

RESPONSIBILITY AND LIABILITY FOR  
REPAIR OF HARM TO ABUSE VICTIMS

*The Royal Commission into Abuse in Care in New Zealand<sup>1</sup> and the Australian Royal Commission into Institutional Responses to Child Sexual Abuse<sup>2</sup> have both had serious questions about the relationship of diocesan bishops and religious institutes. Commissioners in both these commissions struggled to understand the complex governance relationships in the Catholic Church.*

OPINION

Priests act in the name of the Church<sup>3</sup> and religious are in a permanent state recognised by the Church.<sup>4</sup> However, since Vatican II there have been significant changes in law concerning entrusted and proper works of religious, and what oversight and responsibility has meant in practice.<sup>5</sup> Religious superiors have often asserted their independence from diocesan bishops, contrary to canon law. Many religious superiors are still not observing their obligation to notify local Ordinaries of reports of abuse.

In 2019, Pope Francis in *Vos estis lux mundi*<sup>6</sup> introduced mandatory reporting of sexual abuse by clerics and religious within the Church. Article 3 stated:

§1. Except as provided for by canons 1548 §2 *CIC* and 1229 §2 *CCEO*, whenever a cleric or a member of an Institute of Consecrated Life or of a Society of Apostolic Life has notice of, or well-founded motives to believe that, one of the facts referred to in article 1 has been committed, that person is obliged to report promptly the fact to the local Ordinary where the events are said to have occurred or to another Ordinary among those referred to in canons 134 *CIC* and 984 *CCEO*, except for what is established by §3 of the present article.

1 See <https://www.abuseincares.org.nz/>.

2 See <https://www.childabuseroyalcommission.gov.au/>.

3 See *Catechism of the Catholic Church (CCC)* 1552.

4 See *CCC* 915.

5 See Benjamin Earl OP, "Opera Propria: property or patrimony? Consequences for mutual relations between Bishops and Religious," *The Canon Law Society of Great Britain and Ireland Newsletter*, November 2021, no. 200, 33-53.

6 See Francis, motu proprio, *Vos estis lux mundi*, 7 May 2019 (*VELM*), [http://w2.vatican.va/content/francesco/en/motu\\_proprio/documents/papa-francesco-motu-proprio-20190507vos-estis-lux-mundi.html](http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507vos-estis-lux-mundi.html).

§2. Any person can submit a report concerning the conduct referred to in article 1, using the methods referred to in the preceding article, or by any other appropriate means.

§3. When the report concerns one of the persons indicated in article 6, it is to be addressed to the Authority identified based upon articles 8 and 9. The report can always be sent to the Holy See directly or through the Pontifical Representative.

§4. The report shall include as many particulars as possible, such as indications of time and place of the facts, of the persons involved or informed, as well as any other circumstance that may be useful in order to ensure an accurate assessment of the facts.

§5. Information can also be acquired *ex officio*.<sup>7</sup>

Some diocesan bishops believed canon 384 justified them giving priests leniency in dealing with complaints about their abuse or misconduct. While bishops have a responsibility to defend and care for their priests, it is vital that they do not take one canon alone without taking into account the whole Code of Canon Law and all other canonical documents.

Bishops also have a responsibility to care for all the faithful in their dioceses. Diocesan bishops are responsible for caring for victims.

#### 1. Bishops and Religious

The authority of diocesan bishops to members of religious institutes is summarised by Kozlowski:

[A]ll members are subject to the diocesan bishop. . . . The extent of the authority that a diocesan bishop exercises over a member of a religious institute, then, is largely dependent on the member's engagement in the external apostolate in conjunction with the nature of the apostolic work (i.e., is the work proper to the institute or is it entrusted to the institute or one of its members by the diocesan bishop?). At the same time, the member must still obey the legitimate commands of his/her religious superiors (c. 601) and remain faithful to the discipline of the institute (c. 678 §2). Also, this same superior has authority over a religious' exercise of an external apostolate. The extent of the religious superior's authority is also affected by the nature of the work (i.e., proper or entrusted). In short, a religious who exercises an external apostolate is

7 VELM art. 3.

subject to a dual authority structure which consists of the diocesan bishop and religious superior.<sup>8</sup>

The most common apostolate that religious institutes are involved with are schools. The power of the bishop in relation to schools is outlined by Richard Hill:

According to the 1983 code, whether the school is a proper or entrusted work: "The bishop has the right to establish general policies for all Catholic schools (c. 806 §1), to supervise religious formation and education imparted in schools (c. 804 §1), to approve the appointment of those who are to teach religion and to require their removal if he judges this necessary for reasons of religion or morals (c. 805)." If the school is a proper work of the institute, "the right of the religious to direct or manage these schools remains intact (C 806, §1)."<sup>9</sup>

On the relationship between canons 683 §1 and 806 §1, Cito states that the bishop's vigilance function "encompasses everything that could reasonably cause harm to the Catholic character of the educational institution."<sup>10</sup> The local Ordinary, including the diocesan bishop, can remove the faculties of any cleric or, if there is an investigation of an alleged crime,<sup>11</sup> the cleric can be prohibited from the exercise of sacred ministry.<sup>12</sup>

When an individual religious is causing grave scandal, canon 679 provides for a diocesan bishop to expel him or her from the diocese. The reason could be the religious is having an affair with someone or is behaving in another gravely inappropriate manner.

