in the *Vade-Mecum for Ordinaries and Personnel of PCC*)
- 13.5 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.
- 13.6 The names of diocesan Contact persons must be announced in every parish and Church institution.
- 13.7 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 Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (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.
- 13.8 Courses and workshops on the documents *Safeguarding our Children* and *Integrity in Ministry* should be included on a regular basis as part of the clergy ongoing formation.
- 13.9 In order to ensure a safe environment for the young the provisions of the SACBC document *Safeguarding our Children* on policies and procedures for the protection of minors should be carefully observed in all Church institutions.

## PROFESSIONAL CONDUCT COMMITTEE: GUIDELINES

### 1. Appointment of Members

The Chairman and members of a Metropolitan PCC, or a Diocesan PCC, are appointed by an Ordinary. A Chairman of each PCC is appointed by Decree of the Metropolitan, or of another Bishop in the case of a diocesan PCC. An Investigation is established by Decree, which also appoints the Investigators. The composition of the Committee is to be as laid down in no. 7.2.1 of the Protocol on Sexual Abuse, which foresees 7 members “as far as possible.”

### 2. Tasks of the PCC

The tasks of the PCC are (see no. 7.2.2 of the Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors and 4.2.2 of the Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)):

- 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;
- 6 facilitating meetings between victims and Church authorities concerning what the Church can, and should do, to assist the victim;
- 7 acquiring the services of resource persons;
- 8 ensuring that names of contact persons (see Definitions) are effectively publicised in each diocese.

### 3. Tasks of the Bishops' Delegate

The tasks of the Bishops' Delegate are (see no. 7.6.1 of the Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors and 4.7.1 of the Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)):

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 18 and 21) 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.

## INVESTIGATION SECRETARY: GUIDELINES

Investigation Secretaries may be members of the PCC or other suitable persons; they are appointed by the Delegate to

1. manage the Investigation, and are to
  - 1.1 liaise with the Contact Person to obtain first reports of the Complaint and the statements of witnesses;
  - 1.2 arrange with the Contact Person dates and times for interviews, generally it being the task of the Contact Person to inform the Complainant and witnesses of dates and times;
  - 1.3 arrange with Investigators the date time and place for interviews;
  - 1.4 make Investigators aware that the purpose of the Investigation is to decide whether there is a strong probability that the allegations are true or not;
  - 1.5 give them a copy of the Vade-Mecum;
  - 1.6 arrange for interviews to be recorded and transcribed;
  - 1.7 arrange for the report to be ready on time;
  - 1.8 ensure that transcripts of interviews are signed by the interviewee, the Investigators and the case manager;
  - 1.9 make sure that the Investigation is concluded as expeditiously as possible;
2. arrange that whatever help and support are directed by the Ordinary for the Complainant and the Respondent are in the hands of competent persons, and that reports are presented to the committee;
3. be acquainted with the Vade-mecum, and in particular, the guidelines for PCCs and Investigators.

## INVESTIGATORS: GUIDELINES

### 1. Preliminary Investigation

The Investigation is a *preliminary Investigation* into reported facts and their imputability. The usual context is a Complaint made to an Ordinary or a Contact Person about un-professional conduct by a cleric or religious, the *Respondent*.

### 2. Task

- 2.1 The purpose of the Investigation is to make a finding about the facts, the circumstances and the imputability of the alleged offence, in order to conclude whether the initial credibility of the allegations (cf. canon 1717 §1 of the Code of Canon Law: “which has at least the semblance of truth”), that led to open an investigation, seems to be confirmed and consequently there is at least probable knowledge of an offence.
- 2.2 The above terminology of Canon Law can be considered equivalent to determining whether there is a *strongly probable case for the Respondent to answer*, a *prima facie* case to employ the usual terms of Anglo-Saxon law.
- 2.3 Based on the conclusions of the investigators, the Archbishop will decide whether a judicial or extra-judicial process should be initiated to try the allegations.
- 2.4 Therefore *the investigation is not at this stage part of a judicial process* although its findings could be used in a judicial process if the Archbishop decides to open it.
- 2.5 In that case the judge or judges would weigh the evidence provided by the complainants and the defence of the respondent in keeping with the procedural norms regulating the canonical processes in the Code of Canon law.
- 2.6 If the process were to be extra-judicial, the Archbishop would appoint two assessors to weigh together with them all the proofs and arguments. The accused would be notified and given the opportunity to defend himself (cf. canon 1720 of the Code of Canon Law).
- 2.7 The investigators may wish to consult the following canon law norms relevant to the preliminary investigation:
  - a) canons 1395, 1717-1719 and 1428 of the Code of Canon Law (canon 1428 is to be read in connection with canon 1717 § 3);
  - b) articles 6 § 1 and 18 of the *motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001 (revised text of 21 May 2010), and in connection with it canon 1722 of the Code of Canon Law.

- c) The *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors*, SACBC 2010, or the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*, SACBC 2013, depending on the type of alleged offences to be investigated.

- 2.8 The Code of Canon Law and the *motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001 (revised text of 21 May 2010) can be consulted on line at the Holy See's website:

[http://www.vatican.va/archive/ENG1104/\\_INDEX.HTM](http://www.vatican.va/archive/ENG1104/_INDEX.HTM)  
[http://www.vatican.va/resources/resources\\_norme\\_en.html](http://www.vatican.va/resources/resources_norme_en.html)

The relevant articles of the *motu proprio* are included in this Vade-mecum (section O).

The SACBC Protocols can be consulted on line at the SACBC website

<http://www.sacbc.org.za/protection/>

### 3. Interviews

#### 3.1 The Investigators are to

- interview the Complainant and the Respondent and witnesses, all separately,
- and to peruse documentary evidence.

#### 3.2 Complainant and Respondent may be accompanied by support persons of their choice. Minor Complainants must be accompanied by parents.

#### 3.3 Respondents are to be made aware of the substance of allegations made against them and to be given an opportunity to reply.

#### 3.4 The Investigation does not extend to cross examination of Complainant by Respondent

### 4. Recording of Interviews

*Evidence is to be recorded* in writing or transcribed from an electronic recording, and signed at the time, or subsequently, by the interviewee and the Investigators.

### 5. Report

The Investigators are to make a *reasoned Report in writing* on whether in their opinion there is a case for the Respondent to answer (see notes below); they should deal with the facts and circumstances alleged, any attribution of fault (imputability) identifiable from such facts and circumstances, and the Respondent's reply. The test is whether the evidence against the Respondent is strongly probable.

The report is to be handed to the Bishops' Delegate who will hand it on to the Ordinary.

## Notes

- a. In the case of allegations of sexual abuse the report will indicate *inter alia* the following:

Does the allegation, if strongly probable, indicate?

- an external violation of the 6<sup>th</sup> commandment against a minor under the age of eighteen (18) years
- involving the abuse of power or position.
- Was it a potential or actual source of scandal
- Were force/threats used?
- Was it in public?
- Was it in the context of the sacrament of confession?
- Were there factors removing imputability (e.g. lack of use of reason, physical force, grave fear)?
- Has the Offence prescribed? (see below)

- b. **Imputability:** An Offence is imputable by reason of malice or of culpability (cf. canon 1321§1). The commentators use terms like deliberate intention and culpable negligence.

- c. **Sexual abuse:** external violation of the 6<sup>th</sup> Commandment (cf. canon 1395 of the Code of Canon Law, and article 6 of the *motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001, revised text of 21 May 2010):

- Direct abuse: physical sexual abuse
- Indirect abuse
  - showing pornography to minors
  - lewd, indecent exposure in front of minors
  - possession of, or downloading from the internet, paedophilic pornography.

- d. **Sexual misconduct between adults:** The Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors), SACBC 2013, Appendix II, nos. 8-9 distinguishes the following forms this misconduct may present:

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

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

Each of the above can take different forms:

- Physical: uninvited, unwanted physical contact such as rape, sexual assault, touching, stripping
- Verbal: suggestions, unwelcome innuendoes, hints, sexual advances, sexual comments, sex-related jokes, unwelcome comments, whistling
- Non-verbal: unwelcome gestures, indecent exposure, unwelcome display of pictures, unwelcome display of objects.

## APPOINTMENT OF INVESTIGATORS

Investigators are appointed by the Delegate from a PCC Panel approved by the Ordinary (see nos. 7.6.4.1 and 18.2 of the *Protocol for the Investigation of Complaints against Clerics and Religious in Regard to Sexual Abuse of Minors*, and nos. 4.7.4.1 and 12.2 of the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*).

They are appointed in their professional capacities, to make an independent finding on the facts and circumstances disclosed by the Investigation.

For an Appointment Letter see the section Documents: DC 3.

## A MODEL INVESTIGATORS' REPORT (A Hypothetical Case)

1. A summary of the Complaint and of the Respondent's reply and of the evidence of three witnesses is set out in the letter of the investigating team to the Ordinary.
2. The task of the Investigation is to say to the Ordinary whether the facts of the Complaint are true and imputable to the Respondent; canon law commentators speak of the test of a strong probability that the facts are true.
3. On the information presented the Complaint is possibly true and there is a probability that it is so. The probability arises from the credible detail of the events complained of and the absence of internal contradictions in the detail.
4. The Complaint is denied by the Respondent. That does not, in itself, add to or detract from the probability of the Complaint. Respondent gives no reasons why the Complaint is not credible.
5. The witnesses do not corroborate the allegations of sexual abuse of the Complainant by Respondent nor do they say anything that might make this probably true.
6. So there is a probably true story. Is there anything in the Complaint or the response that makes the story strongly probable? Or that weakens the probability?
7. Strengthening factors are
  - 7.1 the coherence of the story of the Complaint,
  - 7.2 the vulnerability of Complainant in the context of advances by the postulants' master and
  - 7.3 the constraint on the postulant, not to complain of abuse.
8. Factors that could be considered to weaken the probability are:
  - 8.1 the period of fifteen years between the event and the Complaint;
  - 8.2 the reason given for the delay was that Complainant would wait until he was a priest to complain, but then it took him until three years after ordination to hint at the Complaint without mentioning the Respondent and then another six years to make it formally;
  - 8.3 key evidence that Complainant asked for counselling and a break because of the trauma of abuse was contradicted by the Provincial who says he offered it to try to save the vocation;
  - 8.4 Complainant's vocation was unstable from about 2000 and he eventually ceased practicing as a priest in 2005 saying that he had a son to care for, and by implication, a livelihood to make;
  - 8.5 the formal Complaint is essentially a claim for monetary damages which becomes a threat to litigate and to go to the newspapers if payment is not made;
  - 8.6 there is in effect a shift from seeking justice as a victim to claiming support for the consequences of a failed vocation.
  - 8.7 The evidence of the witnesses does not strengthen or weaken the Complainant's evidence.

9. Reasons or motivation for bringing the Complaint may be relevant, to the question of whether they weaken the probability that, the Complaint is strongly probable, or not.
10. Considerations of compensating the probable victim, or disciplining the probable perpetrator, are not relevant.
11. The only questions are,
  - 11.1 are the facts complained of strongly probably true? and, if so,
  - 11.2 is the strength of the probability weakened by the factors detailed in 8 above?
12. In the opinion of the Investigators, the initial strong probability is weakened by the factors mentioned in 8. It is now a simple probability and falls short of the certainty required for the Ordinary to act; the delay is significant, there is a key contradiction in regard to counselling and a break sought or offered, there is strong present motivation to seek monetary compensation by fabricating or exaggerating a charge, the threat is a negative factor in credibility. The Ordinary is advised accordingly. It is clear that, should the Ordinary decide not to act against Respondent, then there are no moral grounds for compensating the Complainant.

## SUSPECTED SEXUAL ABUSE OF A MINOR OR FIRST DISCLOSURE FOR AN ADULT - GUIDELINES

### Dealing with suspected sexual abuse of a minor

#### Context:

The protocol directs that parents or guardians who make a Complaint of sexual abuse of a minor will be advised of their right to report to the civil authorities and should they refuse to report the incident the Church will do so. A list of senior detectives in the various centres, to whom such incidents can be reported, has been compiled.

- 1 Before an incident is reported to the senior detective, parents / caregivers should contact CHILDLINE on 0800 055 555. This is a free call. CHILDLINE will assist the parents /caregivers in arranging for the child to talk. This first disclosure is the most difficult and can be relevant legally. It should NOT be bullied or cajoled out of the child by ANYONE. Leave it to those who specialise with this.
- 2 Once disclosure has been made, then a report can be made to a senior detective. It is very important to make a REPORT (and not LAY a CHARGE) at this stage.
- 3 When a CHARGE is made, the child must be taken to a district surgeon where a full assessment of the physical condition of the child must be made with all that entails; physical assessment of the child may be necessary if there is obvious injury.
- 4 Make sure to have this discussion with the counsellor in order to establish what action you are taking. This will ensure proceedings are not taken out of your hands.
- 5 CHILDLINE can then assist with counselling and advice on the way forward. They have a limited number of free counsellors available, plus a resource list of suitable counsellors for those who can afford to pay.
- 6 Parents/caregivers should note that if a decision is made to go ahead with a charge, the child will still have to go through the examination but will have been prepared for it and can be assisted through the entire process including court appearance.

