

Rights and Obligations of Accused Clergy

*Brendan Daly**

INTRODUCTION

Cardinal Tarcisio Bertone, the former secretary of the Congregation (now Dicastery) for the Doctrine of the Faith, recounted an episode when a woman approached him in St Peter's Square and said: 'I have come to know that you are going to Cagliari to give a conference on Justice in the Church. Well, I tell you that there is no justice in the Church!'¹ She spoke of no justice in the Church, but did not say 'the Church is unjust'. The implication is that it is not the Church as such that is unjust, but that those who represent the Church are sometimes unjust or even evil.² We have all heard terrible stories of victims having brought their complaints of sexual abuse to bishops and religious superiors and frequently the victims were not believed, but ignored or even threatened.

Today the pendulum has swung to the opposite extreme in some places. For example, I have heard of a priest being accused in Australia. The first the priest knew about it was when he received a call from a church official who told him,

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1. Tarcisio Bertone, 'La Chiesa e l'impegno per la giustizia: legalità, giustizia, moralità', in *La giustizia nella Chiesa: fondamento divino e cultura processualistica moderna*, Studi giuridici XLV (Libreria Editrice Vaticana, 1997), 8.
2. Augustine Mendonca, *The Bishop as the Mirror of Justice and Equality in the Particular Church: Some Practical Reflections on Episcopal Ministry*, <https://www.canonlawsocietyofindia.org/research/the-bishop-as-the-mirror-of-justice-and-equality-in-the-particular-church-some-practical-reflections-on-episcopal-ministry/>.

‘You have been accused of sexual abuse. You are to be out of the presbytery by 5 p.m. today, when the locks will be changed’.

These approaches to victims and priests are completely wrong and not in accord with canon law. Some church officials act as if canon law does not apply to them and they seem to think they can do whatever they like. They should be aware that both the alleged victim and the accused cleric have rights. I have written about the rights of victims,³ and here I will address the rights of accused clergy.

RIGHTS OF THE ACCUSED

1. Right to the presumption of innocence

It is a fundamental principle in canon law that the accused is considered innocent until proven guilty. Canon 1321 §1 states: ‘Any person is considered innocent until the contrary is proved’.⁴ Juan Arias and Juan Arrieta explain:

the intention is to set out the general principle of penal law that the accused person is presumed innocent, to safeguard his or her integrity. This implies the need for evidence to demonstrate the guilt of the accused and to enable those who must impose a penalty to form moral certainty (c. 1608). It also means that those who have to judge should set aside any prejudice, and evaluate the circumstances of each case in an impartial and objective manner.⁵

The Dicastery for Legislative Texts explains that ‘the presumption of innocence of the accused person is a general principle of every system of law, aimed at protecting the image of people in the face of any attempts to illegitimately tarnish their good reputation’.⁶ This means that assessments of cases of alleged abuse have to start from this perspective, eliminating prejudice, so the judge is impartial. However, when criminal reports are received by church authorities, precautionary

3. Brendan Daly, *Penal Issues in Canon Law* (Paulist, 2025).

4. All translations of the Code of Canon Law 1983 in this article are those of the American Canon Law Society and are sourced from https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html.

5. J. Arrieta, *Code of Canon Law Annotated*, 4th ed. (Wilson & Lafleur, 2022) (hereafter cited as *Code of Canon Law Annotated*), 1026–7.

6. Dicastery for Legislative Texts, *Penal Sanctions in the Church: User Guide for Book VI of the Code of Canon Law* (2023) (hereafter cited as *Penal Sanctions User Guide*), 7, <https://www.delegumtextibus.va/content/dam/testilegislativi/TESTI%20NORMATIVI/Testi%20Norm%20CIC/Libro%20VI/LibroVIsussidio/Penal%20sanctions%20User%20guide.pdf>.

measures are often necessary to ensure justice is achieved and potential victims are protected. Therefore, the accused cleric may be prohibited from exercising sacred ministry and may be required to live at a particular place etc. (canon 1722). The church authorities must still always protect the presumption of innocence.⁷

2. Right to have his good name protected during the investigation

The right to a good reputation arises from natural law. A person's right to a good reputation is enshrined in canon 220: 'No one is permitted to harm illegitimately the good reputation which a person possesses nor to injure the right of any person to protect his or her own privacy'.

During an investigation, canon 1717 §2 recalls the duty in justice to protect the good name of the persons involved (cf. canon 220), whether they are the alleged victim(s) or the accused himself.⁸ These principles mean that all those involved must be careful what they say to others and in particular what is stated to the media.

Javier Hervada calls attention to the canon using the word 'unlawfully' ('*illegitime*') and notes 'it is licit and ethical to bring to light a person's defects and offences and thus damage his or her good reputation in this respect, when the superior good of individuals, of society, and of the Church is at stake'.⁹ Publicity about penal processes is lawful when it is necessary and soundly based with correct procedures being followed. However, the Dicastery for Legislative Texts indicates that 'imprudent management of the news could constitute in certain cases the delict referred to in can. 1390 §2, the duty of reparation also having to be taken into account (cf. n. 140 [in the *Penal Sanctions User Guide*])'.¹⁰ All those involved must be careful what they say to others and in particular what is stated to the media. The dicastery has pointed out:

Canon 220 establishes a general principle prohibiting backbiting and defamation (see also Nos. 2477–2479 CCC), declaring that 'it is not lawful for anyone to illegitimately injure the reputation one enjoys ... it does not seem permissible to justify the publication of such news for alleged reasons of transparency or reparation ... In conclusion, having as an inalienable legal

7. *Penal Sanctions User Guide*, 191. Moreover, in adopting such measures, one cannot fail to take into account the fact that the new canon 1321 §1 calls for the presumption of innocence to be protected at all times.

