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were deficiencies in the penal law, difficulties in canon law and complicated canonical processes for suspension.¹⁷⁹

Over several decades, “many and perhaps most-bishops declined to implement and enforce the rule of canon law. This failure violated the normative principles of natural and divine justice.”¹⁸⁰ The context was Vatican II and a move away from legalism. Nonetheless, “a reduction of the culture of canon law was a contributing factor in the failure to employ the juridical structure to check abuse. First, the bishops opted for a therapeutic approach to the exclusion of correcting the grave injury through the rule of canon law.”¹⁸¹ However, “it is fair to observe that the bishops were not acting in malice. As pastors of the church, they believed the psychological approach to be proper.”¹⁸²

One hopes there will not be another generation which ignored canonical procedures for handling of accusations of delicts. Many agree that ignoring canon law led to abuse crisis. It would be a paradox if the response to abuse crisis was to prefer safeguarding experts’ advice over canon law. As Reverend Ian Waters observed, “For many of the bishops, their attitude in addressing recent challenges and crises has been, ‘Keep canon law out of this!’”¹⁸³

¹⁷⁹ Brendan DALY, “Sexual Abuse and Canon Law,” in *Tui Motu InterIslands*, 235 (March 2019), pp. 12-13; Patrick M. O’BRIEN, “Transparency As A Means To Rebuild Trust Within The Church: A Case Study in How Catholic Dioceses and Eparchies in the United States have Responded to the Clergy Sex Abuse Crisis,” in *Church, Communication and Culture*, 5 (2020), pp. 456-483.

¹⁸⁰ John J. COUGHLIN, “The Clergy Sexual Abuse Crisis and the Spirit of Canon Law,” in *Boston College Law Review*, 44 (2002-2003), p. 982.

¹⁸¹ *Ibid.*, p. 986.

¹⁸² John J. COUGHLIN, “Canon Law and the Clergy Sex Abuse Crisis: The Failure of the Rule of Law,” Notre Dame Law School, Legal Studies Research Paper No. 09-21, 2009, pp. 27-28; Thomas John PAPROCKI, “Legalism, Laxism, and Antinomianism in the Church Today,” in *The Jurist*, 78 (2022), pp. 369-382.

¹⁸³ Ian WATERS, “The Australian Bishops and Canon Law,” in Stephen Crittenden (ed.), *Health and Integrity in Church and Ministry Conference Papers*, Sydney, Franciscan Friars, 2019, p. 103.

Rights of Alleged Victims in Canon Law

*Brendan Daly

Introduction

People everywhere are becoming more aware of human rights, so there are general expectations that nations and organisations do their best to prevent violations of human rights, properly investigate any violations that do happen, ensure there is full reparation for victims and take all measures to ensure the violations do not happen again.¹

In judicial systems in the past, the emphasis was on the prosecution of the crime. Now there has been a move from a focus on the one who allegedly committed the crime, to more care for the alleged victim. Maria Ines Franck notes: “The emphasis, therefore, seems to have shifted from determining the guilt of the perpetrator and the sanction to be applied to that criminal conduct, to the rights, feelings and expectations of those who have suffered the crime.”² However, as Kevin McKenna rightly indicates, the Church can both provide due process for accused clergy and religious as well as justice for sex abuse victims.³

The rights of victims have been advanced in civil law by the European Parliament, and these have been implemented by European countries.⁴ Within the framework of European Union law, Directive 2012/29/EU, on the rights and protection of crime victims, all member European States have to ensure that “in criminal investigations, all statements taken from child victims may be recorded by audio-visual means and these recorded statements may be used as evidence in criminal proceedings” (art. 24.1.a).

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¹ Fabian SALVIOLI, “The Rights of the Victims: International Standards and the Need of a Holistic Approach,” in Charles SCICLUNA and Myriam WIJLENS, *Rights of Alleged Victims in Penal Proceedings Provisions in Canon Law and the Criminal Law of Different Legal Systems* (Baden-Baden: Nomos Verlagsgesellschaft mbH & Co.) 39-52. (Hereinafter: SCICLUNA-WIJLENS Rights of Alleged Victims in Penal Proceedings)

² Maria Ines FRANCK, “Rights of Alleged Victims in Penal Procedures in Argentina and Current Approach to Victims’ Rights in Canon Law,” in SCICLUNA-WIJLENS Rights of Alleged Victims in Penal Proceedings, 206.

