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**THE IMPLEMENTATION OF CANON LAW IN ONTARIO
REGARDING DECENT SUPPORT FOR RETIRED DIOCESAN CLERGY**

by
Robert M. KIFFMAN

A dissertation submitted to the Faculty of Canon Law
Saint Paul University, Ottawa, Canada, in partial
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DEDICATION

To Professor Michel Thériault who loved the law and his students

1942-2000

and

For my brother presbyters

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I wish to acknowledge the assistance and continued support of the following persons who contributed to the completion of this dissertation. Professor Michel Thériault, Faculty of Canon Law, Saint Paul University, Ottawa, gave unfailing good humour, sound advice, and friendship. I deeply regret his passing away during the writing of this dissertation. All who knew him miss him. Professor Lynda A. Robitaille, Faculty of Canon Law, Saint Paul University, Ottawa, consented to become my director part way through the writing of this dissertation. Her patience, diligence, insight and suggestions were of great assistance. To the members and staff of the Faculty of Canon Law and Saint Paul University for the professionalism, cooperation and willingness to be of assistance at any time, especially the former Dean, Monsignor. R. Page and the current Dean, Rev. Dr. J. Roland, O.M.I.

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Robert M. Kiffman

FOREWORD

Moses spoke to the people, saying:

The whole priestly tribe of Levi shall have no share in the heritage with Israel; they shall live on the oblations of the Lord and the portions due to him. Levi shall have no heritage among his brothers; the Lord himself is his heritage, as he has told him.

The priests shall have a right to the following things from the people: from those who are offering a sacrifice, whether the victim is from the herd or from the flock, the priest shall receive the shoulder, the jowls and the stomach. You shall also give him the first fruits of your grain and wine and oil, as well as the first fruits of the shearing of your flock; for the Lord, your God, has chosen him and his sons out of all your tribes to be always in attendance to minister in the manner of the Lord.

When a Levite goes from one of your communities anywhere in Israel in which he ordinarily resides, to visit, as his heart may desire, the place which the Lord chooses, he may minister there in the name of the Lord, there before the Lord, he shall then receive the same portions to eat as the rest, along with his monetary offerings and heirlooms.

Deuteronomy 18:1-22

A STUDY OBSERVATION

Not long ago there were no civil pension plans or medical and social assistance. When a priest lost his position through sickness or age, he was without any definite support. He negotiated with his diocese for any assistance he required, and this was conditional upon his own means, and the type of medical care he required. There was a tendency to deny any responsibility to support a man who had managed to save a portion of his meagre salary for emergency, or where there were members of his family willing to relieve the authorities of the burden. In some cases, this included funeral costs and other liabilities that the family could handle.

G. Mabey, *The Aging and Retiring Priest Today* (M.Past.St(H.C.S.)), Ottawa, Ontario, Saint Paul University, 1976, p. 38.

LIST OF ABBREVIATIONS

AAS	.....	<i>Acta Apostolicae Sedis</i>
ASS	.....	<i>Acta Sanctae Sedis</i>
AA	.....	<i>Apostolicam actuositatem</i>
Ad gentes	.....	<i>Ad gentes divinitus</i>
Anchor	.....	<i>Anchor Bible Dictionary</i>
Black's	.....	<i>Black's Law Dictionary</i>
c.	.....	canon
cc.	.....	canons
CCCB	.....	Canadian Conference of Catholic Bishops
CCEO	.....	<i>Codex Canonum Ecclesiarum Orientalium</i>
CCRA	.....	Canada Customs and Revenue Agency
CD	.....	<i>Christus Dominus</i>
Chron. or Chr.	.....	Chronicles
CIC	.....	<i>Codex iuris canonici</i> , year of promulgation precedes
CJC	.....	<i>Corpus juris civilis</i>
CLD	.....	<i>Canon Law Digest</i>
CLS	.....	<i>Canon Law Studies</i>
CLSA	.....	Canon Law Society of America
Co or Cor	.....	Corinthians
CPP	.....	<i>Canada Pension Plan</i>
Directory	.....	<i>Directory on the Pastoral Ministry of Bishops</i>
Dt	.....	Deuteronomy
E.S.I.	.....	<i>Employment Standards Act</i>
ES, I	.....	<i>Ecclesiae sanctae</i>
F & E	.....	Furniture and Effects
Gal	.....	Galatians
GIS	.....	Guaranteed Income Supplement
GS	.....	<i>Gaudium et spes</i>
HRDC	.....	Human Resources and Development Canada
JB	.....	<i>Jerusalem Bible</i>
JBC (1968)	.....	<i>Jerusalem Biblical Commentary</i> (1968)
JSOT	.....	<i>Journal for the Study of the Old Testament</i>
Lev or Lv	.....	Leviticus
LG	.....	<i>Lumen gentium</i>
LICOs	.....	<i>Low Income Cutoffs</i>
Lk	.....	Luke
Mt or Matt	.....	Matthew
NDT	.....	<i>The New Dictionary of Theology</i>
NJBC	.....	<i>New Jerusalem Biblical Commentary</i>
NRSV	.....	<i>New Revised Standard Version of the Bible</i>
NT	.....	New Testament
NTS	.....	<i>New Testament Studies</i>

Nu or Num, Nb	Numbers
<i>OAP</i>	<i>Old Age Pension</i>
OT	Old Testament
<i>Oxford</i>	<i>Concise Oxford Dictionary of Current English</i>
PCILT	Pontifical Council for the Interpretation of Legislative Texts
<i>PO</i>	<i>Presbyterorum ordinis</i>
RC	Roman Catholic
SC	<i>Studia canonica</i>
SCC	Sacra Congregatio Consistorialis
SDC	Social Development Canada
StatsCan	Statistics Canada
<i>TDNT</i>	<i>Theological Dictionary of the New Testament</i>
Tim	Timothy
USD	United States Dollar
USCC	United States Catholic Conference
p.	page
pp.	pages
vol.	volume
vols.	volumes
vs.	verse
vss.	verses

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INTRODUCTION

Only on two occasions does the notion of “ceasing work on a continuous basis” or “retirement” present itself in the ministerial context of the Judaic and in the Christian traditions. The first reference is from the Book of Numbers 8:23-26 and applies to a Levitical priest; the second is found in the 1983¹ *Codex iuris canonici*, [=Code]², canon [=c.] 538, § 3. Neither reference utilizes the word “retirement”; however, both references indicate the possibility of a cessation of the obligation to perform continual ministerial service. Chronological age is a major criterion that determines when a person is no longer obliged to work. Until the 1983 *Code*, and barring personal incapacity or sanction, the custom and practice in the Roman Catholic [=RC] Church³ dictated that the presbyter continued in fulltime active ministry until he either became incapacitated or “died with his boots on”. The

¹ All dates refer to the Common Era unless otherwise indicated.

² *Codex iuris canonici auctoritate Ioannis Pauli PP* [=1983 Code or 1983 CIC] *promulgatus*, Libreria editrice Vaticana, 1983. English translation in CANON LAW SOCIETY OF AMERICA, *New Commentary on the Code of Canon Law* [=CLSA, *New Commentary*, 2000], J.P. BEAL, J.A. CORIDEN, and T.J. GREEN (eds.), commissioned by the CANON LAW SOCIETY OF AMERICA, New York, NY/Mahwah, NJ, Paulist Press, 2000, p. 1459. Unless otherwise noted, English translations are from the *Code of Canon Law: Latin-English Edition*, Washington, DC, Canon Law Society of America, 1998. In certain matters, specific translation is also utilized and cited from the English translation of the *Code of Canon Law Annotated*, E. CAPARROS, M. THÉRIAULT, and J. THORN (eds.) [=Code of Canon Law Annotated], Montreal, Wilson & LaFleur Limitée, 1983. Under consideration in this study is the law of the Latin Church. The *Codex canonum Ecclesiarum orientalium* [=Oriental Code] *auctoritate Ioannis Pauli PP.II promulgatus*, Typis polyglottis Vaticanis, 1990 is used and cited on occasion.

³ In general, the meaning of the word “Church” in this dissertation is in accordance with the understanding of the 1983 *Code of Canon Law*, canon [=c.] 1258. Canon 1258 states: “In the following canons [=cc.], the term Church signifies not only the universal Church or the Apostolic See but also any public juridic person in the Church unless it is otherwise apparent from the context or the nature of the matter.” The dissertation applies the law to the specific juridical entity, the diocesan church, as described in the 1983 *Code*, c. 369. When reference is made to a parish church, it is to be understood according to the 1983 *Code*, c. 515. The term, “church” or “churches” in small case letters refers to a particular church or a group of particular churches identified with a geographical area. The *Oriental Code* will be used on occasion in order to demonstrate the evolution of law and the “mind of the legislator”.

issue of retirement raises new problems for both a diocese and a presbyter. This study attempts to explore some dimensions of the law of the Latin Church and its relationship to the notion of retirement and presbyteral support in the Province of Ontario, Canada.

With each passing day in North America, there are fewer and fewer Roman Catholic presbyters⁴ available for ministry and greater numbers of presbyters entering retirement. The Canadian Catholic Conference of Bishops [=CCCCB] produced demographic data for the age and numbers of presbyters in Canada in 1993.⁵

Of the 6,318 diocesan presbyters in Canada, we know the ages of 5,945. Few can be considered young. Only 8.8% of all presbyters are under 40 years of age. Middle-aged presbyters (40-54 years of age) account for 23.1% of presbyters – less than a quarter of the total. Presbyters aged 55-65 account for 25.9% of the total, another quarter. Presbyters past the usual age of retirement form the largest group, with 2,509 individuals or 42.2% of the total. In Ontario, 31.4% are under the age of 50, [... with] the average age [...] 56.⁶ [...] Between 1989 and 1993, there were 350 ordinations; however, deaths and departures claimed 799 presbyters.⁷

The sources and methods of providing support to ministers of religion has been an issue throughout the ages. Different times prompted different responses. Different conditions of the minister, active or inactive, prompted different responses by the specific social institution of religion that sponsored the minister.

⁴ The term “priest” includes both a bishop and a presbyter. Since the subject of this dissertation is the presbyter, the term “presbyter” is used unless context demands the inclusive use of the term “priest”. The term “clergy” or “cleric” includes bishops, presbyters, and deacons.

⁵ CANADIAN CONFERENCE OF CATHOLIC BISHOPS [=CCCCB], “Human Resources in the Catholic Church in Canada,” 1993, Ottawa, ON, CCCB, 1993.

⁶ Ibid, p. 2. In 2003, this 31.4% of presbyters are now approximately 66 years of age.

⁷ Ibid, p. 12.

For the first time in the history and in the law of the RC Church, selected documents of Vatican II and the *Codex iuris canonici*, 1983, introduced language that is also common to many marketplaces of the world, including Ontario: remuneration, contracts, and the notion of retirement. Such shifts of language and law tend to suggest a departure from the values and language that lead to the 1917 *Code* and the legislation that governed the churches and the support of their ministers from around 313. Therefore, such subjects and notions are particularly topical to the subject of this dissertation entitled *The Implementation of Canon Law in Ontario Regarding Decent Support for Retired Diocesan Clergy*. Two questions emerge: have the churches implemented the canons of the 1983 *Code* concerning the support due to a presbyter both in active ministry and in retirement in the Province of Ontario; and is the quality of support decent according to the economic standards of time and place?

The purpose of this study is:

1. to provide selected biblical, theological, and canonical foundations and principles pertinent to the continuing support of the diocesan presbyter in retirement based on the implementation of law during active ministry and after;
2. to examine and provide commentary and critique of the applicable canons of the 1983 *Code*, canons [=cc.] 222, 281, 384, 538, § 3 and the 1988 decree of the CCCB; and,
3. to test and demonstrate the implementation of the law by its application in the Province of Ontario.

Only a few studies have considered the subject of presbyteral support for active or inactive ministers in the North American context. Only one pertains to the subject of retirement and this is in accord with the canonical title of an ecclesiastical pension. Pertinent studies on the matter are as follows:

R.M. KIFFMAN, *The Implementation of Universal Law in Canada in the Matter of Decent Support for Active Diocesan Priests and Diocesan Priests in Retirement*, Ottawa, ON, Saint Paul University, 1996, ix, 137 pp. The author provided a platform and framework for the continuing discussion of the subject of decent support of a presbyter in active ministry and in retirement in the North American context in a Master of Arts (CL) thesis and a Licentiate in Canon Law. The material presented is general in nature. A brief presentation touched on the various notions of justice and charity; the source of rights to decent support continues to rest in selected papal documents on social justice; the sources of support find development in the canonical notions of incardination and titles for ordination through to the *Codex iuris canonici*, 1917 [= 1917 Code or 1917 CIC].⁸ The author briefly examines the canons of the 1983 Code, cc. 281, 538, § 3 and 1274. A variety of interpretation and application is given to the discussion of the term *institutum* in c. 1274. Including Canada, a number of Episcopal conferences have established norms and these are reviewed. The author reviewed and discussed the retirement policies of two dioceses with a view to some strengths and weaknesses. A hypothetical scenario placed a retired presbyter within the current socio-economic context of his life and suggested that the prognosis for the future financial security, support and housing of the retired presbyter was uncertain.

⁸ *Codex iuris canonici Pii Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus*. Rome, Typis Polyglottis Vaticanis, 1917.

This doctoral dissertation builds upon and expands the model and material presented in the Masters thesis but with some differences, additions and deletions. Canon [=c.] 1274, concerning the *institutum* to be erected in a diocese for various purposes of funding is not treated here. The historical presentation is expanded along with the commentaries on the noted canonical notions and canons. None of the former studies below note the interpretation and development of the principles of support that originate in the Old Testament [=OT] or NT; particularly, the meaning of the notions of “wage”, the contract associated with work, and “poverty”. Such principles will be noted where appropriate.

The critical question and notion of “housing” a presbyter receives considerable treatment and extensive definition since it is an essential and canonical element of support, especially for a presbyter in retirement. The Master of Arts (CL) thesis concluded with a statement relative to the uncertain future for the support of a presbyter. Completely new to this dissertation are the two surveys. The author requested participation of the dioceses of Ontario and retired presbyters in two studies: one study concerned diocesan policies and practices; the other concerned issues of concern to a retired presbyter in Ontario. The RC dioceses of Ontario and retired presbyters from the participating dioceses presented the means to actually test the viability of diocesan policies concerning support and their application to a presbyter in retirement. The implied conclusion to the 1996 study finds confirmation in this present study. At the time of the study (1998), Fr. Anypriest, the retired presbyter described by the results of the study, could not survive on the financial annuity and benefits provided him from his diocese of

incardination without outside financial assistance. Housing continues to be an issue for an inactive presbyter.

J.B. HESCH, *A Canonical Commentary on Selected Personnel Policies in the United States of America regarding Decent Support of Diocesan Priests in Active Ministry*, Canon Law Studies [=CLS], No. 544, Washington, DC, The Catholic University of America, 1994, v, 318 pp. The author reviewed selected ecclesiastical documents, decrees, pertinent canons of the 1983 *Code*, and the commentaries on the subject of support of the diocesan presbyter during active ministry in the United States. Hesch considered cc. 280, 281, 282, 283, 286, 384, 533, 550, 538, § 3 and 1274 from an historical perspective and added selected commentary. He critically evaluated personnel policies in selected dioceses and made canonical observations on their strengths and weaknesses. Furthermore, he reviewed legislation by selected dioceses as they pertained to retirement.

J. I. DONLON, *The Human Rights of Priests to Equitable Sustenance and to Mobility: An Evaluation of Canon Law from the Codex iuris canonici to the Proposed Revision of the Code of Canon Law*, CLS, No. 510, Washington, DC, The Catholic University of America, 1984, ix, 297 pp. Utilizing an historical approach, the author developed the concept of support from magisterial teaching, from the 1917 *Code*, and by examining the *schemata* of the 1983 *Code* up to, but not including the *Code* promulgated 1983. In addition to considering “equitable sustenance” from the canonical tradition, he also considered the question the mobility of a presbyter and continuing support. Mobility refers to a diocesan presbyter’s availability to missionary activity or ministry to migrants. Donlon

concluded that a presbyter offering himself for service in these ministerial apostolates does not lose the right to support.

Since his research occurred during the formulation of the 1983 *Code*, he included material from *Communicationes* relative to what became c. 281 as well as a comparative listing of the numbering of the proposed canons of the *Schema*, 1980, to the numbering of the 1983 *Code*. Furthermore, Donlon added an Appendix in consideration of the 1983 *Code*, c. 281, § 1, and the interpretation of the English translation of the Latin word “cum”.⁹ The discussion revolved around whether the term meant “when” as a temporal clause or “since” as a causal clause.

P.M. HANNAN, *The Canonical Concept of Congrua sustentatio for the Secular Clergy*, CLS, No. 302, Washington, DC, The Catholic University of America, 1950, xii, 237 pp. Hannan concluded that a presbyter’s right to fitting support existed in “[...] consideration of their dignity [as clerics] and merits according to the economic standards of the locality”¹⁰. Hannan concluded that support included:

In addition to the essentials of housing, food and clothing, a proper allowance for medical care, study, moderate recreation, donations to charitable causes, prudent provision for the future (unless an adequate pension system is in effect in the diocese), and support of the dependent members of one’s family if such support is not available from other near relatives.¹¹

⁹ J. I. DONLON *The Human Rights of Priests to Equitable Sustenance and Mobility: An Evaluation of Canon Law from the Codex iuris canonici to the Proposed Revision of the Code of Canon Law*, CLS, No. 510, Washington, DC, The Catholic University of America, 1984, pp. 277-278.

¹⁰ P. M. HANNAN, *The Canonical Concept of Congrua sustentatio for the Secular Clergy*, CLS, No. 301, Washington, DC, The Catholic University of America, 1950, p. 200.

¹¹ *Ibid.*, p. 200.

Actual financial amounts may differ according to locality. The bishop provides for, and decides what constitutes “fitting support” for the clergy incardinated or offering ministry in the diocese. While retaining the principle of *salus animarum suprema lex*, Hannan defined minimum support as consisting of “[...] all current living expenses”¹².

In 1950, Hannan indicates a pastor’s aggregate annual income of \$ 2400 USD; an associate’s income is about \$ 1800 USD.¹³ The right to support continues as long as the cleric is in good standing. Should the cleric “[...] be forced to retire due to poor health or advanced age, the ordinary is still obliged to provide him with fitting support”¹⁴. For a retired presbyter, a source of support may originate in either a pension from a benefice where such are established, or from a fund established by the bishop for this purpose. Hannan contended that though a presbyter might lose his right to a pension because of a sanction; nevertheless, “[...] the ordinary is obliged by charity and respect for the dignity of the clerical state to accord to a deposed cleric a minimum support”¹⁵. In a general observation at the conclusion of his work, Hannan made two interesting points: the clergy of the USA have earned an “enviable record in their disposition of the income of the Church”¹⁶; and,

¹² Ibid, p. 200.