#### 2. Terminating an Apostolate of Religious Institutes

There is no canonical process to terminate an apostolate of a religious institute.<sup>13</sup> However, if religious violate universal or particular law in an apostolate, they can be removed.<sup>14</sup> The bishop grants faculties for a religious to

8 Matthew Kozlowski, *A Canonical Analysis of the Authority Exercised by the Diocesan Bishop and the Religious Superior Over the Religious Pastor qua Pastor*, CUA Doctoral dissertation (2021) 4-5.

9 Richard Hill, "The Apostolate of Institutes," in *A Handbook on Canons 573-746*, ed. Jordan Hite et al. (Collegeville, MN: Liturgical Press, 1985) 217.

10 David Cito, in Angel Marzoa, Jorge Miras and Rafael Rodrigues-Ocana, *Exegetical Commentary on the Code of Canon Law*, Vol. 3/1:239 (*Exegetical Commentary*).

11 A crime is a grave or mortal sin classified as a delict in canon law.

12 See c. 1772.

13 See Jordan Hite, TOR, "Mutual Rights and Obligations of Bishops and Major Superiors regarding Public Ministry," *Bulletin on Issues of Religious Law* 14 (Spring 1997)

14 See c. 678 §1.

function publicly in the Church.<sup>15</sup> He can remove those faculties or prohibit the exercise of public ministry.<sup>16</sup>

### 3. Rights and Obligations of Clerical and Religious Abusers

What is just for abusers is not simple in practice. Abusers have the right to sufficient income for their support if they have not been dismissed from the clerical state or a religious institute.<sup>17</sup> However, if they have been dismissed from the clerical state or their religious institute, any support they receive is given out of charity.<sup>18</sup>

Justice for victims is related to justice for abusers. Morally, abusers should not be getting more income/housing/etc. than their victims and this is quite possible for example if clergy are receiving a stipend and superannuation. If the abuser has assets, the abuser must be forced to compensate their victim by the Ordinary or tribunal.<sup>18</sup>

Natural law and canon law recognise this obligation enshrined in canon 128. The Church, because of its mission, must place particular emphasis on the obligation to repair moral and spiritual harm.<sup>19</sup> This harm to victims must be repaired. Cases vary enormously and the impact of the abuse also varies greatly. This needs to be recognised in each case.

Sometimes abusers receive a punishment of a life of prayer and penance from the Congregation for the Doctrine of the Faith. What this means must be defined in detail by the Conference of Bishops for their territory, so that justice is real, and the punishment does not become a farce.

Lawyers can argue that dioceses and religious institutes are not legally liable for crimes of their clergy, religious and lay employees. There is no doubt however that there is a moral responsibility and liability.

### 4. Obligations of Dioceses to Victims

The Congregation for the Clergy reminded bishops, in 2009, that ecclesiastical discipline included the obligations of continence<sup>20</sup>:

15 See c. 970.

16 See Brendan Daly, "Canon 1336: What processes must the diocesan bishop follow to remove the faculties of a Priest?" in *Roman Replies and CLSA Advisory Opinions 2017* (Washington DC: CLSA, 2017) 87-95.

17 See c. 1350.

18 See c. 128.

19 See G. Michiels OFM, *De delictis et poenis: commentarius libri V Codicis Iuris Canonici*, Editio altera, vol. I (Romae: Desclee, 1961) 68-71.

20 Continence means the non-use of the sexual faculties.

The bishop has, among other things, the duty to remind priests of their obligation to perfect and perpetual continence for the sake of the kingdom of heaven, an obligation freely and willingly assumed by them at the moment of their ordination. Moreover, the bishop must always be attentive that the priest is faithful in carrying out his proper ministerial duties (cf. Canons 384, 392).<sup>21</sup>

However, the priest is not considered an employee or agent of the bishop and is appointed to a parish to do pastoral work such as that outlined in canons 528-529. The Congregation for the Clergy declared:

