

PART II

GUIDELINES

Issued by the Canadian Conference of Catholic Bishops
to assist bishops and major superiors or those
equivalent to them in law in updating protocols
for the prevention of sexual abuse of minors by clerics
and for responding to complaints.

Every effort must also be made to ensure that the provisions of the Circular Letter of the Congregation for the Doctrine of the Faith dated 3 May 2011 are fully implemented. This document was issued to assist Episcopal Conferences in drawing up guidelines for handling cases of sexual abuse of minors by clerics. It is likewise important that Episcopal Conferences establish a practical means for periodically reviewing their norms and verifying that they are being observed.

— Pope Francis
*Letter Concerning the Pontifical Commission
for the Protection of Minors*
2 February 2015

Following a review by the Congregation for the Doctrine of the Faith, the Canadian Conference of Catholic Bishops (CCCCB) was informed on 10 May 2016 that the following **Guidelines** were determined to be in accord with the indications given by the said Congregation in its 3 May 2011 *Circular Letter* to assist Episcopal Conferences in developing procedures for dealing with cases of sexual abuse of minors perpetrated by clerics.⁸⁰ With the publication of this document, these **Guidelines** are officially and publicly issued.

Each section of the **Guidelines** below is followed by a commentary intended to assist bishops and major superiors or those equivalent to them in law in applying the **Guidelines** as well as to provide others who may be interested with detailed information. Readers who may be unfamiliar with some of the canonical terminology in this section may wish to consult the **Glossary** (page 144).

INTRODUCTION

Over the past twenty years, the problem of sexual abuse by clergy and members of institutes of consecrated life, societies of apostolic life, public associations of the faithful, and new ecclesial movements whose members include clerics (henceforth “institutes”), has highlighted the need for each to adopt effective methods for preventing abuse, responding to allegations, and reducing risks.

These **Guidelines** are intended to assist the leadership of the Catholic Church in Canada with the task of strengthening their policies relating to safeguarding minors. They are also meant to outline the protocol of an appropriate canonical and pastoral response to alleged or established cases of the sexual abuse of minors by clergy and, all things being equal, by non-ordained members of an institute (see Appendix 1) and officially mandated laypersons working in ecclesiastical structures under ecclesiastical supervision.

SECTION ONE: SCOPE AND APPLICABILITY

This section outlines the scope and applicability of the present Guidelines, including the canonical sources from which they are drawn, in view of the priority of creating a safe environment in any circumstance in which the protection of minors is imperative.

§ 1.1 – These **Guidelines** take into account the provisions of the Code of Canon Law (CIC [1983]) and the Code of Canons of the Eastern Churches (CCEO [1990]), the Apostolic Letter (issued *motu proprio*) *Sacramentorum sanctitatis tutela* of 30 April 2001 as revised on 21 May 2010 (henceforth referred to as *Motu Proprio* or SST [2010]),⁸¹ and the *Circular Letter* of 3 May 2011, from the Congregation for the Doctrine of the Faith. They are intended to assist Episcopal Conferences in developing guidelines for dealing with cases of sexual abuse of minors perpetrated by clerics.⁸²

These **Guidelines** are offered to all dioceses and eparchies in Canada and are intended to serve bishops and major superiors or those equivalent to them in law.

§ 1.1 **Commentary** – In keeping with the nature of the CCCB whose members are not only the bishops of the Latin Church but also those of Eastern Churches present in Canada, these **Guidelines** are shared with the representatives of the Eastern Catholic Churches *sui iuris* to facilitate the updating of their own policies and protocols.

The norms of the Holy See contained in the *Motu Proprio* of 30 April 2001, as revised on 21 May 2010, regarding the sexual abuse of minors, apply solely to clerics, whether diocesan or members of institutes.

A note regarding vocabulary: Whenever the term “major superiors” is used in the present **Guidelines**, without a reference to their equivalent in law, this refers to those major superiors of pontifical clerical institutes of consecrated life and of clerical societies of apostolic life who are “Ordinaries” in accordance with the *Code of Canon Law* for the Latin Church (cf. *Codex Iuris Canonici* [CIC] c. 134 § 1) or “Hierarchs” in the *Code of Canons of the Eastern Churches* (cf. *Codex Canonum Ecclesiarum Orientalium* [CCEO] c. 984 § 3).