¹³ Ibid, p. 202.

¹⁴ Ibid, p. 201.

¹⁵ Ibid, p. 201.

¹⁶ Ibid, p. 203.

[w]hile the income of the Church has increased enormously, the income of the clergy has remained at a very modest level. In many of the wealthy parishes the salaries of clergy constitute only three percent of the income of a parish¹⁷.

This quotation is subject to some discussion in the chapters below.

K.R. O'BRIEN, *The Nature of Support of Diocesan Priests in the United States: A Historical Synopsis and Commentary*, CLS, No. 286, Washington, DC, The Catholic University of America, 1949, xvi, 162 pp. The author utilized a historical methodology, stated principles drawn from history and provided a commentary in context of the 1917 *Code*.

S. F. GASS, *Ecclesiastical Pension: An Historical Synopsis and Commentary*, CLS, No. 206, Washington, DC, The Catholic University of America, 1942, xi, 206 pp. Gass treated the subject under the canonical title of ecclesiastical pension. Taken almost entirely within the historical development and context of the 1917 *Code*, particularly cc. 979 and 1429, Gass found the source of the ecclesiastical pension to exist primarily in the benefice. Upon resignation from an ecclesiastical office, the bishop freely granted the title of an ecclesiastical pension to provide support to a cleric because a cleric could not be without a title by law. The usual recipient was a pastor either who had resigned his benefice or who had become incapacitated in some manner. Pensions were not transferable and lasted as long as the beneficiary lived. Pensions could be lost because of an imposed sanction; however, even a deposed cleric was worthy of charity and could not be left destitute. Since the benefice system was not common in the United States or in Canada, direct

¹⁷ Ibid, p. 203.

application was difficult. Nevertheless, Gass does demonstrate the Church's concern by expressing some of the principles and applications of the title to particular circumstances.

The above studies provided foundational material by establishing both theological and canonical principles on the subject of support for a diocesan presbyter both during active ministry as well as when the presbyter was inactive. Gass, O'Brien, and Hannan provide historical surveys within the context of the 1917 *Code* and canonical tradition prior to the changes wrought by Vatican II.

Donlon and Hesch conduct their research in light of the *schemata* and documents of Vatican II, the *schemata* for the revision of the *Code* and discussions of the drafted canons found in the 1983 *Code*. Donlon and Hesch proceed from a Vatican II and 1983 *Code* perspective. They analyse the documents and the law and make selected application to the context of United States. Furthermore, Hesch had data available from a large sample of American dioceses that participated in his study. Both Donlon and Hesch commented on the current practises concerning decent support, but Hesch provided a critique on the selected policies of decent support of number of dioceses in the United States that contributed data to his study.

This present study uses selected ecclesiastical documents from Vatican II and later to provide the values and to determine the principles underpinning the 1983 *Code*, particularly of cc. 222, 384, 281, and 538, § 3. In addition, the CCCB addressed the issue of support due to a resigned priest in the Canadian context in

1988.¹⁸ A systematic, critical, and evaluative analysis exposes both positive aspects of universal and particular law and some of the shortcomings of the Canadian decree.

Because the amount of remuneration during active ministry has a distinct bearing on income in retirement, a discussion on income derived during active ministry is necessary. The Government of Canada and other sources provide objective standards for evaluating the effectiveness of diocesan policy and practice of such presbyteral support in Ontario. These standards provide a basis of evaluation against which to test the implementation of the canonical principles of support against the application of a test case. A practical evaluation of the material pertaining to support in general and a retired presbyter in particular occurs with an adapted version of a questionnaire based on a study done by the United States Catholic Conference [=USCC], Bishops' Committee on Priestly Life and Ministry entitled, *Fullness in Christ*.¹⁹ I adapted the USCC questionnaire to apply to particular issues relative to the Canadian situation. The study gathered data from participating dioceses in the Province of Ontario and from participating presbyters in retirement. The results provide important insights into the subject of support and retirement policy at the time of the survey conducted during 1997-1998. The

¹⁸ CCCB, *Official document*, no. 599, 28 June 1988, in *Studia canonici* [=SC] 22 (1988), pp. 479, 481.

¹⁹ UNITED STATES CATHOLIC CONFERENCE [=USCC], *The Bishops' Committee on Priestly Life and Ministry, Fullness in Christ: A Report on a Study of Clergy Retirement*, Washington, DC, United States Catholic Conference, 1978. Selections are taken from or based upon *Fullness in Christ*: © 1979. Used with permission. See Appendix D.

tabulated results present a narrative portrait of a generic diocese in Ontario and a narrative portrait of a generic retired presbyter in Ontario.

Chapter One of this dissertation consists of a survey from a historical perspective. From earliest times, ministers of religion have obtained support both from the fact of being a minister of religion and from engaging in that ministry. A number of foundational principles develop early and find application in varying degrees over time leading to their inclusion in the 1917 *Code*. By the 1917 *Code*, both the bond of incardination and the notion of ecclesiastical title play important roles that define place of ministry and a right to support for an active or an incapacitated presbyter.

Chapter Two considers selected documents from Vatican II and subsequent documents pertaining to the support of the presbyter: active, incapacitated or who has resigned from a specified ministry in his senior years. The value-foundations of the documents find expression in the 1983 *Code*, particularly in cc. 222, 384, 281, 538, § 3. This chapter provides definition, discussion, commentary, and evaluation of the respective canons. Significant changes occur in the matter of the respective status of the Christian faithful and their relationship to a presbyter and his support. Why a presbyter has a right to continuing support rests not only in the Church's teachings of social justice but also in the nature of both sacramental and juridical bonds. The *Code* makes no mention of "title" for ordination and shifts the notion of an ecclesiastical office from institutional role to an institutional "function". The nature of the juridical bond of incardination ensures

the right to continuing support under a variety of circumstances even when the presbyter retires according to the law.

Chapter Three provides some canonical implications of the canonical tradition and selected canons vis-à-vis secular law in Canada and the Province of Ontario.

A number of criteria are available to test whether a diocese utilizes the canonical principles in its practice of support. This dissertation provides both definition and identifies various classifications of “housing” that are a part of the support due a presbyter in active ministry or in retirement. Furthermore, the tabulated results of the survey provide a narrative portrait of a diocese in Ontario and of a retired presbyter in retirement at the time of the survey. The surveys indicate some significant shortcomings in the implementation and application of ecclesiastical law in the Province of Ontario concerning the decent support for a presbyter in retirement.

The dissertation proposes some conclusions and makes some recommendations.

Abstract

THE IMPLEMENTATION OF CANON LAW IN ONTARIO REGARDING DECENT SUPPORT FOR RETIRED DIOCESAN CLERGY

More Roman Catholic clergy enter retirement every year. Vatican II and the *Code of Canon Law*, 1983, introduced language common to the marketplace and changed the framework of support for a presbyter. Changes included such terminology as wages, remuneration and contract; the values, rights, and criteria to determine the support due to an active, inactive or a retired presbyter. The right to support, including housing, normally for life, resides in the juridical bond of incardination. The pertinent canons in the matter of support for clergy are canons 281 and 538, §3. Are the dioceses of Ontario in compliance with the laws pertinent to the support of a presbyter in retirement?

Chapter One provides the biblical and historical foundations associated with the support of ministers of religion in the Old and New Testaments, early Christianity up to the Edict of Milan in 313, and in the 1917 *Code*. Chapter One considers problems associated with "wandering clergy" and the development of the notion of canonical title to ensure the support of the presbyter for life. The titles of benefice, patrimony, and pension existed in the context of property law. The ordinary title for ordination in Ontario, "service to the diocese" is a non-proprietary title included in the 1917 *Code* that shifted the source of rights to support from property law to law of contract for hire.

Chapter Two considers the ecclesiastical documents from Vatican II and the 1983 *Code* concerning presbyteral support. Social justice and the dignity of the human person and the value of a presbyter's labour is the cause of rights to obtain support in commutative and distributive justice. Canonical issues revolve around the obligation of the Christian faithful to provide support, the sources and loss of support in active ministry, incapacity, and in retirement.

Chapter Three considers the law and CCCB decree, No. 31, measured against a number of objective economic standards of time and place. The chapter considers constitutive elements of support, classifications of housing and the tax implications of low rent. According to the narrative accounts of two surveys, the "Priests' Survey on Retirement" indicates the current diocesan practice of providing support is flawed.

CHAPTER ONE

THE THEOLOGICAL & CANONICAL BASIS OF MINISTERIAL SUPPORT FROM A HISTORICAL PERSPECTIVE

Introduction

The question of support for ministers of religion does not exist in a vacuum nor does support of a Christian minister only evolve and develop after the Edict of Milan in 313. Even long before, the notion of retirement existed in the Old Testament [=OT] Levitical priesthood according to the Book of Numbers 8:23-25. Furthermore, a number of important principles are germane for our study in the consideration of support for the ministers of religion in the Old Testament [=OT] and New Testament [=NT]. These principles express continuity and have relevance today when interpretation of law and terminology must take place in the twenty-first century and in a cultural and economic context in North America.

As the Christian churches tended to adopt the “ways of Rome” after the Edict of Milan, a Christian minister received support from a number of sources hitherto unavailable. The way was not always smooth. The Council of Chalcedon (451), the Council of Trent (1545-1565) and the 1917 *Code* sought to resolve the problems associated with supporting a diocesan¹ presbyter.

Generally, the place of ministry and the source of support for a presbyter of a diocesan church originated in their incardination into a diocese, and specifically,

¹ The subject of the dissertation is the diocesan presbyter. Members of institutes of consecrated life and secular institutes follow the proper law of the institute. As a cleric, the law concerning clerics governs the rights and obligations of a bishop, presbyter, and deacon.

from the acquisition of a canonical title. A presbyter was in a position of some security about his source of support during his active years of ministry. Since the current notion of retirement for a presbyter was virtually unknown in the Church before Vatican II, the ecclesiastical title of pension made some provision for a presbyter incapacitated due to illness or old age. Even if returned to the lay state by choice or as a result of an ecclesiastical penalty, the bishop retained the obligation to see to the presbyter's support even if only in charity. The dignity associated with the clerical state should not be compromised was the rational provided by the social conventions of the time and the canonical tradition.

This chapter discusses the notion of retirement for a Levitical priest in its OT context and indicates some principles of support derived from OT and NT sources. The major consideration is how Christian ministers received support within the Roman Empire before and after the Edict of Milan in 313. Several principles of support and law originated in the Council of Chalcedon and continued to develop throughout the centuries up to and including the Council of Trent and the 1917 *Code*. Some principles find application in the notions of the canonical titles and incardination—the determinate sources for a presbyter's place of ministry and support.

1.1 Elements of Support in General and in the Old Testament and in the New Testament

A consideration pertinent to the issue of support rests in the notion of a bond. No one is able to survive without contributing to and receiving support from others. Some of these bonds provide a source of rights and obligations to support.

The OT law made provision for the retirement of a Levitical priest. The law made provision for the support of the members of the Levitical priesthood and established a number of principles later adopted and affirmed by Jesus, Paul and other early writers of the Christian testaments. After Constantine promulgated the Edict of Milan in 313, the Christian churches found themselves in a much better position politically, socially, and financially. With the rapid increase of Christian membership and the subsequent expansion of Christian churches, the Christian leadership in the churches adopted and adapted many of the social and juridical constructs of the Empire to its own purposes. Eventually, many of these juridical constructs found their way into the 1917 *Code*.

1.1.1 The Notion of “Bond” in General

At its most basic level, physical survival is contingent upon the acquisition of sufficient food, shelter, and clothing to support life. Members of families often cooperate in the endeavour of survival. However, an individual needs more than the satisfaction of basic needs in order to enjoy a quality of life. The nuclear and extended family and a variety of social institutions, from religious to government, provide for the satisfaction of an individual’s emotional, intellectual, social, and spiritual needs.

Natural, artificial (nationality), or juridical bonds establish and constitute kinship and/or juridical relationships. A “bond” not only constitutes the nature of the relationship, a bond establishes a relationship between persons or things. *The*

*Concise Oxford Dictionary of Current English*² defines “bond” primarily as “thing that ties another down or together”³, and as “binding engagement, agreement, deed by which a person binds himself to pay another”⁴. Bonds are the source of individual, institutional, social, and juridical rights and obligations.

The nature of the bond provides the rights and the obligations of an individual to obtain and to provide support within the membership of a defined group according to custom or law. The bond of kinship established by “blood” relationship between persons is the primal source of such support. Formal adoption is a juridical device that constitutes a bond extraneous to the blood relationship but with the same juridical effects.

1.1.2 The Issue of Retirement in the Old Testament

The notion of retirement for a Levite found expression in the Book of Numbers 8:23-26, but it has a particular significance. The term, “to retire,” in common English indicates:

withdraw, go away, seek seclusion or shelter, [...], 2 cease from or give up office or profession or employment (esp. on completion of normal time of service)⁵.

² H.W. FOWLER and F. G. FOWLER (eds.), *The Concise Oxford Dictionary of Current English*, seventh edition, J.B. SYKES (ed.), Oxford, The Clarendon Press, 1984, p. 102.

³ Ibid.

⁴ Ibid. The term, “obligation,” possesses a connotation of a mutual standing-in-debt between defined persons. In a contractual relationship, the debt exists on both sides of the contract until each party satisfies the terms of the contract.

⁵ Ibid, p. 890.

The same connotation is partially present in the Hebrew in the sense of “cease from, withdraw”, but not in the second sense of a complete cessation of the obligation to perform one’s “duty”.

According to J. Milgrom, “*retire*, Hebrew *yashuv* literally “he shall return,” is the opposite of *bā* “qualify” or “be admitted”⁶.

“He shall return” may be understood in the sense of, “he shall return to ordinary [guard] duty without interruption” [...]. In Numbers 3, 7, a primary duty is laid upon the Levite—that of guard duty [...].⁷

There were two different dimensions to the Levite duty. In pre-exilic times, the arduous task of carrying assembling and disassembling the Tabernacle was the duty of the Levite. The law provides for the “partial” retirement of the Levite from this arduous duty; the Levite did not “[...] withdraw into retirement but continues to perform guard duty, the other main Levitical function (cf. [Nu] 3:7)”⁸. Consequently, he continued to minister and receive the usual support from the usual sources:

1. the extended family continued to provide support;
2. the Levite continued to receive his portion of the tithe; and,
3. the Levite continued to receive support from the community according to law (e.g., Lv 6:1-7; 7: 10-38; Nu 18:8-10; Dt 18:4; 26:1-11; Lv 27:21; Dt 12:17).

⁶ J. MILGROM, *Numbers: The Traditional Hebrew Text with the New JPS Translation and Commentary*, Philadelphia, PA, Jewish Publications Society, 1990, p. 66.

⁷ Nu 3:7, “They are to undertake the duties that are laid on him and on the entire community before the Tent of Meeting in their service of the tabernacle.”

⁸ MILGROM, *Numbers*, p. 65.

Though “retired,” the Levite retained his status and the main sources of his support.

1.1.3 Support of Ministers in the Old Testament

The theological rationale for support rests in the OT notion of election. As Israel is the “elect” of God,⁹ so also the Levitical priest is a member of God’s elect as priest.¹⁰ Therefore, the right to minister has its origin in God and God makes

⁹ See W. F. VOGELS, *God’s Universal Covenant: A Biblical Study*, Ottawa, Saint Paul University, 1979; J. PLASTARAS, *The God of Exodus: The Theology of the Exodus Narratives*, Milwaukee, WI, The Bruce Publishing Company, 1966; see also, D.E. GOWAN, *Theology in Exodus: Biblical Theology in the Form of a Commentary*, Louisville, KY, John Knox Press, 1994 for the implications of “election” and the notion of covenant. See, J. S. KAMINSKY, “Corporate Responsibility in the Hebrew Bible,” in *Journal for the Study of the Old Testament* [=JSOT], Supplement series, no. 196, Sheffield, England, Sheffield Academic Press, 1995. Kaminski contends the notion of the corporate personality of Israel “[...] produces a profound theological insight into the tripartite relationship between Yahweh, the community as a whole, and the individuals who compose that community [...]” pp. 137-138. In the sacraments of initiation, the Lord incorporates a person into the Mystical Body of Christ. Through the bond of the Holy Spirit, the Christian becomes a member of the family of God, a brother or sister of Jesus, and a brother or sister to all the baptized within the Body of the Church.

¹⁰ Lv 3:11-13; Nu 3:5-11; Dt 18:1. See J.H. TIGAY, “The Endowments of the Clergy (vv. 1-8).” *Deuteronomy: The Traditional Hebrew Text with the New JPS Translation and Commentary*, Philadelphia, PA, Jewish Publication Society, 1996, pp. 169-172. Tigay suggests that the two terms of “levitical priests” and the “priests, sons of Levi” are “Deuteronomy’s standard way of referring to the priests, indicating that they are descended from Levi [...] and] emphasizes that *all* Levites are priests or are eligible to be priests. This emphasis seems designed to counter the view of Leviticus and Numbers that restricts the priesthood to Aaron’s family [...]. Traditional exegesis considers the absence of a distinction between priests and Levites in Deuteronomy more apparent than real. It assumes that Moses takes the distinction for granted but does not repeat it because it would be superfluous and because here he is not addressing the clergy, to whom the distinctions were most important, but the public as a whole,” p. 169. See also MILGROM, *Numbers*, pp. 14-18. Milgrom provides commentary concerning the Levitical priesthood and the distinction between Aaronide priest and Levite in Numbers 3:1-13. According to Milgrom’s commentary on Nu 3:9: “*formally assigned* The root *n-t-n* implies dedication. By replacing the first-born in their cultic duties, the Levites are dedicated (*n-t-n*) to the Lord (3:16-18); cf. 3:41) and in a special dedication ritual (8:5-22) are transferred to the jurisdiction of the priests. The Levites are dedicated (*n-t-n*), whereas the priests are sanctified (*k-d-sh*). This distinction is consistently maintained in the priestly sources, thereby emphasizing that only the priests—but never the Levites—are authorized to have access to the most sacred sancta. It is also of significance that a later class of Temple servants are called *netimim* (e.g., Ezra 8:20)” p. 18.

provision for the support of the Levitical priests in Deuteronomy 18:3-8.¹¹ Tigay

says:

[t]he priests are given their sustenance directly so that they can devote their efforts to clerical duties instead of producing food and other necessities. Verses [Dt] 3-6 make clear that only those Levites serving as priests are supported in this way¹².