## First disclosure for an adult abused as a minor

### Context:

An adult survivor has decided to pursue justice through the court system. It is still important that s/he seeks counselling FIRST. There are a number of reasons for this.

- 1 It is important that ALL the memories be from the child's perspective in order to be valid. A counsellor will help separate memories from imaginings, or mature reflections.
- 2 It is important to understand that first disclosure, even when an adult, HURTS. Time is needed to adjust to "having it out in the open". Incorporating it into our life story, as opposed to being a secret we have carried around, takes time. It can wait a little longer.
- 3 Counselling enables a person to be clear why they are pursuing this; what they hope to gain; what they believe will happen to the accused. It will provide non-judgemental assistance and be available after whatever course of action is decided. Childline can also assist with resources.
- 4 Counselling will assist with preparations for court and its brutality. [The *defence* will not like you!]

Prepared by Julie Bryant BA (SW) Aust  
(In consultation with Allan Schwarzer  
SACBC Legal Advisory Committee)  
22 May 2007

## PROTECTION OF CHILDREN AND OTHERS IN RSA LAW

### SOUTH AFRICAN LAW - PROTECTION OF MINORS AND OTHERS IN REGARD TO SEXUAL OFFENCES

The RSA Legislature enacted detailed laws pertaining to the protection of minors. The laws are

- the Children's Act, No 38 of 2005;
- the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No 32 of 2007 and
- the Children's Amendment Act, No 41 of 2007.

As an analysis or attempt at concordance is beyond the scope of this note, reference will be made to only certain salient features.

#### NOT ONLY PROTECTION OF MINORS

Whilst Acts 38 of 2005 and 41 of 2007 (which must be taken together) apply only in respect of children and child care (a **child** being defined as meaning "a **person under the age of 18 years**"), Act 32 of 2007 also includes protection of persons over the age of 18 years by creating certain offences in respect of the latter.

#### SEXUAL OFFENCES

After an extensive review of all aspects relating to sexual offences, the legislature enacted the aforesaid Act 32 of 2007. It is both a comprehensive and a consolidating amendment statute. [For ease of reference Act 32 of 2007 will also be referred to as "the Offences Act".]

The main features of the Offences Act are the following:

- Where common law offences (such as Rape and Indecent Assault) have been repealed, they are replaced by new and expanded offences. In addition, further and new offences are created.
- The Offences Act criminalises all forms of sexual penetration without consent (irrespective of gender), of all forms of sexual violation without consent, of certain compelled acts of penetration or violation and of the compelling or causing the witnessing of certain sexual conduct and certain parts of the human anatomy, the exposure or display of child pornography and the engaging of sexual services of an adult.
- The creation of certain new, expanded or amended sexual offences against children and persons who are mentally disabled, including offences relating to sexual exploitation or grooming, exposure to or display of pornography and the creation of child pornography - despite some of such offences being similar to offences created in respect of adults - aims to address the particular vulnerability of children and persons who are mentally disabled in respect of sexual abuse and exploitation.

- For the purposes of the Offences Act **child** is defined the same as in the Children’s Act, viz. “**a person under the age of 18 years**”. However, with specific reference to two of the provisions of the Offences Act (ss. 15 and 16), **child** is defined as “**a person 12 years or older but under the age of 16 years**”.
- In respect of the element of the absence of consent, it is to be noted that it is irrefutably presumed that a person (male or female) under the age of 12 years or a mentally disabled person, is incapable of consenting to a sexual act.
- Whilst the Offences Act formally defines a **sexual offence** as meaning “**any offence in terms of Chapters 2, 3 and 4 and sections 55 and 71 (1), (2) and (6) of this Act**”, the term **sexual act** “**means an act of sexual penetration or an act of sexual violation**”. (Those concepts are in turn further defined.)
- In terms of the Children’s Act, **sexual abuse** “**in relation to a child, means**
  - 
  - (a) **sexually molesting or assaulting a child or allowing a child to be sexually molested or assaulted;**
  - (b) **encouraging, inducing or forcing a child to be used for the sexual gratification of another person;**
  - (c) **using a child in or deliberately exposing a child to sexual activities or pornography; or**
  - (d) **procuring or allowing a child to be procured for commercial sexual exploitation or in any way participating or assisting in the commercial exploitation of a child**”.

The kinds of conduct referred to will also fall to be dealt with under the Offences Act.

- An innovation in RSA law is the establishment in terms of Chapter 6 of the Offences Act of a National Register for Sex Offenders. This is a far-reaching measure. (It is a subject on its own.)
- Another innovation is the provision for Extra-territorial Jurisdiction: in certain circumstances a RSA court has jurisdiction to try an offence charged even if the act alleged to constitute a sexual offence or other offence under the Offences Act occurred outside the Republic, whether or not the act constitutes an offence at the place of its commission.

#### **DUTY TO REPORT**

There are two provisions containing a duty to report offences against minors (or ‘children’ as defined).

One is provided for in s 54 of the Offences Act (which came into operation on 16 December 2007); the other is provided for in s 110 of the Children’s Act as inserted

by the Children's Amendment Act (which became operative on 18 March 2008 and is therefore more recent). The wording of the respective provisions is to be noted.

Section 54 of the Offences Act provides:

*“(1) (a) A person who has knowledge that a sexual offence has been committed against a child must report such knowledge immediately to a police official.*

*(b) A person who fails to report such knowledge as contemplated in paragraph (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.*

*(2) (a) A person who has knowledge, reasonable belief or suspicion that a sexual offence has been committed against a person who is mentally disabled must report such knowledge, reasonable belief or suspicion immediately to a police official.*

*(b) A person who fails to report such knowledge, reasonable belief or suspicion as contemplated in paragraph (a), is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both a fine and such imprisonment.*

*(c) A person who in good faith reports such reasonable belief or suspicion shall not be liable to any civil or criminal proceedings by reason of making such report.”*

[Underlining supplied]

Section 110 of the Children's Act provides:

*“(1) Any correctional official, dentist, homeopath, immigration official, labour inspector, legal practitioner, medical practitioner, medical practitioner, midwife, minister of religion, nurse, occupational therapist, physiotherapist, psychologist, religious leader, social service professional, social worker, speech therapist, teacher, traditional health practitioner, traditional leader or member of staff or volunteer worker at a partial care facility, drop-in centre or child and youth care centre who on reasonable grounds concludes that a child has been abused in a manner causing physical injury, sexually abused or deliberately neglected, must report that conclusion in the prescribed form to a designated child protection organisation, the provincial department of social development or a police official.”*

[Underlining supplied]

Section 110 contains a further seven subsections [(2) to (8)]. Without traversing the detail, the following distillation can be made:

- The key civil authority is the provincial department of social development [“the department”] but a designated child protection organisation is a significantly important role-player.
- Reports made in terms of s 110 to entities other than the department, above, must be passed on by those entities to the department.
- The department is obligated to, among other things, make an assessment and/or do an investigation:

*“(5) The provincial department of social development or designated child protection organisation to whom a report has been made..., must -*

- (a) ensure the safety and well-being of the child concerned, if the child’s safety or well-being is at risk;*
- (b) make an initial assessment of the report;*
- (c) unless the report is frivolous or obviously unfounded, investigate the truthfulness of the report or cause it to be investigated;*
- (d) if the report is substantiated by such investigation, without delay initiate proceedings in terms of this Act for the protection of the child; and*
- (e) submit such particulars as may be prescribed to the Director-General for inclusion in Part A of the National Child Protection Register.”*

- Having conducted an investigation as referred to in subsection (5), the department is empowered by subsection (7) to take certain steps concerning the care and/or welfare of the child. The department is obliged to act where a criminal offence possibly features:

*“(8) The provincial department of social development or designated child protection organisation which has conducted an investigation as contemplated in subsection (5) must report the possible commission of an offence to a police official.”*

## INTEGRITY OF THE INVESTIGATION POSSIBLE ACTIONS AGAINST THE DECISIONS OF THE ORDINARY

1. The investigation, as set out in the Protocols, follows canon 1717, which describes what an Ordinary is to do, when knowledge of an alleged canonical Offence is received.
2. Once the investigation has been started by Decree of the Ordinary it should, in terms of Canon Law and of the Protocol, be completed. This means that, as laid down by canon 1718, the investigation is to be closed with a decision of the Ordinary. The decision should be made known in writing to the lawfully concerned parties who will be entitled to lodge recourse against it or, when the decision of the Ordinary is to open a judicial process in which they will be heard, to appeal the sentence.
3. The persons who have been involved in the investigation are
  - 3.1 the Complainant whose statement to the Contact Person started the process,
  - 3.2 the Respondent who is called on to reply to the Complaint,
  - 3.3 the Investigators who interview the parties on behalf of the Ordinary
  - 3.4 the members of the PCC who manage and oversee the process in terms of the Ordinary's delegation to the chairperson to act in the matter
  - 3.5 persons who are affected by the abuse complained of, e.g. the family of the Complainant, the members of an "abused" parish, and
  - 3.6 all the members of the Church whose trust has been abused.
4. Those persons have an expectation that -
  - 4.1 the investigation will be professional and independent,
  - 4.2 the findings of the investigation will be acted on,
  - 4.3 the canonical process subsequent to the Investigation will be completed, and
  - 4.4 there will be no perceived cover-up.
5. The integrity of the process, once commenced, requires that the expectations of the Church be met by the Ordinary. The fulfilment of the expectations will be recorded in the files of the Professional Conduct Committee, delegated by the Ordinary to manage the process.
6. The norms which regulate the administrative recourse against decrees of the Church authority when closing an investigation or the appeal against the sentence in the judicial process that may follow a preliminary investigation are contained in the Code of Canon Law and in other pontifical laws. They are referred to in the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors*, Part VI, Legal Recourse, no. 26, and in the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*, Part VI, Legal Recourse, no. 19. They can also be found in the section of documents at the end of this Vade-mecum, in the sample decrees nos. DC 16-19.

## TIME IS OF THE ESSENCE

1. Delays in concluding the Investigation are to be avoided because of the following factors:
  - the serious nature of the allegations,
  - care for the Complainant,
  - safeguarding the reputation of the Respondent and
  - the containment of scandal.
2. It is suggested that an Investigation should be concluded within 30 days of the Complaint.
3. The following time sheet could be used to this end; it can be copied and printed.

### TIME SHEET

Case reference \_\_\_\_\_

Complaint transmitted to Ordinary on (Date) \_\_\_\_\_

1. Within 1 day of Complaint, Contact Person to inform Ordinary
2. Within 3 days, Ordinary
  - a) to inform Respondent
  - b) to issue Decree opening Investigation and appointing Investigators
  - c) to decide on withdrawal from active ministry or not
3. Within 7 days, delegate to appoint case manager
4. Within 10 days, case manager to have arranged interviews
5. Within 20 days, interviews to be concluded
6. Within 25 days, Investigators' report to be given to delegate
7. Within 30 days, PCC to peruse report and transmit to Ordinary

## BISHOP-AS-JUDGE AND THE PRIEST: JUSTICE WITH DIGNITY

1. Bishops and priests have taken for granted their relationship of father and son. In our time the bishop has often to be a judge of his priest whose behaviour has been complained about. Complaint and process mean that the father/son relationship may need protecting and nurturing. The reputation of the bishop and the priest are at stake. Unwarranted hurt to parties is to be contained.
2. Steps have been taken to protect victims of Offences said to be committed by priests.<sup>1</sup> Protecting the bishop/priest relationship deserves to be addressed. Justice with dignity can be gained by holding to canon law and natural justice.
  - 2.1. The priest against whom a Complaint is made is to be told right away<sup>2</sup> about it, rather by the bishop than by anyone else.
  - 2.2. The priest against whom a Complaint is made is to be told right away<sup>3</sup> about it, rather by the bishop than by anyone else.
  - 2.3. The bishop is to satisfy himself whether the Complaint is genuine or malicious as soon as possible after it is made.<sup>4</sup> Simple questioning of the priest and of the Complainant will help. The finding, and the consequent decision to go ahead with an enquiry or not, is to be made known to both parties right away.
  - 2.4. The reputation of the priest is at stake and whether to relegate him from his duties is not lightly done. He is presumed innocent of the Complaint until the facts have been found to be true<sup>5</sup> and performed by him.
  - 2.5. The bishop is to decide whether to set in motion an enquiry<sup>6</sup> either personally or through another (canon 1717).
  - 2.6. A speedy conclusion to the enquiry is vital.
  - 2.7. Natural justice requires that the priest is entitled
    - a. to know what has been said or written about him by the Complainant or any other person,
    - b. to reply to the Complaint,
    - c. to have a companion or legal person to help him,
    - d. to a speedy conclusion and to be informed of it right away,
    - e. to have the bishop make a speedy decision about the next step.