On the other hand, when the term “major superiors or those equivalent to them in law” is used in these **Guidelines**, this refers not only to the major superiors of institutes of consecrated life, but also of clerical societies of apostolic life, public associations of the faithful, and new ecclesial movements whose members include clerics (cf. CIC/c. 620; CCEO/c. 418).

Even if the present document concerns only clerics, these norms can be adapted and adopted (preserving what is necessary for the particular norm, that is, all things being equal), in order to address cases of non-ordained members of institutes or laypersons officially mandated by bishops and major superiors or those equivalent to them in law (see Appendix 1). In these situations, the cases do not fall under the Congregation for the Doctrine of Faith, but of another dicastery of the Holy See, such as the Congregation for the Institutes of Consecrated Life and Societies of Apostolic Life. A short summary of the procedures to be followed in such cases is provided in Appendix 1.

§ 1.2 – The adoption of a diocesan protocol, adapted to the particular situation, resources, and history of a diocese, reaffirms the responsibility of a bishop in his diocese or eparchy to initiate, support, and maintain the means for preventing sexual abuse of minors and for responding to abuse complaints.

The various protocols of institutes existing in Canada also enable major superiors to prevent sexual abuse by their members and to respond to abuse complaints.

§ 1.2 **Commentary** – Entrusted with the pastoral care of the people of God residing in his diocese/eparchy, the bishop provides suitable mechanisms for the prevention of sexual abuse of minors. Consequently, he is to see that all works of the apostolate in his diocese/eparchy are coordinated under his supervision (cf. CIC/c. 394; CCEO/c. 203). To this end, the bishop will ensure that major superiors, or those equivalent to them in law, and members of institutes present in his diocese/eparchy, are aware of the present **Guidelines** as well as of the local diocesan protocol. In addition, the bishop will inquire about the existence of their respective safeguarding policies and protocols for intervention, which provide for the efficient management of and adequate response to an allegation of sexual abuse of a minor committed in his diocese/eparchy by a consecrated person, cleric, or layperson officially mandated by the institute.

§ 1.3 – Sexual abuse policies differ according to the varying situations in and sizes of Canadian dioceses/eparchies and institutes. These policies express the pastoral responsibility of bishops and major superiors or those equivalent to them in law towards victims, those who are close to them, the Christian community, pastoral personnel, and an alleged abuser. These policies also express the obligation for maintaining a healthy and safe environment for the pastoral activities of the Christian community where all persons may feel confident to live their faith.

§ 1.3 **Commentary** – There is no need for commentary on this section.

SECTION TWO: DEFINITION OF TERMS

*The following section provides the reader with definitions of select key terms used in these **Guidelines**.*

§ 2.1 – “Abuse” is understood to mean any physical, verbal, emotional, or sexual behaviour by a representative of a Church entity:

(i) which causes a person to fear for his or her physical, psychological, or emotional safety and well-being;

(ii) which the alleged perpetrator knew or ought to have reasonably known would cause that person to have concern or fear for his or her physical, psychological, or emotional safety and well-being.

Such behaviour may or may not be criminal in nature. Child abuse, as defined under the child protection legislation of each Canadian province or territory, also constitutes abuse in terms of these **Guidelines**.

§ 2.1 **Commentary** – The situations outlined in clauses (i) and (ii) of the **Guidelines** are neither mutually exclusive nor necessarily concurrent. The person abused may not have been conscious or fully aware of the seriousness of the behaviour at the time it was committed.

§ 2.2 – “Sexual misconduct” is any act deemed a sexual offence according to canon law, the *Criminal Code* of Canada, and the applicable laws of the province or territory.

§ 2.2 **Commentary** – “Sexual misconduct” here concerns the sexual abuse of a minor and likewise the sexual assault of a vulnerable

adult. Refer to § 2.4 of the present **Guidelines** for the definition of a “minor,” be it in reference to a child or a youth. For the definition of “vulnerable adult,” refer to § 2.5.

Since bishops and major superiors or those equivalent to them in law are obliged to follow the requirements of secular law (cf. § 3.1 of the present **Guidelines**), it is important to be aware of the applicable secular laws. In addition to federal statutes against child sexual abuse and exploitation, each province and territory has its own child welfare legislation to protect children against abuse, exploitation, and neglect.