B.A. Levine indicates that the law provided for the generous remuneration of the Levitical priest in general.¹³ The Levitical priests acquired material resources from the people as required by law or by an individual's benevolence.¹⁴ Typically, the Israelite supported the temple and the priests by means of the tithe, i.e., "a tenth part of one's yearly income set aside for sacral purposes"¹⁵. In addition to his portion of the tithe, the Levitical priest received "fees for service" according to the law. The law defined rates of remuneration for ministerial acts that were in

¹¹ See TIGAY, *Deuteronomy*, pp. 171-172. "[...], only those Levites serving as priests receive the endowments listed in verses 3-6. Following the restriction of sacrifice to the chosen place, Levites living elsewhere would be unable to serve as priests and would therefore be cut off from their livelihood. The present paragraph remedies this situation by providing that any Levite who wishes to go to the chosen sanctuary and serve as a priest there is entitled to do so and to share in the endowments" (p. 171). Even so, some priests from the sanctuaries outside of Jerusalem continued to have problems concerning eligibility to serve because they had served at what were perceived to be illegitimate sanctuaries or [...] perhaps the Jerusalem priests simply refused to share their office with them" p. 172.

¹² TIGAY, *Deuteronomy*, p. 170.

¹³ See B.A. LEVINE, "Numbers 1-20," in *The Anchor Bible*, Toronto, ON, Doubleday, 1993, pp. 436-437; J.J. CASTELOT, "Remuneration of the Clergy," in R.E. BROWN, J.A. FITZMEYER, and R.E. MURPHY (eds.), *Jerome Biblical Commentary* [=JBC], Englewood Cliffs, NJ. Prentice-Hall, Inc., 1968, p. 710. See also J.D. CROSSAN, *The Historical Jesus: The Life of a Mediterranean Jewish Peasant*, San Francisco, CA, HarperSanFrancisco, 1992, pp. 45-46.

¹⁴ See J. J. CASTELOT and A. CODY, "Religious Institutions of Israel, Places of Worship," in *New Jerome Biblical Commentary* [=NJBC], R.E. BROWN, J.A. FITZMEYER, and R.E. MURPHY (eds.), Student Edition, London, England, Geoffrey Chapman, 1993, pp. 1259-1283; see also, J. J. CASTELOT, "Religious Institutions of Israel," in *JBC*, pp. 706-708.

¹⁵ M.A. SWEENEY, "tithe," in *The HarperCollins Bible Dictionary*, J. ACHTEMEIER, P. (Gen. Ed.), R.S BORAAS, M. FISHBANE, P. PERKINS, W.O. WALKER, JR, (Associate Editors), San Francisco, CA, HarperSanFrancisco, 1996, pp. 1157. See Ex 30:11-16; Nu 18:21-32; Lv 27:30-33; Dt 12:17-18, 14:22-29; Neh 10:37-38.

conformity to the economic standards of time and place.¹⁶ According to Deuteronomy 18:8, the principle of equal pay for equal work among those of the same status and for the provision of the same service applied, but different levels of support did exist between classes of priests.¹⁷ Three other points provide a source for interpretation relative to our own time.

1. The Levitical priest possessed the right of mobility;¹⁸ i.e., if a particular place of ministry was incapable of supporting the priest (and his family), he moved to a place that could offer support.
2. According to Leviticus 21:22,¹⁹ a Levitical priest possessed the right to support even if he had some impediment or infirmity declared at law that prevented him from engaging in ministerial acts.
3. Deuteronomy 18:8 states: "They shall have equal portions to eat, even though they have income from the sale of family possessions (RNSV²⁰)".

Though subject to some confusion, Tigay indicates that the latter phrase, "income from the sale of family possessions"

[...] seems to mean that the share of individual priests is not to be reduced even though they may have other resources. The precise meaning of the awkward Hebrew phrase *levad m-m-,r-y-v 'al ha-avot* [...] is uncertain. The translation is based on 2 Kings 12:6,8, where individual priests receive contributions for the Temple from their *makkirim*, "acquaintances," and Numbers 5:9-10, according to which donations are kept by the priest who receives them. [...] Thus understood, the phrase could refer to property the Levites inherit from their ancestors or to proceeds they receive from selling ancestral property²¹.

¹⁶ Lv 6:17-7:1-38; Ex 23:16-19; Dt 18:4; 26:1-11.

¹⁷ See LEVINE, "Numbers," in *Anchor*, pp. 436-437. See also MILGROM, v. 9 in *Numbers*, p. 17.

¹⁸ Dt 18:6.

¹⁹ Lv 21:16-23. See B.A. LEVINE, *Leviticus: The Traditional Hebrew Text with the New JPS Translation and Commentary*, Philadelphia, PA, Jewish Publication Society, 1989 p. 146: "A physically defective priest was prohibited only from officiating; he was not denied his emoluments. The intent was to prevent his presence in the holy precincts where sacrifices were offered—at the altar of sacrifice or inside the Shrine proper."

²⁰ *Holy Bible containing the Old and New Testaments, New Revised Standard Version: Catholic Edition [=NRSV]*, Nashville, TN, Catholic Bible Press, 1993.

²¹ TIGAY, *Deuteronomy*, p. 172.

Though sources of income derived from outside ministry had little bearing on the sources of support in the NT until recent time, it could have some bearing today.²²

1.1.4 Support of Ministers in the New Testament

To be “poor” existed as a physical reality at the time of Jesus. The Church places some value upon “poverty” today and encourages its clergy to practise this virtue. It is worthwhile to place the meaning of being “poor” in its more ancient context.

The NT evolved in a particular socio-economic milieu where poverty was a real issue for most of the people. The largest portion of the population belonged to the poorer and lower social classes. The OT law²³ defined the widow, the orphan and the stranger as the juridical poor specifically because, without an extended family, they had no source of support except the community. The care for the poor was the obligation laid upon the membership of both the OT and the NT communities of faith.

Unlike the current understanding of the theological virtue of poverty, to be “poor” was not a positive beneficial value in either the OT or the NT unless it was a state voluntarily chosen. Poverty was a simple fact that expressed a physical condition

²² The implications of family inheritance or sources of income obtained from other than a church is subject to discussion in Chapter Three. Suffice to say here, a church could use such income as a reason for reducing, eliminating or withdrawing the necessity to provide either support in general or remuneration to a minister for service rendered, *ad hoc*, contrary to the stated biblical praxis.

²³ See G. BRIN, “Studies in Biblical Law: from the Hebrew Bible to the Dead Sea Scrolls: Caring for the Poor in Biblical Law,” *JSOT*, J. CHIPMAN, transl, Supplement series, no. 176, Sheffield, England, Journal for the Study of the Old Testament Press, 1994.

of economic deprivation, helplessness, extreme vulnerability, and the risk of starvation.²⁴

Paul appeared to act in a manner similar to Jesus who did not build up “earthly treasures” during his missionary journeys. Paul provided directions to local church leadership concerning distribution of resources for the poor; for example, he regulated the “honour”, with its connotation of material support, due to a widow in 1 Tim 5:3-13. In 2 Cor 8:13-15, Paul encouraged the Corinthians to share resources and to be generous to the young churches of Macedonia, but with reservations: “[...] it is a question of balancing what happens to be your surplus against their present need”.

At least a portion of the assembly referred to in the *Acts of the Apostles* appears to reveal a spirit of generous self-giving benevolence. In Acts 4:32-35, those who owned land sold it and gave it to the apostles for distribution to the poor.

However, in Acts 4:32-35 what this assembly wished would happen or what actually happened?²⁵ R.J. Dillon and J.A. Fitzmyer conclude: “Luke’s

²⁴ See J.D. PLEINS, “Poor, Poverty,” in *Anchor Bible Series*, vol. 5, pp. 408-413. See also J. P. MURPHY-O’CONNOR, *Paul: A Critical Life*, Oxford, England, Oxford University Press, 1996, pp. 144-145 and 314-315 respectively. Murphy-O’Connor contends that Paul always uses “poor” (2 Cor 6:10; Gal 4:9) and “poverty” (2 Cor 8:3) in their natural material sense, p. 144.

²⁵ See CROSSAN, “The Skin of My Feet for Shoes,” and “A Peasant Jewish Cynic,” in *The Historical Jesus*, pp. 80-88 and 421-422 respectively. The attitude conveyed by Gospel of Luke parallels the “instructions for the road” (Lk 10:1; 3-8) that characterizes expressions common to the Greco-Roman philosophers known as the Cynics. Luke appears to identify and compare some of the Cynic philosophy and practice with Jesus because he was writing primarily for educated gentiles who were generally familiar with Greek philosophy. Undoubtedly, some took Luke’s admonition to heart, but it was not likely the norm.

communistic ideal is proposed as a characteristic of the ideal first Church rather than a continuing norm for Christian communities”²⁶.

By the second century, the principles governing the acquisition and distribution of the material resources evolved. In his First Apology, Justin Martyr (110-165) described a liturgy that included a freewill “offering” by the people, given to the president for distribution to the poor.²⁷

What are the historical sources of a Christian minister’s right to support in a biblical context? According to D.H. Akenson, Paul’s saying in 1 Cor 9:14 is taken directly from the teachings of Jesus on the subject of ministerial support:

[...] And, Yeshua believed that holy men (preachers of God’s truth) should be supported by their followers, rather than work for a living in the ordinary way²⁸.

Paul defended his apostolic right to support from the Christian assembly in 1 Cor 9:11-14 even if he did not exercise the right:

If we have sown spiritual things for you, why should you be surprised if we harvest your material things? Others are allowed these rights over you and *our right* is surely greater? In fact *we have never exercised this right*. On the contrary, we have put up with anything rather than obstruct the Good News of Christ in any way. Remember that the ministers serving in

²⁶ R.J. DILLON and J.A. FITZMYER, “Acts of the Apostles,” in *JBC*, p. 180.

²⁷ JUSTIN MARTYR, “The First Apology of Justin,” LXVII, in “The Apostolic Fathers, Justin Martyr, Irenaeus,” in *Anti-Nicene Fathers*, vol. 1, A. ROBERTS and J. DONALDSON (eds.), Peabody, MA, Hendrickson Publishers, 1994, p. 186.

²⁸ D. H. AKENSON, *Saint Saul: A Skeleton Key to the Historical Jesus*, Montreal and Kingston, McGill-Queen’s University Press, 2000, p. 226. See also D. H. AKENSON, *Surpassing Wonder: The Invention of the Bible and the Talmuds*, Kingston, McGill-Queen’s University Press, 1998, pp. 555-556.

the Temple get their food from the Temple and those serving at the altar can claim their share from the altar itself. In the same sort of way, *the Lord directed* that those who preach the gospel should get their living from the gospel²⁹.

R. Kugelman suggests that Paul was very sensitive on the matter of support from the Corinthians fearing they might complain about the additional burden of supporting missionaries or even that pagans might suggest the missionaries were self-serving if they were asking for support.³⁰ Nevertheless, Kugelman confirms that Paul believed that he had a right to derive his support from ministry.

1.1.5 Factors Determining Levels of Support in the New Testament

In 1 Timothy 5, Paul provided these instructions concerning the elders of the churches:

The elders who do their work well while they are in charge are to be given double consideration, especially those who are assiduous in preaching and teaching. [...] The worker deserves his pay (1 Tim 5:17-18).

In his letters to the Corinthians and in 1 Timothy, Paul, the working tentmaker and apostle, recognized two matters of justice and acknowledged the reality of his own experience: "The worker deserves his pay;" and, not all types of "work" deserve identical pay. Some workers are to be given "double consideration".

The term "worker" does not refer only a generic social class, a job classification or a group; the term refers to each person performing a specific service for or on

²⁹ 1 Cor 9:11-14. Italics added.

³⁰ R. KUGELMAN, "The First Letter to the Corinthians," in *JBC*, p. 268.

behalf of another person. Every worker deserves both “honour”³¹ and his pay.

Furthermore, Paul implies and adds two other important qualifiers. Some “work” itself is worthy of a higher “consideration” because of the inherent value assigned to the work by a community in general or in particular. Therefore, a person who can perform such a service to, or for the community, inherently possesses a greater value to that community. The value attached to the person may stem from an individual’s personal gifts or specialized training and skills. Second, Paul acknowledges a subjective difference exists among workers. Paul does not suggest that all workers, or in this case, ministers, receive the same recompense. In fact, he indicates that some differences existed between a worker and the work, i.e., a teacher or not a teacher. Furthermore, vs. 17 appears to introduce the qualification of personal competence (“those who do their work *well*”).

Paul clearly instructs the churches to give “double consideration” to those who hold certain positions, notably those “in charge” and those with special skills or training, such as elders, teachers, and preachers. Greater responsibility merits greater recompense. Paul bases his injunctions upon a matter of justice: “The worker deserves his pay (1 Tim. 5:17-18)”; and “double consideration” (*JB*)³² for particular types of ministry.

³¹ Spelling is Canadian English; American spelling continues to be used in direct quotations.

³² In his commentary on the Pastoral Epistles, G.A. Denzer gives interpretation and weight to the terminology of Paul’s *First Letter to Timothy* (vvs 17-18). The English translation of the *JB* and *NRSV* use different terminology to express much the same reality, that is, “double *consideration*” according to *JB*, or “double *honour*” in the *NRSV Bible*. The two words have identical significance.

Denzer parallels the situation of two classifications of the juridically poor, the widow and the presbyter.³³ “To honour” referred not only to that intangible quality, “respect”, but honour indicated that the widow and the “elder” have a right to receive the tangible sign of that respect—the material support from the community.³⁴

Paul appreciated both the economics of the time as well as the value of human labour. Both the worker and the nature of the job determined compensation on a proportional basis dependent upon the type of ministry and the competence of the minister. Consequently, he established two fundamental principles of support for a Christian minister: first, a minister has a right to obtain support from the Christian community; second, some ministers ought to receive greater “consideration” according to the type of ministry and the level of personal competence.

1.1.6 The Notion of Wage in the New Testament

As understood by the working poor and ministers of the early churches, the notion of “payment for service” or “wage” underwent some revision with the integration of the Christian churches into the structure of the Roman Empire and the gradual adoption of some of the Roman political, social, and economic infrastructures by the churches. Time and circumstances altered Paul’s principles and praxis.

³³ G.A. DENZER, “The Pastoral Letters,” in *JBC*, p. 356. Denzer indicates the term is used in 1 Tim 5:17 “[...] in the sense of an ecclesiastical official [...]”.

³⁴ Ibid. “3. [...], *honor widows*: The admonition includes not only respect but also material support, as the rest of the passage shows. The Fourth Commandment, “Honour your father and your mother” provides a clear analogy (cf. 15:4-6),” p. 356.

Consequently, the notion of “wage” contained in the gospel saying of Lk 10:7, “the laborer deserves his wage”³⁵, is worth noting here.

The term “wage” has a particular significance in both the OT and early NT milieu. Linked to the “legally” poor in the early narratives and biblical law,³⁶ the poor person lived from hand to mouth. Therefore, the OT law and early NT Jewish cultural milieu demanded that the day labourer receive the agreed upon wage by sundown of the same day upon which the labour was provided. Without receiving his wage, the labourer and his family might well suffer privation.

The meaning was unequivocal. This is a classic notion of a Roman contract for hire: one contracting labour stands in debt to the labourer until the wage is paid; the labourer stands in debt to the one contracting labour until the service is provided. According to the authors noted above, Paul and Luke both express the teaching of Jesus in their own writings in the matter of support of the minister—the obligation and the requirement to support a minister of the gospel is real, urgent and a matter of justice.

³⁵ Lk 10:7. See C. STUHLMEYER, “The Gospel According to Luke,” in *JBC*, p. 143: “[...] 7. *the laborer deserves his wage*: This saying is quoted in 1 Tm 5:18 as “Scripture” (cf. 1 Cor 9:7, 14).

³⁶ See BRIN, “Caring for the Poor in Biblical Law,” in *JSOT*, pp. 81-89. To be “legally” poor, the law identified such persons as: (1) incapable of fulfilling general obligations, (2) required to leave a pledge (e.g., a coat or outer garment), (3) a day labourer, and, (4) a widow, an orphan or a stranger (alien).

1.2 Sources of Support in the Roman Empire and Following the Edict of Milan, 313

The very existences of Christian churches were rather precarious in the Roman Empire before 313. Roman legal status conferred identity, rights and obligations on a group; without it, a group had no identity nor could it own property as a group in its own right. Christian churches existed without official Roman juridical status until Constantine's Edict of Milan in 313. After the Christian churches received imperial acceptance, the churches experienced rapid expansion. The transition was not always smooth, especially for the presbyters of the various dioceses.

1.2.1 Lack of Resources in the Early Churches

By the end of the first century, the followers of Jesus had already been subject to harassment and expulsion from rabbinic synagogues.³⁷ They no longer received protection or material support³⁸ from Israel's religious institutions.

By the early second century, structure was present to provide support to the bishops, priests, deacons, and the poor of the early church. Justin Martyr (110-165) reports:

And they who are well to do, and willing, give what each thinks fit; and what is collected is deposited with the president, who

³⁷ Paul is one example. See MURPHY-O'CONNOR, "Persecutor of the Church," in *Paul*, pp. 65-70.

³⁸ MURPHY-O'CONNOR, "Learning a Trade," in *Paul*, p. 86. Murphy-O'Connor indicates that the synagogues had a system of institutionalized charity to provide for those in need. Murphy-O'Connor refers to the charity offered to Paul during his studies and before his conversion. "[Paul] would not have starved, because there were many who sought merit by alms-giving."

succours the orphan and widows, and those who, through sickness or any other cause, are in want, and those who are in bonds, and the strangers sojourning among us, and in a word takes care of all who are in need³⁹.

Before Constantine, the position of Christians in the Empire depended on the attitude of the various emperors. Often, the Empire merely tolerated and ignored the Christians; at the worst of times, Christians suffered persecution.⁴⁰ To pagan Rome, Christians belonged to a religious sect or cult rather than any kind of structured religious institution so they did not receive the same protection of law as did other pagan religions.

J.T. McBride reports: "Little is known of the ways in which the Church allotted, utilized, and supported its clerics until the beginning of the fourth century [...]"⁴¹.

F.X. Funk indicates that there are few references to clergy and their support until well into the fifth century. The poorer clergy "[...] continued to earn their living by manual labor"⁴².

After almost three hundred years in the Roman Empire, tradition credits Constantine with providing juridical standing to Christians and their churches by what has become known as the Edict of Milan, 313.

³⁹ JUSTIN MARTYR, "The First Apology of Justin", p. 186.