³ Kevin MCKENNA, “We can do both: Due Process for accused priests and justice for sex abuse survivors” *America*, 2 June 2023. <https://www.americamagazine.org/faith/2023/06/02/due-process-clergy-sexual-abuse-accusation-245117>.

⁴ EUROPEAN COURT OF HUMAN RIGHTS, “Convention for the Protection of Human Rights and Fundamental Freedoms,” https://www.echr.coe.int/Documents/Convention_ENG.pdf. Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, 2011 O.J. (L 335) 1. Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, 2012 O.J. (L 315) 57.

particular case. For an alleged victim to be cared for, there needs to be someone such as a victim assistance coordinator¹⁰, and if necessary, an advocate to advise the alleged victim about processes and their rights.

Victims often suffer from post-traumatic stress disorder (PTSD). The alleged victim has suffered spiritually, emotionally, and psychologically. Bartchak states that in his experience, all those involved with dealing with alleged victims need to be trauma-informed as well as being knowledgeable about canon law.¹¹ Tribunal officials can easily retraumatise victims by making unnecessary, judgmental statements about alleged victims without any understanding of the trauma they have experienced.

Bartchak noted that crimes involving the sacrament of Penance such as solicitation can impact on the victim physically, psychologically, emotionally, and spiritually.¹² The alleged victim is a key witness and often the only one who witnessed the crime. When the judge or delegate interviews the alleged victim,¹³ the person must be treated properly, and their complaint must be taken seriously. Bartchak believes for this reason it is very important for the judge or the delegate to personally interview the alleged victim.

Reception of information concerning a crime

When information is received about an offence, the Ordinary should be initiating a preliminary investigation to establish the facts and circumstances of the allegation, as well as the imputability of the offence unless this enquiry would be entirely superfluous. The Doctrine of the Faith *Vademecum* states:

16. Art. 10 § 1 SST (cf. also canons 1717 CIC and 1468 CCEO) states that, when a *notitia de delicto* is received, a preliminary investigation ought to ensue, provided that the report is "*saltem verisimilis*". If that plausibility proves unfounded, there is no need to pursue the *notitia de delicto*, although care should be taken to keep the documentation, together with a written explanation regarding the reasons for the decision.¹⁴

The alleged victim will normally be interviewed as part of this preliminary investigation, so already at this stage the alleged victim should have the help of a Victim's Assistance Coordinator and an Advocate. After the preliminary investigation

¹⁰ The victim assistance coordinator provides outreach, accountability, and transparency for victims of clergy sexual abuse. See Archdiocese of Regina, [https://archregina.sk.ca/grouppage/core-working-group-mandate/sexual abuse](https://archregina.sk.ca/grouppage/core-working-group-mandate/sexual%20abuse).

¹¹ Mark BARTCHAK, "The Position of Alleged Victims in the Canonical Penal Process," in SCICLUNA-WIJLENS Rights of Alleged Victims in Penal Proceedings, 289. (= BARTCHAK, "Position of Alleged Victims").

¹² *Ibid.*, 291.

¹³ *Ibid.*, 298.

¹⁴ *Vademecum* 16.

is completed, the Ordinary will decide whether the accusation is credible and if a judicial or extra-judicial process is to be used.

Resolving damages at the end of the Preliminary Investigation

Canon 1718 §4 allows for the resolve of the question of damages at the end of the preliminary investigation:

Before making a decree in accordance with §1, the Ordinary is to consider whether, to avoid useless trials, it would be expedient, with the parties' consent, for himself or the investigator to make a decision, according to what is good and equitable, about the question of damages.

The alleged victim needs to have an advocate advising them of the options available to them during the process. The alleged victim cannot participate in the judicial or extra-judicial penal process that follows if the alleged victim accepts an award for damages at the end of the preliminary investigation.

Penal Process

The penal process has the aims of the restoration of justice, the reform of the offender, and the repair of scandal.¹⁵ The penal process is initiated by the promotor of justice,¹⁶ not the alleged victim, because the good of the Church community is always at stake in penal cases. Therefore, the Promotor of Justice is the petitioner in a penal trial and is a party in the process.¹⁷ Montini explains the public good and public order are protected by penal law and, correspondingly, by the penal process. "Public good and public order are proper to all members of the Church and are not exclusive to any particular individual member."¹⁸

Rights of the victim should parallel the rights of the accused

The Dicastery for the Doctrine of the Faith in its *Vademecum* advises in the interests of justice that an accused has legal advice from when he is notified of the

¹⁵ Canon 1311 §2.