§ 2.3 – “Abuse within ministerial relationships” is considered to be any abuse of power, betrayal of trust, or exploitation of the imbalance of power inherent in a ministerial relationship between a representative of a Church entity and the person with whom a ministerial relationship exists.

Because of the imbalance of power between the person offering ministry and the person to whom ministry is offered, the apparent consent of a possible victim does not in itself determine whether there has been an abuse of power, breach of trust, or exploitation. Abuse within ministerial relationships would include abuses which transpire between one Church representative and another for whom there is an imbalance of power (for example, between an ecclesiastical superior and subject, between a formator and a candidate for ministry, and so forth).

§ 2.3 **Commentary** – The *Criminal Code* of Canada sets the age of consent for sexual activity at sixteen years [R.S.C. 1985, c. C-46, s. 151]; however, when there is a relationship of trust, authority, or dependency, the age of consent is eighteen years [R.S.C. 1985, c. C-46, s. 153 (1)].

§ 2.4 – A “minor” is considered to be, for the purposes of these **Guidelines**, any person under the age of eighteen years or other such age which is in accordance with the prevalent secular, canonical, and social norms.

§ 2.4 **Commentary** – In Canada, the definition of a minor varies according to province. In the following five provinces, the definition of a minor is a person under eighteen years: Alberta, Manitoba, Ontario, Quebec, and Prince Edward Island. In Saskatchewan a minor is an unmarried person under the age of sixteen. In Newfoundland, a minor is a person under sixteen years (youth defined as a person who is sixteen years or older, but under the age of eighteen). In the remaining three provinces and three territories a minor is defined as a person under nineteen years: British Columbia, New Brunswick, Nova Scotia, Nunavut, Northwest Territories, and Yukon.⁸³

CIC/c. 97 and CCEO/c. 909 define a minor as one who has not yet reached the age of eighteen.

§ 2.5 – A “vulnerable adult” refers to a person who is defined as an adult by secular statutes (see §2.4), but who lacks an adult mental capacity or who, by reason of advanced age, physical illness, mental disorder, or disability at the time the alleged abuse occurred, was or might be unable to protect himself or herself from significant harm or exploitation. Therefore, an adult who habitually lacks the use of reason is considered incapable of personal responsibility and is deemed to be equivalent to a minor according to canon law (see CIC/c. 99; CCEO/c. 909) and for the purposes of these **Guidelines**.

The case of a cleric who would take advantage of his position of authority to abuse sexually an adult who is not vulnerable in this sense would not be dealt with by virtue

of *Sacramentorum sanctitatis tutela*, since this misconduct is not considered among the more grave delicts listed in the *Motu Proprio*. However, it remains a delict according to CIC/c. 1395; CCEO/c. 1453 § 1, and would be treated in accordance with the applicable provision in canon law.

§ 2.5 Commentary – The case of a cleric who sexually assaults an adult who is not vulnerable in the sense as defined in the above and who is found guilty and has been sentenced, does not fall under the jurisdiction of the Congregation for the Doctrine of the Faith. Rather the case would eventually be handled by the Congregation for the Clergy in virtue of the special faculties granted to it by Pope Benedict XVI on 30 January 2009. One of these faculties is that of presenting “to the Holy Father for approval the cases of dismissal from the clerical state [...] of clerics guilty of serious external sins against the sixth commandment of the Decalogue” (cf. CIC/c. 1395 §§ 1-2; CCEO/c. 1453 §§ 1-2). The application of these faculties concerns namely the Ordinary, therefore not only the bishops or the hierarchs, but also the major superiors.

SECTION THREE: CANONICAL PROVISIONS

Although the CCCB recommends that any eventual protocols apply (all things being equal) to all of the above-mentioned situations of abuse or misconduct, it must be kept in mind that the substantive and procedural norms promulgated by the Motu Proprio Sacramentorum sanctitatis tutela apply in the strict sense of the term only to those cases of sexual abuse listed by the Motu Proprio among the more grave delicts (delicta graviora):

“1^o 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^o 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” (SST [2010] art. 6).

§ 3.1 – Secular legislation must be taken into account. The *Circular Letter* of the Congregation for the Doctrine of the Faith mentioned above calls for making “allowance for the legislation of the country where the Conference is located” (section III, g). Since the *Criminal Code* of Canada defines child pornography as including pornographic images of a person under the age of eighteen (R.S.C. 1985, c. C-46, s. 163.1) – not under the age of fourteen – secular law in Canada must be taken into account, even though a canonical penalty cannot be imposed for something which is not a delict in canon law.