8. *Code of Canon Law Annotated*, 79. Care must be taken so that the good name of anyone is not endangered from this investigation.

9. *Code of Canon Law Annotated*, 179.

10. *Penal Sanctions User Guide*, 179.

basis the statement of the Supreme Pontiff Francis that ‘it is necessary to avoid the publication of lists of the accused, even by dioceses, before the prior investigation and the final condemnation ... the answer cannot but be negative with respect to the publishing of occult news concerning anyone, all the more so when it concerns deceased persons.’¹¹

3. Right to a civil and a canonical advocate/procurator

The accused cleric must have an advocate,¹² and the judge or delegate must advise the accused cleric of this right. The advocate could also be a procurator, so that he is able to act on behalf of the accused cleric.¹³ The Dicastery for the Doctrine of the Faith explains this right:

With the new *Norms* promulgated in 2021 (cf. art. 20 §7 SST), it is explicitly stipulated by the law for the case of an extrajudicial process in matters reserved to the DDF that the accused, in accordance with the prescriptions of canons 1723 and 1481 §§1–2 CIC, be assisted by an advocate and/or procurator, either of his own choice or, otherwise, appointed *ex officio*. The Ordinary (or his delegate) must be informed of the appointment of the advocate and/or procurator by means of a suitable and authentic procuratorial mandate in accordance with canon 1484 §1 CIC, prior to the session in which the accusations and proofs are made known, in order to verify that the requirements of canon 1483 CIC have been met.¹⁴

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11. Dicastery for Legislative Texts, Reply concerning the publication of names of clerics allegedly guilty of sexual abuse, 5 September 2024. N. 18316/2024. Original Italian: https://www.delegumtextibus.va/content/dam/testilegislativi/CHIARIMENTI%20NORMATIVI/Ch%20Normativi%20Risp%20Particolari/Chiar%20normativi%20CIC/Prot.18316_2024_Circa%20dovere%20pera%20bona%20fama%20defuncti%20can.%20220.pdf.
 12. Canon 1723 §1. The judge who cites the accused must invite the accused to appoint an advocate according to the norm of can. 1481, §1 within the time limit set by the judge. §2. If the accused does not make provision, the judge is to appoint an advocate before the joinder of the issue; this advocate will remain in this function as long as the accused does not appoint an advocate personally.
 13. Canon 1481 §1. A party can freely appoint an advocate and procurator; except for the cases established in §§2 and 3, however, the party can also petition and respond personally unless the judge has decided that the services of a procurator or advocate are necessary. §2. In a penal trial, the accused must always have an advocate either appointed personally or assigned by the judge.
 14. Dicastery for the Doctrine of the Faith, *Vademecum: On Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*, Ver. 2.0, 5 June 2022 (hereafter cited as *Vademecum*), 98, https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_en.html.

To be properly advised, both the accused and the advocate must know the details of the accusation. The advocate must know the details of the accusation, because otherwise the advocate would not be able to perform their role.

Financing the advocate is frequently an issue. A religious institute must finance the canon or civil lawyer to advise their member. An accused diocesan priest must negotiate with his local Ordinary, normally a diocesan bishop, about the provision of civil and canonical advice. The diocesan bishop is obliged to defend the rights of his priests.¹⁵ Therefore, the diocese would be obliged to ensure that the accused priest appoints a canon lawyer or has one assigned for him. The provision of a civil lawyer is another matter.¹⁶ If a priest is also facing civil charges, he would be entitled, in many countries, to legal aid.

The diocese paying for lawyers is a sensitive issue. When a priest has stolen a substantial sum from the diocese and parishes, it is upsetting for parishioners to discover that the accused priest is getting one of the most expensive lawyers at diocesan expense to get his sentence reduced as much as possible. A diocese may have a policy, for example, that a priest provide his own civil lawyer,¹⁷ on the understanding that if he is found not guilty, the diocese will refund his legal expenses.

4. Right to remuneration and support

All clergy dedicated to ecclesiastical ministry have a right to remuneration:

Canon 281 §1. Since clerics dedicate themselves to ecclesiastical ministry, they deserve remuneration which is consistent with their condition, taking into account the nature of their function and the conditions of places and times, and by which they can provide for the necessities of their life as well as for the equitable payment of those whose services they need.

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15. Canon 384. With special solicitude, a diocesan bishop is to attend to presbyters and listen to them as assistants and counselors. He is to protect their rights and take care that they correctly fulfill the obligations proper to their state and that the means and institutions which they need to foster spiritual and intellectual life are available to them. He also is to take care that provision is made for their decent support and social assistance, according to the norm of law.
 16. Canon 1464. Questions concerning the provision for judicial expenses or a grant of gratuitous legal assistance which had been requested from the very beginning and other such questions as a rule must be dealt with before the joinder of the issue.
 17. Canon 1649 §1. The bishop who directs the tribunal is to establish norms concerning:
 - 1/ the requirement of the parties to pay or compensate judicial expenses; [...]
 - 3/ the grant of gratuitous legal assistance or reduction of the expenses.

This canon expresses the right of clergy who work, or have worked, in sacred ministry to receive adequate remuneration, and social assistance in sickness and old age. The right to remuneration¹⁸ is linked to the diocese, personal prelature, or religious institute of incardination.