⁴⁰ F. X. FUNK, *A Manual of Church History*, second impression of the authorized translation from the 5th German edition by L. CAPPADelta, St. Louis, MO, B. Herder Book Co., 1910, p. 45. Persecutions by various emperors, such as Nero (54-68), Domitian (81-96), Trajan (98-117) and Valarian (253-260) were consistent until 313.

⁴¹ J. T. MCBRIDE, *Incardination and Excardination of Seculars: An Historical Synopsis and Commentary*, Canon Law Studies, no. 145, Washington, DC, The Catholic University of America, 1941, p. 66

⁴² FUNK, *A Manual of Church History*, p. 175.

When I, Constantine Augustus, as well as I, Licinius Augustus, fortunately met near Mediolanum (Milan), [...] we thought to arrange that no one whatsoever should be denied the opportunity to give his heart to the observance of the Christian religion, [...] it has pleased us to remove all conditions whatsoever, which were in the rescripts formerly given to you officially, concerning the Christians and now any one of these who wishes to observe Christian religion may do so freely and openly, without molestation. [...] we have also conceded to other religions the right of open and free observance of their worship for the sake of the peace of our times [...].

Moreover, in the case of the Christians especially we esteemed it best in order that if it happens anyone heretofore has bought from our treasury from anyone whatsoever, those places where they were previously accustomed to assemble, [...] the same shall be restored to the Christians without payment or any claim of recompense and without any kind of fraud or deception.

Those, moreover, who have obtained the same by gift, are likewise to return them at once to the Christians. [...] And since these Christians are known to have possessed not only those places in which they were accustomed to assemble, but also other property, namely the churches, belonging to them as a corporation and not as individuals, all these things which we have included under the above law, you will order to be restored, without any hesitation or controversy at all, to these Christians, that is to say to the corporations and their conventicles: [...].⁴³

With juridical protection and favoured status under Constantine, remarkable changes occurred in virtually every phase of the life of the Christian churches. It

⁴³ LACTANTIUS, *De Mortibus. Persecutorum.*, ch. 48, opera, ad optimorum librorum fidem emendavit et cum selecta lectionum varietate edidit O.F. FRITZSCHE, Lipsiae, B. TAUCHNITZ, 1842-1844 in G.E. GERSDORF (ed.), *Bibliotheca Patrum ecclesiasticorum latinorum selecta*. Lipsiae, 1838-47, vol. 11, pp. 282-284. Translation from the University of Pennsylvania, Department of History: *Translations and Reprints from the Original Sources of European History*, Philadelphia, University of Pennsylvania Press, 1897?-1907?, vol. 4, 1, pp. 28-30 at <http://gbgm-umc.org/umw/bible/milan.stm>, June 11, 2003. See also K. S. LATOURETTE, *A History of Christianity: Beginnings to 1500*, R. D. WINTER, rev'd edition, vol. 1, San Francisco, CA, HarperSanFrancisco, 1975. Third printing reprinted by arrangement with HarperSanFrancisco in Peabody, MA, Prince Press, 1999. According to LATOURETTE some controversy surrounds this "edict." Some declare that an edict was issued; others contend that Constantine "[...] had already granted religious freedom and that whatever was done at Milan was by Licinius and was intended only for the eastern portions of the Empire where Licinius was in control [...]," p. 92. See also F.L. CROSS (ed.), *The Oxford Dictionary of the Christian Church*, third edition, E.A. LIVINGSTON (ed.), New York, NY, Oxford University Press, 1997, p. 1086: "The document so called is in fact a circular of 313 to provincial governors issued in Bithynia by the Emp. Licinius. In accordance with an agreement made with Constantine at Milan, he extended to the E. provinces freedom of worship for all, including Christians, and the restitution of possessions lost by the Churches since the persecutions of 303, concessions previously made in the W. by Constantine and Maxentius."

is not difficult to see the changes in the material well-being of the churches'

ministers. Eusebius reports:

The emperor also personally inviting the society of God's ministers, distinguished them with the highest possible respect and honor, [...] Accordingly, they were admitted to his table, *though mean in their attire and outward appearance*; [...]. He made them also his companions in travel, [...]. [H]e gave from his own private resources costly benefactions to the churches of God, both enlarging and heightening the sacred edifices, and embellishing the August sanctuaries of the church with abundant offerings⁴⁴.

J.C. Dwyer observes the movement of the Western dioceses⁴⁵ away from their biblical roots with the adaptation to Roman structures and politic:

The church took over the political divisions and structures of the Empire (dioceses, for example) and converted pagan temples to Christian worship; [...]. Bishops were given the rank of high civil officials and in the East the church became the "kingdom of God on earth," no longer distinguishing its early or secular dimensions from secular political structures. The biblical notion of the people of God gave way to a far more political concept—the Christian people—who identified more and more with the population of the Empire⁴⁶.

The bishops adopted much of the infrastructure of the Roman Empire. They did so in order to accommodate two elements of the changed circumstances of the Christian dioceses of the West. First, the increased demands brought about by a rapidly expanding membership called for rapid restructuring. Second, the legal right to incorporate under the protection of Roman law allowed for the

⁴⁴ EUSEBIUS, "The Life of Constantine," xlii, ERNEST C. RICHARDSON, a revised translation, *Nicene and Post-Nicene Fathers*, Second Series, vol. 1, P. SCHAFF and H. WACE, USA, Christian Literature Publishing Company, 1890. The quotation above is taken from the reprint edition, second printing, Peabody, MS, Hendrickson Publishers, 1995, p. 494. . I added the italics to highlight the poor circumstances of the churches' clergy prior to the Edict of Milan.

⁴⁵ This dissertation pertains to the Western or Latin Church. The churches of the East, founded in patriarchal churches of Jerusalem, Antioch, Constantinople, etc., developed along different lines.

⁴⁶ J. C. DWYER, *Church History: Twenty Centuries of Catholic Christianity*, New York, NY, Paulist Press, 1985, p. 94

acquisition, administration, management and alienation of property according to the Roman laws of property. Furthermore, the social (and economic) status of the bishops of the churches changed dramatically for the better. However, such rapid social changes and expansion were not without problems, particularly for a presbyter.

1.2.2 The Notions of Roman Law of Contract and Contracts for Hire

The social and economic structure of the empire became a model for the Roman churches of the West, some aspects of which continue down to our own day. One aspect of the Roman socio-economic and juridical system was to have some long-reaching effects. A rigid hierarchical class system delineated the populations of the empire from the highest to the lowest.⁴⁷ Excluding a transitory relationship between parties created by an ordinary contract of sale or hire (a merchant, day labourer, or tradesman), the vehicle of social intercourse among the classes rested in the patronage system.⁴⁸ In a patron-client social contact, the ordinary contract for hire could not rest in proportional equality between one of the upper class and one who was not of the same class or higher. A social intercourse between the classes occurred because a continuing relationship of patron-client existed between parties.

⁴⁷ See CROSSAN, *The Historical Jesus*, pp. 45-46, 68; See also MEIER, *A Marginal Jew*, pp. 278-285.

⁴⁸ See CROSSAN, *The Historical Jesus*, pp. 65-68.

A special type of patron-client relationship existed between a patron and a person who was ordinarily a person with advanced education and/or special skills—a professional person, such as a teacher, lawyer, doctor and others.⁴⁹ The patron appreciated the value of his client's expertise over that of a day-labourer. Furthermore, the patron-client relationship tended to be more permanent in nature since the client tended to become part of the patron's household.

Roman law had a well-developed law of contract. According to *Institutiones*, such contracts as sale, hire, partnership and mandate

arise by agreement, in these cases because for the obligation to come into being there is absolutely no need for anything in writing, for the parties to meet, or for anything to be transferred. It is enough if the parties to the transaction merely come to an agreement. [...] Another feature of these contracts is that both parties come under reciprocal obligations to conform to the standard of what is fair and reasonable. *By contrast, in obligations by words, only one party promises, in response to the other's question*⁵⁰.

This early form of question/answer oral contract (*circa* 451) had evolved and after 472, any oral agreement was a contract.⁵¹ After Justinian, "[...] any agreement in writing was a contract."⁵²

There are a number of different shades of meaning that may apply to an oral Roman contract for hire, "obligation by words", known as *mandatum*.⁵³ Because

⁴⁹ H. C. SHELDON, *History of the Christian Church: The Early Church*, vol. 1, reprinted third edition, Peabody, MA, Hendrickson Publisher, Inc, 1999, pp. 25-26.

⁵⁰ JUSTINIANUS, *Institutiones*, III, 3.22. Translation in the English & Latin version: *Justinian's Institutes*, P. BIRKS and G. MCLEOD (transl.), with the Latin text of P. KRUEGER, Ithaca, NY, Cornell University press, 1987, p. 113. Italics added. This contract experiences an evolution in time with characteristics common to the contract known as *mandatum*, discussed below.

⁵¹ See B. NICHOLAS, *An Introduction to Roman Law*, A.M. HONORÉ AND J. RAZ (eds.), Clarendon Law Series, Oxford, Clarendon Press, 1962, p. 194.

⁵² *Ibid.*

there may be some echo of this particular contract today in the absence of the canonical titles, especially the title of benefice”, contained in the 1917 *Code*, this type of contract may account for some confusion in the interpretation of some language of the 1983 *Code*. For this reason, it is worth considering.

Definition and Description of Contract for Hire—*Mandatum*

According to Berger	According to Nicholas
A consensual contract by which a person assumed the duty to conclude a legal transaction or to perform a service gratuitously in the interest of the mandator or third party. The <i>mandatum</i> was based on a personal relationship of confidence (friendship) between the parties; it therefore ended by the death of one of them, [...]. Gratuity of the service was essential, since if compensation was given, the agreement was a hiring of services. The mandatary could not sue for an honorarium, but he might claim the reimbursement of expenses by an <i>actio mandati contraria</i> . ⁵⁴	<i>Mandatum</i> existed when one person agreed to perform a service gratuitously for another at the mandator's request. The service might be of any kind but consisted commonly in entering into a contract or some other legal transaction with a third party. Mandate was imperfectly bilateral, the mandatarius being bound to perform the service, and the mandator being contingently bound to indemnify him for his expenses. The mandatarius was also bound to account to the mandator for any incidental benefits he derived from the performance of the service. [...] The surprising feature of mandate is its gratuitous character. ⁵⁵

Here is one way the contract of *mandatum* functioned in the system of Roman patronage. In seeking a patron, the petitioner offered his services *without charge* to a prospective patron, usually a wealthy landlord. If the patron accepted the offer, the nature of the contract obliged the client to perform service at the request of the patron. For his part, the nature of the non-bilateral contract did not oblige the patron in any manner except to indemnify the client for expenses incurred on behalf of the patron (*honorarium*).

⁵³ See NICHOLAS, *An Introduction to Roman Law*, p. 187.

⁵⁴ A. BERGER, *Encyclopedic Dictionary of Roman Law*, vol. 43, part 2, Philadelphia, PA, The American Philosophical Society, 1953, reprinted 1991, p. 574.

⁵⁵ NICHOLAS, *An Introduction to Roman Law*, p. 187.

Frequently, a client became part of the patron's household staff. He received room and board, and at the option of the patron, a small *stipendium* to cover incidental personal expenses. If a problem developed, the client had very little recourse against his patron. Furthermore, the client's position depended completely upon the good will of his patron for employment and support.

In applying the idea of *mandatum* today, some distinct parallels to this contract continue to exist relative to candidates for, and clergy in, holy orders:

1. a candidate for orders petitions the bishop; the bishop accepts or rejects the offer of service,
2. a candidate promises to perform the services requested by the bishop,
3. the offer is gratuitous on the part of the petitioner. Nowhere is there is mention of wages, benefits or employment terms in the petition. The nature and quality of support remains the purview of the bishop even as the petitioner presumes such support.

A significant difference rests in the right accorded by the bond of incardination—a bond that requires a diocese to provide support to a presbyter. As the diocese's representative and agent, the bishop is to see to that support. Today, the nature of the contract presumed to exist, exists in the juridical bond of incardination; the actual "employment" status of a diocesan presbyter remains unclear, especially a presbyter's status at secular law vis-à-vis the diocese.

Such actions suggest that the churches of North America implicitly adopted the contract of *mandatum* by using as the title for ordination, "service to the diocese", in the absence of the canonical title of benefice. The nature of the contract is very open. There appears to be a clear reluctance to define the "work" of a presbyter under an ordinary contract for hire. To do so would be to directly establish a

contractual arrangement of mutual rights and obligations between the presbyter and the bishop as the representative of the diocese. One such obligation would oblige the bishop to remunerate and house a presbyter in accord with the standards of time and place. Currently, the law does not make the bishop subject to such a contractual agreement though he retains the obligation *to see to* the presbyter's support and housing. A presbyter has little opportunity to improve his lot under adverse circumstances. All of these elements suggest that the contract of *mandatum*, "where only one party promises", may well stand as the basis of the oral agreement between presbyter and bishop even today in the Province of Ontario.

1.2.3 The Early Problems and their "Resolution"

From before the Council of Chalcedon (451) to the Council of Trent (1545-1565), the bishops often encountered problems providing a presbyter with an ecclesiastical office, a proper place to offer ministry, and source of support. There were three major causes of the problems:

1. some bishops were ordaining more clergy than they needed for the service of their dioceses;
2. some bishops were ordaining clerics to higher orders who were not their subjects; and,
3. some bishops were ordaining clergy without providing a source of support.

With more presbyters than diocesan offices, without a determined place to minister, and without a source of support, some presbyters were destitute. These presbyters had to "wander" to find ministry and support or had to find other non-ministerial sources of support in order to provide for their needs. The problem of

“wandering clergy” seeking a place to minister and to obtain support caused serious problems for the churches.

In 451, the Council of Chalcedon sought to rectify the problems associated with the ordination of a presbyter by issuing legislative decrees found in canons [=cc.] 3, 5 and 6. Canon [=c.] 3 sought to resolve the problems associated with clerics following secular pursuits in order to obtain support. Some found support by managing other people’s properties or managing the temporal affairs of the wealthy. The council fathers felt that these activities detracted from the performance of their religious duties. As a result, c. 3 condemned such activities; however, “[...] there is a certain lack of real will shown by civil and religious authorities in taking effective measures to suppress this kind of activity”⁵⁶. In his commentary on the canon, W. Bright suggests “[...] it was not the mere fact of secular employment but secularity of motive and tone that was condemned”⁵⁷.

Canon 5 forbade the indiscriminate movement of bishops and presbyters by limiting a bishop’s or a presbyter’s mobility. In his commentary on c. 5, P. L’Huillier suggested the mobility of a bishop should be limited because

⁵⁶ P. L’HUIILLIER, *The Church of the Ancient Councils: The Disciplinary Work of the First Four Ecumenical Councils*, Crestwood, NY, St. Vladimir’s Seminary Press, 1996, indicates that c. 3, that contains the condemnation of such activities on the part of the clergy, originated with the emperor Marcian but such regulation was not new. L’Huillier indicates that in the third century, St Cyprian “[...] chastised bishops who accepted very profitable occupations or got involved in business [...]” pp. 218-219.

⁵⁷ W. BRIGHT, “Canon III. Notes,” in “The Seven Ecumenical Councils,” in *Nicene and Post-Nicene Fathers*, Second Series, P. SCHAFF and H. WACE, (eds.) vol. 14, H. R. PERCIVAL (ed.), New York, NY, Charles Scribner’s Sons, 1900. Reprinted, Peabody, Mass., Hendrickson Publishers, Inc., 1994, p. 270.

[...] ecclesial tradition has always seen a mystical link between the bishop and his church, one similar to that of marriage, which, moreover, is reflected in canonical terminology⁵⁸.

L'Huillier provided the rationale to support the limitation of the movement of bishops. In comparing the marriage bond with the bond constituted between a bishop and his diocese, L'Huillier highlighted what he perceives to be parallel values. From these values, he implied a relationship analogous to a marriage bond. Accordingly, three chief values of such bonds are commitment, permanence, and fidelity. As the elements of value for the bond of marriage are commitment, permanence and fidelity for the sake of the stability of the relationship, so also, the nature of the bond between a diocesan bishop and the people of God in a particular church required commitment, permanence and fidelity.

Some would apply L'Huillier's analogy to the relationship between a pastor and his parish. The analogy weakens considerably. A pastor and parish do not constitute a particular church; that is, a diocese.

If L'Huillier's "link" referred to the bond created by the reception of sacred orders, a different scenario is possible. The order of priesthood includes bishops and presbyters. The notion of the bond indicated above might intend to reflect a type of a relationship expressed in the sacramental bonds and in the juridical bond of incardination. A bond exists between a diocese/bishop and an incardinated presbyter and/or a bond exists among incardinated members of a diocesan

⁵⁸ L'HUILLIER, *The Church of the Ancient Councils*, p. 223. The "canonical tradition" refers to the Councils of Nicea, c.15; Ancyra, c. 18; Antioch, cc. 16 and 21.

presbyterate based on the mutual appreciation of the values of permanence, commitment and fidelity to the shared ministry in a diocese. Brotherhood is the basis of this type of kinship bond; the law cannot sever the sacramental bonds; the bond of incardination can only be severed under particular circumstances.

In order to resolve the problems associated with a lack of a place to minister and of resources necessary to provide for support of the minister, the council decreed in c. 6:

No one, whether presbyter or deacon or anyone at all who belongs to the ecclesiastical order, is to be ordained without title, unless the one ordained is specially assigned to a city or village church or to a martyr's shrine or a monastery. The sacred synod has decreed that the ordination of those ordained without title is null, and that they cannot operate anywhere, because of the presumption of the one who ordained them⁵⁹.

L'Huillier concurred with the specificity of service to a particular place where the ordained may minister. The Greek connotation of "ordained-at-large" was determined to be an ordination "without value" according to the fathers of Chalcedon. L'Huillier suggests the canon was necessary because some of the bishops had lost the "[...] awareness of the intrinsic relation between the conferring of an order and a clearly defined service in a church"⁶⁰. Consequently,

⁵⁹ CONCILIUM CHALCEDOENSE, 451, VI: "Nullum absolute ordinari debere presbyterum aut diaconum nec quemlibet in gradu ecclesiastico, nisi specialiter ecclesiae civitatis aut possessionis aut martyrii aut monasterii qui ordinandus est pronuntietur. Qui vero absolute ordinantur, decrevit sancta synodus, irritam esse huiusce mode manus inpositionem, et nusquam posse ministrare, ad ordinantis iniuriam." Latin and English translation in TANNER (ed.), vol. 1, p. 90. The council's understanding of the notion of "title" is based on the Roman laws of property.