§ 3.1 **Commentary** —The *Criminal Code* (R.S.C. 1985, c. C-46, s. 163.1) prescribes that anyone found possessing or distributing child pornography is guilty of a criminal offence. The *Criminal Code's* definition of child pornography includes: a) a photographic, film, video, or other visual representation, whether or not it was made by electronic or mechanical means, of explicit sexual activity with a person who is, or who is depicted as being under the age of eighteen; b) any written material, visual representation, or audio recording that advocates or counsels sexual activity with a person under the age of eighteen; c) any written material whose dominant characteristic is the description, for a sexual purpose, of sexual activity with a person under the age of eighteen; d) any audio recording that has as its dominant characteristic the description, presentation, or representation, for a sexual purpose, of sexual activity with a person under the age of eighteen years.

If a cleric is found guilty under secular law of possessing or distributing child pornography, the provisions for reporting cases to the Congregation for the Doctrine of the Faith are to be observed (SST [2010] art. 6 §1, 1°, art. 17 and art. 18).

The diocesan protocol must also take into account any provincial/territorial statute, where applicable, requiring citizens to report to the civil authorities anyone suspected of accessing or possessing child pornography.

§ 3.2 – A criminal action for delicts of sexual abuse ends by prescription after twenty years. “The prescription begins to run from the day on which a minor completes his/her eighteenth year of age,” although the Congregation for the Doctrine of the Faith may derogate from this prescription in individual cases (*Motu Proprio*, art. 7). At the same time, according to the criminal law of Canada, there is no statute of limitations for child sexual abuse. Consequently, these **Guidelines** will comply with both the norms of the *Motu Proprio* and Canadian legislation.

§ 3.2 **Commentary** – The determination of the criminal action in question here is with respect to the canonical trial. The prescription of twenty years which is found in the *Motu Proprio* starts after midnight at the end of the day when the presumed victim reaches the age of eighteen years (cf. CIC/c. 203 §2; CCEO/c. 1546 § 2); hence, the victim can formulate an accusation until the age of thirty-eight years. The Congregation for the Doctrine of the Faith may derogate from this in individual cases (cf. SST [2010] art. 7 § 1) and increase the time period. Secular law in Canada imposes no prescription period (statute of limitations) for denouncing the sexual abuse of minors or sexual assault in general. Given the canonical procedural rules outlined below, the Ordinary is to investigate the allegation of abuse which must be reported to the Congregation for the Doctrine of the Faith and, if it proves to be likely, he must request a derogation concerning the prescription period, if need be.

§ 3.3 – The preliminary investigation concerning an alleged delict of sexual abuse by a cleric is to be initiated by the Ordinary or the Hierarch whenever he receives a report of an allegation which has at least the semblance of truth. Once this preliminary investigation is completed, the Ordinary or the Hierarch “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 the same Congregation” (art. 16). This norm is of a great importance, since its application will indicate to the Ordinary or the Hierarch the procedure to be followed, which is not the same in each case.

§ 3.3 **Commentary** – If the Ordinary has reason to believe that the allegation which has been brought to his attention has the semblance

of truth – in other words, that the allegation appears plausible – he must proceed with a preliminary inquiry. Sometimes, a founded doubt or persistent rumours from different sources can plausibly support an allegation. If the investigation leads to the conclusion that the allegation is founded, the Ordinary is to bring these facts to the attention of the Congregation for the Doctrine of the Faith together with his opinion (*votum*) on the matter. The Congregation will then indicate the procedure to be followed, depending on the case. The latter may be different, for example if the perpetrator of the abuse admits his guilt or not, or has already been found guilty by a secular court.

The Congregation for the Doctrine of the Faith can retain the right to handle the matter itself “because of special circumstances” which the *Motu Proprio* does not specify. Among the “special” circumstances, one could imagine such cases as, for example, the conviction of the accused by a secular court for numerous offences of a heinous nature, or the accused being an especially prominent person or public figure. In cases involving such “special” circumstances, the Congregation may revoke its decision to demand an immediate penal or judicial administrative process.