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<sup>1</sup> See the SACBC professional conduct and protocol documents which cover much of what is said here but the emphasis of which is the victim.

<sup>2</sup> "Right away" here means within days rather than weeks and weeks rather than months.

<sup>3</sup> "Right away" here means within days rather than weeks and weeks rather than months.

<sup>4</sup> The bishop may ask a suitable person to help him.

<sup>5</sup> The test is "strong probability" and not "beyond a reasonable doubt" or "on a balance of probability".

<sup>6</sup> The enquiry is the preliminary investigation of canon 1717 that normally the Ordinary delegates to the Professional Conduct Committee, as a result of which the bishop decides what further step to take.

## PRESCRIPTION

Prescription (also called in some countries statute of limitations) is the extinction or lapsing of the right to institute legal action, i.e. to bring a law suit against an alleged offender.

### PRESCRIPTION IN CANON LAW

1. GENERAL PRINCIPLE. In Canon Law a criminal action is extinguished by prescription after three years. (Canon 1362 §1)
2. EXCEPTIONS (Canon 1362 §1):
  - 1) Offences reserved to the Congregation for the Doctrine of the Faith (CDF) (see below).
  - 2) The following offences prescribe after five years (canon 1362 §1):
    - a) a cleric or a religious in perpetual vows who is not a cleric who attempts marriage, even if only civilly;
    - b) a cleric living in concubinage;
    - c) a cleric who continues in some other external sin against the sixth commandment of the Decalogue which causes scandal;
    - d) a cleric who has offended in other ways against the sixth commandment of the Decalogue, if the crime was committed by force, or by threats, or in public, or with a minor under the age of sixteen years);
    - e) one who commits murder, or who by force or by fraud abducts, imprisons, mutilates or gravely wounds a person;
    - f) a person who actually procures an abortion.
3. OFFENCES RESERVED TO THE CDF. A criminal action for offences reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after twenty years, with due regard to the right of the CDF to derogate from prescription in individual cases. (Norms on *delicta graviora* approved by the Holy Father Benedict XVI on 21 May 2010, Art. 7)
4. RECKONING OF THE TIME FOR PRESCRIPTION. Prescription runs from the day the offence was committed or, if the offence was enduring or habitual, from the day it ceased. (Canon 1362 §2) However, in the offences against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years prescription begins to run from the day on which a minor completes his eighteenth year of age. In this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor below the age of eighteen years.
5. The DEATH OF THE RESPONDENT extinguishes criminal actions. However there may be reasons that make advisable to establish whether allegations of sexual abuse of minors seem credible in order to offer the victim apologies, pastoral care and financial help to cover psychological or other medical treatment in spite of the respondent having passed away. Moreover, the alleged victim can sue the Church for damages at a secular court as already seen in some countries.

## PRESCRIPTION IN RSA LAW

The right to institute a prosecution lapses for

**CRIMINAL ACTIONS** (Section 18(1)(d) to (i), Criminal Procedure Act 51/1977): after the expiration of a period of 20 years from the time when the offence was committed, or in the case of an offence against a minor 20 years from the age of majority. The right to institute an action does not lapse in respect of

- kidnapping
- child stealing
- rape or compelled rape (Sections 3 & 4, Criminal Law Amendment Act 2007)
- genocide and crimes against humanity
- trafficking in persons for sexual purposes
- using a child or person who is mentally disabled for pornographic purposes. (Sections 20(1) and 26(1), Criminal Law Amendment Act 2007)

**CIVIL ACTIONS:** 3 years from occurrence of the delict or awareness of the right to institute an action or in the case of a delict against a minor 3 years from the date of majority. (Sections 20(1) and 26(1), Criminal Law Amendment Act 2007)

A minor (child) is a person under 18 year of age. (Children's Act No 38 of 2005)

## ATTORNEY/CLIENT PRIVILEGE: LODGING THE CASE RECORD

Instructions given to an attorney in regard to a matter and generally to consider the law, investigate a situation, gather evidence be it oral or documentary, peruse files, give or solicit legal opinion, in reasonable anticipation of litigation ensuing, are privileged as between the attorney and the client. This means that the attorney may not disclose the instructions, including all the above items, without the agreement of the client. As concerns the attorney the privilege cannot be breached by subpoena, court order or finding of an administrative body under for instance the Public Access to Information Act.

Client, but not the attorney without his agreement, can be required to furnish information in his possession or within his knowledge in terms of the rules of court through a discovery request, an order *duces tecum* or in cross examination.

The advantage of instructing an attorney is that client, under protection of the attorney/client privilege, gets legal opinion on his matter, gathers the evidence through interview or perusal of documents, orders the facts, appraises the case and is prepared for a possible claim before having to disclose, particularly in cross-examination.

An added advantage for client is that the media can be referred to the attorney until such time as client is fully prepared to deal with the media.

### RULES FOR THE ATTORNEY/CLIENT PRIVILEGE

In order to make the privilege work for a PCC case -

1. An attorney is to be instructed to represent and give advice on litigation or in anticipation of litigation to the Archdiocese in the particular matter.
2. All documents, manuscript notes and recordings are collected from the investigators, the case manager, the delegate and chancery officials.
3. The archivist collecting the documentation is either the delegate or a person appointed by him.
4. The documentation is collated, duplicates shredded, listed, put into a box file and delivered to the attorney.
5. The attorney is to check the documentation against the list, give a receipt and seal the box file which is clearly identified.
6. Investigators, the delegate, the case manager and chancery officials are instructed to delete from their computers all files that refer to the case; they will assure the delegate by email or fax that this has been done.

## **MOTU PROPRIO SACRAMENTORUM SANCTITATIS TUTELA OF 30 APRIL 2001 WITH THE AMENDMENTS MADE BY BENEDICT XVI ON 21 MAY 2010**

On 30 April 2001 John Paul II issued norms on more grave delicts. On 21 May 2010 Benedict XVI made amendments to these norms. The sections of greater interest for the preliminary investigation of complaints against clerics and religious in regard to sexual abuse of minors are included below.

Part One

### **SUBSTANTIVE NORMS**

#### **Art. 1**

§ 1. The Congregation for the Doctrine of the Faith, according to art. 52 of the Apostolic Constitution *Pastor Bonus* [1], judges delicts against the faith, as well as the more grave delicts committed against morals and in the celebration of the sacraments and, whenever necessary, proceeds to declare or impose canonical sanctions according to the norm of both common and proper law, with due regard for the competence of the Apostolic Penitentiary [2] and in keeping with *Agendi ratio in doctrinarum examine* [3].

§ 2. With regard to the delicts mentioned above in § 1, the Congregation for the Doctrine of the Faith, by mandate of the Roman Pontiff, may judge Cardinals, Patriarchs, Legates of the Apostolic See, Bishops as well as other physical persons mentioned in can. 1405 § 3 of the Code of Canon Law [4], and in can. 1061 of the Code of Canons of the Eastern Churches. [5]

§ 3. The Congregation for the Doctrine of the Faith judges the reserved delicts mentioned in § 1 according to the following norms.

[...]

#### **Art. 6**

§ 1. The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:

1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.

2° the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology;

§ 2. A cleric who commits the delicts mentioned above in § 1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition.

#### **Art. 7**

§ 1. A criminal action for delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after twenty years, with due regard to the right of the Congregation for the Doctrine of the Faith to derogate from prescription in individual cases.

§ 2. Prescription runs according to the norm of can. 1362 § 2 of the Code of Canon Law [32], and can. 1152 § 3 of the Code of Canons of the Eastern Churches [33]. However, in the delict mentioned in art. 6 §1 n. 1, prescription begins to run from the day on which a minor completes his eighteenth year of age.

## Part Two

## PROCEDURAL NORMS

[...]

**Art. 16**

Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, once the preliminary investigation has been completed, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch how to proceed further, with due regard, however, for the right to appeal, if the case warrants, against a sentence of the first instance only to the Supreme Tribunal of this same Congregation.

**Art. 17**

If a case is referred directly to the Congregation without a preliminary investigation having been undertaken, the steps preliminary to the process, which fall by common law to the Ordinary or Hierarch, may be carried out by the Congregation itself.

**Art. 18**

With full respect for the right of defence, the Congregation for the Doctrine of the Faith may sanate acts in cases lawfully presented to it if merely procedural laws have been violated by lower Tribunals acting by mandate of the same Congregation or according to art. 16.

**Art. 19**

With due regard for the right of the Ordinary, to impose from the outset of the preliminary investigation those measures which are established in can. 1722 of the Code of Canon Law [36], or in can. 1473 of the Code of Canons of the Eastern Churches [37], the respective presiding judge may, at the request of the Promoter of Justice, exercise the same power under the same conditions determined in the canons themselves.

## Footnotes

- [1] Ioannes Paulus PP. II, Constitutio apostolica *Pastor bonus*, De Romana Curia, 28 iunii 1988, art. 52, in AAS 80 (1988) 874: «Delicta contra fidem necnon graviora delicta, tum contra mores tum in sacramentorum celebratione commissa, quae ipsi delata fuerint, cognoscit atque, ubi opus fuerit, ad canonicas sanctiones declarandas aut irrogandas ad normam iuris, sive communis sive proprii, procedit».
- [2] Ioannes Paulus PP. II, Constitutio apostolica *Pastor bonus*, De Romana Curia, 28 iunii 1988, art. 118, in AAS 80 (1988) 890: «Pro foro interno, tum sacramentali tum non sacramentali, absolutiones, dispensationes, commutationes, sanationes, condonationes aliasque gratias eadem largitur».
- [3] Congregatio pro Doctrina Fidei, *Agendi ratio in doctrinarum examine*, 29 iunii 1997, in AAS 89 (1997) 830-835.
- [4] *Codex Iuris Canonici*, can. 1405 - § 3. Rotae Romanae reservatur iudicare:
- 1° Episcopos in contentiosis, firmo praescripto can. 1419 § 2;
  - 2° Abbatem primatem, vel Abbatem superiorem congregationis monasticae, et supremum Moderatorem institutorum religiosorum iuris pontificii;
  - 3° dioeceses aliasve personas ecclesiasticas, sive physicas sive iuridicas, quae Superiorem infra Romanum Pontificem non habent.
- [5] *Codex Canonum Ecclesiarum Orientalium*, can. 1061 - Coram tribunalibus Sedis Apostolicae conveniri debent personae, quae auctoritatem superiorem infra Romanum pontificem non habent, sive sunt personae physicae in ordine episcopatus non constitutae sive sunt personae iuridicae salvo can. 1063 § 4 nn. 3 et 4.
- [32] *Codex Iuris Canonici*, can. 1362 - § 2. Praescriptio decurrit ex die quo delictum patratum est, vel, si delictum sit permanens vel habituale, ex die quo cessavit.

- [36] Codex Iuris Canonici, can. 1722 - Ad scandala praevenienda, ad testium libertatem protegendam et ad iustitiae cursum tutandum, potest Ordinarius, audito promotore iustitiae et citato ipso accusato, in quolibet processus stadio accusatum a sacro ministerio vel ab aliquo officio et munere ecclesiastico arcere, ei imponere vel interdicere commorationem in aliquo loco vel territorio, vel etiam publicam sanctissimae Eucharistiae participationem prohibere; quae omnia, causa cessante, sunt revocanda, eaque ipso iure finem habent, cessante processu poenali.
- [37] Codex Canonum Ecclesiarum Orientalium, can. 1473 - Ad scandala praevenienda, ad testium libertatem protegendam et ad iustitiae cursum tuendum potest Hierarcha audito promotore iustitiae et citato ipso accusato in quolibet statu et grado iudicii poenalis accusatum ab exercitio ordinis sacri, officii, ministerii vel alterius muneris arcere, ei imponere vel prohibere commorationem in aliquo loco vel territorio, vel etiam publicam Divinae Eucharistiae susceptionem prohibere; quae omnia causa cessante sunt revocanda et ipso iure finem habent cessante iudicio poenali.

## PROCEDURE AND PRAXIS OF THE CONGREGATION OF THE DOCTRINE OF THE FAITH REGARDING *GRAVIORA DELICTA*

*Mgr Charles J. Scicluna*  
*Former Promoter of Justice of the CDF*

### A. Some preliminary considerations regarding substantive law

With reference to art. 52 of the Apostolic Constitution *Pastor Bonus* of 28 June 1988, art. 1 of the *motu proprio Sacramentorum sanctitatis tutela* of 30 April 2001 distinguishes between two types of *graviora delicta*:

- “*delicta in sacramentorum celebratione commissa*” (delicts committed in the celebration of the sacraments)
- “*delicta contra mores*” (delicts against morals).