Apart from the loss of the clerical state, which includes loss of all rights as a cleric, even suspended clergy, or clergy prohibited from the exercise of public ministry, have a right to remuneration. Clerics dismissed from the clerical state, however, cannot be employed by the Ordinary in any capacity:

Canon 1350 §1. In imposing penalties on a cleric, except in the case of dismissal from the clerical state, care must always be taken that he does not lack what is necessary for his worthy support.

§2. If a person is truly in need because he has been dismissed from the clerical state, the Ordinary is to provide in the best way possible, but not by the conferral of an office, ministry or function.

The remuneration granted to a cleric who is not in active ministry may be less than what a cleric in active ministry receives. However, as the canon states, ‘care must always be taken that he does not lack what is necessary for his worthy support’. Aria and Arrieta in their commentary on canon 1350 state that ‘the legislator, taking into account the vital importance of such a law [canon 281], determines that no penalty, except dismissal from the clerical state, can annul or suspend the cleric’s right to worthy support’.¹⁹

5. Right to a decision based on moral certitude

When decisions are made about compensating victims, the standard of proof is often probability that the person was abused. This must be the case especially when the accused cleric is deceased, or when the Church must fulfil the requirements of civil law. However, the standard or proof for finding a person guilty of a crime in a church penal process is the standard of ‘moral certainty’:

Canon 1608 §1. For the pronouncement of any sentence, the judge must have moral certitude about the matter to be decided by the sentence.

18. Pontifical Council for Legislative Texts, Decree, 29 April 2000, *Communicationes* 32 (2000): 162-7.

19. *Code of Canon Law Annotated*, 1058. The remuneration is not a stipend for work performed but can consider other systems of income from other sources such as military pensions.

§2. The judge must derive this certitude from the acts and the proofs.

Canon 1342 requires moral certainty to be the standard of proof for both canonical trials and extrajudicial processes.²⁰

When a decision about the guilt of the accused is made in a civil court, the standard of proof is ‘beyond reasonable doubt’. This standard of beyond reasonable doubt is practically the same as moral certainty in a church penal process. Judith Hahn explains this very well:

For the marriage procedures, moral certitude as the standard of proof was explicitly mentioned in the Instruction *Dignitas connubii*, article 247,²¹ and is now mentioned in article 12 of the ‘The way of proceeding in cases regarding the declaration of the nullity of a marriage’²², the *Ratio Procedendi*, which Pope Francis added to the 2015 *Motu proprio Mitis Iudex Dominus Iesus* to reform the marriage nullity process.²³ Here it is noted, ‘To achieve the moral certainty required by law, a preponderance of proofs and indications is not sufficient, but it is required that any prudent doubt of making an error, in law or in fact, is excluded, even if the mere possibility of the contrary is not removed.’ The closeness of moral certitude to beyond a reasonable doubt is quite obvious in this regulation.²⁴

This requirement to reach moral certainty is also reiterated in canon 1342 §3.²⁵

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20. Canon 1342 §1. Whenever there are just reasons against the use of a judicial procedure, a penalty can be imposed or declared by means of an extra-judicial decree, observing canon 1720, especially in what concerns the right of defence and the moral certainty in the mind of the one issuing the decree, in accordance with the provision of can. 1608. Penal remedies and penances may in any case whatever be applied by a decree.
 21. Pontifical Council for Legislative Texts, ‘Instruction *Dignitas connubii* to be observed by diocesan and interdiocesan tribunals in handling the causes of the nullity of marriage’, 25 January 2005, *Communicationes* 37 (2005): 11–92.
 22. Francis, ‘Ratio procedendi in causis ad matrimonii nullitatem declarandam’, AAS 107 (2015): 967–70.
 23. Francis, ‘Apostolic Letter issued *Motu proprio Mitis Iudex Dominus Iesus* by which the canons of the Code of Canon Law pertaining to cases regarding the nullity of marriage are reformed’, 15 August 2015, AAS 107 (2015): 958–67.
 24. Judith Hahn, ‘What Does It Mean to Be “Morally Certain”? How Secular Standards of Proof Help to Understand Canonical Decision Making’, *The Canonist* 11, no. 2 (2020): 242; and Judith Hahn, ‘Moral Certitude: Merits and Demerits of the Standard of Proof Applied in Roman Catholic Jurisprudence’, *Oxford Journal of Law and Religion* 8 (2019): 324.
 25. Canon 1342 §3. What the law or decree says of a judge in regard to the imposition or declaration of a penalty in a trial is to be applied also to a Superior who imposes or declares a penalty by an extra-judicial decree, unless it is otherwise clear, or unless there is question of provisions which concern only procedural matters.

6. Right to be judged according to the provisions of canon law

All the Christian faithful, and not only clergy, possess the rights enshrined in Canon 221 §2: ‘If they are summoned to a trial by a competent authority, the Christian faithful also have the right to be judged according to the prescripts of the law applied with equity’. The diocesan bishop can only dispense from disciplinary laws within the limits of his competence. He cannot dispense from penal law or penal procedures.²⁶ All procedures and protocols of dioceses and the bishop’s conference must comply with universal law.²⁷ If the protocol document for investigating complaints of abuse in a diocese or a territory has provisions contrary to the universal law of the Church, the accused cleric can seek recourse against the investigation to the competent dicastery. Therefore, accused clergy have the right to be judged with justice and with canonical legal safeguards.