⁶⁰ L'HUILLIER, *The Church of the Ancient Councils*, p. 224. We will return to this theme when discussing the changes wrought by Vatican II and found in the 1983 *Code*.

some bishops ordained to higher ministerial orders as “[...] a purely honorific gesture”⁶¹.

Furthermore, L’Huillier added a further dimension to c. 6:

[...] in effect, according to the conception of the ancient Church, a person is ordained to fulfill a precise function, from then on, there is a link between the man and the function, in principle, unchangeable⁶².

A link exists between the sacramental order and the function, between the presbyter and ministry. L’Huillier does not describe the exact nature of the “link” between the sacramental order and a ministerial function. The “link” might refer to a number of considerations:

1. as the indelible character of presbyteral ordination as a sign of the sacramental bond between Jesus, the presbyter and those to whom ministry is offered;
2. the beginnings of the juridical notion of incardination linking (or joining) a presbyter to a particular diocese and its presbyterate; or,
3. the notions of title and tenure establishing a juridical bond, a contractual link based on property law, between a diocese/bishop and a title-holding presbyter⁶³.

In practice, one might consider the link among the elements involved within the notion of “title.” The title to a parish provided the venue for a presbyter to exercise his function of ministry; a city parish or a village parish became the *locus* of ministry as well as the source of support for a presbyter.

⁶¹ Ibid.

⁶² Ibid, p. 223.

⁶³ Under the title of benefice, the pastor possessed defined proprietary and tenancy rights in the administration and management of the property in return for support. The legal rights associated with tenancy gave protection against unlawful removal by the landowner. In the patronage system, in the contract, *mandatum*, the client had no strict rights at law nor could the client sue the patron in ordinary circumstances. In addition, no title constituted the basis of the relationship between the patron and client.

In addition, canon 6 implies four other principles:

1. before ordination to the presbyterate, a presbyter must have a title that specifies a specific place to minister;
2. before ordination, a presbyter must have a title that provides for his on-going support for his lifetime;
3. the bishop may not ordain licitly⁶⁴ without providing a title, nor may the presbyter minister without a title; and,
4. according to L'Huillier, the bishop ordains a minister in order to fulfil a precise function, i.e., a minister is called to minister to a particular parish, permanently.

McBride has his own commentary on c. 6 and the implications of a title for a presbyter in order to possess a place to minister and to receive support:

This law has come down through the centuries as the strictest model of a perpetual bond between cleric and diocese, for it not merely assigned clerics to the general service of the diocese, but limited and confined their ministry to life to one particular church or position⁶⁵.

McBride is clear on the subject of the bond between a presbyter and a diocese.

The title demonstrated the actualization of the bond of incardination⁶⁶ in a specific time and place.

Even as late as the Second General Council of the Lateran (1179), the problems associated with presbyteral ordination and the consequences of a lack of title, continued to persist. Pope Alexander III issued a decree to the effect that a bishop who ordained without certain title

⁶⁴ The language of the time leaves some question as to the exact implication of the terms "null" and "illicit". L'Huillier's suggests "illicit" is the interpretation closer to the intent of the canon.

⁶⁵ MCBRIDE, *Incardination and Excardination of Seculars*, p. 68.

⁶⁶ To be discussed below.

[...] would have to support the same out of his personal resources until the cleric obtained a title, unless the subject had enough material wealth to provide for himself from his own resources or from his patrimony⁶⁷.

The purpose of the decree was to confirm and reaffirm that the title of benefice was the ordinary canonical title suited to the purposes of stability of ministry and support of the presbyter. Alexander III tried to discourage a bishop from ordaining a presbyter without title by telling the bishops that whoever did ordain without title might very well end up providing him support from his own purse.

There were three particular consequences to his decree. Inadvertently, Alexander III introduced a new title, the title of patrimony. The title of patrimony made an appearance when the pope added the *nisi* clause: “[...] unless the subject had enough material wealth to provide for himself from his own resources or from his patrimony”. Second, this title disconnected ministry both from a particular and specific place to offer ministry and from the notion that the presbyter’s support was to be derived from his place of ministry. Third, Alexander III made it possible for a bishop to abrogate the obligation to assure a proper place of ministry for a presbyter as well as to ensure that the presbyter had the opportunity to obtain support from ministry rather than from a non-ministerial source.

Personal wealth became a criterion for ordination to orders.

⁶⁷ ALEXANDER III, C. 4, x de praebendis et dignitatibus, III, 5 in MANSI, XXII, 220: “Episcopus, si aliquem sine certo titulo, de quo necessaria vitae percipiat, in diaconum vel presbyterium ordinaverit, tamdiu ei necessaria subministret, donec in aliqua ecclesia ei convenientia stipendia militiae clericalis assignet, nisi talis forte ordinatus de sua vel paterna hereditate subsidium vitae posit habere.” Translation by J. T. MCBRIDE, *Incardination and Excardination of Seculars*, p. 75.

1.3 Selected Statutory Elements of the Support of the Presbyter

The ministerial order of the Roman Catholic priesthood resides in the episcopacy and presbyterate. A layperson became a member of the clergy upon receiving tonsure (c. 108). Upon receiving the major orders of subdeacon, deacon and presbyter, the cleric advanced to a higher order in the clerical system and obtained the rights and obligations associated with his changed status.

The 1917 *Code* expressed the values and intent of the theology and law before and into the Councils of Trent and Vatican I. The notions of incardination and the acquisition of a canonical title provided a place to minister as well as the provision of a source of support for a presbyter. A title was an asset of value, a juridical object (*res*) that stood alone and possessed standing at law independent of another person, physical, or juridical.

Three canonical titles constituted the property-at-law (*res*) from which a presbyter might derive his support according to 1917 *Code*, c. 979: benefice, patrimony, and ecclesiastical pension. The 1917 *Code* reaffirmed the ecclesiastical tradition by defining the sources of support for the lifetime of the presbyter within the framework of a juridical title of property (*res*).

With tonsure, the cleric was incardinated into a diocese. The notion of incardination represented the juridical bond by which a cleric presbyter joined a particular diocesan church (c. 111, § 2). The bond became a source of rights and obligations on the part of the diocese and its juridical representative, the bishop, and for the purpose of this thesis, the presbyter. The bond of incardination

ensured a specific place to minister and a secure source of material support, ordinarily, for the life of the presbyter.

1.3.1 The Notion of Incardination and the Dual Nature of the Bond

The development of the notion of “incardination” has a long history of development in the Church that only comes to full fruition in the 1917 *Code*.

Canon 6 of the Council of Chalcedon called for a cleric to be in possession of a title in order to be ordained to major orders. Where a title to a residential benefice was not available in one diocese, the proper bishop could give permission for the cleric to transfer to another in order to acquire one.

McBride provides the stages up to the 1917 *Code* with its adaptation in a North American context:

Widespread use of the term incardination along with its correlative excardination began only in the latter part of the nineteenth century. It was the Roman Curia which adopted it in its discussions and responses, but which broadened its meaning so as to include the permanent attachment of any cleric, or in later years, even of a lay person to a new diocese after his transfer from another. [...]

America, a vast new missionary field, requiring the acquisition of many priests from abroad, had much to do with the development of the terminology of canonical transfers. [...] In 1829 the First Provincial Council of Baltimore used the classical Latin word *cooptare* (to receive or admit into a body) to designate the transfer and enlistment of a foreign cleric in the service of a church here. [...] later, *incorporare* [was] used there throughout the major part of the nineteenth century until it became the practice of the Church to use the term *incardination* exclusively.

The *Code of Canon Law* [1917] in canon 111, §2, however, has given to the term a more comprehensive meaning than it ever had before. To be *incardinated* now means to be permanently

attached or admitted to the clergy of a diocese, whether by transfer from elsewhere or by initial tonsure in one's own diocese⁶⁸.

The earliest role of incardination was to provide a juridical process whereby a cleric transferred from one diocese to another. The transferring cleric obtained a proper bishop for ordination to major orders as well as acquiring a proper title.

After centuries of development, the notion of incardination became an essential component of the canonical tradition. Incardination manifested the Church's quest to attain stability in a minister, his ministry and his support by means of the creation of a bond between a diocese and a presbyter, between a presbyter and a diocese. The bond received visible expression in the law through the free conferral of a canonical title upon the presbyter. To symbolize the life long commitment of both parties, a presbyter had to be in possession of a canonical title for as long as he lived, barring unforeseen circumstances.

The promulgation of the 1917 *Code* corrected the destabilizing influences of continuously changing and absentee pastors and the uncertainty associated with this in the matter of presbyteral support. The factor of stability added to the quality of service to parishes and security to the office of pastor. According to Bouscaren,

[t]he [1917] *Code* evidently favors the higher degree of stability, since it provides that parishes may be declared irremovable by the bishop, after consulting the chapter, and that newly erected parishes are to be irremovable; whereas it requires the permission of the Holy See to make an irremovable parish removable. The provision that new parishes are to be

⁶⁸ MCBRIDE, *Incardination and Excardination of Seculars*, pp. 10-11.

irremovable is not absolute but permits exceptions in the prudent discretion of the Bishop after hearing from the chapter⁶⁹.

Clearly, the Church's experience, law and practice of fifteen hundred years determined the stability of a presbyter-pastor as something to be highly valued. This value was demonstrated in the ordinary juridical classification of a parish as "irremovable" upon its canonical erection as a parish. The law declared the parish as irremovable, moveable or religious (c. 454).⁷⁰ As a consequence, the pastor enjoyed the stability of his office. A pastor might resign his office and a bishop could remove a pastor according to the law only for cause and after due process. Until the 1983 *Code* and under ordinary circumstances, the people received ministry from their pastor for the period of his life.

The problem of absenteeism existed over the centuries. Some bishops and presbyters were simply absent from their benefice and their place of ministry for long periods of time; such clerics did not personally provide ministry to the people of their respective diocese or parish. Such clergy continued to receive support from their benefices even though they were illegitimately absent. Aside from the issue of justice, the extended absence of a bishop or presbyter had a rather negative impact on the quality of ministry associated with a diocese or a

⁶⁹ T.N. BOUSCAREN, A.C. ELLIS and F. N. KORTH (eds.), *Canon Law: A Text and Commentary*, Fourth Edition (rev'd), Milwaukee, WI, Bruce Publishing Company, 1963, p. 196.

⁷⁰ See S. WOYWOD, *A Practical Commentary on the Code of Canon Law*, vol. 1, revised by C. SMITH, New York, NY, Joseph F. Wagner, Inc., 1962, p. 205.

parish. The Church enacted the law concerning residence for a presbyter who was a pastor⁷¹ in order to correct absenteeism. McBride states:

[t]he laws of the period too, were very clear in exacting personal residence. Thus clerics were forbidden to depart from their diocese arbitrarily in order to take up their abode elsewhere, and, if they did so, either they were to be forced to return or various punishments were to be visited upon them⁷².

The law permitted a pastor to be absent from his place of ministry and source of support only for legitimate reasons and with the approval of his bishop.

McBride draws the following principle from Chalcedon, c. 6 and suggests the circumstances upon which the support of the presbyter rests.

Since clerics from the time of their first ordination were assigned to the permanent service of one certain church, it followed that from natural equity they should be sustained in life from the fruits of their labors as long as they persevered in the church where they were assigned [...].⁷³

The implications of the title of benefice were threefold:

1. the source of support rested in natural equity on the part of both parties—the diocese, represented by the bishop, and the parish, represented by the pastor;
2. the source of support derived from the fruits of the pastor's labours—the fact of offering ministry to a specific parish on a continuing basis; and,
3. the *usufruct*⁷⁴ of the parish of his title was the source of support.

The nature of a canonical title illustrates the principle of reciprocity; that is, the title establishes the exchange of rights and obligations between both parties. A

⁷¹ 1917 CIC, c. 465; 1983 CIC, cc. 283, 533.

⁷² MCBRIDE, *Incardination and Excardination of Seculars*, pp. 68-69.

⁷³ Ibid, p. 70.

⁷⁴ The material support engendered by the lands that constituted the benefice; e.g., farm products, sale of goods produced, etc. The real estate of the benefice was not subject to alienation by a pastor.

relational link exists between the minister, the act of ministry and the action of being supported by the benefice. Furthermore, since the notion of stability surrounds the juridical person of the parish, the office of pastor, the title, the minister, and the act of ministry, there is also some implication of permanence around the issue of support.

A presbyter is a minister by definition; however, support was not contingent solely upon the performance of individual acts of ministry, e.g. vacation, illness, other legitimate reasons for absence. Furthermore, a presbyter may possess a title other than a title of benefice. Both the titles of patrimony and pension became direct sources of support independent from the fact of ministry. He may also acquire support independent of ecclesiastical sources for a variety of reasons.⁷⁵

A certain commonality exists among the three titles: upon the loss of a title, the source of support is lost. In such a situation and according to circumstances, the bishop may offer some assistance in justice⁷⁶ or in charity to a presbyter who is without a source of support.

In order to provide a continuing source of support, McBride reports a shift in the practice of the administration of ecclesiastical property and revenues early in the churches' development around the fifth century. In order to provide for the

⁷⁵ A presbyter may return to the lay state or suffer an ecclesiastical penalty depriving him of his source of support from an ecclesiastical office or from an ecclesiastical pension.

⁷⁶ One might argue distributive justice places a higher obligation upon a diocesan bishop to provide support to a diocesan presbyter in need; charity might follow if all other means have been exhausted.

ordinary canonical title of benefice and a source of support for a presbyter receiving ordination, the bishop arranged for

[t]he transfer of the administration of the revenues of each church from the Bishop to the church itself consolidated in one spot the two elements of the ordination title, but at the same time brought the secondary element of sustenance into such prominence as to overshadow the primary—a trend which was destined to make history⁷⁷.

What were these two elements that came together? First, a bishop had to provide a specific title, a place of “permanent” ministry before he could ordain someone to the presbyterate; second, the title provided the source of support. The ordination title now joined two elements of title: the minister and ministry, the administration of a portion of the diocesan property. In the “handing over” of a portion of diocesan property to the administration of another by means of a title of benefice, the bishop provided the opportunity for the presbyter to support himself. The presbyter obtained support by his ability to administer, manage and utilize the fruits (*usufruct*) of the property.

McBride implies the “administrative” function of the benefice became more of concern for a pastor than the ministerial function. Why? Two powerful “stability” factors merged and possessed standing-at-law in this relationship between a diocese/bishop and a parish/pastor of the diocese. A bishop transferred to the pastor the rights and obligations of ministry and the administration of a portion of the diocese territorially defined in the title of the benefice. In return, the pastor ministered to the people and administered the property according to

⁷⁷ MCBRIDE, *Incardination and Excardination of Seculars*, p. 73.

law. The law granted to the pastor the rights associated with the management and dispersal of the *usufruct* of the property. The bishop saw to the provision of support to the pastor by means of the title; the benefice provided support to the pastor.

The development of the juridical categorization of the irremovable parish and its association to the tenure of the office of pastor clearly exemplified the urgency the Church felt to provide stable spiritual care for the faithful. This degree of stability enforced by juridical rights⁷⁸ had both positive and negative effects amongst the presbyters.

There is nothing in the canonical tradition to suggest that support generated by a title should be the same for all. There were minimum amounts established by the bishop according to the standards of time and place for the titles of benefice, patrimony, and pension. The law said nothing about maximum limits of support for benefices or patrimony. However, the law placed some limitation on the income defined in the title of pension due to its source—a prior benefice.

When the title of “service to the diocese” entered the canonical tradition, the issue of support took a different direction. This title is discussed in detail later. Suffice to say the question of an unequal distribution of the resources of support became a problem for some. However, there is more than one way to view this issue.

⁷⁸ See 1917 CIC, cc. 1419-1424. WOYWOD, vol. 2, pp. 184-186, describes the distinctions involved when altering the juridical identity of a benefice. The law limited and structured the authority of the bishop in this matter.

Some titles to a benefice (or pension or patrimony) provided more resources and corresponding levels of support to one presbyter than it did to others. The law regulating the parish with an irremovable status had the benefit of eliminating or reducing the propensity of some to seek a different office or benefice in order to acquire greater resources.

On the negative side, the mere fact that one benefice was more prosperous than another might have led to some dissatisfaction among the presbyters. Such dissatisfaction might also lead some to seek to obtain a benefice with more lucrative resources. The real question is just how widespread was the dissatisfaction and to what extent dissatisfied presbyters sought to acquire a “better” benefice. Undoubtedly, some dissatisfaction and abuse existed as suggested by R.T. Kennedy.⁷⁹ However, is this the whole story?

There is another side to this issue. Individual competence plays a considerable part in the effective administration and management of property. In appointing a person to an office, a bishop has an obligation to select persons who have the proper training and adequate levels of competence. The bishop must see a candidate as a good pastor as well as a competent administrator. Therefore, the presumption is that a pastor is a capable administrator. Forgotten in this equation

⁷⁹ R. T. KENNEDY in *New Commentary on the Code of Canon Law*, J. P. BEAL, J. A. CORIDEN, T. J. GREEN (eds.), commissioned by the CANON LAW SOCIETY OF AMERICA, New York, NY/Mahwah, NJ, Paulist Press, 2000, p. 1473. Kennedy suggests another reason for the suppression of the benefice system in his commentary on c. 1272, p. 1473: “The theoretical advantage of a benefice has been thought to be the freeing of the officeholder for ministry without having to be concerned with obtaining personal financial support. Practically, however, the system has led to financial inequities which in turn have frequently spawned the subordination of ministry to ecclesiastical ambition and avarice”.

are the administrative skills, abilities, and personal efforts of the individual to enhance the asset value of his benefice at the same time he ministered to the people.

If the pastor were a good administrator, then such a pastor made a considerable contribution to the asset-value of his benefice because of his competence and skill as an administrator and manager. This is his obligation. Such a pastor should receive proper acknowledgment and his reward. This is a part of the biblical saying, "The labourer deserves his reward?"

The notions of incardination and canonical title are of particular import. By the 1917 *Code*, the tradition and law link these notions together. They constituted the means by which a presbyter acquired the juridical right to support within a particular church by the acquisition of a specific and designated place in which to minister.

1.3.2 The Notions of Canonical Title and Tenure

According to the 1917 *Code*, c. 979,

The canonical title for the secular clergy is the title of a benefice or, in default of a benefice, of a patrimony or pension. This title should be really secure for the whole life of the cleric and truly sufficient for the proper maintenance of the cleric, according to the rules to be laid down by the Ordinaries in accordance with the needs and circumstances of the respective localities and times⁸⁰.