Concerning the *delicta graviora in sacramentorum celebratione commissa*, the *motu proprio* takes into account only two sacraments: i) the Most Holy Sacrifice and Sacrament of the Eucharist ii) the sacrament of Penance.

The *motu proprio*, in art. 2, enumerates five (5) delicts against the Eucharist.

1. The profanation of the Sacred Species (art. 2, n. 1). The *motu proprio* makes explicit reference (cf. n. 9) to the authentic interpretation of 4 June 1999 which included in the definition of the verb “*abicere*”, used in can. 1367 CIC and can. 1442 CCEO, “*quamlibet actionem Sacras Species voluntarie et graviter despicientem*” (any action which voluntarily and gravely offends the Sacred Species).
2. The attempt to celebrate the Eucharistic Sacrifice by someone not in Holy Orders (art. 2, n. 2; can. 1378 §2, n. 1 CIC). This delict, while not mentioned in the CCEO, is explicitly included in the *corpus canonum ecclesiarum orientalium* in virtue of the *motu proprio*.
3. The simulation of the liturgical celebration of the Eucharistic Sacrifice (art. 2, n. 2; can. 1379 CIC; can. 1443 CCEO). For both Codes, the simulation of any of the sacraments is a delict. The *motu proprio* only considers the simulation of Holy Mass or of the Divine Liturgy as a *delictum gravius*.
4. The concelebration of the Eucharistic Sacrifice with a minister of an ecclesial community which does not have the Apostolic Succession and which does not recognize the sacramental dignity of priestly ordination (art. 2, n. 3). The *motu proprio* explicitly mentions cann. 908 and 1365 CIC as well as cann. 702 and 1440 CCEO. The scope of these canons is broader than the norm of the *motu proprio*, which restricts a *delictum gravius* to the concelebration of the Eucharistic Sacrifice with “Protestant” ministers. It seems to me that the two elements (the absence of Apostolic Succession and the non-recognition of the sacramental dignity of priestly ordination) are indistinguishable in the description of this particular ecclesial community which is spoken of in art. 2, n. 3.
5. The consecration, for a *sacrilegious purpose*, of one of the Eucharistic species without the other in the Eucharistic celebration, or of both outside the Eucharistic celebration (Art. 2 § 2). Note 19 makes reference to can. 927 CIC which utilizes the expression *nefas est* to forbid an action which is not a formal delict. It is important to note the *finis operantis* “in sacrilegum finem”. I wonder whether such consecrations within the context of sacrilege verge on the

delict of profanation of the Eucharist defined as “qualibet actio Sacras Species voluntarie et graviter despicens”.

Art. 3 of the *motu proprio* envisages four (4) delicts against the sanctity of the Sacrament of Penance.

1. The absolution of an accomplice in a sin against the Sixth Commandment (Art. 3, n. 1 can. 1378, § 1 CIC; can. 1457 CCEO).
2. The solicitation to sin against the Sixth Commandment (Art. 3, n. 2 can. 1387 CIC; can. 1458 CCEO). It is important to note that the *motu proprio* limits the *delictum gravius* to solicitation which is directed to sinning with the confessor himself (“*quae ad peccandum cum ipso confessario dirigitur*”), while the classic definition of *solicitatio* in the Code includes also the solicitation to sin against the Sixth Commandment with a third person. The jurisprudence concerning this delict has evolved substantially, in part because in the 1917 Code an obligation existed, under pain of excommunication, to denounce the soliciting confessor. Solicitation also includes the explicit encouragement to commit impure acts. Some cases of abusive behaviour show that some priests have used the Sacrament of Penance to identify their victims and to make their first contact with them. This behaviour could easily be included under *solicitatio inchoata* in which the confessor begins an apparently innocent conversation leading to a meeting with the penitent outside of confession where sexual or indecent behaviour occurs.
3. The direct or indirect violation of the sacramental seal (Art.3, n. 3 can. 1388 § 1 CIC; can. 1456 § 1 CCEO). The *motu proprio* originally included only the direct violation of the seal. The Holy Father, in an audience granted to Cardinal Ratzinger on 7 February 2003, decided to include also the indirect violation. This decision of the Supreme Legislator certainly makes it easier for the Ordinary to decide which cases are to be referred to the CDF by reason of competence. It is often difficult to distinguish between the two species of delict in actual cases of violating the seal.
4. The recording, or divulging by means of social communication, of that which has been said, whether by the priest or by the penitent, in confession (Art. 3, n. 4 Decretum CDF, 23.09.1988 AAS 80 [1988] 1367). This *delictum gravius* was added by the Holy Father in a decision dated 7 February 2003. The Decree of the CDF, establishing an excommunication *latae sententiae*, was published in 1988.

It is worth noting a principal of procedural law pertaining particularly to this type of delict. Art. 20 of the *motu proprio* provides that, in cases of delicts against the Sacrament of Penance, the name of the accuser cannot be made known to the accused or to his advocate without the explicit consent of the accuser. This traditional principle also has corollary norms in Art. 20: a) the question of the credibility of the accuser in these cases is of the greatest importance; b) the need always to avoid any danger whatsoever of violating the sacramental seal.

For the category of *delicta contra mores*, the *motu proprio* contains only one, in art. 4: the delict against the Sixth Commandment committed by a cleric with a minor under the age of eighteen (18) years.

With regard to this delict, some considerations of the praxis of the CDF, are relevant:

- a) the *motu proprio* speaks of a “*delictum cum minore*”. This does not mean only physical contact or direct abuse, but includes indirect abuse also (for example: showing pornography to minors; lewd indecent exposure in front of minors). Included also is the possession of, or downloading from the internet of pedophilic pornography. This type of behaviour is also a civil crime in some nations. While “browsing” may be involuntary, it is difficult to see how

“downloading” could be considered so, since not only does it involve making a choice or choosing a specific option, but often involves payment by credit card and the furnishing of personal information by the purchaser which can be traced back to him. Some priests have been incarcerated for possession of thousands of pornographic photos of children and youth. According to the praxis of the CDF such behaviour is considered a *delictum gravius*.

- b) Can. 1395 § 2 CIC speaks of a delict with a minor under 16: “*cum minore infra aetatem sedecim annorum*”. The *motu proprio*, on the other hand, speaks of a delict with a minor under 18: “*delictum ... cum minore infra aetatem duodeviginti annorum*”. Therefore the classification of the delict becomes more complex. Some experts, in fact, speak not only of pedophilia (the sexual attraction to prepubescent children) but also of ephebophilia (the sexual attraction to adolescents), of homosexuality (the sexual attraction to adults of the same sex) and of heterosexuality (the sexual attraction to adults of the other sex). Between sixteen and eighteen years of age, some “minors” may indeed be perceived as objects of homosexual or heterosexual attraction. Some civil jurisdictions consider a person of sixteen years as capable of giving consent for sexual activity (whether hetero- or homosexual). The *motu proprio*, however, stigmatises as a delict every violation of the Sixth Commandment with a minor under eighteen years of age whether based on pedophilia, ephebophilia, homosexuality or heterosexuality. This differentiation has, nevertheless, an importance from the psychological, pastoral and juridical points of view. It helps, no doubt, both the Ordinary and the judge in grasping the gravity of the delict and choosing the path necessary for the reform of the guilty cleric, the reparation of scandal and the restitution of justice (cfr can. 1341).
- c) A few serious cases of sexual abuse of minors between the ages of sixteen and eighteen committed prior to 30 April 2001 were dealt with under can. 1399: In addition to the cases established here or in other laws, the external violation of a divine or canonical law can be punished by a just penalty only when the special gravity of the violation demands punishment and there is an urgent need to prevent or repair scandals (“*Praeter casus hac vel aliis legibus statutos, divinae vel canonicae legis externa violatio tunc tantum potest iusta quidem poena puniri, cum specialis violationis gravitas punitionem postulat, et necessitas urget scandala praeveniendi vel reparandi*”). As this canon speaks only of a “*iusta poena*”, according to can. 1349 a judge is not able, therefore, to inflict a perpetual penalty.

The question of prescription with regard to *graviora delicta* is once again much discussed after the *motu proprio* because, for the first time in history, a time limit has been imposed, after which the *actio criminalis* is extinguished for these delicts. Art. 5 § 1 indicates that a delict is bound by prescription after ten years, while Art. 5 § 2 establishes that this period of ten years runs according to the norm of can. 1362 § 2 CIC or of can. 1152 § 3 CCEO:

Prescription runs from the day on which the delict was committed or, if the delict is continuous or habitual, from the day on which it ceased (“*praescriptio decurrit ex die quo delictum patratum est, vel, si delictum sit permanens vel habituale, ex die quo cessavit*”). In cases of sexual abuse, the period of ten years begins to run the day on which the minor completes his eighteenth year. Experience has shown that a term of ten years is inadequate for these types of cases and that it would be desirable to return to the former system in which these delicts were not subject to prescription at all. On 7 November 2002, the Holy Father granted to the CDF the faculty to derogate from prescription on a case by case basis upon request of an individual bishop.

## SOME NOTES ON PROCEDURE

**The *Notitia criminis***

*Delicta graviora* are referred to the CDF by the Ordinary in virtue of Art. 13 of the *motu proprio* which speaks of “notitia saltem verisimilem ... de delicto reservato” and of an “investigatio praevia”. The first phase is identical to that envisaged by can. 1717. The Ordinary has the obligation to investigate both the credibility of the accusation as well as the substance or object of the alleged delict. If the result of the “investigatio praevia” is that the accusation is credible, the Ordinary no longer has power or competence to treat the material in conformity with can. 1718, but he must refer the case to the CDF.

**The Options of the CDF**

The CDF studies the acts submitted by the Ordinary and, if no further information is requested in order to arrive at an informed decision, the Congregation proceeds to a very important first decision, namely, the method, *iter*, of resolving the case. Different possibilities are possible:

- a) the CDF may decide that the facts of the case do not require any further penal action and propose, or confirm, some non-penal administrative provisions for the sake of the common good of the Church, including the good of the denounced cleric (cf. cann. 1718 § 1, nn. 1-2). Against such provisions of the CDF, it is not possible to make hierarchic recourse to the Apostolic Signatura but only to the Cardinal and Bishop members in Ordinary Session of the CDF, commonly known by the name *Feria Quarta*.
- b) The CDF may decide to present the case directly to the Holy Father for a *dimissio ex officio* of the accused cleric. This is reserved for particularly grave cases in which the guilt of the cleric is beyond doubt and well documented. It is the praxis of the CDF to request that the Ordinary ask the guilty cleric if he would prefer to seek himself a dispensation from his priestly obligations. If the cleric refuses, or does not respond, the case proceeds. The Disciplinary Section of the CDF prepares a report for the Holy Father who himself decides the case on the occasion of the audience granted generally on a Friday to the Cardinal Prefect or to the Secretary of the Congregation. The rescript will be communicated to the Ordinary. There is no appeal or recourse against the decision of the Holy Father.
- c) The CDF may decide to authorize a penal administrative procedure according to can. 1720 CIC (can. 1486 CCEO). If the Ordinary is of the opinion that the case merits the imposition of the penalty of dismissal from the clerical state, he must refer his opinion to the CDF which will, in turn, decide to impose the penalty or not. Against such a decision recourse may be made to the *Feria IV*.
- d) The CDF may decide to authorize the Ordinary to conduct a penal judicial process in the diocese, with the proviso that, in every case, an appeal will be reserved to the Tribunal of the CDF. The judges, the promoter of justice, the notaries, as well as the advocates must be priests (Art. 12) or be dispensed from this prerequisite. Art. 22 further requires that the acts of the case be transmitted *ex officio* to the CDF at the conclusion of the first instance. The Promoter of Justice of the Congregation has the faculty to appeal the first instance sentence within thirty days “a die qua sententia primae instantiae ipsi Promotori nota facta sit”. In these cases, the CDF has the faculty to senate any acts of procedural law of inferior tribunals. The decision of the Tribunal of the CDF in second instance does not admit of appeal, and therefore, becomes a *res iudicata* (Art. 23 n. 1 and n. 4).

As regards religious, the following procedural *iter* is foreseen:

Each time the competent Superior (can. 620) receives information about at least a probable *delictum gravius* committed by a religious cleric, he must carry out an *investigatio praevia* according to the norm of law. The religious must be informed of the outcome and given the

opportunity to defend himself (cann. 1717; 695, § 2). All the acts must be handed over to the Supreme Moderator according to the norms laid down in can. 695, §2. In turn, the Supreme Moderator will forward the aforementioned acts to the Congregation for the Doctrine of the Faith, along with his own *votum* and that of his council about both the merits of the case and the procedure to be followed.