However, canon 1399 does establish a person can be punished even if an action is not classified as a crime in canon law or in a precept. This is the case if it is an external violation of a divine or canonical law that is specially grave and there is an urgent need to prevent or repair scandals:²⁸ thus, to reiterate, canon 1399 has four safeguards: (1) it (i.e., the action) is external conduct, (2) it violates a divine or canonical law, (3) it possesses a special gravity, and (4) there is an urgent need to prevent or repair scandals. The Dicastery for Legislative Texts believes canon 1399 is to be used only in extreme cases, when there is no other way to address the situation.²⁹

Accused clergy have the right, if there are sufficient qualified and available competent personnel with a good reputation,³⁰ to request a trial in the competent

26. Canon 87 §1. A diocesan bishop, whenever he judges that it contributes to their spiritual good, is able to dispense the faithful from universal and particular disciplinary laws issued for his territory or his subjects by the supreme authority of the Church. He is not able to dispense, however, from procedural or penal laws nor from those whose dispensation is specially reserved to the Apostolic See or some other authority.

27. Canon 135 §2. [...] A lower legislator cannot validly issue a law contrary to higher law.

28. *Penal Sanctions User Guide*, 164.

29. *Penal Sanctions User Guide*, 164.

30. Canon 1421 §3. Judges are to be of unimpaired reputation and doctors or at least licensed in canon law. Canon 1435. It is for the bishop to appoint the promoter of justice and defender of the bond; they are to be clerics or lay persons, of unimpaired reputation, doctors or licensed in canon law, and proven in prudence and zeal for justice.

Canon 1436 §1. The same person can hold the office of promoter of justice and defender of the bond but not in the same case.

The practice of the DDF for judges has been to give dispensations for priests with licentiates in canon law and dispensations for lay persons with doctorates in canon law.

ecclesiastical forum—see canon 221 §1: ‘The Christian faithful can legitimately vindicate and defend the rights which they possess in the Church in the competent ecclesiastical forum according to the norm of law’.

Accused clergy cannot be punished unless they have committed an external violation of a law or precept for which they are gravely imputable by reason of malice or culpability.³¹ It is essential for a delict or canonical crime that there be an *external violation of a penal law* (canon 1321 §2). Acts in the internal forum may be immoral, but they are not punishable as crimes. Crimes are grave sins the legislator has categorised as crimes. Canon 1399 makes an exception, so that even if no crime is committed, when a divine or ecclesiastical law is gravely violated ‘and there is an urgent need to prevent or repair scandals’, the perpetrator can be punished.

A delict requires an external violation of the law, as well as malice (*willful intent*) or *negligence*. The Dicastery for Legislative Texts notes, to understand the difference between these concepts: ‘the definitions given in the 1917 *Codex* are useful: *willful intent* was defined as the deliberate intention to violate the law (Canon 2200 *Codex* 1917), while *negligence* was understood as ignorance of the law or omission of due diligence (Canon 2199 *Codex* 1917). These definitions are still valid today’.³²

When there is a preliminary investigation, it is important that this be carried out as quickly and efficiently as possible. Francis Morrissey quotes the Congregation (now Dicastery) for Clergy writing to a Canadian bishop in 2004, pointing out:

Canon 221, number 3, states that Christ’s faithful have the right that no canonical penalties be inflicted upon them except in accordance with the law. This means the rigid adherence to the dictates of canon 1717. The bishop or a person, not a committee, delegated by him, investigates, in a preliminary fashion, after the bishop receives information that has the ‘semblance of truth’.

This is a perfunctory investigation, which can be concluded in a matter of hours. The purpose is merely to determine whether or not there is something worth investigating and if there is, how it is to be investigated, either

31. Canon 1321 §2. No one can be punished unless the commission by him or her of an external violation of a law or precept is gravely imputable by reason of malice or of culpability.

32. *Penal Sanctions User Guide*, 18.

administratively or judicially. This ‘Preliminary Investigation’ is NOT a canonical ‘process’ (nor is it a ‘trial within a trial’), but it **MUST** be **opened** by a decree of the Bishop, and subsequent **action** to be taken must then be **DECREED** by the Bishop (canon 1718), and the Preliminary Investigation must be closed by **DEGREE** (canon 1719), and the discipline indicated in the canon followed.³³

The congregation observed that when priests have recourse they often win because the bishop has not followed correct procedures. When there is a recourse, the congregation must evaluate the facts and the law concerning the accusation as well as ensure that correct canonical procedures were followed. Sometimes one hears of cases where there is no preliminary investigation; cases where the investigation goes on for many months or years; cases where the file is sent to a board after the preliminary investigation when the case should be sent directly to the Dicastery for the Doctrine of the Faith; or cases where the standard of proof is not moral certainty but is decided on the basis of probability. In all these cases the rights of the accused priests are violated and in many cases the rights of the alleged victim are also violated because inevitably there will be unnecessary delays, violating the *regula iuris* or principle of law, ‘justice delayed is justice denied’.³⁴

7. Right to know the accusation and to deny it

The Congregation for the Doctrine of the Faith advised in a letter that unless there are serious contrary indications, even in the course of the preliminary investigation, the accused cleric should be informed of the accusation, and given the opportunity to respond to it.³⁵ However, there is an exception concerning the identity of the accuser when the seal of confession is involved. The norms of *Sacramentorum Sanctitatis Tutela* in art. 4 §2 state:

33. Congregation for Clergy, ‘Letter to a Canadian Bishop 2004’, quoted in Frank Morrissey, ‘Preliminary Investigation in Penal Cases: Some of the Better Practices’, *The Canonist* 2 (2011): 192-3 (emphases in the original letter).