¹⁶ Canon 1430. A promotor of justice is to be appointed in the diocese for penal cases, and for contentious cases in which the public good may be at stake. The promotor is bound by office to safeguard the public good.

¹⁷ Canon 1721§1. If the Ordinary decrees that a penal judicial process is to be initiated, he is to pass the acts of the investigation to the promotor of justice, who is to present to the judge a petition of accusation in accordance with Canons 1502 and 1504. §2 Before a higher tribunal, the promotor of justice constituted for that tribunal adopts the role of plaintiff.

¹⁸ Gian Paolo Montini, "The Rights of Alleged Victims in Canonical Penal Procedures Current Penal Procedural Canon Law" in Scicluna-Wijlens, Rights of Alleged Victims in Penal Proceedings 19-38. (= Montini, "Rights of Alleged Victims in Penal Procedural Canon Law")

accusation during the preliminary investigation.¹⁹ It is not obligatory in law for the accused to have an advocate during the preliminary investigation, but the accused must have an advocate during a penal trial.²⁰

The Dicastery for the Doctrine of the Faith in its *Vademecum* insists the accused has legal advice in an extra-judicial penal process:

98. 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.²¹

If the alleged victim does not have canonical advice about their rights and the procedures being followed, the perception will be that the system is biased against them.

Justice System needs an alleged Victim

Victims have common needs as explained by Bartchak:

- 1) to feel safe;
- 2) to express their emotions;
- 3) to know what comes next after their victimisation.²²

These needs can only be met in a process in which the victims feel cared for. In canon law the alleged victim cannot initiate and promote penal action, and is not necessarily a party in the penal process. In fairness the accused must have an advocate/procurator and is advised to have a civil lawyer, justice requires that the alleged victim also has representation and advice about procedures and their rights.

It is a fact that any justice system cannot exist without the active participation of the alleged victim. Montini believes in canon law the victim as a right to:

¹⁹ *Vademecum* 54.

²⁰ Canons 1723, 1481.

²¹ *Vademecum* 98

²² BARTCHAK, "Position of Alleged Victims", 305.

know the accusations and evidence disputed in the summons of the accused (cf. can. 540 SN)²³; 19 – establish one or more defenders (lawyers) and a procurator (cf. can. 553, § 1 SN),²⁰ as well as request free legal aid; – propose exceptions and proof (cf. can. 553, § 1 SN); – participate in the discussion of the case (cf. can. 569, § 1 SN);²² – request an exemption from legal expenses (cf. can. 576 SN).²³ In a single word, the victim is a 'party' in the penal process in all respects, "as a true party in the case", as underlined in can. 553, § 1 SN.²⁴

Protection from the Accused

The Dicastery for the Doctrine of the Faith is conscious of the need to ensure such things as there being no contact between the accused and the alleged victim. Even an accidental meeting at a shopping centre can cause grave upset for the alleged victim. The accused must be living far enough away from the alleged victim to avoid such accidental meetings:

Vademecum 20. Here it should be mentioned that in cases of improper and imprudent conduct, even in the absence of a delict involving minors, should it prove necessary to protect the common good and to avoid scandal, the Ordinary or Hierarch is competent to take other administrative provisions with regard to the person accused (for example, restrictions on his ministry), or to impose the penal remedies mentioned in canon 1339 CIC for the purpose of preventing delicts (cf. canon 1312 § 3 CIC) or to give the public reprimand referred to in canon 1427 CCEO. In the case of delicts that are *non graviora*, the Ordinary or Hierarch should employ the juridical means appropriate to the particular circumstances.²⁵

²³ Montini states: The abbreviation SN refers to the Apostolic Letter *Sollicitudinem Nostram*, motu proprio dated 06.01.1950 from Pius XII for the Eastern (Catholic) Churches: it is the procedural law of the Eastern (Catholic) Churches that remained in force until 30.09.1991. The promulgated text (in Latin) is in: *AAS*, No. 1, 5–120; an English translation is in Paul PALLATH (ed), *Code of Eastern Canon Law: English Translation of the Four Apostolic Letters Issued Motu Proprio by Pope Pius XII*, Kottayam Oriental Institute of Religious Studies India 2021. "Although the procedural rules of the aforementioned motu proprio SN are not formally in force today, they can still be considered binding due to the fact that they emerge as logical deductions from the setting of the current canons 1729–1731, canons that fully transpose, albeit in abbreviated form (as in the style of the current Code), the setting of the aforementioned motu proprio" in MONTINI, "Rights of Alleged Victims in Penal Procedural Canon Law", 27.