Once it has received the necessary acts from the Supreme Moderator, the Congregation for the Doctrine of the Faith will indicate the procedure to be followed and the measures to be taken:

- a) When this Congregation indicates that the case should proceed by means of a **penal trial**, it can also indicate, according to circumstances, the competent tribunal to undertake the proceedings at first instance (cf. cann. 1427; 1408 with can. 103). The said tribunal may Decree dismissal from the Institute as well as dismissal from the clerical state. The appeal judgement is reserved to the Supreme Tribunal of the Congregation of the Doctrine of the Faith;
- b) When this Congregation decides that the case should proceed in an **administrative manner**, it will ask the Supreme Moderator to proceed according to the norm of can. 699, § 1. With his council, the Supreme Moderator can decide not to order dismissal from the Institute but to issue disciplinary measures. It is the exclusive duty of the Congregation for the Doctrine of the Faith to confirm the Decree of dismissal from the Institute according to the norm of can. 700. At the same time the Congregation will also decide whether to impose upon the religious the penalty of dismissal from the clerical state. Copies of any Decrees will be sent *ex officio* to the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life. Appeals against Decrees issued in cases of *delicta graviora* will be decided exclusively by the Ordinary Congregation of members of the Congregation for the Doctrine of the Faith (*Feria IV*). There is no recourse to the Apostolic Signatura. Recourses have a suspensive effect.
- c) As regards institutes of diocesan right, each presentation from the Supreme Moderator to the Congregation for the Doctrine of the Faith must be endorsed by the Bishop of the religious person's domicile or quasi-domicile according to the norms of can. 103.

## **COUNSELLING AND PSYCHO/MEDICAL AGREEMENT**

Care for Victim and Respondent may require professional treatment. If the Church offers it to a victim, professionals should be properly appointed and remunerated. An agreement should be signed between a Church representative and the victim stipulating its terms and conditions.

See a possible text for this agreement in the section of Documents DC 22.

**DOCUMENTS:  
DECREES, LETTERS, REPORTS, ETC.  
(DC)**

## DOCUMENTS: DECREES, LETTERS, REPORTS, ETC.

- I. APPOINTMENT OF PCC OFFICIALS AND OATHS OF CONFIDENTIALITY
  1. Decree Appointing PCC Chair-Archbishop's Delegate
  2. Decree appointing the Contact Person
  3. Appointment of Investigators
  4. Oath of confidentiality for PCC members
  5. Oath of confidentiality for Investigators and Investigation Secretaries
  
- II. RECEIVING ALLEGATIONS
  6. Report on allegations received by the Contact Persons
  
- III. OPENING AN INVESTIGATION
  - A. SEXUAL ABUSE OF MINORS
    7. Decree opening a preliminary investigation in the case of sexual abuse of minors by clerics
    8. Letter to inform the respondent in the case of sexual abuse of minors by clerics
    9. Decree of temporary withdrawal from active ministry: to be used when the priest is not willing to withdraw voluntarily
    10. Letter informing on temporary withdrawal from active ministry to be signed by the priest: when the priest is willing to withdraw voluntarily
  - B. CANONICAL OFFENCES (OTHER THAN SEXUAL ABUSE OF MINORS)
    11. Decree opening a preliminary investigation in the case of canonical offences (other than sexual abuse of minors)
    12. Letter to inform the respondent in the case of canonical offences (other than sexual abuse of minors)
  
- IV. SUSPENSION OF AN INVESTIGATION BECAUSE A COURT CASE IS OPENED
  13. Decree holding in abeyance a preliminary investigation because a public prosecutor is taking the case to a court of law

- V. CLOSURE OF A COMPLETED INVESTIGATION
- A. SEXUAL ABUSE OF MINORS: FORWARDING THE ACTS TO THE CDF
14. Decree closing a preliminary investigation where the case is submitted to the CDF
  15. Referral of case to CDF
- B. SEXUAL ABUSE OF MINORS: OPENING A PROCESS
16. Decree opening an administrative process in the case of sexual abuse of minors by clerics (if the CDF instructs the Ordinary to institute a process in the diocese)
  17. Decree opening a judicial process in the case of sexual abuse of minors by clerics (if the CDF instructs the Ordinary to institute a process in the diocese).
- C. CANONICAL OFFENCES (OTHER THAN SEXUAL ABUSE OF MINORS): OPENING A PROCESS
18. Decree opening an administrative process in the case of canonical offences (other than sexual abuse of minors)
  19. Decree opening a judicial process in the case of canonical offences (other than sexual abuse of minors)
- D. CANONICAL OFFENCES (OTHER THAN SEXUAL ABUSE OF MINORS). CLOSING A PRELIMINARY INVESTIGATION WITHOUT FURTHER PROCESS MAKING USE OF APPROPRIATE MEANS OF CORRECTION
20. Decree closing a preliminary investigation without further process making use of appropriate means of correction
- E. CLOSING A PRELIMINARY INVESTIGATION WITHOUT FURTHER PROCESS: THE ALLEGATIONS WERE GROUNDLESS (BOTH SEXUAL ABUSE OF MINORS AND CANONICAL OFFENCES (OTHER THAN SEXUAL ABUSE OF MINORS))
21. Decree closing a preliminary investigation where it has been shown that the allegations were groundless
- VI. COUNSELLING AND PSYCHO/MEDICAL AGREEMENT
22. Counselling and psycho/medical agreement
- VII. TESTIMONIAL OF SUITABILITY FOR MINISTRY
23. Testimonial of suitability for ministry

DECREE

Taking into account No. 7.4 of the SACBC Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors, and No. 4.5 of the SACBC Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors),

After having heard the opinion of the College of Consultors, and counting on the favourable opinion of the Bishops of the suffragan dioceses of this ecclesiastical province,

I HEREBY APPOINT FR. .... as the Bishops' Delegate and Chairperson of the Professional Conduct Committee of this archdiocese with the rights and duties laid down in No. 7.6.1 of the SACBC Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors, and No. 7.4.1 of the SACBC Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)

Given at the Chancery on this date.....

(LS) (Bishop's Seal)

+ \_\_\_\_\_  
.....  
Ordinary of .....  
(specify: Archbishop of, Bishop of,  
Provincial of, etc.)

\_\_\_\_\_  
Fr .....  
Chancellor (or: Vicar General)

DECREE APPOINTING PCC CHAIR-ARCHBISHOP'S DELEGATE

Note: The abbreviation LS is used in Church documents which are to be sealed and stands for *locum sigilli* (Latin for *place for the seal or affix the seal here*).

DECREE

WHEREAS, according to the Protocols which regulate the preliminary investigation of allegations against Church personnel, a Contact Person and a Deputy Contact Person should exist in each diocese,

I HEREBY APPOINT ..... (title Mrs., Mr., Sr., etc., name, surname) as Contact Person ((or Deputy Contact Person)) of this diocese/archdiocese.

The contact person's name is to be announced in every parish and Church institution.

As regards the role of the Contact Person, the following is to be observed:

- 1. The contact person will receive allegations of offences committed by Church personnel and immediately bring them to the Ordinary and the Chairperson of the Professional Conduct Committee.
2. Once contacted by a complainant, the Contact Person will interview him/her without delay, within twenty-four hours if possible, and will keep a written record of this interview which is to be signed by the complainant and the contact person.
3. If the complainant is not the alleged victim, the Contact Person will also interview the victim after discerning the appropriateness of such an interview and obtaining - in the case of allegations of sexual abuse of minors - the express consent of the minor's parent(s) or guardian(s), and in their presence or in the presence of persons mandated by them. A written record is to be made, signed by the victim or guardian and the contact person.
4. The contact person will receive all complaints with respect, understanding and compassion.
5. No statements should be made to the complainant or the victim or any other person implying that the respondent is guilty; that there is any liability for damages; or that any particular course of action will follow the investigation.
6. The Contact Person should advise the victim (or the parents or guardians if the victim is still a minor) of their right to report the case to the Civil Authorities and they will be encouraged to do so. If the parents or guardians refuse to report to the Civil Authorities the Church authority will do it.
7. In the case of allegations of sexual abuse of minors, particular attention is to be paid to child protection issues. In addition to making sure that the parents or the Church authority report the allegations to the Civil authorities, the Contact Person along with the victim's parents or guardian will see to it that counselling and, if needed, health care is provided to the victim by the Child Welfare Agencies.

Given at the Chancery on this date DD / MM / YYYY .

(LS) (Bishop's Seal)

+ \_\_\_\_\_
.....

Ordinary of .....
(specify: Archbishop of, Bishop of, Provincial of, etc.)

\_\_\_\_\_
Fr .....
Chancellor (or: Vicar General)

DECREE APPOINTING THE CONTACT PERSON

PROFESSIONAL CONDUCT COMMITTEE  
Archdiocese or Diocese of .....

APPOINTMENT OF MR/MS .....AS AN INVESTIGATOR IN A COMPLAINT BROUGHT AGAINST FR .....

1. The Professional Conduct Committee (Committee) appoints you in your professional capacity as an attorney to investigate a Complaint of sexual abuse/sexual misbehaviour between adults/mismanaging parish funds... brought against Fr .....
2. Dr/Mrs/Mr ..... has been appointed in her capacity as a social worker/clinical psychologist as co-Investigator. Her/his contact details are: tel....., fax....., cell....., email .....
3. Your professional service and out of pocket expenses will be remunerated by the Committee.
4. The Committee is authorised to make the Investigation by Decree of the Most Reverend/Right Reverend ....., Archbishop/Bishop of ..... A copy of the Decree is attached.
5. In terms of canon 1717 § 2 of the Code of Canon Law, care is to be taken that this investigation does not call into question anyone’s good name. Consequently, the investigation is confidential to the Complainant, the Respondent, the witnesses and the Committee. You will be asked to take an Oath of Confidentiality save pursuant to the obligations of the Committee in terms of the law of the Republic of South Africa and of Canon Law to report complaints of crimes of sexual abuse of minors to the appropriate civil authority.
6. You will be provided with the statement of Complaint and with other available information by Secretary to the Investigation..... whose contact details are; tel....., fax....., cell....., email.....
7. You will interview the Complainant, the Respondent and any persons you consider may have information of the Complaint. You may also call for relevant documentation from the Committee. The Secretary will make arrangements for interviews at your request and convenience and any other requirements.
8. The purpose of the Investigation is to make a finding about the facts, the circumstances and the imputability of the alleged offence, in order to conclude whether the initial credibility of the allegations (cf. canon 1717 §1 of the Code of Canon Law: “which has at least the semblance of truth”), which led to open an investigation, seems to be confirmed and consequently there is at least probable knowledge of an offence.

Based on your conclusions, the Archbishop will decide whether a judicial or extra-judicial process should be initiated to try the allegations. Therefore the investigation is not at this stage part of a judicial process although its findings could be used in a judicial process if the Archbishop decides to open it. In that case the judge or judges would weigh the evidence provided by the complainants and the defence of the respondent in keeping with the procedural norms regulating the canonical processes in the Code of Canon law. If the process were to be extra-judicial, the Archbishop would appoint two assessors to weigh together with them all the proofs and arguments. The accused would be notified and given the opportunity to defend himself (cf. canon 1720 of the Code of Canon Law).

Allan Schwarer 12/12/9 12:24 AM  
**Comment [1]:**

Allan Schwarer 12/12/9 12:24 AM  
**Comment [2]:**

9. You are referred to Guidelines for Investigators which is section E of the Vademecum and is attached. You may also wish to consult:
- a) canons 1395, 1717-1719 and 1428 of the Code of Canon Law (canon 1428 is to be read in connection with canon 1717 § 3);
  - b) articles 6 § 1 and 18 of the *motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001 (revised text of 21 May 2010), and in connection with it canon 1722 of the Code of Canon Law.

The Code of Canon Law and the *motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001 (revised text of 21 May 2010) can be consulted on line at the Holy See's website:

[http://www.vatican.va/archive/ENG1104/\\_INDEX.HTM](http://www.vatican.va/archive/ENG1104/_INDEX.HTM)

[http://www.vatican.va/resources/resources\\_norme\\_en.html](http://www.vatican.va/resources/resources_norme_en.html)

10. You are asked to hold the Investigation, to provide the Committee with the recordings of the interviews and to make a written report as expeditiously as possible. Your report should summarise your findings and indicate your conclusions and recommendations taking into account what is said in nos. 8-9 above. The Committee will consider the report and may request clarifications. The Committee claims ownership of the report and will forward it to the Archbishop adding its own opinion.
11. The written report would ideally be a joint report of both the Investigator and co-Investigator.
12. You will be informed of the decision of the Archbishop and of the outcome of the process, if a process follows the investigation.

Signed at \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

\_\_\_\_\_  
for Professional Conduct Committee

#### APPOINTMENT OF INVESTIGATORS

Note. If it is not possible to appoint professionals as investigators, the reference to their professions can be omitted in nos. 1 and 2 below.