§ 3.4 In principle, sexual abuse cases are to be tried in a judicial process. However, the Congregation for the Doctrine of the Faith may decide that the competent authority should proceed by extrajudicial decree, that is to say, by administrative penal process. The Ordinary or the Hierarch cannot impose a perpetual penalty upon the individual, unless it is included in the mandate of the said Congregation which can impose the penalty itself (see SST [2010] art. 21 § 2, 1^o) or “present the most grave cases to the decision of the Roman Pontiff with regard to dismissal from the clerical state” (SST [2010] art. 21 § 2, 2^o). However, at the request of the cleric himself, a dispensation from the obligations of the clerical state, including celibacy, can be granted by the Roman Pontiff.

§ 3.4 **Commentary** – There is no need for commentary on this section.

§ 3.5 – “With full respect for the right of defence” (SST [2010] art. 18), it is of a great importance to notify the alleged abuser of the allegation and the evidence, and to give the accused the opportunity to defend himself (cf. CIC/c. 1720, 1°; CCEO/c. 1486 § 1, 1°) and to respond to the allegation. If a judicial penal process is ordered by the Congregation for the Doctrine of the Faith, the judge must invite the accused to engage an advocate; if he does not do this, the judge himself is to appoint an advocate *ex officio* (see CIC/cc. 1481 § 2 and 1723; CCEO/cc. 1139 and 1474).

§ 3.5 **Commentary** – There are two possible processes: the administrative penal process and the formal judicial process. The first is chaired by the Ordinary or his delegate, assisted by two assessors, in addition to a notary, and concludes with an extrajudicial decree. Unless the Congregation for the Doctrine of the Faith has given an express mandate, a perpetual penalty, such as the loss of the clerical state, cannot be imposed by decree (cf. CIC/c. 1342 § 2; CCEO/c. 1402 § 2).

The right of defence must be respected by offering the alleged abuser the opportunity to defend himself and to choose an advocate. In principle, persons designated to exercise this role must be priests with a doctorate in canon law. These two stipulations are required by the *Motu Proprio*. That being said, the Congregation may grant an exemption to these requirements in particular cases (SST [2010] art. 15). Finally, recourse against the extrajudicial decree can be exercised with the Congregation, but if the latter confirms the order there is no possible further recourse (cf. SST [2010] art. 27).

As to the judicial process, as its name indicates, it is chaired by a judge, assisted often by other judges (cf. CIC/c. 1425 § 2; CCEO/c. 1084, § 1), and conducted according to the applicable

canonical norms. Among other things, given that the question concerns the public good of the Church, it is the promoter of justice who initiates the process by naming the points of accusation. Furthermore, the accused in a judicial trial must have an advocate. If he does not, the judge is to name one.

The judicial trial can come to a close by a sentence imposing a perpetual penalty such as the loss of the clerical state. Just as in the administrative penal process, the persons involved in the judicial process must be priests with a doctorate in canon law; however, an exemption may be granted by the Congregation (SST [2010] art. 15). Finally, the accused cleric can exercise his right to appeal the decision to the Congregation. However, as in the case of a recourse against the extrajudicial decree, there is no recourse against a confirmation by the Congregation of the decision taken by the Ordinary (cf. SST [2010] art. 28).

§ 3.6 – If a delict of sexual abuse is connected with a delict against the Sacrament of Penance, the one reporting has the right to request that his or her name not be made known to the cleric denounced, unless this accuser has expressly consented to the revelation of his or her identity (see SST [2010] art. 24 § 1).

§ 3.6 **Commentary** – “A delict of sexual abuse is connected with a delict against the Sacrament of Penance” can mean, for example, that the perpetrator imparts sacramental absolution on his accomplice or a confessor solicits a penitent during the Sacrament of Penance.

With any delict against the Sacrament of Penance, violation of the sacramental seal must be altogether avoided (Cf. SST [2010] art. 24 § 2).

§ 3.7 – Once the local process has been completed in any manner, even if there is no appeal from a sentence, “all of the acts of the case are to be transmitted *ex officio* to the

Congregation for the Doctrine of the Faith as soon as possible”
(SST [2010] art. 26 § 1).

§ 3.7 **Commentary** – “Completed in any manner,” that is to say whether the administrative penal process or formal judicial process ends with the imposition of a sanction or a decision of not guilty, all the acts must be transmitted to the Congregation for the Doctrine of the Faith.