²⁴ "The injured party, who has been admitted to the exercise of a contentious action, has the right to propose exceptions and proofs [...], as a true party in the case, but with due regard for canon 376, § 3" (can. 553, § 1 SN), i.e., in the case of late intervention, which therefore obviously takes place according to the Acts. Cf. also can. 557 SN. in MONTINI, "Rights of Alleged Victims in Penal Procedural Canon Law", 27.

²⁵ *Vademecum* 20.

Knowledge and understanding of the Process

In 1950 Pope Pius XII published an apostolic letter, *Sollicitudinem nostram*.²⁶ It contained procedural canon law for the Eastern Churches in full communion with Rome and remained in force until 1991 when the Code of Canons of the Eastern Churches, hereafter CCEO, came into force. Montini is of the opinion that:

“Although the procedural rules of the aforementioned *motu proprio* [*Sollicitudinem Nostram*] are not formally in force today, they can still be considered binding due to the fact that they emerge as logical deductions from the setting of the current canons 1729–1731, canons that fully transpose, albeit in abbreviated form (as in the style of the current Code) the setting of the aforementioned *motu proprio*.”²⁷ This position appears to find support in canon 1477 § 1 CCEO: “The promoter of justice, the accused and the advocate for the accused, and the injured party mentioned in can. 1483, § 1 and that person's advocate take part in the discussion”. If the injured party and the advocate for that party can take part in the discussion of a case, this logically means the injured party has the rights highlighted by Monsignor Montini.²⁸

Intervention in the Process

A victim must be informed of their right to intervene so that they can participate and exercise their right.²⁹ Montini points out:

1) no right exists for the victim to intervene in an administrative penal process; 2) the Ordinary can – at his discretion – deny the victim who requests it the opportunity to intervene in the administrative penal process with the request for the reparation of damages; 3) the victim may request access to the final decision in the administrative penal process to then assess whether to request compensation for damages in front of the tribunal of the competent ordinary (request to be resolved as provided above [n. 4] in case n. 5).³⁰

The intervention of the alleged victim is at the discretion of the Ordinary. The Apostolic Signatura has accepted that for a disciplinary process, the victim could be

²⁶ AAS 1950, No. 1, 5–120; an English translation is in Paul PALLATH (ed), *Code of Eastern Canon Law: English Translation of the Four Apostolic Letters Issued Motu Proprio by Pope Pius XII*, Kottayam Oriental Institute of Religious Studies India 2021. See A. MCGRATH OFM, “With Dignity and Respect: How Victims May Participate in Canonical Proceedings,” in SCICLUNA-WIJLENS *Rights of Alleged Victims in Penal Proceedings*, 318.

²⁷ MONTINI, “Rights of Alleged Victims in Penal Procedural Canon Law”, 27.

²⁸ A. MCGRATH OFM, “With Dignity and Respect: How Victims May Participate in Canonical Proceedings,” in SCICLUNA-WIJLENS *Rights of Alleged Victims in Penal Proceedings*, 318.

²⁹ MONTINI, “Rights of Alleged Victims in Penal Procedural Canon Law”, 28.

³⁰ MONTINI, “Rights of Alleged Victims in Penal Procedural Canon Law”, 30.

allowed to intervene in the extra-judicial process for the reparation of damages since canons 1729-1731 apply by analogy.³¹ This means that since the victim can request for reparation of damages,³² the alleged victim must be fully informed about their rights as the case proceeds.

The jurisprudence of the Apostolic Signatura allows for the redacted publication of the decree of adjudication or sentence.³³ The alleged victim has the right to see these documents but often the alleged victim is not made aware of this.

This requires an official who informs them of their rights and tells them of procedural developments such as the accused being summoned. They then have an opportunity to participate and give their views in the citation hearing.³⁴ The victim could then inform the judge of one of these stances:

1) simple or qualified absence; 2) disinterest in the penal process; 3) request to be informed of the progress of the penal process; 4) request for admission to constitute a civil party; 5) request to accede to the definitive judicial decision in view of the possible proposal of an (autonomous) case for the reparation of damages.³⁵

Montini notes that positions 3) and 4) 5) necessitate the victim having a lawyer or procurator they have chosen to assist them.