I. FOR NEWLY APPOINTED MEMBERS OF THE COMMITTEE

I, N....., on assuming the office of member of the Professional Conduct Committee in the Archdiocese of ..... (or in the Southern African Catholic Bishops' Conference), promise that will always observe the secret of the office.

Therefore, I will not make revelations about anything I come to know as a consequence of my work in this Committee, and I will not hand on documents related to the cases dealt with by the Committee to anybody who is not supposed to know them.

I will bear in mind the prescription of canon 1717 § 2 of the Code Canon Law about the preliminary investigation on allegations of a canonical offence, namely: "Care is to be taken that this investigation does not call into question anyone's good name."

So help me God and these His Holy Gospels, which I touch with my hand.

II. FOR CURRENT MEMBERS OF THE COMMITTEE

(who did not take the oath when joining the PCC or in case it is deemed opportune that all the PCC members renew this oath)

I, N....., promise that, while holding the office of member of the Professional Conduct Committee in the Archdiocese of ..... (or in the Southern African Catholic Bishops' Conference), will always observe the secret of the office.

Therefore, I will not make revelations about anything I come to know as a consequence of my work in this Committee, and I will not hand on documents related to the cases dealt with by the Committee to anybody who is not supposed to know them.

I will bear in mind the prescription of canon 1717 § 2 of the Code Canon Law about the preliminary investigation on allegations of a canonical offence, namely: "Care is to be taken that this investigation does not call into question anyone's good name."

So help me God and these His Holy Gospels, which I touch with my hand.

Notes:

- 1) The persons mentioned at the end of paragraph 2 to whom it is acceptable to talk about matters of the PCC or share PCC documents with are the other PCC members and the Archbishop of the archdiocese to which the PCC belongs. For the members of the SACBC PCC this means the other members of the SACBC PCC.
- 2) See paragraph 3: a copy of the Bible is needed for this oath.
- 3) See II: if it is decided that all the PCC members renew their oath of office, they can read aloud the text of the oath together but each says his/her name at the beginning successively.

OATH OF CONFIDENTIALITY FOR MEMBERS OF PROFESSIONAL CONDUCT COMMITTEES

I. FOR INVESTIGATORS

I, N....., on assuming the office of investigator in a preliminary investigation on allegations of a canonical offence for which I have been appointed by the Archbishop of ..... (or by the Major Superior of -name of the institute of consecrated life, etc.-) promise that I will always observe the secret of the office.

Therefore, I will not make revelations about anything I come to know as a consequence of interviews, documents I will read, etc. and I will not hand on documents related to the cases I will investigate to anybody except the investigation secretary or the chairperson of the Professional Conduct Committee.

I will bear in mind the prescription of canon 1717 § 2 of the Code Canon Law about the preliminary investigation on allegations of a canonical offence, namely: "Care is to be taken that this investigation does not call into question anyone's good name."

So help me God and these His Holy Gospels, which I touch with my hand.

II. FOR INVESTIGATION SECRETARIES

I, N..... on assuming the office of investigation secretary of the Professional Conduct Committee in the Archdiocese of ..... promise that I will always observe the secret of the office.

Therefore, I will not make revelations about anything I come to know as a consequence of my work in this Committee, and will not hand on documents related to the cases dealt with by the Committee to anybody except the investigators or the chairperson of the Professional Conduct Committee.

I will bear in mind the prescription of canon 1717 § 2 of the Code Canon Law about the preliminary investigation on allegations of a canonical offence, namely: "Care is to be taken that this investigation does not call into question anyone's good name."

So help me God and these His Holy Gospels, which I touch with my hand.

Notes:

- 1) There will always be the need for a person, which can be called investigation secretary or case manager, to act as intermediary between the investigators and those to be interviewed by them in order to arrange a day and time that suits all of them, find a suitable place, introduce the interviewees to the investigators, etc.

When the investigation takes place in the same place where the PCC is based, this person is one of the members of the PCC (see Protocol for the Investigation of Complaints in regard to Sexual Abuse of Minors, no. 5.6). When the interviews are to be held in one of the suffragan dioceses, the PCC asks the Bishop of that diocese to appoint someone.

- 2) Occasionally the investigation secretary or case manager may receive some document from an alleged victim or complainant to be handed to the investigators. This is why the text of the oath includes a reference to documents.

OATH OF CONFIDENTIALITY FOR INVESTIGATORS AND INVESTIGATION SECRETARIES

PROFESSIONAL CONDUCT COMMITTEE  
Archdiocese or Diocese of .....

Case Number (*here the number which corresponds to the case within the year in course and the year could be given; e.gr. 2/2013*)

**REPORT OF COMPLAINT MADE TO CONTACT PERSON**

It is not necessary to have all the information requested before reporting the incident.

1) This report is submitted by the Contact Person:

Name and surname: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City/Town \_\_\_\_\_  
Postal Code \_\_\_\_\_ Tel. \_\_\_\_\_

2) Suspected author of the alleged facts:

Name and surname: \_\_\_\_\_  
Church office (parish priest, chaplain, etc. of *name of parish or institution*) \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City/Town \_\_\_\_\_  
Postal Code \_\_\_\_\_ Tel. \_\_\_\_\_

3) Alleged victim:

Name and surname: \_\_\_\_\_  
Date of birth \_\_\_\_\_ Male \_\_\_ Female \_\_\_  
Age when he/she was allegedly abused \_\_\_\_  
Street Address: \_\_\_\_\_  
City/Town \_\_\_\_\_  
Postal Code \_\_\_\_\_ Tel. \_\_\_\_\_

4) Parents or guardian of the alleged victim (when he/she is or was a minor at the time of the facts reported):

Name and surname: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City/Town \_\_\_\_\_  
Postal Code \_\_\_\_\_ Tel. \_\_\_\_\_

5) Eyewitnesses to the alleged facts if any (use another sheet if needed):

Name and surname: \_\_\_\_\_  
Street Address: \_\_\_\_\_  
City/Town \_\_\_\_\_  
Postal Code \_\_\_\_\_ Tel. \_\_\_\_\_

6) Any individuals who heard about the facts alleged from another person (use another sheet if needed):

Name, surname and title: \_\_\_\_\_  
Tel. \_\_\_\_\_

7) **FACTS OF THE CASE**

On a separate sheet of paper, please type a report of the interview(s) held with the person(s) making allegations. It is important to include the following information if known by those who report the incident:

- a) Nature of the alleged act(s) (sexual abuse of minors; sexual misbehaviour between adults - in both cases what type of violation of the 6<sup>th</sup> commandment; financial mismanagement; unbecoming and alien to clerical state behaviour, etc.)
- b) Date(s) and time(s) of the alleged act(s)
- c) Where did it/they happen?
- d) Relevant circumstances: for instance, in the case of sexual offences, involving abuse of position, a source of scandal, using threats or force, in public, in the sacrament of confession, etc.
- e) Any other information you deem important.

- 8) Regarding counselling and reporting to state authorities; please refer to case secretary if there is one in the PCC; otherwise to the PCC Chairperson.

**The reports of interviews are to be signed by the contact person and the persons who make allegations (the latter after reading them and being satisfied that they reflect accurately what they have said).**

**Please staple the report(s) to this sheet and sign also this sheet.**

Signature of Contact Person \_\_\_\_\_

Date \_\_\_\_\_

DECREE

WHEREAS an allegation has been laid against Fr \_\_\_\_\_ ((First Name and Surname)) who is incardinated in the Diocese of ((Name of Diocese)) ((or: who is incardinated in the Diocese of XXXX and works in the Diocese of XXXX on a contract between both dioceses)).

WHEREAS after proper consideration of the said complaint, bearing in mind that the facts referred to in the same, if being true, could constitute an offence.

I HEREBY DECREE to open a preliminary investigation about these allegations in accordance with the norms laid down by universal law (canon 1717 of the Code of Canon Law) and particular law (number 18.2 of the Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors).

I hereby authorise my Delegate to appoint two investigators from the List of Investigators approved by the Provincial Professional Conduct Committee to carry out the preliminary investigation of this accusation in keeping with the prescriptions of canon 1717 of the Code of Canon Law and of number 18.2 of the Protocol.

Through the Provincial Professional Conduct Committee, the Investigators should submit to me written and signed reports of the interviews they will have with the complainant, the respondent and the witnesses, as well as any comments they may wish to make.

Given at the Chancery on this date DD / MM / YYYY .

(LS) (Bishop's Seal)

+ \_\_\_\_\_  
.....

Ordinary of .....  
(specify: Archbishop of, Bishop of, Provincial of, etc.)

\_\_\_\_\_  
Fr .....  
Chancellor (or: Vicar General)

\_\_\_\_\_  
DECREE OPENING A PRELIMINARY INVESTIGATION:  
SEXUAL ABUSE OF MINORS

DD / MM / YYYY

Fr \_\_\_\_\_  
First Name \_\_\_\_\_ Surname \_\_\_\_\_

Dear Father \_\_\_\_\_  
First Name \_\_\_\_\_,

According to number 19.1 of the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors*, it is my duty to inform you that a complaint has been laid against you.

After proper consideration of the said complaint and in accordance with the norms laid down by universal law (canon 1717 of the Code of Canon Law) and particular law (number 18.2 of the aforementioned *Protocol*), I decided to open a preliminary investigation and to appoint the investigators. Please find enclosed a copy of the corresponding Decree.

As soon as possible the investigators will arrange an interview with you (cf. number 20.6 of the *Protocol*). You are entitled to have a support person or legal representative to be chosen by you present during the interview (cf. number 20.6.2 of the *Protocol*). Therefore you will have the opportunity to reply to the complaint either verbally or in writing.

Obviously the investigators will also interview the complainant, the victim, if he/she is not the complainant himself/herself, and those persons who may be willing to provide information as witnesses (cf. numbers 20.4, 20.5 and 20.7 of the *Protocol*). Your support person or legal representative will have access to the appropriate information from the investigators and should keep you informed of the progress of the investigation (cf. number 20.8 of the *Protocol*).

The investigators will submit a report to me with all the documentation of the interviews they carry out. Then, complying with the directives of the *motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001 (revised text of 21 May 2010), article 16, I will forward this documentation to the Congregation for the Doctrine of Faith.

Please be advised that you are not to contact the complainants or witnesses or members of their families until this matter is entirely resolved.

I have quoted above the relevant sections of the *Code of Canon Law* and of the *Protocol* so that you may be aware of the norms regulating this procedure. If you do not have a copy of the *Protocol*, you may consult it at the Chancery.

Yours sincerely in the Lord,

+ \_\_\_\_\_  
.....

Ordinary of .....  
(specify: Archbishop of, Bishop of,  
Provincial of, etc.)

LETTER TO INFORM THE RESPONDENT: SEXUAL ABUSE OF MINORS

DECREE

WHEREAS an allegation has been laid against Fr \_\_\_\_\_, who is incardinated in the Archdiocese of \_\_\_\_\_ (or: who is incardinated in the Diocese of XXXX and works in the Diocese of XXXX on a contract between both dioceses).

WHEREAS after proper consideration of the said complaint, bearing in mind that the facts referred to in the same, if being true, could constitute an offence, I issued a decree to open a preliminary investigation about these allegations in accordance with the norms laid down by universal law (canon 1717 of the Code of Canon Law) and particular law (number 18.2 of the Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors).

WHEREAS I have deemed fit the temporary withdrawal of Fr \_\_\_\_\_ from active ministry during the preliminary investigation in order to protect minors, safeguard the course of justice, protect the freedom of witnesses and prevent scandal (see motu proprio Sacramentorum sanctitatis tutela, 30 April 2001 (revised text of 21 May 2010), article 19 and Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors, number 19.6).

I HEREBY DECREE the temporary withdrawal of Fr \_\_\_\_\_ from his office as Priest in Charge (or Parish Priest) of \_\_\_\_\_.

- 1. In keeping with number 19.6.5 of the Protocol, this withdrawal:
(a) has a temporary character, does not constitute removal from office and should be reviewed when the preliminary investigation is closed;
(b) does not prejudge the outcome of the preliminary investigation;
(c) shall be notified by me, or by some priest on my behalf, to the parishioners of \_\_\_\_\_, and to the other priests in the diocese without mentioning the investigation on the allegations received against you but rather underlining the temporary character of the withdrawal and pointing out that I wish you to work on some other job for a period of time.
2. Making use of the provisions of motu proprio Sacramentorum sanctitatis tutela, 30 April 2001 (revised text of 21 May 2010), article 19, canon 1722 of the Code of Canon Law and number 19.6.1 of the Protocol, I hereby also decree that, for the same reasons mentioned in paragraph 3 above:
(a) Fr \_\_\_\_\_ should leave the parish house of ((name of the parish)), free and hand over everything pertaining to the parish to the person to whom I have entrusted it for the time of this withdrawal while keeping his full pay and being provided other place to stay.
(b) Until the preliminary investigation concludes Fr \_\_\_\_\_ should abstain from visiting ((name of the parish)) Catholic Church.
(c) ((What follows can be adapted to the circumstances of the different cases)) Fr NN's ministerial faculties are withdrawn for the time of his temporary withdrawal from active ministry. He is not to preach or to hear confessions. He can celebrate Mass only without a congregation being present. He is not supposed to celebrate baptisms, weddings or funerals. He should not engage in any activities with minors neither pastoral ones nor others.