34. *Code of Canon Law Annotated*, 1161, in commentary on canon 1453: ‘It is incumbent on the promotor of justice and the defender of the bond to safeguard the application of the law and to oppose any delay: *iustitia dilata est iustitia denegata*’. This is a *regula iuris*, a principle of law.

35. CDF, *Circular Letter: To Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics*, 3 May 2011, III: ‘Suggestions for Ordinaries on Procedures’, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-minori_en.html.

In the cases concerning the delicts mentioned in §1, it is not permitted for anyone to indicate the name of the accuser or the penitent either to the accused or to his or her patron, unless the one making the accusation or the penitent has expressly consented; the question of the credibility of the accuser is to be considered attentively; and any danger of violating the sacramental seal is to be altogether avoided, taking care, however, that the right of defense of the accused remains intact.³⁶

When the accusation involves the seal of confession, it is usually wise for the local Ordinary to await directions from Doctrine of the Faith before the accused cleric is interviewed.

When there is a judicial process, the accused is cited and formally confronted with the allegation against him. With the citation, the accused now has the opportunity to respond to the contents of the *libellus*:

the processual judicial relationship is fully established ... It is in the wide sense the so-called *vocatio in ius*; in the strict sense it can be defined as the judicial act by which the judge summons the parties to judgement so that they may try to establish their judiciary claims in a trial ordered by specific regulations.³⁷

The judge then formulates the doubt after hearing the response of the accused, who may deny the accusation, or admit his guilt, or deny part of what is alleged against him. Canon 1620: ‘A sentence suffers from the defect of irremediable nullity if: [...] 7/ the right of defense was denied to one or the other party’. The right to deny the accusation also applies in an extrajudicial process because canon 19 ensures the principle for a trial applies in an extrajudicial process.³⁸

Sometimes the accused is very unhappy about the precautionary measures imposed upon him. If there is a quick preliminary investigation, precautionary measures are less of a problem. However, if there is a protracted investigation,

36. CDF, *Norms Regarding Delicts Reserved to the Dicastery for the Doctrine of the Faith*, 11 October 2021, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20211011_norme-delittiservati-cfaith_en.html.

37. Fernando Della Rocca, *Canonical Procedure*, trans. John Fitzgerald (Bruce, 1961), 171-2.

38. Canon 19. If a custom or an express prescript of universal or particular law is lacking in a certain matter, a case, unless it is penal, must be resolved in light of laws issued in similar matters, general principles of law applied with canonical equity, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of learned persons.

the accused cleric's reputation suffers and he is entitled to take recourse to the competent dicastery against the precautionary measures imposed upon him.

8. Right to recourse against the process chosen and the personnel involved

William Daniel believes that in natural justice it is possible for accused clergy to challenge the use of an extrajudicial process when a penal trial is possible.³⁹ There are more safeguards for the accused in a penal trial because more officials are involved and there are more procedural safeguards. In fact, canon 1342 favours the use of a trial.

An accused could possibly make recourse against the decree to use an extrajudicial process following canons 1733–1739. However, there may be insufficient qualified personnel with a good reputation to have a trial.

Both the accused cleric and the alleged victim could object if a person involved in their case: lacks a good reputation (he/she had abused someone or engaged in misconduct); is not competent; or has a bias in some way. The accuser/complainant or the accused cleric could also object against their involvement in the case and take recourse to the competent dicastery at the Apostolic See.⁴⁰

9. Right not to take an oath

The accused cleric can be offered the possibility of taking an oath but has the right not to be forced to take an oath to tell the truth. Of course, any evidence given with an oath to tell the truth, completed with an oath that the truth was told, gives more credibility to the evidence.⁴¹

39. William Daniel, 'The Normalization of the Extrajudicial Process (c. 1720): Analysis, Critique, Proposal', *Ius Canonicum* 61 (2021): 74, quoted in Simeon Etonu, *Rights of the Accused in the Penal Process* (Catholic University of America, 2024), 34.

40. Canon 1448 §1. A judge is not to undertake the adjudication of a case in which the judge is involved by reason of consanguinity or affinity in any degree of the direct line and up to the fourth degree of the collateral line or by reason of trusteeship, guardianship, close acquaintance, great animosity, the making of a profit, or the avoidance of a loss. §2. In these circumstances the promoter of justice, the defender of the bond, the assessor, and the auditor must abstain from their office.

Canon 1449 §1. If in the cases mentioned in can. 1448 the judge does not withdraw, a party can lodge an objection against the judge.

§2. The judicial vicar deals with the objection; if the objection is lodged against him, the bishop who presides over the tribunal deals with it.

§3. If the bishop is the judge and the objection is lodged against him, he is to abstain from judging.

41. *Vademecum*, 110.

Canon 1728 §1. Without prejudice to the prescripts of the canons of this title and unless the nature of the matter precludes it, the canons on trials in general and on the ordinary contentious trial must be applied in a penal trial; the special norms for cases which pertain to the public good are also to be observed.

§2. The accused is not bound to confess the delict nor can an oath be administered to the accused.