Montini identifies the right of the alleged victim to intervene in the penal process.³⁶ Canon 1729 states: “In the penal trial itself an injured party can bring a contentious action to repair damages incurred personally from the delict, according to the norm of can. 1596”.

Canon 1730 allows the judge in a penal trial to defer but not to deny a judgment for damages until after a definitive sentence has been given or because of an appeal:

³¹ Cf. SSAT, Congressional Decree in a Disciplinaria, 29.10.2015, prot. no. 48706/14 VT, in *Ius Canonicum* 1 [2018] 328–331, translated into Spanish *ibid.*, and commented on by Francisca PÉREZ-MADRID, *La vigilancia de la recta administración de justicia por el Tribunal de la Signatura Apostólica. Comentario a algunos decretos recientes en materia disciplinar*, in *Ius Canonicum* 1 [2018] 321–354. in SCICLUNA-WIJLENS *Rights of Alleged Victims in Penal Proceedings*, 30.

³² Canon 128. Whoever unlawfully causes harm to another by a juridical act, or indeed by any other act which is malicious or culpable, is obliged to repair the damage done.

³³ MONTINI, “Rights of Alleged Victims in Penal Procedural Canon Law”, 32.

³⁴ Canon 547 § 1 SN. “Praeter reum citanda semper est pars cui ex delicto laesio iuridica est illata, quaeque ius habet exercendi actionem civilem”.

³⁵ MONTINI, “Rights of Alleged Victims in Penal Procedural Canon Law”, 29.

³⁶ Gian Paolo MONTINI, “The Action for Damages” in *Exegetical Commentary on the Code of Canon Law* (Montreal: Wilson & Lafleur 2004) Volume IV/2, 2036–2048.

§1 To avoid excessive delay in a penal trial, the judge can postpone the trial concerning damages until he has given a definitive judgement in the penal trial.

§2 When the judge does this he must, after giving judgement in the penal trial, hear the case concerning damages, even though the penal trial is still pending because of a proposed challenge to it, or even though the accused has been acquitted, when the reason for the acquittal does not take away the obligation to make good the damages.

Active participation in all phases of the process

Canon 1596 outlines how a third party who could be a victim, can intervene in the penal process:

§ 1. A person who has an interest can be admitted to intervene in a case at any instance of the litigation, either as a party defending a right or in an accessory way to help a litigant.

§ 2. To be admitted, the person must present a libellus to the judge before the conclusion of the case; in the libellus the person briefly is to demonstrate his or her right to intervene.

§ 3. A person who intervenes in a case must be admitted at that stage which the case has reached, with a brief and preemptory period of time assigned to the person to present evidence if the case has reached the probatory period.

Montini notes that by making an intervention a victim becomes a party in the penal process. As a party the victim can be involved in obtaining proofs, discussing the evidence and the final phase preparing for a decision. Montini says the victim can exercise their right to intervene in the penal process once the accused has been summoned. The alleged victim cannot be involved in the discussion of the case, but provided the alleged victim was involved in the first instance case, the victim can be involved in an appeal. (c. 1729 §2) The victim can seek reparation of damages if the penal process ended for any reason.³⁷ Also the victim has a right to appeal. (c. 1729 §3)³⁸ Canons 1596-1597 provide for the intervention of a third party in a case.

³⁷ SSAT (Supremum Signaturae Apostolicae Tribunal), "Congressional Decree in a Disciplinary", 29.10.2015, prot. no. 48706/14 VT, in *Ius Canonicum* I [2018], 328-331, in SCICLUNA-WIJLENS *Rights of Alleged Victims in Penal Proceedings*, 26. "Extinctio iudicii poenalis minime secumfert et etiam iudicio de damnis finis imponatur. Exercitium actionis contentiosae ad damna reparanda ab actore pendet, non ab Ordinario. id quoque valet, si pars laesa actionem contentiosam ad damna reparanda in ipso poenali iudicio exercent."

³⁸ MONTINI, *Rights of Alleged Victims in Canonical Penal Procedures* 30.