“Acts of the case,” that is to say all testimonies and documents to be gathered and transmitted in order for a judgment to be reached by the ecclesiastical court.

SECTION FOUR

BASIC ELEMENTS FOR APPLYING THE CANONICAL PROVISIONS

A protocol for the prevention of sexual abuse and the pastoral response to complaints of sexual abuse should include the elements outlined in this section. Such a protocol should exist in every diocese/eparchy and institute.

§ 4.1 – The Ordinary should appoint a delegate to deal with issues related to sexual abuse or to allegations of sexual misconduct (see CIC/c. 1717 § 1; CCEO/c. 1468). The delegate may be a priest, a deacon, or any other person (male or female) who is trustworthy and qualified to perform these duties.

A deputy delegate should be appointed at the same time as the delegate and be similarly qualified. In the absence of the delegate or in the event of the delegate’s incapacity, the deputy delegate has the same role and functions as the delegate.

§ 4.1 **Commentary** – There is no requirement for the delegate or his deputy to be a specialist in any particular discipline. However, he or she could, for example, be knowledgeable about matters relating to safeguarding against abuse or abuse itself and be of good repute.

§ 4.2 – The protocol should provide for the formation of an advisory committee of at least three persons who, under the authority of the delegate, will assist the delegate in matters relating to the prevention of sexual abuse of minors and in responding to allegations of sexual abuse. Taking into consideration the resources that are available, neighbouring dioceses/eparchies or institutes might agree to establish an

interdiocesan or an intercongregational advisory committee. The advisory committee should also be mandated to provide advice on the preparation and updating of the protocol relating to sexual abuse, as well as to its interpretation and proper application.

§ 4.2 **Commentary** – The appointment of a delegate and a deputy delegate is recommended to allow the Ordinary freedom of judgment and all possible latitude in case an allegation of sexual abuse proves to be founded. Given that the Vicar General and the Episcopal Vicar have the same executive power as the bishop (cf. CIC/c. 479; CCEO/c. 248) and are “never to act contrary to the intention and mind of the diocesan bishop” (CIC/c. 480; CCEO/c. 249), it would be preferable for the delegate and deputy delegate not to be vicars of the bishop. Since CIC/c. 483 §2 and CCEO/c. 253 §1 require that even the notary be a priest in cases in which the reputation of a cleric can be called into question, current practice calls for the delegate to be a priest in a case concerning a priest.

The appointment of a delegate also has the advantage of allowing the cleric suspected of sexual abuse to rely on a possible local instance rather than to start immediately by the last instance before the Holy See. If the allegation is made directly to the Ordinary, it is advisable that he refer the person to the delegate or the deputy delegate. It is also recommended that, to the extent resources permit, the delegate and deputy delegate work with an advisory committee composed of members of various professions to propose an informed decision on the probability of the facts and the likelihood of the allegation.

§ 4.3 – Every allegation of sexual abuse against a member of the clergy, whether doubtful or well-founded, is to be reported to the delegate or deputy delegate. This applies also with respect to an allegation of sexual abuse against a non-ordained member of an institute or officially mandated laypersons working in ecclesiastical structures under

ecclesiastical supervision – even if such cases are not covered by the norms of the *Motu Proprio*.

In the initial stages of the process, it is particularly important to listen attentively to victims and their families, to treat them with respect, and to be committed to their spiritual and psychological assistance.

It is also essential that the delegate comply with the reporting obligations imposed by secular law, cooperate with the police in their investigation of the allegations and avoid any interference which may arise on account of the canonical investigation.

If the situation does not call for mandatory reporting to the civil authorities, the delegate is nevertheless required to inform those concerned of their right to make their own denunciation to the proper civil authorities and offer proper encouragement in this regard.

§ 4.3 Commentary – The Church has an obligation to cooperate with the requirements of secular law regarding the sexual abuse of a minor (cf. *Circular Letter I*, e). This requirement extends to the reporting of such crimes to the appropriate civil authorities. In Canada, all provinces and territories have laws concerning the mandatory reporting of sexual or physical abuse of a minor, be it suspected or ascertained. It is important to be informed as to how “minor” is defined in the applicable secular legislation (see **Guidelines** above, § 2.4, for the definition of a “minor”).