The defendant is to be informed in advance that, in accordance with canon 1728 §2, he is not required to take an oath at any time during the proceedings. The Dicastery for Legislative Texts also adds that ‘he should not be forced to give testimony against himself that could incriminate him. However, he must be heard and his statements will be suitably evaluated by the Authority’.⁴² The dicastery also adds that ‘it would be unlawful to provoke or accept in proceedings “declarations of conscience” that the accused actually intended to make exclusively in confidence by reporting to certain persons (e.g., his Superior)’.⁴³

10. Right not to incriminate himself—that is, right to remain silent and not to admit the offence

Canon 1728 §2 explicitly states the right of the accused: ‘The accused is not bound to confess the delict nor can an oath be administered to the accused’.⁴⁴ When a cleric is called to a meeting and informed about the allegation he does not have to respond to the allegation. The accused should ask for the details of the allegation in writing and either the accused or his support person should take notes about what is said.

11. Right to know the punishment proposed, including if a dismissal is being sought

Charles Scicluna explains that the accused cleric has the right to know if the bishop wants to dismiss him from the clerical state, and the accused cleric has the right to respond to the request to have this penalty imposed.⁴⁵

42. *Penal Sanctions User Guide*, 209.

43. *Penal Sanctions User Guide*, 209.

44. *Vademecum*, 209.

45. Charles Scicluna, ‘Clerical Rights and Duties in the Jurisprudence and Praxis of the Congregation of the Doctrine of the Faith on *Graviora Delicta*’, *Folia Canonica* 10 (2007): 277.

12. Right to actively participate in the instruction of the case

The accused cleric has the right to suggest which witnesses should be interviewed and the use of other evidence to prove his innocence or prove mitigating circumstances for his actions.⁴⁶

His advocate/procurator can be present when witnesses are examined and the advocate/procurator can propose questions to the judge. The judge makes the decision whether the witnesses are interviewed or whether the questions are asked. These provisions bolster the right of defence of the accused cleric.

It is unacceptable that the accused cleric get supporting statements from supporters to submit to the judge, or get parishioners to sign a petition after Sunday Mass stating he is innocent or something similar.

13. Right to see the acts

When the collection of proofs has been completed, the judge issues a decree publishing the acts. The accused and his advocate/procurator have a right to see the acts. This will usually take place in a tribunal office:

Canon 1598 §1. After the proofs have been collected, the judge by a decree must permit the parties and their advocates, under penalty of nullity, to inspect at the tribunal chancery the acts not yet known to them; furthermore, a copy of the acts can also be given to advocates who request one. In cases pertaining to the public good to avoid a most grave danger the judge can decree that a specific act must be shown to no one; the judge is to take care, however, that the right of defense always remains intact.

§2. To complete the proofs, the parties can propose additional proofs to the judge. When these proofs have been collected, it is again an occasion for the decree mentioned in §1 if the judge thinks it necessary.

The accuser/complainant and his or her advocate/procurator have a right to also see the acts. Both the accused and the accuser have the right to suggest that further witnesses be interviewed or that other evidence be collected.

46. Canons 1552, 1553, 1559, and 1428.

14. Right to submit written arguments or briefs

The advocate/procurator for the accused can make a written submission on behalf of the accused, and this is the usual practice.⁴⁷ Canons 1602 and 1603 allow the judge to have more detailed requirements concerning the defence briefs or submissions. The promoter of justice has a right to respond to the submissions of the parties.⁴⁸

15. Right to speak last

Canon law upholds the right of the accused or his advocate/procurator to intervene or speak last—canon 1725: ‘In the discussion of the case, whether done in written or oral form, the accused, either personally or through the advocate or procurator, always has the right to write or speak last’. The Dicastery for Legislative Texts explains:

Moreover, the accused must always have the faculty to intervene last, both in written and oral form, and this also on the occasion of any new elements, testimonies or proofs, which are added to the procedural acts, as prescribed by can. 1725: in any case, the accused or, in his place, his lawyer must express his opinion last.⁴⁹

‘He or she may do so orally or in writing, either in person or through the advocate or procurator.’⁵⁰

16. Right to have the most favourable law applied

Canon law requires that an offender be judged according to the law that was in force at the time of the alleged events—see canon 1313: ‘§1. If a law is changed after an offence has been committed, the law more favourable to the offender is to be applied. §2. If a later law removes a law, or at least a penalty, the penalty immediately lapses’. Therefore, if the law changes after a delict has been committed, whatever law is more favourable to an offender is to be applied.⁵¹ An

47. Canon 1602 §1. The defense briefs and the observations are to be written unless the judge, with the consent of the parties, considers a debate before a session of the tribunal to be sufficient.

48. Canon 1603 §3.

49. *Penal Sanctions User Guide*, 209.

50. *Code of Canon Law Annotated*, 1387.

51. *Penal Sanctions User Guide*, 7: ‘In both cases, can. 1313 states that the law most favourable to the offender must be applied. Consequently, if it is necessary to judge a delict committed before the new law, the law that is more favourable to the offender is applied (can. 1313 §1)’.

example is canon 1394,⁵² which speaks of a priest being suspended. Before the 1983 Code came into effect, the priest was excommunicated. Therefore, priests excommunicated for attempting a civil marriage became only suspended when the 1983 Code came into effect.

17. Right to a proportionate penalty

Penalties cannot be arbitrarily imposed or be vindictive. Canon 221 §3 states that ‘The Christian faithful have the right not to be punished with canonical penalties except according to the norm of law’. This means, when penalties are imposed on offenders, the penalties must be lawful and proportionate.

Canon 1349. If a penalty is indeterminate, and if the law does not provide otherwise, the judge in determining the penalties is to choose those which are proportionate to the scandal caused and the gravity of the harm; he is not however to impose graver penalties, unless the seriousness of the case really demands it. He may not impose penalties which are perpetual.