Given at the Chancery on this date \_\_\_\_\_.

(LS) (Bishop's Seal)

+ \_\_\_\_\_
Ordinary of \_\_\_\_\_
(specify: Archbishop of, Bishop of, Provincial of, etc.)

Fr \_\_\_\_\_
Chancellor (or: Vicar General)

DECREE OF WITHDRAWAL FROM ACTIVE MINISTRY:
TO BE USED WHEN THE PRIEST IS NOT WILLING TO WITHDRAW VOLUNTARILY

DD / MM / YYYY

Fr \_\_\_\_\_ First Name \_\_\_\_\_ Surname \_\_\_\_\_

Dear Father .....,

As I inform you in a separate letter, an allegation has been laid against you. After proper consideration of the said complaint, bearing in mind that the facts referred to in the same, if being true, could be constitutive of an offence, I issued a decree to open a preliminary investigation about these allegations in accordance with the norms laid down by universal law (canon 1717 of the Code of Canon Law) and particular law (number 18.2 of the Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors).

In the conversation we have had about it, you have agreed to your temporary withdrawal from active ministry, which is necessary in order to protect minors, safeguard the course of justice; protect the freedom of witnesses and prevent scandal (see Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors, number 19.6).

The purpose of this letter is to confirm your temporary withdrawal from your office as Priest in Charge of (name of the parish church), your agreement to it as well as the terms and conditions of the withdrawal, which are expressed below.

- 1. In keeping with number 19.6.5 of the Protocol, this withdrawal:
  - (a) has a temporary character, does not constitute removal from office and should be reviewed when the preliminary investigation is closed;
  - (b) does not prejudice the outcome of the preliminary investigation;
  - (c) shall be notified by me, or by some priest on my behalf, to the parishioners of (name of the parish church) and to the other priests in the diocese without mentioning the investigation on the allegations received against you but rather underlining its temporary character and pointing out that I wish you to work on some other job for a period of time. I will not make known the details of this job.
- 2. Making use of the provisions of *motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001 (revised text of 21 May 2010), article 19, canon 1722 of the Code of Canon Law and number 19.6.1 of the Protocol (cf. canon 1722), I have determined that, for the same reasons mentioned in paragraph 2 above, your temporary withdrawal will entail that:
  - (a) You should leave the parish house free and hand over everything pertaining to the parish to the person to whom I have entrusted it for the time of this withdrawal while keeping your full pay and being provided other place to stay.
  - (b) ((What follows can be adapted to the circumstances of the different cases)) Your ministerial faculties are withdrawn for the time of your temporary withdrawal from active ministry. You are not to preach or to hear confessions. You can celebrate Mass only without a congregation being present. You are not supposed to celebrate baptisms, weddings or funerals. You should not engage in any activities with minors: confirmation classes, catechists meetings, etc.

Yours sincerely in the Lord

(LS) (Bishop's Seal)

+ \_\_\_\_\_  
.....  
Ordinary of .....  
(specify: Archbishop of, Bishop of, Provincial of, etc.)

Fr XXXXXXXXX  
Chancellor (or: Vicar General)

LETTER INFORMING ON WITHDRAWAL FROM ACTIVE MINISTRY TO BE SIGNED BY THE PRIEST: WHEN THE PRIEST IS WILLING TO WITHDRAW VOLUNTARILY

DECREE

WHEREAS an allegation has been laid against Fr (name and surname), who is incardinated in the Diocese of XXXX ((or: who is incardinated in the Diocese of XXXX and works in the Diocese of XXXX on a contract between both dioceses)).

WHEREAS after proper consideration of the said complaint, bearing in mind that the facts referred to in the same, if being true, could constitute an offence.

I HEREBY DECREE to open a preliminary investigation about these allegations in accordance with the norms laid down by universal law (canon 1717 of the Code of Canon Law) and particular law (number 12.2 of the Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)).

I hereby authorise my Delegate to appoint two investigators from the List of Investigators approved by the Provincial Professional Conduct Committee to carry out the preliminary investigation of this accusation in keeping with the prescriptions of canon 1717 of the Code of Canon Law and of number 12.2 of the Protocol.

Through the Provincial Professional Conduct Committee, they should submit to me written and signed reports of the interviews they will have with the complainant, the respondent and the witnesses, as well as any comments they may wish to make.

Given at the Chancery on this date DD / MM / YYYY .

L.S. (Bishop's Seal)

+ \_\_\_\_\_  
.....  
Ordinary of .....  
(specify: Archbishop of, Bishop of,  
Provincial of, etc.)

Fr \_\_\_\_\_  
First Name Surname  
Vicar General (or: Chancellor)

DECREE OPENING A PRELIMINARY INVESTIGATION:  
CANONICAL OFFENCES (OTHER THAN SEXUAL ABUSE OF MINORS)

DD / MM / YYYY

Fr \_\_\_\_\_  
First Name \_\_\_\_\_ Surname \_\_\_\_\_

Dear Father \_\_\_\_\_  
First Name \_\_\_\_\_,

According to number 13.1 of the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Canonical Offences (other than Sexual Abuse of Minors)*, it is my duty to inform you that a complaint has been laid against you.

After proper consideration of the said complaint and in accordance with the norms laid down by universal law (canon 1717 of the Code of Canon Law) and particular law (number 12.2 of the aforementioned *Protocol*), I decided to open a preliminary investigation and to appoint the investigators. Please find enclosed a copy of the corresponding Decree.

As soon as possible the investigators will arrange an interview with you (cf. number 14.3.1 of the *Protocol*). You are entitled to have a support person or legal representative to be chosen by you present during the interview (cf. number 14.3.2 of the *Protocol*). Therefore you will have the opportunity to reply to the complaint either verbally or in writing.

Obviously the investigators will also interview the complainant, the victim, if he/she is not the complainant himself/herself, and those persons who may be willing to provide information as witnesses (cf. numbers 14.1.2 14.2.1 and 14.4.1 of the *Protocol*). Your support person or legal representative will have access to the appropriate information from the investigators and should keep you informed of the progress of the investigation (cf. number 14.5 of the *Protocol*).

The investigators will submit a report to me. I will examine this report and decide whether subsequent action should be undertaken (cf. canon 1718 of the Code of Canon Law and number 15.2 of the *Protocol*).

Please be advised that you are not to contact the complainants or witnesses or members of their families until this matter is entirely resolved.

I have quoted above the relevant sections of the *Code of Canon Law* and of the *Protocol* so that you may be aware of the norms regulating this procedure. If you do not have a copy of the *Protocol*, you may consult it at the Chancery.

Yours sincerely in the Lord

+ \_\_\_\_\_  
.....  
Ordinary of .....  
(specify: Archbishop of, Bishop of,  
Provincial of, etc.)

LETTER TO INFORM THE RESPONDENT:  
CANONICAL OFFENCES (OTHER THAN SEXUAL ABUSE OF MINORS)

DECREE

WHEREAS it has been established to my satisfaction that a prosecution is instituted against Fr ..... by decision of the prosecuting authority.

I HEREBY DECREE that, in the circumstances, the preliminary investigation instituted by decree dated ..... is held in abeyance in terms of numbers 12.3 and 12.4 of the *Protocol for the Investigation of Complaints against Clerics and Religious in regard to Sexual Abuse of Minors*, pending the decision of a court of law.

Given at the Chancery on this date .

L.S. (Bishop's Seal)

+ \_\_\_\_\_  
.....  
Ordinary of .....  
(specify: Archbishop of, Bishop of,  
Provincial of, etc.)

\_\_\_\_\_  
Fr  
Chancellor (or: Vicar General)

\_\_\_\_\_  
DECREE HOLDING IN ABEYANCE A PRELIMINARY INVESTIGATION

DECREE

WHEREAS a preliminary investigation in terms of canon 1717 of the Code of Canon Law has been undertaken into allegations against Fr .....

WHEREAS, after a careful examination of the documentation submitted by the investigators about the facts, the circumstances and the imputability of the alleged offence, the initial credibility of the allegations (cf. canon 1717 §1 of the Code of Canon Law: "which has at least the semblance of truth"), which led to open an investigation, has been confirmed and consequently there is at least probable knowledge of an offence reserved to the Congregation for the Doctrine of the Faith.

I HEREBY DECREE that the acts of the investigation be transmitted to the Congregation for the Doctrine of the Faith as laid down in article 16 of the *motu proprio "Sacramentorum sanctitatis tutela,"* 30 April 2001 (revised text of 21 May 2010).

Given at the Chancery on this date .

L.S. (Bishop's Seal)

+ \_\_\_\_\_  
.....  
Ordinary of .....  
(specify: Archbishop of, Bishop of,  
Provincial of, etc.)

\_\_\_\_\_  
Fr  
Chancellor (or: Vicar General)

\_\_\_\_\_  
DECREE CLOSING A PRELIMINARY INVESTIGATION:  
WHERE THE CASE IS SUBMITTED TO THE CDF

**REFERRAL OF CASE TO CDF**

When forwarding the acts of the preliminary investigation to Rome, please be advised that the CDF wishes to receive them accompanied by the information requested in the form which follows. Some of the data requested may be found in the documents being forwarded but having all of them at sight in this sheet makes the work of the CDF easier. At the same time this form can serve those preparing the documents as a check list of all that has to be sent.

In addition to the acts and to this form, a covering letter signed and sealed by the bishop or major superior should be sent addressed to the Cardinal Prefect of the CDF. The *votum* of the bishop or major superior (see BISHOP'S VOTUM in notes below) can be sent in a separate sheet or included in the covering letter.

**NOTES**

In order to clarify doubts which may arise when filling in this form, some explanatory notes are added below. They do not appear in the CDF form.

**PROCURATOR**

The procurator is the advocate of the defendant. In penal trials it is mandatory for defendants to appoint a procurator or advocate (cf. Code of Canon Law, canon 1481 §§ 1-2)

**ORIGINAL SIGNED MANDATE**

This is the document with the appointment of the procurator signed by the defendant

**ACCUSATIONS AGAINST THE CLERIC**

These are the allegations received

**IMPUTABLE ACTS**

The offences allegedly committed by the accused, who seems to have violated the law with them either intentionally or negligently

**YEAR**

When the alleged offence was committed

**DENUNCIATION**

In this field the date when the allegations were received is to be written. Very often it does not coincide with the year when the alleged offence was committed

**MEASURES ADOPTED BY THE DIOCESE**

For instance: correction or reproof, warning, withdrawal from active ministry

**BISHOP'S VOTUM**

The bishop or major superior is to give his opinion about what should be done with the case being forwarded. He should do so adding a signed and sealed statement to the acts of the investigation saying for instance that he thinks a judicial or extrajudicial process should be opened, or that - given the gravity of the case and that it seems manifestly evident that the offence was committed - he suggests that the CDF presents to the decision of the Roman Pontiff the dismissal of the accused from the clerical state after giving him the possibility of defending himself (cf article 21 § 2 of the *motu proprio* "Sacramentorum sanctitatis tutela," 30 April 2001, revised text of 21 May 2010)

DIOCESE	
NAME OF ORDINARY	
CDF PROT. N. (if available)	
NAME OF CLERIC	

PERSONAL DETAILS OF THE CLERIC	Date of Birth		Age	
	Ordination		Years of ministry	
ORIGINAL DIOCESE OF INCARDINATION				
MINISTRY IN/TRANSFER TO OTHER DIOCESE				
CONTACT ADDRESS OF THE CLERIC				
PROCURATOR (include original signed mandate)				
CONTACT ADDRESS OF THE PROCURATOR				
ASSIGNMENTS (complete in a separate sheet if necessary)				
Year	Parish	Location	Appointment	
ACCUSATIONS AGAINST THE CLERIC				
Year	Victim	Age	Imputable Acts	Denunciation
CIVIL PROCEEDINGS AGAINST THE CLERIC				
Year	Type/Case	Conviction	Sentence (include copies of civil documents)	

<b>MEASURES ADOPTED BY THE DIOCESE</b>	
<b>Year</b>	
<b>SUSTENANCE PROVIDED BY THE DIOCESE TO THE CLERIC</b>	
<b>RESPONSE/RECOURSE MADE BY THE CLERIC</b>	
<b>Year</b>	
<b>BISHOP'S VOTUM</b>	

DECREE

WHEREAS a preliminary investigation in terms of canon 1717 of the Code of Canon Law was undertaken into allegations against Fr .....