In a society based on agriculture, people supported themselves by a variety of means. Real estate was generally the primary source of wealth. Consequently,

⁸⁰ 1917 CIC, c. 979. Translation in WOYWOD, vol. 1, p. 657.

the ownership, possession, protection, occupation, or use of real estate (land) became the basis for the extensive development of property law, particularly the notion of “title”. In both secular law and canon law, at least one notion of a “title” is “[a] person’s right to ownership of property”⁸¹. There were other sources of material support. Some derived their material support from manual labour (farmers and tradespersons); others offered professional services. A professional person, by definition, possessed advanced training and “worked with their heads” (teachers, doctors, clergy) rather than their hands.

The notion “tenure” is a juridical notion as important today as it was centuries ago. Originating in the Latin root, *tenere*, tenure has taken on the meaning to hold, to keep and even to seize, property. *Black’s Law Dictionary* defines “tenure,” in part, as the following:

Generally, tenure is a right, or mode of holding or occupying, and “tenure of an office” means the manner in which it is held, especially with regard to time. [...] *Feudal Law*. The mode or system of holding lands or tenements in subordination to some superior which, in feudal ages, was the leading characteristic of real property. Tenure is the direct result of feudalism, which separated the *dominium directum* (the dominion of the soil), which is placed mediately or immediately in the crown, from the *dominium utile* (the possessory title), the right to the use and profits in the soil, designated by the term “seisin,” which is the highest interest a subject can acquire⁸².

⁸¹ E. A. MARTIN (ed.), “title,” in *Oxford Dictionary of Law*, 4th edition, Oxford, Oxford University Press, 1997, p. 466.

⁸² H.C. BLACK, *Black’s Law Dictionary*, The Publishers Editorial Staff, co-authors J. R. NOLAN and J. M. NOLAN-HALEY, [et.al.], Sixth Edition, St. Paul, MN, West Publishing Company, 1990, “tenure,” pp. 1469-1470. By today’s standards in Ontario, a presbyter-pastor normally obtains the right to occupy the residence attached to a parish church. This arrangement is more in the nature of a “lease.” The pastor possesses no title implying “ownership” to the property or its *fructus*, his occupancy is temporary, and he pays rent derived from a salary rather than obtaining support directly from the *usufruct* or *usus* of the property itself.

Ownership known as *dominium directum* was the highest form of a title to property. A title of ownership implied absolute juridical right to property: to acquire, administer, distribute, use, or alienate the property itself or any part thereof. The diocesan bishop holds *diocesan* property as *dominium directum*.

The second highest form of ownership was the relative title to possession of property known as *dominium utile*. The landlord granted a title of possession to a tenant with an agreement as to the use of specific property and the distribution of resources produced by that property. Two terms appear in Roman law: *usufruct* and *usus* [=use]. For Justinian,

[u]sfruct is the right to the use and the fruits of another person's property, with the duty to preserve its substance. It is a right to a corporeal thing. It must end if the corporeal object ceases to exist. Usufruct has to be split off from ownership⁸³.

The ownership of the real estate does not change; what the property produces is 'split off' from the *dominium directum* title and established as a different titled entity. The law considers this moral⁸⁴ person to be a minor and incompetent to handle its affairs. The landlord appoints a physical person who is competent, and

⁸³ JUSTINIANUS, *Institutiones*, I, xii, in *Codex juris civilis*, in English and Latin, *Justinian's Institutes*, P. BIRKS and G. MCLEOD (transl.), with the Latin text of P. KRUEGER, Ithaca, NY, Cornell University Press, 1987, p. 61.

⁸⁴ See R.T. KENNEDY, "Juridic Persons," in *Commentary 2000*, p. 154. The description of a "moral person" proposed by Kennedy is very suitable and has the added advantage of describing the participants who share a particular paradigm and worldview. "A moral person is a group or succession of natural persons who are united by a common purpose and, hence, who have a particular relationship to each other and who, because of that relationship may be conceived of as a single entity."

gives the title-holder the right (*ius*) to administer and manage the minor's property free from interference according to law.⁸⁵

The notion of tenure surpasses the notion of a lease. A lease is

[...] a contract under which an owner of property grants another person exclusive possession of the property for an agreed period, usually (but not necessarily) in return for rent and sometimes for a capital sum [...]⁸⁶.

Tenure has significance beyond a strictly contractual arrangement in feudal times.

The landlord and the tenant possessed defined juridical rights under the law of tenure once the parties agreed to the terms. Under terms of tenure, the tenant possessed the right at law to hold, to keep, and even to seize property against unjust attack by the landlord as long as the tenant complied with the conditions of tenure. On the other hand, the landlord possessed all the powers necessary to govern his subjects in his area of competence and in accord with the tenure agreement. This was an important feature of tenure. Given the radical difference and inequality of their respective status and class in a feudal and hierarchical society (e.g., Crown and vassal, bishop and presbyter, landlord and tenant), tenure provided some protection at law to the socially inferior class.

On occasion, historical circumstances did not permit the use of the title of benefice in some places. P.M. Hannan reports church property was confiscated in England by the end of the sixteenth century, in France in 1789, in Italy by 1870, and in Germany at various times throughout the religious wars.

⁸⁵ The benefice as a public juridical person is discussed below.

⁸⁶ *Oxford Dictionary of Law*, "lease," p. 261.

In all these countries the clergy who were formerly supported by benefices or [ecclesiastical] pensions were forced to secure support from a grant by the State or from the funds of the diocese. [...] canonical commentators were discouraged from considering the support due to the clergy from benefices and funds that no longer existed, [...].⁸⁷

The bishops of the dispossessed churches sought to continue to provide services to the people at the same time they sought to provide support for the clergy. In response to the need to serve the people of God, some bishops began to ordain without the approved canonical titles. This was the case in France after the French Revolution of 1789.⁸⁸

The Holy See ultimately granted the French bishops the permission to dispense from the Tridentine law whenever circumstances warranted. In addition, the First Council of the Vatican [=Vatican I] suggested a further change of the Tridentine law in order to allow bishops greater flexibility in managing their personnel resources. The bishops wanted permission to set aside the canonical title of benefice in order to require a presbyter to serve the diocese by fulfilling any office or position temporarily assigned to him.⁸⁹ Though not formally approved by Vatican I, the title of “service to the diocese” became the practice in countries where a variety of circumstances prevented the use of the title of benefice. It is true that extraordinary circumstances called for extraordinary solutions. However warranted the use of such a title, the subsequent continuance of the title after the

⁸⁷ P.M. HANNAN, *The Canonical Concept of congrua sustentatio for the Secular Clergy*, CLS 302, Washington, DC, The Catholic University of America, 1950, p. 109.

⁸⁸ See F.X FUNK, *A Manual of Church History*, Luigi Cappadelta, transl, from fifth German edition, vol. 2, St. Louis, MO, Herder Book Company, 1910, pp. 208-216.

⁸⁹ *Summarium responsorum ab episcopis datorum de gravioribus disciplinae ecclesiasticae capitibus in concilio tractandis*, Quaestio IX—MANSI, XLIX, 350.

extraordinary situation that created it ceased, made the obligation of presbyteral support considerably more tenuous.

By the 1917 *Code*, the legislator added another title to the law to account for extraordinary circumstances where ordination under the proprietary title of benefice was not possible (or desirable). Canon 981 allowed for ordination under the title of “service to the diocese” in exceptional cases wherein

[...] the candidate shall promise under oath to serve the diocese forever [...]. The Ordinary must give to the priest [...] a benefice or office or salary sufficient for his proper support (c. 981)⁹⁰.

The canon broadened the scope of rights and obligations for both parties. A presbyter obliged himself to serve the diocese in perpetuity with no specific place to practice ministry defined. The presbyter obliged himself to serve in any capacity required by the bishop. The diocese guaranteed the presbyter’s support in perpetuity. The bishop had the option as to the source of support: benefice, office or salary. The term, “salary” might refer to income derived from an office or from some “work” not associated with a particular ecclesiastical office.⁹¹

To ordain without an ordinary title raised the problem of support for a presbyter unable to perform ministry. Since no proper source of support existed without title, what would happen to those suffering from old age, infirmity or sickness? According to McBride, provincial councils of the time provided the solution. The

⁹⁰ 1917 CIC, c. 981. Translation in WOYWOD, vol. 1, p. 658.

⁹¹ A presbyter appointed as a director of a non-ecclesiastical office (e.g. social services, religious education, etc.) would receive a salary in this context.

councils asked that every diocese establish a particular diocesan fund for the specific purpose of making provision for ailing and aged presbyters.⁹² The very source of support for a presbyter had changed in view of the inability of a bishop to provide one of the canonical titles.

The major difference between the ordinary titles of benefice, patrimony and ecclesiastical pension and the title “service to the diocese” rested the distinct difference in the notion of title. The original canonical titles were proprietary in nature and negotiable at law; i.e., the title may be subject or the object of a legal suit. The title “service to the diocese” is not subject to suit since it is not *res* at law. Rather, this title makes the diocese/bishop the guarantor of support without defining either a ministry, a specific place to minister or even the need to minister at all.

1.3.3 The Origin and Evolution of the Benefice to the 1917 Code

In secular law, “[t]itle is the means whereby the owner of lands has the just possession of his property”⁹³. The purpose and function of “title” in secular law entered into the canonical tradition as the churches sought to provide a place of ministry and a source of support for a presbyter. A canonical title provided a determined source of support and ensured maintenance for the lifetime of a presbyter. It gave stability to the minister, the ministry, and the benefice.

⁹² MCBRIDE, *Incardination and Excardination of Seculars*, p. 149.

⁹³ *Black's Law Dictionary*, p. 1485.

The Church adopted the legal device of Roman “title” to property and, as in secular society, for the same reasons: security of ownership; and, to protect a source of support for the title-holder. The particular churches resolved problems associated with the protection of the property and the maintenance of its clergy in much the same way.

To simplify the problem of sustenance, and to give, as far as possible, security to all clerics, equal to that enjoyed by those of endowed chapels, each church began at this time, as was seen, to divide its land possessions into portions (*precaria*), the revenues from which would guarantee livelihood to as many clerics as there were *precaria*.⁹⁴

The *precaria* eventually became known as the benefice, a parish, a distinct entity, “[...] which had the character of retaining their identity perpetually, regardless of the physical personality of their possessors”⁹⁵. As such, the *precaria* or a parish existed as a public juridical person when duly erected at law.

The diocese transferred *not* a title to ownership (*dominium directum*) to the juridical person of the parish, but rather, the diocese transferred a possessory title of ownership to the parish (*dominium utile*) with the right to the *usufruct* of the parish. To its administrator-tenant pastor, the parish possessed the obligation to provided support.

Chalcedon had decreed in c. 6 that in order for a bishop to promote a cleric to the order of the presbyterate, the cleric had to be in possession of a title for ordination. McBride indicates that by the eleventh century one such title evolved

⁹⁴ MCBRIDE, *Incardination and Excardination of Seculars*, p. 74.

⁹⁵ Ibid.

and satisfied the requirement of Chalcedon, "[...] the benefice or *prebend* itself became known as the *title of ordination*"⁹⁶. Even so, the issue of support continued to be a problem until addressed at the Council of Trent. Trent said:

It is not fitting that those enlisted for the service of God should bring disgrace on their order by begging or plying some mean trade, but it is public knowledge that many are admitted to holy orders with hardly any process of selection, who pretend by various tricks and deceits that they possess a church benefice or have sufficient means of their own. Hence the holy council lays down that in future no secular cleric should be advanced to holy orders, however suitable he may otherwise be in character, learning and age, until it is first legally established that he has unchallenged tenure of a church benefice sufficient for respectable living. And he may not resign that benefice without a declaration that he was ordained with that benefice as his title; his resignation is not to be accepted unless there is proof that he can live comfortably by other means, and without it his resignation is null. Henceforth those possessing a patrimony or pension may only be ordained if the bishop judges they should be accepted for the need and welfare of his churches, and has first ensured that they really possess a patrimony or pension and that these are sufficient to support them. And these incomes may not thereafter be alienated or cancelled or diminished without the bishop's permission, until they have acquired an adequate church benefice or have some other means of support; the penalties of the ancient canons about these matters being hereby renewed⁹⁷.

⁹⁶ Ibid.

⁹⁷ COUNCIL OF TRENT, Session XXI, Canon. II. Latin and English translation in TANNER, vol. 2, pp. 728-729. "Cum non deceat, eos, qui divino ministerio adscripti sunt, cum ordinis dedecore mendicare aut sordidum aliquem quaestum exercere, compertumque sit, quamplures plerisque in locis ad sacros ordines nullo fere delectu admitti, qui variis artibus ac fallaciis confingunt, se beneficium ecclesiasticum aut etiam idoneas facultates obtinere: statuit sancta synodus, ne quis deinceps clericus saecularis, quamvis alieas sit idoneus moribus, scientia et aetate, ad sacros ordines promoveatur, nisi prius legitime constet, eum beneficium ecclesiasticum, quod sibi ad victum honeste sufficiat, pacifice possidere. Id vero beneficium resignare non possit, nisi facta mentione, quod ad illius beneficii titulum sit promotus; neque ea resignatio admittatur, nisi constito, quod aliunde vivere commodum possit, et aliter facta resignatio nulla sit. Patrimonium vero vel pensionem obtinentes ordinari posthac non possint nisi illi, quos episcopus iudicaverit assumendos pro necessitate vel commoditate ecclesiarum suarum, eo quoque prius perspecto, patrimonium illud vel pensionem vere ab eis obtineri taliaque esse, quae eis ad vitam sustentandam satis sint. Atque illa deinceps sine licentia episcopi alienari aut exstingui vel remitti nullatenus possint, donec beneficium ecclesiasticum sufficiens sint adepti, vel aliunde habeant, unde vivere possint, antiquorum canonum poenas super his innovando."

Trent saw the dangers and abuses that continued to affect the clergy without any means of support or a place to minister. The Council sought to resolve the issue by clearly establishing that a bishop accept candidates for orders based on diocesan need. Furthermore, the bishop must ensure that a title for ordination be "sufficient for respectable living." McBride suggests that the notion of title of ordination shifted from the determination of one's place of spiritual ministry to "[...] a guarantee of one's perpetual sustenance"⁹⁸.

The Council of Trent again confirmed c. 6 of Chalcedon in an attempt to resolve the issue of wandering clergy. Trent sought the establishment of sanctions against wandering clergy and required the presbyter's proper bishop to issue a commendatory letter to a presbyter absent from his place of ministry.

No one should be ordained unless his bishop judges that he will be useful or necessary for his churches. Hence the holy council, following the example of the sixth canon of the council of Chalcedon, decrees that no one is to be ordained henceforth without being assigned to the church or place of piety for the needs and advantage of which he is being advanced, and where he may fulfil his functions and not wander about in a homeless fashion. And if he deserts that post without the bishop's consent, he is to be banned from sacred ministry. And furthermore no wandering cleric is to be allowed by any bishop to celebrate the liturgy and administer the sacraments without commendatory letters from his own bishop.⁹⁹

⁹⁸ MCBRIDE, *Incardination and Excardination of Seculars*, p. 126.

⁹⁹ COUNCIL OF TRENT, Session XXIII, Chap. XVI. Latin and English translation in TANNER, vol. 2, pp. 749-750. "Cum nullus debeat ordinari, qui iudicio sui episcopi non sit utilis aut necessarius suis ecclesiis, sancta synodus, vestigiis sexti canonis concilii Chalcedonensis inhaerendo, statuit, ut nullus in posterum ordinetur qui illi ecclesiae aut pio loco, pro cuius necessitate aut utilitate assumitur, non adscribatur, ubi suis fungatur muneribus, nec incertis vagetur sedibus. Quodsi locum inconsulto episcopo deseruerit, ei sacrorum exercitium interdicatur. Nullus praeterea clericus peregrinus sine commendatitiis sui ordinarii litteris ab ullo episcopo ad divina celebranda et sacramenta administranda admittatur."

This canon is rather straightforward on the issue of ordination based on diocesan need and presbyteral support from a place of assigned ministry. Trent went further by providing a penalty for the unauthorized departure from a parish, and by requiring a travelling presbyter to carry a commendatory letter if he wished to celebrate liturgy and sacraments in another diocese.

The solution proposed by centuries of experience was affirmed again as part of the law of the church. By the 1917 *Code*, the Church specifically formulated the notion of a canonical title and incorporated it into its law in c. 979; c. 981 made the title “service to the diocese” a part of ecclesiastical law. According to Woywod, “[service to the diocese] is, nevertheless, only a supplementary title, the titles of benefice and patrimony or pension being the regular canonical titles”¹⁰⁰.

1.3.4 The Title of Benefice—A Primary Source of Support

In general, the canonical titles of benefice, patrimony, and pension provided for the support of the clergy according to the 1917 *Code*. The 1917 *Code* defines the benefice:

An ecclesiastical benefice is a juridical entity, permanently constituted or erected by competent ecclesiastical authority, and consisting of a sacred office and the right to receive the revenue accruing from the endowment of such an office¹⁰¹.

¹⁰⁰ WOYWOD, *Commentary*, vol. 1, p. 659.

¹⁰¹ 1917 CIC, c. 1409. “Beneficium ecclesiasticum est ens juridicum a competente ecclesiastica auctoritate in perpetuum constitutum seu erectum, constans officio sacro et iure percipiendi redditus ex dote officio adnexos.” English translation in WOYWOD, *Commentary*, vol. 2, p. 178.

The benefice is a moral person¹⁰² constituted as a juridical person at law. The law¹⁰³ considers the benefice equivalent to a minor person. Therefore, a physical person must function as its “guardian” and administrator. The office¹⁰⁴-holder and administrator of the benefice obtains support from the “revenues accruing from the endowment of such an office (c. 1409)”.

Canon 1415 established some legal criteria the bishop observed in the erection of a benefice. The criteria included the security of an endowment or some other source of income that provided for the support of the presbyter. Canon 1410 describes what constituted the “endowment” of a benefice:

[...] either goods owned by the benefice itself as a juridical entity, or of definite obligatory payments of some family or moral person, or of definite voluntary offerings of the faithful which belong to the rector of a benefice, or of so-called stole fees received according to and within the limits of the diocesan taxation or legitimate custom, or of choir distributions, one-third of which are excluded if the entire revenue of a benefice consists of choral distributions¹⁰⁵.

The endowments of a benefice admitted of two types: stable and variable. The stable portion of the endowment was the *minimum* income determined by the diocesan synod for the erection of a benefice. The stable endowment consisted of the income required for its ordinary expenses. Ordinary expenses might include religious supplies, diocesan taxes, physical maintenance and the support of the presbyter. According to the evolving canonical tradition, the voluntary offerings

¹⁰² 1917, CIC, cc. 99, 100.