When an adult brings forward an accusation of abuse which took place at the time he/she was a minor, he/she must be informed of the right and perhaps the duty to denounce the alleged offender to the civil authorities. As per the *Criminal Code* of Canada, there

is no time limitation on when an accused can be charged for an indictable offence such as sexual assault/sexual abuse.

Regardless of whether the adult person coming forward reports the alleged historical incident to civil authorities, when an allegation of sexual abuse involves a cleric, the Ordinary is obliged to inform the Holy See and to await its directives concerning how to proceed canonically.

Apart from historical allegations, should the Ordinary become aware of the sexual or physical abuse of a minor *which is currently taking place*, but remains silent, he can be deemed criminally liable and prosecuted for protecting the offender. If the Ordinary acquires this information during sacramental Confession – whether of the victim or the perpetrator – the seal of Confession remains inviolable (cf. CIC/c. 983 and CCEO/c. 733).

§ 4.4 – The protocol should provide for the appointment of a person responsible for relations with news media for all questions concerning allegations of sexual abuse; this person is not to be the delegate or deputy delegate. The designation of one individual as the official spokesperson leads to better mutual understanding, more effective collaboration, and avoids confusion with reporters/journalists. The designated spokesperson should work closely with the bishop/major superior or the equivalent in law and the delegate.

§ 4.4 Commentary – With the widespread presence and formidable efficiency of social media, it is more than ever important that traditional mass media be kept informed in a formal manner, one way or another, of the accountability of the bishop/major superior or the equivalent in law concerning allegations which were made public and what actions have been or will be undertaken. It can be most helpful for a communications professional to be delegated to respond to media inquiries in such cases; however, this person cannot replace the bishop/major superior.

§ 4.5 – The protocol should also provide for a mechanism by which to inform the clergy, the members and personnel of an institute, and the faithful about the duly approved protocol and the means by which to access it.

The protocol should be published and made available to the faithful and the general public through a brochure or by publication on an appropriate website, if one exists. It should be written in plain and accessible language in order that it may be readily understood.

The information required for someone to be able to contact the delegate or deputy delegate should also be publicized and made available in all locations where pastoral activities take place, and posted on the website of the diocese/eparchy and institute.

§ 4.5 **Commentary** – The information to be locally disseminated includes the present **Guidelines** issued by the CCCB.

§4.6 – Clerics and members of institutes as well as officially mandated laypersons who function in ecclesiastical structures are to be well informed of the damage to victims from sexual abuse, whether the perpetrator be a cleric, a member of an institute, or other personnel under ecclesiastical supervision. They are to be aware of their own responsibilities in this regard in view of both canon and secular law. They are also to be helped to recognize the potential signs of abuse, perpetrated by anyone in relation to minors (see *Circular Letter*, I, d, 1).

§ 4.6 **Commentary** – There is no need for commentary on this section.

§ 4.7 – It is important to keep in mind that the accused person is presumed innocent until the contrary is proven in accordance with the norms of law. Therefore, any investigation of accusations is to be done with due respect for the principle of privacy and the good name of the persons involved (see CIC/cc. 220 and 1717 §2; CCEO/cc. 23 and 1468, and *Circular Letter*, III, d).

§ 4.7 **Commentary** – In addition to the sections of the Codes and the *Circular Letter* cited above, the *Canadian Charter of Rights and Freedoms*, Section 11(d), provides that any person charged with an offence has the right “to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal.”

§ 4.8 – The protocol should provide for a mechanism whereby, once the preliminary inquiry is begun, the Ordinary systematically assesses the canonical measures to be implemented with respect to a person who is alleged to have committed sexual abuse (in particular, see CIC/c. 1722; CCEO/c. 1473). The *Motu Proprio* permits the Ordinary to impose precautionary measures from the outset of the preliminary investigation (see SST [2010] art. 19). These measures are to be adapted to the alleged abuser’s canonical status. They may include restrictions in relation to residence, a temporary suspension of faculties for the exercise of ministry, or prohibition against any public exercise of ministry. No matter which restrictions are imposed during the course of the disciplinary or penal process, he is to be afforded a just and fit sustenance (see *Circular Letter*, III, h). With regard to married priests and deacons, each diocese/eparchy has its own policy with regard to their financial conditions, which can be used as a reference to determine a just sustenance.