The Dicastery for Legislative Texts notes that when penalties are to be imposed on an offender, the penalty to be imposed ‘is proportionate not only to the gravity of the act, but also to the person’s responsibility’.⁵³

18. Right to reject the renunciation of the trial

In a number of cases as evidence is gathered it becomes clear that the accused is not the offender and he is innocent. The law provides for renouncing the trial when this happens:

Canon 1724 §1. At any grade of the trial the promoter of justice can renounce the trial at the command of or with the consent of the ordinary whose deliberation initiated the process.

§2. For validity the accused must accept the renunciation unless the accused was declared absent from the trial.

52. Canon 1394 §1. A cleric who attempts marriage, even if only civilly, incurs a *latae sententiae* suspension, without prejudice to the provisions of can. 194 §1 n. 3, and 694 §1 n. 2. If, after warning, he has not reformed or continues to give scandal, he must be progressively punished by deprivations, or even by dismissal from the clerical state.

53. *Penal Sanctions User Guide*, 25.

However, the accused has the right to reject the renouncing of the trial. Obviously, the accused may well want the trial to continue and to receive a declaration of innocence of the offence. This is very different to merely just having the trial stop with no decision.

19. Right to be acquitted if he is innocent

Canon 1726 states the right for the accused to be acquitted: 'If at any grade and stage of the penal trial it is evidently established that the accused did not commit the delict, the judge must declare this in a sentence and absolve the accused even if it is also established that criminal action has been extinguished'.

Three decisions are possible in a penal trial or extrajudicial process, as the Dicastery for the Doctrine of the Faith explains:

The decision that concludes the penal process, whether judicial or extrajudicial, can be of three types:

- *conviction* ('*constat*'), if with moral certainty the guilt of the accused is established with regard to the delict ascribed to him. In this case, the decision must indicate specifically the type of canonical sanction imposed or declared.
- *acquittal* ('*constat de non*'), if with moral certainty the innocence of the accused is established, inasmuch as no offence was committed, the accused did not commit the offence, the offence is not deemed a delict by the law or was committed by a person who is not imputable.
- *dismissal* ('*non constat*'), whenever it has not been possible to attain moral certainty with regard to the guilt of the accused, due to lack of evidence or to insufficient or conflicting evidence that the offence was in fact committed, that the accused committed the offence, or that the delict was committed by a person who is not imputable.

The decision (issued by sentence or by decree) must refer to one of these three types, so that it is clear whether it is '*constat*', '*constat de non*' or '*non constat*'.⁵⁴

The accused has a right to be declared innocent if that is proven. If he is guilty it is possible to provide for the public good or for the welfare of the person

54. *Vademecum*, 84.

accused through appropriate warnings, penal remedies, and other means of pastoral solicitude (cf. canon 1348 CIC).

20. Right to see the sentence

The sentence must be published⁵⁵ for the accused and his advocate/procurator to read.⁵⁶

The confidentiality and the reliability of mail services is a major issue today. Therefore, in many places the accused and his advocate/procurator are required to go to a tribunal office to read the sentence and take notes. Sometimes they will be required to visit the office several times.

21. Right to challenge the decision or sentence

This right is very important and it is an example of the importance of following the procedural laws of the Code. When an extrajudicial decision is made in a case and a decree is issued, if the accused disagrees with it, he must follow canon 1734 and ask the author of the decree to change or withdraw it (*remonstratio*):

Canon 1734 §1. Before proposing recourse a person must seek the revocation or emendation of the decree in writing from its author. When this petition is proposed, by that very fact suspension of the execution of the decree is also understood to be requested.

§2. The petition must be made within the peremptory period of ten useful days from the legitimate notification of the decree.

If the author refuses to emend or revoke the decree, or thirty days have elapsed since the decree was legitimately notified, then the accused may have recourse to the competent dicastery.

If the decision has been given by a tribunal as a sentence in a trial, the accused can appeal the decision to the tribunal of appeal that is competent.⁵⁷

55. Canon 1614. The sentence is to be published as soon as possible, with an indication of the means by which it can be challenged. It has no force before publication even if the dispositive part was made known to the parties with the permission of the judge.

56. Canon 1615. Publication or communication of the sentence can be done either by giving a copy of the sentence to the parties or their procurators or by sending them a copy according to the norm of can. 1509.

57. Canon 1353. An appeal or a recourse against judgements of a court or against decrees which impose or declare any penalty has a suspensive effect.

22. Right to a suspension of the judgment upon appeal

When the accused appeals a sentence of a court or has recourse against an extrajudicial decree, the penalty is suspended while the appeal is considered.⁵⁸ The law is clear that ‘the effect of the appeal or recourse is to bring about the *paralysis* of the judgment or of the administrative decree that imposed or declared the penalty until such time as the higher instance has made a decision’.⁵⁹

The accused cleric also has the right to seek a *restitutio in integrum* against a sentence that he believes is manifestly unjust.⁶⁰ Fernando della Rocca describes a *restitutio in integrum*:

An extra-ordinary remedy which cannot be used unless it is impossible to deploy the other means of remedial attack ... Its legal effect is restoration of the situation treated in the sentence to the condition which existed before the sentence was pronounced. The general condition that must be verified in order that *restitutio in integrum* can be requested is that there be an unjust sentence, one which is injurious to the rights of the petitioner, and that this sentence be issued under circumstances that the injured party can propose neither appeal nor *querela nullitatis* to eliminate the prejudicing consequences.⁶¹

A petition for a *restitutio in integrum* suspends the execution of the judgment.