¹⁰³ 1917 CIC, c. 100.

¹⁰⁴ The ecclesiastical “office” will be considered later under both the 1917 and 1983 *Codes*. In this context of support, the benefice is the actual source of material support for the pastor.

¹⁰⁵ 1917 CIC, c. 1410. English translation in WOYWOD, *Commentary*, vol. 2, p. 178.

of the people, Mass stipends, and stole fees constituted the variable portion of the endowment within the limits established by the diocese or custom.

The title of benefice was the "[...] first title to be officially so recognized"¹⁰⁶.

The canonical title for the secular clergy is the title of a benefice or, in default of a benefice, of a patrimony or pension. This title should be really secure for the whole life of the cleric and truly sufficient for the proper maintenance of the cleric, according to the rules to be laid down by the Ordinaries in accordance with the needs and circumstances of the respective localities and times.¹⁰⁷

Four elements are essential to the nature of the title of benefice.

1. To be a legitimate title for ordination, the title "[...] had to be actually possessed before the cleric received sacred orders"¹⁰⁸.
2. It had to be "peacefully possessed", that is, without controversy over ownership or possession.¹⁰⁹
3. It had to be "[...] adequate for the honourable livelihood of the cleric (1917 CIC, c. 979, § 2)"¹¹⁰.
4. "The benefice had to be perpetual in character" (1917 CIC, c. 979, § 2).¹¹¹

Such elements assured stability in ministry and stability of support for the presbyter as determined by the bishop.

The bishop determined what constituted "honourable livelihood" in his diocese.

A diocesan synod provided advice on the matter as well as establishing monetary rates for Mass stipends and stole fees.¹¹² McBride notes, "[...] in the diocesan

¹⁰⁶ MCBRIDE, *Incardination and Excardination of Seculars*, p. 127.

¹⁰⁷ 1917 CIC, c. 979. English translation in WOYWOD, *Commentary*, vol. 1, p. 657.

¹⁰⁸ MCBRIDE, *Incardination and Excardination of Seculars*, p. 127.

¹⁰⁹ Ibid, p.128.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² TRENT, XXIV, c. 2 (concerning the synod).

synod an amount would be stipulated as adequate for the decent sustenance of each cleric in that diocese”¹¹³. Consequently, the benefice had to possess the capacity to provide such an income as determined by this “synodal tax”. The synodal tax became the base amount required by a benefice for the adequate maintenance of its beneficiary.

Two other considerations are noteworthy. The synodal tax was subject to periodic review to bring it in line with fluctuations in the cost of living.¹¹⁴ In addition, the value of the benefice could not be reduced by the bishop either by

[...] taking part of the income away from the beneficiary or by adding to the duties of the benefice without a proportionate increase of the benefits [except as prescribed by cc. 1429, 1430^{115,116}].

Both points addressed the issue of maintaining realistic support from the benefice for the beneficiary according to the economic standards of time and place. The review was also necessary to satisfy criteria for the erection, maintenance, and suppression of a benefice.¹¹⁷

The bishop needed to consider four other criteria when erecting a benefice and its ability to support its beneficiary.

1. The benefice could exceed or equal the amount determined in synod but not be notably lower.
2. Should the income from one benefice not be adequate, another benefice could lawfully supplement the income.

¹¹³ MCBRIDE, *Incardination and Excardination of Seculars*, p. 128.

¹¹⁴ Ibid, p. 129.

¹¹⁵ See WOYWOD, “Imposition of Pensions on Benefices,” in *Commentary*, vol. 2, pp. 190-191.

¹¹⁶ WOYWOD, *Commentary*, vol. 2, pp. 195-196.

¹¹⁷ See TRENT, XXIV, concerning how the poorer churches are to be provided for and the division of boundaries, c. 13 and c. 15.

3. Should the income of one benefice not be adequate, the patrimony of the incumbent could complement the balance providing the conditions for patrimony were met and verified.
4. After ordinary operating expenses, the benefice had to possess enough revenue to provide for the support of the pastor.

The law forbade the bishop from imposing upon

any kind of benefices perpetual pensions, nor temporary pensions that last for the lifetime of the pensionary; but for a just cause, to be stated in the very act of conferring the benefice, they may when conferring a benefice impose temporary pensions that last for the life of the person on whom the benefice is conferred, [...]. On parochial benefices the local Ordinaries may impose pensions only in favor of the pastor or parochial vicar of that same parish when they go out of office.¹¹⁸

The benefice continued to be a source of support to a former pastor when the bishop imposed a title of pension upon the benefice in favour of a former pastor.

The beneficiary administered the property of the benefice and obtained support from it in two ways according to 1917 *Code*, c. 1410: from the goods acquired or produced by the benefice itself; and from stipends¹¹⁹ and stole fees defined at common law¹²⁰, and at the fees set by particular law.¹²¹

Since the benefice was both a place to minister and a source of support, should the presbyter decide to depart from his benefice, he had to depart peacefully.¹²²

Peaceful departure meant that the beneficiary had to resign voluntarily and according to law. In the case of a resignation from the office of pastor to the

¹¹⁸ 1917 CIC, c. 1429. English translation in WOYWOD, *Commentary*, vol. 2, p. 191-192.

¹¹⁹ 1917 CIC, cc. 826, 831.

¹²⁰ 1917 CIC, cc. 463; 831. 1056; 1234.

¹²¹ 1917 CIC, c. 1507.

¹²² Voluntary resignation is opposed to a removal effected by an administrative decree or as a result of sanction.

bishop, Woywod indicates that the act of resignation of a benefice occurred because of a transfer of benefice or as a prerequisite to obtaining a pension.¹²³

The resignation

[...] had to be absolutely and expressly made [...], it had to be proved by authentic documents that the cleric had sufficient means from some other source on which he could live, e.g. from some other adequate benefice or from patrimony¹²⁴.

Formal resignation addressed the issues that ensured the vacancy of the office of the benefice in question and the security of support of the resigning presbyter. In accepting the resignation, the bishop “[...] had to declare in an official written document that such a patrimony or such and such benefice was adequate for this cleric’s future sustenance [...]”¹²⁵. Upon acceptance of the presbyter’s resignation, the law obliged the bishop to confer a new title upon the presbyter, another benefice, patrimony, or pension.

If the bishop did not confer a title of benefice or patrimony upon the resigning presbyter, the bishop might confer a title of pension. In order to halt the buying, selling and transferring¹²⁶ of titles, including pensions, the title of pension lasted only as long as the presbyter lived. An ecclesiastical pension was non-transferrable.

¹²³ See 1917 CIC, cc. 1409-1447 and WOYWOD, *Commentary*, vol. 2, pp. 178-200. Woywod briefly alludes to the very complex and long canonical tradition surrounding the entire scope of the benefice, pensions imposed on benefices, trading in pension rights attached to benefices, and conversion of benefices.

¹²⁴ MCBRIDE, *Incardination and Excardination of Seculars*, p. 131.

¹²⁵ Ibid.

¹²⁶ See WOYWOD, vol. 1, 1917 Code, cc. 726-730, (canons and commentary on simony), pp. 399-403.

One source of income from the title of pension came from the benefice from which the presbyter resigned. The benefice's obligation to support the pensioner ceased with the demise of the pensioner or because of an ecclesiastical sanction.

There was an anomaly when the benefice of title has insufficient means to provide support for a title of pension. The bishop had a number of possibilities available. He could attach a defined portion of income from another benefice other than the presbyter's former benefice in order to provide a title of pension (c. 1429); he could make provision out of diocesan or other resources available. The options tended to underscore the obligation the bishop had to see to the provision of support to a presbyter without a benefice.

In common law, *Black's Law Dictionary* defines and provides the source of the origin of the benefice system:

In ecclesiastical law, in its technical sense, this term includes ecclesiastical preferment to which rank or public office is attached [...]; but in popular acceptance, it is almost invariably appropriated to rectories [...]. A term derived from the feudal law, in which it signified a permanent stipendiary estate, or an estate held by feudal tenure¹²⁷.

Three constitutive elements emerge from *Black's* definition of benefice:

1. the source and interpretation of the notion of benefice took place in the context of secular law of property;
2. according to *Black's*, the title to a benefice provided a right to an on-going source of support; and,
3. the office of pastor is accorded the status of a public office and granted the right of tenure to the presbyter according to law.

¹²⁷ *Black's Law Dictionary*, p. 156.

Until 1910, other than resignation from office, a bishop could not remove a pastor from his parish/benefice unless it was as a result of a sanction issued and executed by an ecclesiastical court. Not all misbehaviour was criminal and in such a case, the bishop had no easy process available to remove a pastor for the good of the church. After 1910, a presbyter might lose the title as a result of an administrative decree of removal¹²⁸ for cause as determined by the bishop. The 1917 *Code* provided a procedure for the administrative removal of pastors in the law.

The title of benefice provided a place for a presbyter-pastor to minister, a place to live (residence), and a place from which he derived his support for his lifetime. The title provided substantial legal protection and personal security to a pastor. Aside from the ministerial considerations, the office also conferred significant social status upon a competent presbyter as a professional person, a businessman, a manager, and a leader in the community.

1.3.5 The Title of Patrimony in Ecclesiastical Law

The title of patrimony originated in a decree of Alexander III at the Second General Council of the Lateran (1179). The title allowed for the ordination of a cleric provided he had support from a source other than the title of benefice. The

¹²⁸ See SACRA CONGREGATIO CONSISTORIALIS [=SCC], Decree *Maxima cura*, 20 August 1910, in *AAS*, 2 (1910), p. 636. Prior to *Maxima cura*, the only way a pastor of an irremovable parish could be removed from office against his will was for an ecclesiastical court to declare the pastor guilty of a delict. The bishop could then issue the decree of removal. There was no "simple" administrative procedure for the removal or transfer of an unwilling pastor. *Maxima cura* provided the bishop with the administrative means to remove a pastor by means of a process much simplified from that of a criminal process. The 1917 *Code* confirmed *Maxima cura* by providing the form of due process in cc. 2147-2157. The 1983 *Code* provides the process for administrative removal or transfer of pastors in cc. 1732-1752.

support could originate from within his personal resources, his family, or an independent sponsor.

The Council of Trent addressed the title of patrimony and demanded verification of the content of the endowment among other matters.¹²⁹ The title of patrimony was determined to be only a subsidiary title. The council allowed it under two conditions and by way of an exception. First, a benefice with insufficient endowment allowed a bishop to ordain under the title of patrimony if the title was temporary. The bishop was to replace the title of patrimony by a benefice with sufficient endowment as soon as possible. Second, a bishop could use the title of patrimony out of necessity or utility for the good of the diocesan church.¹³⁰

Patrimony was a two-edged sword when used as a title for ordination to major orders. On one hand, the Church had established certain criteria for the use of patrimony as a title when the title could be used to the positive advantage of the churches; on the other hand, the title suffered from the negative effects created by wealthy clerical *vagi* and the misuse of the title by some bishops. Some bishops continued to ordain even when no proper benefice was available. There was no longer a requirement to provide support from the revenues of a benefice or from other sources available to the bishop. The title of patrimony provided an economic advantage to a diocese and to a benefice if a benefice suffered from real financial difficulty and could not support a pastor.

¹²⁹ TRENT, Session XXV, c. 9 (concerning the right of patrimony and matters pertaining to it).

¹³⁰ TRENT, Session XXI, c. 2, (concerning the support of a presbyter and exclusion from orders). Translation in TANNER, pp. 728-729.

The purpose and construction of this title did serve one major purpose of a title: to provide a means of stable support for a cleric. The title-holder could not alienate the title unless he obtained a different title. Upon taking possession of a new title, the presbyter returned the property constituting the “title” of patrimony to his personal estate, his family or his sponsor.

1.3.6 The Title of Pension in Ecclesiastical Law

The third title for ordination was the title of pension. An extensive examination of the notion of the ecclesiastical pension up to and including the 1917 *Code* has been made by Sylvester F. Gass, in *Ecclesiastical Pensions: An Historical Synopsis and Commentary*.¹³¹ The universal law and the title of ecclesiastical pension derived from a benefice pertained more directly to those parts of the world where the benefice system was in place. Since the title of benefice was not common in the RC churches of Canada or Ontario, direct application is difficult. Nevertheless, a brief and general examination of the ecclesiastical pension is necessary for purposes of comparison in light of ecclesiastical and common law before and after the 1983 *Code*. Selected topics subject to particular examination according to the 1917 *Code* will include the source of a pension, the recipient, pension eligibility, the rights, and obligations of the pensioner and the loss of a pension. Common practices associated with the pension provide some interpretation common to the application and acquisition of support by a presbyter under this title.

¹³¹ S. F. GASS, *Ecclesiastical Pensions: An Historical Synopsis and Commentary*, CLS, no. 157, Washington, DC, Catholic University of America, 1942.

What was to be the common source of the title of an ecclesiastical pension? The law recognized some obligation existed to provide for a former benefice-holder even when the former pastor no longer had a strict right to support from this source when he no longer held the office. Though the *notion* of pension existed as early as Gregory the Great (590-604) and continued throughout the following centuries, the “title of pension” made its “[...] official appearance for the first time in the Council of Trent”¹³². The decree issued by the Council is worth repeating:

And he may not resign that benefice without a declaration that he was ordained with that benefice as his title; his resignation is not to be accepted unless there is proof that he can live comfortably by other means, and without it his resignation is null. Henceforth those possessing a patrimony or pension may only be ordained if the bishop judges they should be accepted for the need and welfare of his churches, and has first ensured that they really possess a patrimony or pension and that these are sufficient to support them. And these incomes may not thereafter be alienated or cancelled or diminished without the bishop's permission, until they have acquired an adequate church benefice or have some other means of support [...]¹³³.

Gass defined an ecclesiastical pension as:

[...] the right to receive each year a part of the fruits from a benefice not one's own (or from other ecclesiastical revenues), established for a just cause by an ecclesiastical superior in behalf of a cleric.¹³⁴

Furthermore,

The source of the pension came from the *fructus* of a benefice,

¹³² MCBRIDE, *Incardination and Excardination of Seculars*, p. 138.

¹³³ TRENT, Session XXI, concerning clergy and support, c. 2. Translation in TANNER, pp. 728-729.

¹³⁴ GASS, *Ecclesiastical Pension*, p. 3.

one's former benefice or another at the direction of the competent authority¹³⁵.

McBride states that an ecclesiastical pension

[...] when constituted in perpetuity by an episcopal decree as deriving from the revenues of a church (*precaria*) or parish and as due to be conferred on a cleric by canonical institution, did not differ from a benefice and was governed accordingly¹³⁶.

The pension was one of the options demanded by law whereby a bishop was able to see to the support a presbyter. Two juridical effects follow. According to Trent, the title of pension constituted real property and was subject to the laws of property and ownership. Furthermore, the pension could become a title for ordination providing it was a “[...] fixed arrangement for the lifetime of the possessor”¹³⁷. After noting diocesan need as the rationale for ordaining, the decree was also sensitive to the necessity of the bishop to find an on-going source of support for the presbyter when advanced age, illness, or some other incapacity prevented the presbyter from engaging in active ministry on a continuing basis.

Who was able to receive a pension? Any cleric in need for any reason was eligible to receive support under a title of pension. The more common recipient of support under the title of pension was one who legitimately resigned his benefice. To replace the title of benefice and in order to satisfy the obligation to see to the support of the cleric, the bishop attached a title of pension to the benefice and granted the title to the resigned title-holder of the benefice.

¹³⁵ 1917 CIC, cc. 1429, 1430. See WOYWOD, *Commentary*, vol. 2, pp. 191-192.

¹³⁶ MCBRIDE, *Incardination and Excardination of Seculars*, p. 138.

¹³⁷ Ibid.

According to Gass¹³⁸, no link existed between a pension and any office “[...] but rather [a pension was] given for support in consideration for services rendered in the past [...]”¹³⁹, nor was a pension to be confused with remuneration that Gass indicates is consideration for services *to be rendered* in the future. Under normal circumstances, the title of pension continued for the life of the pensioner. The claim made by the title upon the designated benefice or foundation ceased upon the pensioner’s demise.

Gregory the Great (590-604) demonstrated his concern for the poor and protected the rights of the clergy. From the barbarian invasions to pestilence originating in a flooded Tiber, Rome and Italy suffered a devastated economy. Gregory fed the hungry of Rome and responded to the economic deprivation caused by physical and political disruptions.¹⁴⁰ He used the extensive properties and endowments under his control to respond to the needs of his people, including clergy in need.

In the early days, Gregory I, in providing for incapacitated bishops and even priests and clerics of lower rank, arranged for payments not only from the revenues of their former churches or titles, but even from the Pope’s own income¹⁴¹.

He ordered a local bishop to “[...] pay to an ailing cleric the usual sum”¹⁴² in a case where a priest was incapacitated due to illness.

¹³⁸ I have summarized and selected the material presented here from Gass’ dissertation to provide a brief account of the context of an ecclesiastical pension and to highlight its application to the clergy.

¹³⁹ GASS, *Ecclesiastical Pensions*, p. 8.

¹⁴⁰ See LATOURETTE, *A History of Christianity*, pp. 337-341.

¹⁴¹ GASS, *Ecclesiastical Pensions*, p. 21.

¹⁴² *Ibid*, p. 17.

Gregory's efforts could not have been lost on the bishops and the quality of their interaction with their fellow bishops and their respective presbyters. The fact that the pope acted and responded to the needs of the people and the clergy from his own resources has a universal significance. Presuming actual material poverty of a diocese, a bishop, a benefice, or a cleric, the action of Gregory the Great expressed the notion that an obligation existed to support anyone in need even when the need extended beyond a particular church to the Church-at-large.¹⁴³

The spirit of Gregory continued beyond his own time. Where a parish benefice became too poor to provide decent support to a presbyter due to the reduced circumstances of the benefice, the bishop was able to provide supplemental income by means of the title of pension. The title of pension from a source other than the titled benefice provided a support "supplement". The supplement was personal and separate from that allotted by the title to the benefice. The title of pension when combined with the income of the benefice elevated the benefice-holder's income to a decent level even while the presbyter was in active service. Here we have an example of receiving a legitimate second title; i.e., to support a presbyter whose title of benefice lacked the means to provide decent support.

¹⁴³ See 1 Cor. 8:13-15 and Acts 4:32-35.

Gregory VII (1073-1081) continued the tradition of caring for poor clergy. He used his authority to impose on benefices the obligation of directing a portion of their *usufruct* toward the support of a needy cleric.¹⁴⁴

Gass indicates the continuance of an important principle that is very relative to the circumstances of today. Even those convicted of extreme of crimes were not to be left destitute. At the request of a bishop or the pope, a bishop might grant a title of pension to

[...] priests who had been suspended from the active ministry because of certain crimes [...], [they] were to be assured fitting maintenance even though they might not exercise their ministry again¹⁴⁵.