Canonical measures do not depend on whether the abuser was charged or convicted of a crime under the *Criminal Code* of Canada or other secular legislation, or whether the abuser was found by a secular court to have committed the abuse. It is not to be forgotten that some offences defined according to secular law may be seen as being more serious according to the terms of canon law, as listed in the *Motu Proprio* among other more grave delicts.

During the secular proceedings, a cleric could request a dispensation from the obligations of the clerical state. However, it is recommended that no permanent canonical measures be imposed until all secular criminal proceedings have been completed. In any event, all of the acts of the case are to be transmitted *ex officio* to the Congregation for the Doctrine of the Faith (see SST [2010] art. 26 § 1).

§ 4.8 Commentary – The Codes of Canon Law deal with the livelihood of a cleric when penalties are to be imposed. These may include being placed on *administrative leave*, i.e., *the temporary suspension of faculties for the exercise of ministry*, with appropriate remuneration. According to CIC/c. 1350, “unless it concerns dismissal from the clerical state, when penalties are imposed on a cleric, provision must always be made so that he does not lack those things necessary for his decent support” (§ 1). This being said, the Ordinary is to take care to provide for a person dismissed from the clerical state who is truly in need “because of the penalty” (§ 2). CCEO/c. 1410 speaks in similar terms, while also noting specifically the situation of a married cleric.

These canons manifest a human concern on the part of the legislator: the sacramental brotherhood unites the bishop and the cleric by the Sacrament of Holy Orders and remains even after a perpetual penalty. However, there are difficulties concerning their application in specific cases, which can vary greatly according to

the circumstances of time, place, and person. CIC/c. 1350 § 1 speaks of “what is necessary for his decent support;” if the cleric has been dispensed from the obligations of his ministry, § 2 goes on to state that the Ordinary is to provide “in the best manner possible.” For example, the means of subsistence are not the same in the case of a married deacon or priest in an Eastern Church, a permanent deacon in the Latin Church, or an ordained member of an institute of consecrated life who has lived for many years under the vow of poverty and is without personal resources. There are unique circumstances in each case which cannot be managed by a universal policy.

In regards to members of institutes (whether ordained or not), the Codes do not speak of subsistence as such. The Latin Code puts the responsibility on the particular institute following the withdrawal of a member, whether he or she leaves legitimately or is dismissed. According to CIC/c. 702 § 2, “the institute is to observe equity and evangelical charity towards a member who is separated from it.” CCEO/c. 503 speaks in similar terms.

If the Ordinary has not appointed a delegate to be present during the secular trial, he must carefully examine the court sentence of a cleric who has been convicted in accordance with secular criminal law as a result of the facts which came to light during the secular trial. The Ordinary must determine if the offence involves a delict punishable by canonical law with a corresponding penalty. For example, if a priest committed sexual abuse during Confession, the secular judge may not take this circumstance into consideration as a punishable offence under secular law; however, it may be regarded as an aggravating factor in canon law because of the sacrilege and the abuse of authority. The Ordinary will then need to mention this detail in the *notum* which he sends to the Holy See.

§ 4.9 – The protocol is to provide appropriate means for restoring the reputation of a person who has been wrongly accused of sexual abuse of minors or vulnerable adults. The way

this is to be done will depend to a great extent on the publicity given to the accusations and to any eventual secular trial.

§ 4.9 **Commentary** – Each case is unique. There may be significant differences between a non-guilty decision because there is absolutely no evidence to support the allegation, and a non-guilty decision because of the weakness of the evidence or because of a reasonable doubt. If the Ordinary continues to have a reasonable doubt, he is to communicate the decision from the secular trial to the Congregation for the Doctrine of the Faith together with his *notum* and await the directives of the Holy See.

If the cleric is cleared of all accusations, the Ordinary will need to take the necessary measures to restore as far as possible the cleric's good reputation, while also taking the latter's own advice into consideration.

SECTION FIVE: APPROVAL AND PROMULGATION OF THE PROTOCOL

§ 5.1 – Once approved by the competent authority, the protocol is to be promulgated according to the custom of the diocese/eparchy and published in accord with §§ 4.5 and 4.6 above.

§ 5.1 **Commentary** – There is no need for commentary on this section.

SECTION SIX: UPDATE OF THE PROTOCOL

§ 6.1 – The protocol is to be reviewed every four years.

§ 6.1 **Commentary** – There is no need for commentary on this section.