The diocesan priest, who is not merely the passive executor of commands received from the bishop, enjoys autonomy in making decisions both in his ministry and in his personal and private life. Thus, he is personally responsible for his personal actions and for those carried out in the scope of his ministry. Consequently, a bishop cannot be held juridically responsible for the acts which a diocesan priest carries out in transgression of the canonical norms, universal or particular. This principle which is not new and has always been part of the patrimony of the church, means, among other things, that the criminal action of a priest, and its penal consequences as well as any eventual payment of damages, is imputable to the priest who has committed the offense and not to the bishop or to the diocese of which the bishop is the legal representative (cf. Canon 393).<sup>22</sup>

However, *Vos estis lux mundi (VELM)* has modified this stance by the Congregation for the Clergy in article 5.<sup>23</sup> Pope Francis explained what it meant for diocesan bishops "to be solicitous for all Christ's faithful committed to his care" in *VELM*:

#### Article 5 – Care for persons

§1. The ecclesiastical Authorities shall commit themselves to ensuring that those who state that they have been harmed, together with their families, are to be treated with dignity and respect, and, in particular, are to be:

- a) welcomed, listened to and supported, including through provision of specific services;
- b) offered spiritual assistance;

21 Congregation for the Clergy, Letter, *Origins*, 39 (2008-2009) 82.

22 *Ibid.*, 83.

23 Cf. footnote 85; *VELM* 5.

c) offered medical assistance, including therapeutic and psychological assistance, as required by the specific case.<sup>24</sup>

It must be acknowledged that in dealing with sexual abuse victims, so many aspects are case specific. General statements do not always serve a just outcome. *Vos estis lux mundi* does not mention financial compensation, but it is a reality for the Church in all western countries. Victims often take a long time to complain. In Australia victims took on average 33 years to seek justice.<sup>25</sup> Religious institutes have a parallel responsibility to victims for those abused by their members.<sup>26</sup>

Dioceses have a responsibility to care for victims of diocesan priests from their diocese.<sup>27</sup> Incardination in a diocese connects the cleric to the diocese which must provide for him in return for his commitment to serve there.<sup>28</sup> If a priest abuser belonged to two dioceses, the dioceses should compensate/help in a proportional manner according to the number of years the priest worked in each diocese. When a diocesan priest offends, he holds the primary responsibility to pay his legal expenses. If he is judged innocent, his diocese has a responsibility to recompense him.

Bishops have more power and responsibility over an entrusted work of a religious institute rather than a proper work. This is because they hold the power to appoint to positions or offices. Consequently, a diocesan bishop appoints a religious priest as a parish priest.<sup>29</sup>

Issues do arise about the bishop's liability as a consequence of his supervisory role over associations of the faithful. "Supervision" [*vigilantia*] in canon 305 is not "governance" or "administration". The diocesan bishop's right of visitation or vigilance over ecclesiastical entities is limited according to the statutes of the entity, and that right certainly does not envision day-to-day decision-making. Rather, the role of the diocesan bishop's supervision as provided for in canon 305 consists in the right of review and approval of statutes, and the right to intervene in case of malfeasance or commission of a delict or abuse of office.

24 *VELM* art. 5.

25 See *Final Report Religious Institutions*, vol. 16, 518; [https://www.childabuseroyalcommission.gov.au/sites/default/files/final\\_report\\_volume\\_16\\_religious\\_institutions\\_book\\_1.pdf](https://www.childabuseroyalcommission.gov.au/sites/default/files/final_report_volume_16_religious_institutions_book_1.pdf).

26 Canon 19.

27 See *CCC* 1548; *CCC* 1552. Cf. *LD* 10; *SC* 33; *PO* 2, 6.

28 See cc. 265; 281.

29 See c. 523.

If abuse is committed during work time by lay employees employed by a diocesan bishop, the abuser has the responsibility to repair the damage done to victims. If the abuser cannot or will not repair the damage, the diocese has a moral responsibility to repair the damage done to victims.

#### 5. Obligations of Religious Institutes to Victims

If members of religious institutes (brothers, sisters or clerics) abuse others, their religious institutes have the responsibility to repair the damage done to victims whether it takes place in an entrusted or proper work.<sup>30</sup>

Bishops do not have the power to appoint office holders in a proper work of a religious institute, but merely approve appointees of a religious institute.<sup>31</sup> However, a bishop is usually only informed who the religious institute has appointed. Because the religious institute appoints the office holders, the religious institute holds the liability for any subsequent abuse.

Similarly, if perpetrators are members of societies of apostolic life, their society bears the responsibility to repair the damage done to victims.<sup>32</sup>

If the religious institute does not help the victim or repair the harm done, the diocesan bishop must pressure the religious institute or the Ministerial Public Juridic Person (MPIP) to meet their obligations to repair the damage done to victims. The Apostolic See can force any religious institute to meet their obligations. If a religious institute no longer exists, the diocese must help the victims.

If abuse is committed by lay employees of a religious institute in their proper work, the abuser has the responsibility to repair the damage done to victims. If the abuser cannot or will not repair the damage, the religious institute has responsibility to repair the damage done to victims.