This same right applies to victims. Montini quotes the Dicastery for the Doctrine of the Faith concerning a case stating:

"The document should express more clearly the right of a victim to intervene in canonical procedures as an injured party and, therefore, his or her right to bring a contentious action to repair damages incurred personally from the delict, within the same canonical process".³⁹

This means victims do have a right to participate in extrajudicial process.

Being interviewed

Since a victim is a witness to a crime, the judge or delegate should interview the person as the injured party. The interview needs to be carried out carefully in a supportive environment with an advocate or support person present.

The victim's family cared for and heard

Grace Millane, an English tourist to New Zealand, was murdered in 2018. All the details of her personal life were in the newspapers, but everything concerning her killer was suppressed. Her family could do little about this.⁴⁰ No one would ever have known her name or anything about her sexual explorations if she had not been a victim.

In a case a victim who was a minor, experienced details about the actions of the cleric against him being published in the newspaper and on the radio. He found it very difficult going to public places such as MacDonalds, and hearing people talking about him. His family were also impacted by this publicity. While these examples are issues for New Zealand civil law, the cases highlight how the families of victims are greatly impacted by abuse. In Church processes, they need to be properly cared for and given all the support and help they need, including legal help.⁴¹ Publishing personal details about a victim's personal life has a huge impact on people close to them. Legal systems, especially canon law, need to ensure that the alleged victim's family are cared for, their privacy is respected, and their mental health and other needs are provided for.

Reparation of damages

The Church faces enormous legal challenges as victims sue for damages in civil courts. In the past, the canonical legal processes have not always been implemented and victims have not been offered the opportunity to participate fully in penal cases

³⁹ MONTINI, *Rights of Alleged Victims in Canonical Penal Procedures* 31.

⁴⁰ NEW ZEALAND HERALD, "New Zealand's List of Shame: Grace Millane and the Other Tourists Killed Here," <https://www.nzherald.co.nz/new-zealands-list-of-shame-grace-millane-and-the-other-tourists-killed-here/GFKHZJLANF7DSYTRZ2W3ZMFB7E/>

⁴¹ VELM art. 5 §1.

enshrined in canon law. It is not surprising that the victims have resorted to civil court action for damages.

The victim has a clear right in canon law to initiate a litigation case for damages suffered from the crime and also for damages suffered within the penal process.⁴² The victim may make the application before, during or after a penal process. The application can even be made if the victim did not wish to participate as a party to the trial.⁴³ If the application for damages is made before or during the penal process, the judge is usually going to suspend the application for damages until after the penal process has ended.

Right to legal aid

A victim has the right to ask the judge for the perpetrator who caused damages, to be brought to trial:

SN c. 554. “§ 1. A party who, according to the norm of ecclesiastical law or civil law legitimately received in canon law, must respond concerning the civil damage perpetrated by the offender, has the right to intervene for safeguarding his right in a criminal trial”.⁴⁴

Canon 1479 provides for the judge to appoint a guardian or a curator for a victim if it is considered to be needed or required in the circumstances:

A guardian or curator appointed by a civil authority can be admitted by an ecclesiastical judge, after he has consulted, if possible, the diocesan Bishop of the person to whom the guardian or curator has been given. If there is no such guardian or curator, or it is not seen fit to admit the one appointed, the judge is to appoint a guardian or curator for the case.

Sometimes it is necessary for a guardian or curator to be appointed if there are health issues. Carlo Gullo outlines the appropriate qualities of such a guardian or curator to make them competent for this role including their qualifications and relationship with the victim.⁴⁵

⁴² MONTINI, *Rights of Alleged Victims in Canonical Penal Procedures* 23.

⁴³ “*Omnino certum manet utramque actionem, seu poenalem et contentiosam ad damna reparanda, quae in eodem delicto fundatur, etiam separatim exerceri posse*” (SSAT [Supremum Signaturae Apostolicae Tribunal], vote annexed to letter 10.7.1989, prot. no. 19126/87 CP) in MONTINI, *Rights of Alleged Victims in Penal Proceedings* 23.

⁴⁴ MONTINI, *Rights of Alleged Victims in Canonical Penal Procedures* 35.

⁴⁵ CARLO GULLO, *Exegetical Commentary* vol. IV/l. (Wilson & Lafleur: 2004) 968-970.