OBLIGATIONS OF THE ACCUSED

The Dicastery for the Doctrine of the Faith *Vademecum* enables a bishop to use canon 1722 from the beginning of the preliminary investigation concerning an alleged more grave crime:

To defend the good name of the persons involved and to protect the public good, as well as to avoid other factors (for example, the rise of scandal, the risk of concealment of future evidence, the presence of threats or other conduct meant to dissuade the alleged victim from exercising his or her

58. Canon 1353—see preceding footnote.

Canon 1638. An appeal suspends the execution of the sentence.

59. *Code of Canon Law Annotated*, 1060.

60. Canon 1645 §1. *Restitutio in integrum* is granted against a sentence which has become res iudicata provided that its injustice is clearly established.

61. Della Rocca, *Canonical Procedure*, 302.

rights, the protection of other possible victims), in accordance with art. 10 § 2 SST, the Ordinary or Hierarch has the right, from the outset of the preliminary investigation, to impose the precautionary measures listed in canons 1722 CIC and 1473 CCEO.⁶²

The Dicastery for Legislative Texts explains that a bishop can use those same measures from the beginning of the preliminary investigation in allegations of other crimes:

However, during the preliminary investigation, with just cause and on the basis of the ordinary attributions that are proper to it (cf. can. 392), the ecclesiastical Authority can adopt by Decree (cf. Appendix 3) adequate disciplinary measures, proportional, and reasonably limited in time: for example, by limiting the exercise of the pastoral ministry or ecclesiastical office of the subject under investigation, even in cases not reserved to the Dicastery for the Doctrine of the Faith.⁶³

Therefore, the bishop can prohibit the exercise of sacred ministry, require the accused to live in a particular place etc. while canonical processes are in action. A bishop might write something like this to an accused cleric:

Because of the seriousness of the allegations against you, and to respond to the spiritual and pastoral needs of the church community and for your own good and the good of the Church, in accord with the provisions of canons 49 and 1339 §1, I hereby admonish and warn you:

1. To avoid any contact whatsoever and in any other manner, either at your initiative or from their own initiative, with persons under the age of 18 years unless in the presence of an adult.
2. To avoid any contact whatsoever and in any manner, either from your own initiative or from their own initiative, with the person who has lodged the above referenced complaint against you.
3. Not to interfere with the process, including by distributing information about the accuser in any manner or means.
4. To avoid any contact whatsoever and in any manner, either from your own initiative or from their own initiative, with the family

62. *Vademecum*, 58.

63. *Penal Sanctions User Guide*, 191.

members or friends of the person who has lodged the above referenced complaint against you.

5. To avoid physical presence in the parish of *N* and town of *N*, which is where the allegation arose.
6. To avoid persons or situations that could endanger your continence or any conduct that might cause scandal to the faithful or that would receive publicity in the media.

I require you to live at *N*. You require my prior written permission to stay overnight anywhere else.

The provisions of this precept are necessary and prudent precautions as a pastoral measure to protect the rights and reputations of all involved and to safeguard the salvation of souls.

The gravity of this matter requires me to state further that failing to observe the provisions of this precept shall be deemed a violation of canon 1371 §1, which can result in further disciplinary action against you, and which may render you liable to additional canonical penalties. Accordingly, this precept itself stands as a canonical warning concerning these matters.

Yours sincerely in Christ,
Bishop *N*

CONCLUSION

Accused clerics have many rights enshrined in canon law, either in the Code of Canon Law or in other documents. Accused clerics also have obligations to enable justice to be achieved in a particular case. These rights and obligations are summarised below.

Rights of the Accused

1. Right to the presumption of innocence
2. Right to have his good name protected during the investigation
3. Right to a civil and a canonical advocate/procurator
4. Right to remuneration and support

5. Right to a decision based on moral certitude
6. Right to be judged according to the provisions of canon law
7. Right to know the accusation and to deny it
8. Right to recourse against the process chosen and the personnel involved
9. Right not to take an oath
10. Right not to incriminate himself—that is, right to remain silent and not to admit the offence
11. Right to know the punishment proposed, including if a dismissal is being sought
12. Right to actively participate in the instruction of the case
13. Right to see the acts
14. Right to submit written arguments or briefs
15. Right to speak last
16. Right to have the most favourable law applied
17. Right to a proportionate penalty
18. Right to reject the renunciation of the trial
19. Right to be acquitted if he is innocent
20. Right to see the sentence
21. Right to challenge the decision or sentence
22. Right to a suspension of the judgment upon appeal

Obligations of the Accused

1. Not to interfere with any canonical or civil process, including by distributing information about the accuser in any manner or means.
2. To avoid any contact whatsoever and in any manner with the person who has lodged the complaint.
3. To avoid any contact whatsoever and in any manner with the family members or friends of the person who has lodged the complaint.

4. To observe any precepts or requirements imposed by the diocesan bishop or Ordinary, which may include the following provisions:
 - 4.1 To avoid any contact whatsoever and in any other manner, either at one's initiative or from their own initiative, with persons under the age of 18 years unless in the presence of an adult.
 - 4.2 To avoid physical presence in the parish of *N* and town of *N*, which is where the allegation arose.
 - 4.3 To avoid persons or situations that could endanger one's continence or any conduct that might cause scandal to the faithful or that would receive publicity in the media.
 - 4.4 To live at a particular address.