#### 6. Integrated Schools and the Obligations to Victims

Catholic schools in New Zealand have all been integrated into the state education system. This system was changed in 1989 by what is referred to as "Tomorrow's Schools." The government review as part of the Tomorrow's Schools reforms states:

Until the Tomorrow's Schools reforms of 1989, the governance and administration of New Zealand's compulsory education system was highly centralised. . . . Since the 1989 reforms, each school has been

30 See *CCC* 914.

31 See c. 805.

32 See c. 19.

operating as a largely self-managing statutory Crown entity with responsibility for a wide range of functions that were previously centralised, such as employing staff and developing school policies.<sup>33</sup>

For integrated schools in New Zealand, proprietors, including bishops and religious institutes, have four representatives on school boards. The four representatives are not the majority on the board. The board of trustees in an integrated school appoints the teachers and other staff. If abusers are lay people (teachers, caretakers, etc.) appointed by the board, the board is responsible for placing them in that position. Neither a religious institute nor a diocese makes the appointment and so they are not legally responsible for compensating victims of those appointed by the boards of trustees.

Rev. Brendan Daly

*IPSO FACTO* DISMISSAL FOR ILLEGITIMATE ABSENCE

*The new provincial administration in a religious institute of pontifical right uncovered the economic crimes committed by former Provincial and Provincial Bursar (while they were in office) and the new leaders followed the canonical process and issued a Decree of Suspension to the former leaders in 2019. Their residence was restricted to a particular community in their Institute.*

*However, the offenders did not go to that prescribed community for more than six (6) months and were unavailable to the administration for any communication. In the year 2020, when the duration of six (6) months of their unlawful absence was exceeded, the administration issued two (2) canonical warnings (based on canons 696 and 697 - unlawful absence) and sent those letters to the address of that community where they were expected to reside. Because the offenders were absconding, there was no reply to the canonical warnings. Meanwhile, due to the COVID-19 pandemic, the administration was busy with other activities; they forgot about these two offenders and did not take any action on the absent members to issue the Decree of Dismissal.*

*After two (2) years in May 2022, one of the offenders sent a letter to the Superior General informing that the member would comply with the Suspension Decree and go back to that assigned community to reside. The Superior General forwarded that request letter to the Provincial Superior. The recent modification of Canon 694 says any unlawful absence from the religious institute will attract ipso facto dismissal.*

*Questions:*

- 1. Can the recent modification of Canon 694 still be applied to the offenders even after they sent their request to come back to the Institute?*
- 2. Can the Provincial administration claim that the offenders have already incurred the penalty of ipso facto dismissal from the institute without issuing the Decree of Dismissal?*
- 3. Due to an enormous scandal in the Province, the Provincial administration does not want to retain the two offenders in their province. For that purpose, what should the Provincial Administration do?*

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<sup>33</sup> New Zealand Government, *Supporting all schools to succeed Reform of the Tomorrow's Schools system*, <https://conversation-live-storage-assets-storage3bucket-jsvm6zoesodc.s3.ap-southeast-2.amazonaws.com/public/TSR/November-2019/TSR-Government-Response-WEB.pdf>.

The Canon Law Society of America (CLSA) publishes annually *Roman Replies and CLSA Advisory Opinions* for canonists and those seeking a clearer understanding of the *praxis legis* of the Catholic Church. The combination of these two services, begun in 1984, continues to serve as useful resources for those involved in the application of canonical discipline.

The compilation of materials for *Roman Replies 2022* was guided by Donna Miller, Executive Coordinator of the CLSA and an *ex officio* member of the CLSA Publications Advisory Board. The collection of entries in this issue, when viewed in conjunction with previous volumes, assists the reader both in understanding recent developments in the law and in identifying current trends in the praxis of the Roman Curia.

The selection, editing, and assembly of opinions for *CLSA Advisory Opinions 2022* were provided by Monsignor Michael A. Souckar, chair of the Publications Advisory Board, and Reverend Patrick M. Cooney, OSB, a member of the Publications Advisory Board. The topics addressed in the opinions reflect a variety of canonical issues and demonstrate the scope of canonical expertise and reflection by members of the Society. Editorial assistance was provided by the CLSA Executive Coordinator.

Recent past issues of *Roman Replies and CLSA Advisory Opinions* are available in the Society's online store. Past issues that are out-of-print are available electronically as PDFs on the CLSA website (clsa.org), and many are available as print-on-demand (POD) through Amazon.

The CLSA provides this series as a professional resource. Care should be taken in considering the relative weight of the materials found in this publication. The principles for canonical interpretation (*CIC* cc. 16-19 and *CCEO* cc. 1498-1501) serve as guides in considering the contents of this volume.

The editors are grateful to all who submitted texts to the three sections of this edition.

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