Better Provision of Victims' Rights

Victim advocates or procurators, with the required personality and skills, need to be properly trained and qualified. These advocate/procurators need to be educated in trauma and its impact on victims including PTSD. Ideally, canon law qualifications mean a doctorate or licentiate degree in canon law. Obtaining these qualifications takes significant time and expense from countries in the southern hemisphere. It is easier and cheaper to train clergy and religious who do not have family commitments. However, victims often do not want to deal with clergy and/or religious if they have been abused by one of them. Training lay people with families as advocates, requires real commitment and investment of money from Church leaders. Some might already have training and work experience working on declaration of marriage nullity cases. This means that they are already familiar with some Church judicial processes.

Once a number of procurator/advocates are trained, alleged victims can then be offered such a service from the time the “Ordinary receives information, which has at least the semblance of truth” (c. 1717). The alleged victims can then choose who represents them.

Victim Impact Statements and updating of Information

Many civil jurisdictions ensure that victims can make a victim impact statement giving information to the court about how the offence has affected them. They can express their views about the offending; and make the offender aware of how they have been affected. The judge will consider this information when sentencing the offender.⁴⁶

After sentencing victims are informed about: where the abuser is living; when the abuser is released from prison; and any application the offender makes to return to a previous job or position. Victims and their families can report how the abuse is still impacting on them when these decisions are made.

The Church should be providing ongoing care and support for victims including keeping them informed about when an abuser is being returned to ministry. Victim(s) should be consulted/informed about this and the vigilance⁴⁷ or safety plan that is in place. Victims should be advised when their abuser dies,⁴⁸ as they consider this to be very important.

⁴⁶ <https://victimsinfo.govt.nz/assets/adult-jurisdiction-victim-impact-statement.pdf>.

⁴⁷ Canon 1339.

⁴⁸ S. KILGALLON, “Paedophile priest died - but church didn't tell survivors” 11 May 2024; <https://www.stuff.co.nz/nz-news/350271520/paedophile-priest-died-church-didnt-tell-survivors#:~:text=Father%20Magnus%20Max%20Murray%20died,least%20once%20during%20those%20months.>

Conclusion

There needs to be a concerted effort in all areas of the Church to ensure the provision and upholding of victims' rights. This requires a widespread knowledge and understanding of penal processes. Archbishop Scicluna is conscious of the need to have an instruction on the procedures for penal processes, akin to the instruction *Dignitas connubii*⁴⁹ for the processing of marriage cases.

Penal law aims to achieve three ends: the restoration of justice, reform of the offender, and the reparation of the scandal. For justice to be achieved for victims and for justice to be seen to be done, victims must be cared for, represented and enabled to fully exercise their rights in all preliminary investigations, penal trials and extra-judicial processes.

⁴⁹ DICASTERY FOR LEGISLATIVE TEXTS, Instruction. *Dignitas Connubii* (Rome: Libreria Editrice Vaticana 2005).

Boundaries and Belonging, Protection and Power: From Care Objects to Companions

*Justin Glyn

As this conference shows, our Church has fortunately become increasingly alive to the need for robust professional standards and the many ways in which relationships of trust and power can be abused. However, as the canonical term “vulnerable person” suggests, disabled people (especially those with intellectual disability) as well as children are currently regarded primarily as objects of protection. This has been driven by an understandable desire to protect those who cannot uphold their own rights. Unfortunately, it has the potential to exacerbate the power imbalance which we disabled people often experience in a Church whose instincts are often already hierarchical and where disabled people have only recently become recognised as members of Christ’s Church rather than objects of its care.

I shall suggest that the problem with this model is that it does not recognise that all of us will or have been, at some stage in our lives, in need of protection from those who in a position to exploit us. None of us, adult or child, is an object of care but each of us is rather a collaborator in the vineyard of the Lord to the limits of our capacities, one in and through whom God is present in the world.¹ What has been missing from the discussion has therefore been an understanding of protective standards as universally applicable in a Church where each of us is a firstborn child of God (Heb 12:23). Finally, I shall suggest some practical implications of this paradigm shift.

Bringing the Exiles Home

As Pope Francis famously commented, “Many persons with disabilities “feel that they exist without belonging and without participating”. Much still prevents them from being fully enfranchised.”²

The need to bring home these exiles can be seen to stand in some tension with the need for protection where they are unable to make or express decisions unaided,

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¹ Cf. Ignatius of Loyola, *Spiritual Exercises*, para. 235.

² Francis, *Fratelli tutti*, encyclical letter 2019, 98.