WHEREAS the acts of the investigation were transmitted to the Congregation for the Doctrine of the Faith as laid down in article 16 of the *motu proprio* "Sacramentorum sanctitatis tutela," 30 April 2001 (revised text of 21 May 2010).

WHEREAS the Congregation for the Doctrine of the Faith, after receiving the acts of the investigation, directed me to proceed further with this case in the diocese.

I HEREBY DECREE, in keeping with canon 1718 of the Code of Canon Law, that an administrative process be instituted.

This extra-judicial process is to be carried out following the prescriptions of canon 1720 of the Code of Canon Law:

- (a) Copies of the acts of the preliminary investigation are to be handed on to the defendant. He is hereby summoned to peruse this documentation and defend himself.
- (b) I hereby appoint .....and ..... as my assessors to weigh the incriminating evidence and the arguments raised by the defendant.

Against the decree I will issue at the conclusion of this extra-judicial process Fr. .... will have the right to lodge a hierarchical recourse at the Congregation for the Evangelisation of Peoples (cf. Code of Canon Law, 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 decision of my decree (cf. Code of Canon Law, canon 1445 § 2 and Apostolic Constitution *Pastor bonus*, art. 123 § 1).

Given at the Chancery on this date .

(LS) (Bishop's Seal)

+ \_\_\_\_\_  
.....  
Ordinary of .....  
(specify: Archbishop of, Bishop of,  
Provincial of, etc.)

\_\_\_\_\_  
Fr  
Chancellor (or: Vicar General)

DECREE OPENING AN ADMINISTRATIVE PROCESS IN THE CASE OF SEXUAL ABUSE OF MINORS BY CLERICS IF THE CDF INSTRUCTS THE ORDINARY TO INSTITUTE A PROCESS IN THE DIOCESE

DECREE

WHEREAS a preliminary investigation in terms of canon 1717 of the Code of Canon Law was undertaken into allegations against Fr .....

WHEREAS the acts of the investigation were transmitted to the Congregation for the Doctrine of the Faith as laid down in article 16 of the *motu proprio "Sacramentorum sanctitatis tutela,"* 30 April 2001 (revised text of 21 May 2010).

WHEREAS the Congregation for the Doctrine of the Faith, after receiving the acts of the investigation, directed me to proceed further with this case in the diocese.

I HEREBY DECREE, in keeping with canon 1718 of the Code of Canon Law, that a judicial penal process be instituted to try the allegations against the respondent.

- 1) In accordance with canon 1425 of the Code of Canon Law and articles 14-15 of the *motu proprio "Sacramentorum sanctitatis tutela,"* 30 April 2001 (revised text of 21 May 2010), I also hereby appoint:
  - a) the following three judges to form the collegiate tribunal which will hear this case:
    - Fr ..... who will preside over the tribunal.
    - Fr .....
    - Fr .....
  - b) Fr ..... as promoter of justice for this judicial process.
  - c) Fr ..... as notary for this judicial process.
- 2) The defendant should appoint an advocate. If he does not do so, the presiding judge is to appoint him before the joinder of the issue as laid down in canons 1723 and 1481 § 2.
- 3) I further direct that the acts of the investigation be given to the promoter of justice, Fr ..... and that he prepare a petition (*libellus*) of accusation in accord to the norm of law to be presented to the collegiate tribunal.
- 4) As laid down in the *motu proprio "Sacramentorum sanctitatis tutela,"* 30 April 2001 (revised text of 21 May 2010), article 26, at the conclusion of the process the acts shall be transmitted *ex officio* to the Congregation for the Doctrine of the Faith.
- 5) Should any of the parties wish to challenge the sentence, the appeal will be reserved to the Tribunal of the said Congregation (see *motu proprio "Sacramentorum sanctitatis tutela,"* 30 April 2001 (revised text of 21 May 2010), article 20).

Given at the Chancery on this date .

(LS) (Bishop's Seal)

+ \_\_\_\_\_  
 .....  
 Ordinary of .....  
 (specify: Archbishop of, Bishop of, Provincial  
 of, etc.)

\_\_\_\_\_  
 Fr  
 Chancellor (or: Vicar General)

DECREE OPENING A JUDICIAL PROCESS IN THE CASE OF SEXUAL ABUSE OF MINORS BY CLERICS (IF THE CDF INSTRUCTS THE ORDINARY TO INSTITUTE A PROCESS IN THE DIOCESE)

DECREE

WHEREAS a preliminary investigation in terms of canon 1717 of the Code of Canon Law was undertaken into allegations against Fr .....

WHEREAS, after a careful examination of the documentation submitted by the investigators about the facts, the circumstances and the imputability of the alleged offence, the initial credibility of the allegations (cf. canon 1717 §1 of the Code of Canon Law: "which has at least the semblance of truth"), which led to open an investigation, has been confirmed and consequently there is at least probable knowledge of an offence punished in canon 1395 of the Code of Canon Law.

I HEREBY DECREE, in keeping with canon 1718 of the Code of Canon Law, that an administrative process be instituted.

This extra-judicial process is to be carried out following the prescriptions of canon 1720 of the Code of Canon Law:

- (a) Copies of the acts of the preliminary investigation are to be handed on to the defendant. He is hereby summoned to peruse this documentation and defend himself.
- (b) I hereby appoint .....and ..... as my assessors to weigh the incriminating evidence and the arguments raised by the defendant.

Against the decree I will issue at the conclusion of this extra-judicial process Fr. .... will have the right to lodge a hierarchical recourse at the Congregation for the Evangelisation of Peoples (cf. Code of Canon Law, 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 decision of my decree (cf. Code of Canon Law, canon 1445 § 2 and Apostolic Constitution 'Pastor bonus,' art. 123 § 1).

Given at the Chancery on this date .

(LS) (Bishop's Seal)

+ \_\_\_\_\_  
.....  
Ordinary of .....  
(specify: Archbishop of, Bishop of, Provincial of, etc.)

\_\_\_\_\_  
Fr  
Chancellor (or: Vicar General)

DECREE OPENING AN ADMINISTRATIVE PROCESS IN THE CASE OF CANONICAL OFFENCES (OTHER THAN SEXUAL ABUSE OF MINORS)

DECREE

WHEREAS a preliminary investigation in terms of canon 1717 of the Code of Canon Law was undertaken into allegations against Fr .....

WHEREAS, after a careful examination of the documentation submitted by the investigators about the facts, the circumstances and the imputability of the alleged offence, the initial credibility of the allegations (cf. canon 1717 §1 of the Code of Canon Law: "which has at least the semblance of truth"), which led to open an investigation, has been confirmed and consequently there is at least probable knowledge of an offence punished in canon ..... of the Code of Canon Law.

I HEREBY DECREE, in keeping with canon 1718 of the Code of Canon Law, that a judicial penal process be instituted to try the allegations against the defendant.

- 1) In accordance with canon 1425 of the Code of Canon Law, I also hereby appoint:
  - a) the following three judges to form the collegiate tribunal which will hear this case:
    - Fr ..... who will preside over the tribunal.
    - Fr .....
    - Fr .....
  - b) Fr ..... as promoter of justice for this judicial process.
  - c) Fr ..... as notary for this judicial process.
- 2) The defendant should appoint an advocate. If he does not do so, the presiding judge is to appoint him before the joinder of the issue as laid down in canons 1723 and 1481 § 2.
- 3) I further direct that the acts of the investigation be given to the promoter of justice, Fr ..... and that he prepare a petition (*libellus*) of accusation in accord to the norm of law to be presented to the collegiate tribunal.
- 4) Should any of the parties wish to challenge the sentence, they can appeal following the norms of canons 1628-1640 of the Code of Canon Law (see also canon 1727).

(LS) (Bishop's Seal)

+ \_\_\_\_\_  
 .....  
 Ordinary of .....  
 (specify: Archbishop of, Bishop of, Provincial of, etc.)

\_\_\_\_\_  
 Fr  
 Chancellor (or: Vicar General)

DECREE OPENING A JUDICIAL PROCESS IN THE CASE OF CANONICAL OFFENCES (OTHER THAN SEXUAL ABUSE OF MINORS)

DECREE

WHEREAS a preliminary investigation in terms of canon 1717 of the Code of Canon Law has been undertaken into allegations against Fr ..... After a careful examination of the documentation submitted by the investigators about the facts, the circumstances and the imputability of the alleged offence, and having also considered the opinion of two experts in Canon Law,

I HEREBY DECREE that no judicial or administrative process should be instituted to deal with these allegations.

In keeping with the provisions of the Code of Canon Law, canons 1718, § 1, 2° and 1341, I will make use of the appropriate means of correction to deal with the misconduct ((or the lack of prudence, etc.)) of the respondent but I do not deem necessary the imposition of a canonical penalty.

L.S. (Bishop’s Seal)

+ \_\_\_\_\_  
.....  
Ordinary of .....  
(specify: Archbishop of, Bishop of,  
Provincial of, etc.)

\_\_\_\_\_  
Fr  
Chancellor (or: Vicar General)

\_\_\_\_\_  
DECREE CLOSING A PRELIMINARY INVESTIGATION WITHOUT FURTHER PROCESS MAKING USE  
OF APPROPRIATE MEANS OF CORRECTION

DECREE

WHEREAS a preliminary investigation in terms of canon 1717 of the Code of Canon Law has been undertaken into allegations against Fr ..... After a careful examination of the documentation submitted by the investigators about the facts, the circumstances and the imputability of the alleged offence, and having also considered the opinion of two experts in Canon Law,

I HEREBY DECREE that no judicial or administrative process should be instituted to deal with these allegations.

The results of the preliminary investigation show that the allegations are groundless. Therefore my conclusion is that there is no reason to doubt of the upright behaviour of Fr .....

Given at the Chancery on this date .

L.S. (Bishop's Seal)

+ \_\_\_\_\_  
.....  
Ordinary of .....  
(specify: Archbishop of, Bishop of,  
Provincial of, etc.)

\_\_\_\_\_  
Fr  
Chancellor (or: Vicar General)

\_\_\_\_\_  
DECREE CLOSING A PRELIMINARY INVESTIGATION WHERE IT HAS BEEN SHOWN THAT THE ALLEGATIONS WERE GROUNDLESS (ALLEGATIONS OF SEXUAL ABUSE OF MINORS OR OF OTHER CANONICAL OFFENCE)

COUNSELLING AGREEMENT

This is an Agreement for the provision of an assessment / counselling made between:

.....  
[Insert Name of Organisation]  
(the "Organisation")

and

.....  
[Insert Name of Complainant]  
(the "Recipient")

The Organisation agrees to fund an assessment and/or [Insert Number of recommended sessions] sessions of counselling to be provided by [Insert Name of counselling service] (the "Provider") to the Recipient.

It is agreed by the Organisation and the Recipient that these counselling sessions are provided on a Without Prejudice basis and with no admission of liability on the part of the Organisation.

Signed by the Recipient .....

Date .....

Signed on behalf of the Organisation .....

Full name .....

Office held .....

Date .....

TESTIMONIAL OF SUITABILITY FOR MINISTRY

To: .....  
(The receiving Bishop or Major Superior)

From: .....  
(Sending Bishop or Major Superior)

Address of the Sending Bishop or Major Superior:

.....  
.....  
.....

Tel.

+.....

Concerning: Fr ..... Date of Birth

.....  
..... (Day / Month /  
Year)

I confirm that Fr ..... who is  
.....

(incardinated in this diocese / working on a contract in this diocese / member of (name of Religious Institute))

is seeking to exercise ministry in your jurisdiction. Having carefully reviewed our personnel files and all other records that we maintain and based on these and on my own personal knowledge, I am able to make each of the following statements which I have initialled: (NB: if you are unable to make one or more of the following statements, but would still claim that the priest is in good standing and that you would recommend him for ministry, please explain clearly the details and your reasons on the reverse side of this document)

\_\_\_\_\_ He is a priest under my jurisdiction and is in good standing.

\_\_\_\_\_ He has never been suspended or otherwise canonically disciplined.

\_\_\_\_\_ No criminal charges have ever been brought against him, and he has no criminal record.

\_\_\_\_\_ He has never behaved in such a way as to indicate that he is likely to deal with children or vulnerable adults in an inappropriate manner nor have any allegations ever been made against him with respect to such inappropriate behaviour.

\_\_\_\_\_ He does not have an unresolved problem with alcoholism or other forms of substance abuse.

\_\_\_\_\_ He is sufficiently fluent in the English language to enable him to engage in pastoral ministry.

I hereby grant him permission to seek to exercise the priestly ministry in your jurisdiction, with the understanding that such a ministry is of a temporary nature.

Signature: ..... Date .....

Please affix official seal of Diocese or Religious Institute