Gregory VII made some provision of support for a priest convicted of homicide.¹⁴⁶ Gass reports that during the pontificate of Gregory XII, the Sacred Congregation of the Council, July 11, 1577 concluded “[...] a cleric and his co-operator in voluntary homicide could receive and retain pensions without a previous dispensation from this irregularity [...]”¹⁴⁷.

For clerics without a benefice, the bishop provided pensions, or at least some generous provision. Thus in 1237, the bishop of Durham, with permission of the Holy Father, provided a common house for certain aged, infirm, and blind clerics of his diocese, and assigned “the tithe of his wills for their support”¹⁴⁸.

¹⁴⁴ GASS, *Ecclesiastical Pensions*, p. 20.

¹⁴⁵ Ibid, pp. 16-17.

¹⁴⁶ Ibid, p. 20.

¹⁴⁷ Ibid, p. 76.

¹⁴⁸ Ibid, pp. 33-34.

The examples highlight the Church's concern for the support of its presbyters.

The actions of Gregory the Great, Gregory VII, the actions of individual bishops, and the evolution of the law regarding the title of pension, indicate that the Church did not want to leave a presbyter without a means of support. A bishop granted the title of pension in a variety of distressful situations, even when a cleric was unable to

[...] administer his benefice or otherwise participate in the active ministry, be it because of physical incapacity through illness, disease, blindness, age and the like, because of hostile expulsion from his benefice, because of legitimate resignation or even because of penal reasons¹⁴⁹.

A presbyter needed a source of support no matter what constituted the circumstances of his life. In the absence of the titles of benefice and patrimony, any number of other reasons satisfied a motive for the granting of the title of pension. A bishop might grant a title of pension based on

[...] merit recognized by the Church; gratitude for service rendered; promotion of knowledge, by support of the learned or of clerics pursuing sacred sciences; hospitality; reward and affection; uprightness of life; "*aliaque laudabilia*"¹⁵⁰.

The title of pension acknowledged and satisfied a presbyter's right to support under virtually any circumstance.

What motivated such concern around the issue of continuing clerical support?

Gass says: "The motivating cause was the preservation of the dignity of the

¹⁴⁹ Ibid, pp. 35-36.

¹⁵⁰ Ibid, p. 60.

clerical state; poverty alone was sufficient cause for granting a pension”¹⁵¹.

The granting and retention of the title of pension was not without conditions. Under what circumstances might a title of pension be lost other than the fact of the title-holder’s death? Gass indicates the termination of the ecclesiastical pension for a variety of other reasons. Perhaps the revenues associated with a benefice suffered a loss over time. In such a case, resources were insufficient to provide support both to the incumbent beneficiary and a person holding a title to pension. What happened then? “The incumbent [benefice-holder] would not, [...], be competent to reduce the pension of his own authority.”¹⁵² Only the bishop could make the change affecting the two titles. In order to determine the amount of the reduction, the bishop normally determined the amount after calculating the average of revenues over a ten-year period and adjusted the amount accordingly.

Over time, some clerics accumulated a number of titles of pension as they advanced to higher dignities in the church. Not until a decree of Leo XIII (1878-1903) did clerics promoted to higher orders, offices and dignities lose all pensions they might have possessed from former titles.¹⁵³ Elevation from one order to the next, from one dignity to another terminated the title of pension derived from a title of lower order or rank. The termination from one pension presumed an

¹⁵¹ Ibid, p. 36.

¹⁵² Ibid, p. 68. See SCC, *Mandelen*, “Aperitionis oris et pensionis,” 13 jun. 1885 in ASS, XVIII (1885), pp. 200-203.

¹⁵³ DATARIA Sp., *Litterae Eminentissimi Cardinalis a Secretis Status, ad Emum Pro-Datarium quoad Beneficia et pensiones ecclesiasticas*, 24 maii 1899, 1° in ASS, 33 (1865-1908), p. 121.

increased income derived from a “title” of higher rank. The accumulation of pensions might deprive someone else of the possibility of obtaining such a title due to lack of financial resources of a benefice or at least, create undue hardship on the source of the pension.

Gass poses a variety of other reasons for the termination of a pension. A cleric in major orders attempting marriage¹⁵⁴ lost rights associated with his state, including any pension he possessed. Nevertheless, in consideration of the dignity of the clerical state and with papal consent, a cleric might retain a pension.¹⁵⁵ “Failure to dress as a cleric could effect the extinction of a pension.”¹⁵⁶ In the Latin churches, a cleric who joined the military without proper dispensation could lose his title of pension. The commentators differ in the matter of a loss of pension due to canonical irregularity.

Though sensitive to not leaving a cleric destitute, serious crime, punishable by loss of ecclesiastical office also extinguished the pension.¹⁵⁷ Since a person excommunicated could not receive the *usufruct* of his benefice, by analogy, “[...] a pension was suspended for the duration of the censure”¹⁵⁸. Although in these latter situations, the title to pension was a right; it could be attacked and lost as a result of a sanction imposed by an ecclesiastical court. Even if the law removed

¹⁵⁴ TRENT, Sess. XXIV, c. 9 (concerning the attempted marriage of seculars).

¹⁵⁵ GASS, *Ecclesiastical Pensions*, p. 74.

¹⁵⁶ *Ibid.*, p. 75.

¹⁵⁷ *Ibid.*, p. 76.

¹⁵⁸ *Ibid.*, p. 77.

the right to support, the bishop retained the obligation to provide support according to the demand of charity.

Maxima cura, and the 1917 *Code*, granted the bishop the authority to remove a cleric's title of pension by executing an administrative decree according to law.

The pensioner remained subject to the authority of the bishop who was responsible for clerical discipline and order in his diocese. If a cleric caused scandal to the community, the bishop could take action. For the Church to appear to reward scandalous behavior by the continuous provision of support was intolerable and itself scandalous. Therefore, in an attempt to remove the scandal and to reform the cleric, the bishop could remove the source of support from the offending cleric until the offending cleric corrected his behaviour.

Chapter Conclusions

In the theology of Israel, the tribe of Levi and the Levitical priesthood were the elect of God and had "no lot" in the distribution of the land that constituted Israel. Consequently, without land, the priest was dependent upon Yahweh to provide support. According to the narrative traditions, Yahweh provided support by means of the law. A considerable amount of Israel's prescriptive law laid the obligation on an Israelite to provide support for the "poor", and for the maintenance of the Levitical priesthood by means of the tithe and "fees for service". Yahweh manifested his generosity by means of Israel's care for the poor; Israel's care for the poor manifested Yahweh's generosity to the nations.

From simple beginnings, the Levitical priesthood grew and functioned within the social and economic context and structure of a highly developed social institution. The main OT principles of support included a right to minister, a right to mobility, a right to support for all Levitical priests even for a priest with an impediment. The distribution of resources occurred according to the order and rank of the Levitical priest. The law provided for generous support. Nevertheless, actual resources were dependent upon the Israelites' compliance with the law as well as the economy of time and place.

In NT times, support was tenuous for the Christian clergy. After its separation from Judaism (*circa* 70), early Christianity had little formal structure of its own to manage the support of the Apostles and disciples of Jesus. Paul and the early Christian churches adopted many of the principles of the OT law concerning the obligation of the faithful to support of the ministers of religion. The scriptural references of 1 Cor 9:11-14, 1 Tim 5:17 and Lk 10:7 consistently refer to the term "wage". However, ministry and its relationship to "wage" lacked a formal context of a strict Roman contract for hire as between employer and employee. The socio-economic circumstances were not present and neither was the infrastructure available to implement these principles of support for a Christian minister by a Christian assembly.

After the destruction of the Second Temple in 70, many of these fundamental principles seem to have fallen into abeyance. As the Christian churches spread throughout the Roman Empire, finding the resources to support the Christian clergy was not always easy either before or after the Edict of Milan, in 313.

Wandering clergy seeking a place to offer ministry and to obtain support was problematic to the Church for many centuries that continued to our own time.

A number of solutions to the problems of presbyteral support emerged over the centuries. In the adaptation of the Roman property law to the question of ministry and support, the notion of the canonical title offered the greatest solution to the problem but in varying degrees. "To minister" was not a canonical right in the Latin churches even in the 1917 *Code*; however, the 1917 *Code* did reaffirm the right of a presbyter to obtain support. The right to support rested in the reception of tonsure with its two juridical effects: on becoming a cleric, the person was elevated to the dignity of the clerical state and obtained the rights associated with his status according to the law, and, tonsure incardinated a cleric into the presbyterate of a particular church. The origin of the bond of incardination rests in the notion of the transfer of a candidate for orders to a diocese other than his own in order to obtain a proper bishop for ordination, a place of ministry and a source of support. The source of support originated in the one of the titles for ordination to sacred orders: the titles of benefice, patronage, and ecclesiastical pension.

The title of benefice provided the greatest level of security to a presbyter. Due to the tenure associated with the office of pastor, his right to the residence, and a right to the *usufruct* of the benefice, the pastor was able to provide for himself and to satisfy his financial obligations to others. In this title, the title links a place to minister with a source of support.

Though the proprietary elements and support remain in the titles of patrimony and pension, the titles do not identify any specific place for the presbyter to offer ministry. Furthermore, the titles do not include a right to an official residence.

The Church adopted the canonical title of “service to the church” in the 1917 *Code* and this was the title of choice in North America.¹⁵⁹ This title caused a dramatic shift in the application of the notion of canonical title of benefice and the sources of ministry and support for a presbyter. From the assignation of a presbyter to a specific benefice or place in which to minister and receive support as granted by title, the newer title allowed the bishop to assign a presbyter to any office or work in the diocese. The presbyter received support by means of a wage or salary. The change reduced the security granted by the right of tenure. In addition, the title constituted no ownership to property.

This title shifted the nature of the contract between the parties to the Roman oral contract for hire, *mandatum*. The petitioner’s free offer of service created an obligation only on the petitioner and established a nebulous context for the quality of support offered to a presbyter. The ordinary contract for hire continued to be absent at a time and place when the social and economic context would most allow for its development and application to a presbyter. The economic advances created by the industrial revolution, the evolution of capitalism and the Church’s policies regarding social justice and labour, established the opportunity to

¹⁵⁹ The following chapters discuss this title, service to the church. The purpose here is to note the shift of a source of support and to highlight its connection to the term “salary”.

implement all these dynamics relative to the support of a presbyter in twentieth century in North America.

The adoption of the title “service to the diocese” weakened the juridical position and the security of a diocesan presbyter because no real law of property or law of contract provided the juridical sources of rights and obligations between a presbyter and a diocese/bishop. Such a lack made a presbyter vulnerable and dependent upon the diocese/bishop to determine working conditions as well as criteria for and levels of support. A component of the title—incardination—made the diocese/bishop the guarantor of a presbyter’s support. Nevertheless, within its historical context, a proprietary title of benefice, patrimony, or pension provided the highest form of contractual security to a presbyter.

Today, the juridical bond of incardination takes on heightened importance as the diocese/bishop’s guarantee of continuing support to a presbyter even if it does not guarantee him a specific place in which to offer ministry.

CHAPTER TWO

THE ECCLESIASTICAL DOCUMENTS, THE LAW AND PRESBYTERAL SUPPORT

Introduction

The Second Council of the Vatican [=Vatican II or Council] and the 1983 *Code*¹ brought considerable changes to the issue of presbyteral support. A major shift occurs with the Church's teachings concerning social justice and its application to a presbyter's right to support. The source of support originates in the notion of ministry.

The documents and the law confirm the continuing obligation of the Christian faithful to provide support to the presbyter. The laity, the bishop and the presbyter all play their roles in the provision of support due to a presbyter during active ministry, and during illness, incapacity and old age. The juridical realities of titles of ordination are not a consideration in the 1983 *Code*; thus, the juridical notion of incardination takes on greater import. In addition, the *Code* has suppressed the ordinary title of benefice. Vatican II and the 1983 *Code* introduced the new notion of retirement; i.e., the presbyter's obligation to provide continuing ministry terminates along with the remuneration and housing² associated with it.

Retirement transfers of the obligation of support and housing derived from a particular ministry to the diocese/bishop. This transfer is subject to discussion

¹ Unless otherwise noted, English translations and canons are from the *Code of Canon Law: Latin-English Edition*, Washington, DC, Canon Law Society of America, 1998.

² The term, "housing," is a generic term to indicate residence, accommodations, parish house, etc., that a presbyter may occupy as part of his support. The specifics are defined, described and applied in Chapter Three.

according to the law under the juridical bond of incardination. The material on the subject is growing but not extensive in the canonical tradition. The quality of life for a presbyter in retirement depends on a number of factors. Two major criteria are the financial resources available to him during his active ministry, and the resources provided by the diocese to a presbyter in retirement or in illness and/or incapacity. Selected canons pertaining to active ministry, presbyteral status, and sources of support occupy a considerable portion of this chapter. These issues affect a presbyter's quality of life in retirement.

The purpose of this chapter is threefold:

1. to establish the values and to indicate the respective roles of the Christian faithful in the support of the presbyter presented in the documents *Lumen gentium*³, *Gaudium et spes*⁴, *Ad gentes divinitus*⁵, *Apostolicam actuositatem*⁶, along with the implementation of these values in selected canons of the 1983 *Code*, particularly cc. 222, 225, § 2, 228, and 275, § 2;
2. to review selected ecclesiastical documents in the matter of support, particularly *Christus Dominus*⁷, *Ecclesiae sanctae* I⁸, *Presbyterorum ordinis*⁹, the *Directory on the Pastoral Office of Bishops*¹⁰, and

³ SECOND COUNCIL OF THE VATICAN II [=VATICAN II], *Dogmatic Constitution on the Church Lumen gentium* [=LG], 21 November 1964, in *AAS*, 57 (1965), pp. 5-75. English translation in A. FLANNERY (ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, Study Edition [=FLANNERY], Northport, NY, Costello Publishing Company, 1987, pp. 350-423.

⁴ VATICAN II, *Pastoral Constitution on the Church in the Modern World Gaudium et spes* [=GS], 7 December 1965, in *AAS*, 58 (1966), pp. 1025-1120. English translation in FLANNERY, pp. 903-1014.

⁵ VATICAN II, *Decree on the Church's Missionary Activity Ad gentes divinitus* [=Ad gentes], 7 December 1965, in *AAS* 58 (1966), pp. 947-990. English translation in FLANNERY, pp. 813-856.

⁶ VATICAN II, *Decree on the Apostolate of the Lay People Apostolicam actuositatem* [=AA], 18 November 1965, in *AAS* 58 (1966), pp. 837-864. English translation in FLANNERY, pp. 766-798.

⁷ VATICAN II, *Decree on the Pastoral Office of Bishops in the Church Christus Dominus* [=CD], 28 October 1965, in *AAS* 58, (1966), pp. 673-701. English translation in FLANNERY, M. DILLON, E. O'LEARY and FLANNERY transl, pp. 564-590.

⁸ PAUL VI, *Motu proprio Ecclesiae sanctae I* [=ES I], 6 August 1966, in *AAS*, 58 (1966), pp. 757-787. Translation in FLANNERY, pp. 591-610.

3. to provide the ecclesiastical law with commentary, particularly, the 1983 *Code*, cc. 281 and 538.

The following situations provide for the examination of the presbyters sources of support: during active ministry, when a presbyter becomes incapacitated or unemployable, or when a presbyter submits his resignation complying with the requirements leading to retirement.

2.1 The Right to, and the Sources of Support after Vatican II in General

The use of some contemporary terminology in the documents of Vatican II and the canons of the 1983 *Code* suggests the intention of participants of the Council and the drafters of the 1983 *Code* to make the Church more responsive to the changed circumstances of the modern world, especially social and economic realities. With the changed economic situation, the 1983 *Code* does not mention the canonical notion of title. This has resulted in a re-evaluation of the sources of the right to support, the actual source of support during active ministry, and in retirement and the quality of support. Where the source of support existed in the notion of title in the 1917 *Code*, Vatican II places support within the context of the principles of the Church's teaching on social justice, the dignity of the human person, the inherent value of human labour, and the right to support flowing from

⁹ VATICAN II, *Decree on the Ministry and Life of Priests Presbyterorum ordinis* [=PO], 7 December 1965, in *AAS*, 58 (1966), pp. 991-1024. English translation in FLANNERY, pp. 863-902.

¹⁰ SACRED CONGREGATION FOR BISHOPS, *Directorium de pastorali ministerio episcoporum*, Civitate Vatican, Typis polyglottis Vaticanis, 1973. English translation in *Directory on the Pastoral Ministry of Bishops*, The Benedictine Monks of the Seminary of Christ the King (transl), Mission, BC, Ottawa, Canadian Conference of Catholic Bishops, 1974.

natural and legal justice. This indicates a significant socio-cultural shift away from support rooted in a Roman patriarchal society and its system of patronage and social class, i.e., the “clerical state” as the origin of a right to support.

2.1.1 The Right of the Presbyter to Support Clarified

Though the issue of support appears to be relatively straightforward, some complicating factors continue to exist over language and interpretation. Note the comments of J.E. Lynch concerning c. 281, § 1:

The context of this canon, in the chapter on rights and obligations of clerics, indicates that the remuneration of the clergy is indeed a matter of right, but it is difficult to determine whether or not it is a right in the strict sense.¹¹

Even if Lynch admits a right to support, he highlights a complicated issue. The aim of his interpretation seems true to a notion of remuneration that would protect the diocese and the bishop from any direct obligation to provide support to a presbyter. In addition, Lynch’s interpretation is consistent with the Latin verb, *remunerare*, in Roman property law:

To give a reward to a person for a service gratuitously rendered. To give such a reward is a kind of liberality since it is not a fulfillment of a legal duty and not even of an *obligatio naturalis*, the only motive being to recompense another for a meritorious performance which he was not obligated to do.¹²

The implication is that no strictly legal right exists to remuneration. While reminiscent of the patronage system and the Roman contract for hire, *mandatum*,

¹¹ J. E. LYNCH, in CLSA, *New Commentary*, 2000, p. 367.

¹² BERGER, *Encyclopedic Dictionary of Roman Law*, p. 674. The subject is revisited in no. 2.2.4 below.

there appears to be little appreciation of the common English meaning of “remuneration” within the context of a “wage” and its relationship to the provision of a payment for service rendered. If the canon intends a “right” in the strict sense of justice, then it must follow that the interpretation of “remuneration” must occur within the context of a contract of hire that calls for a principle of proportionality between the services rendered and the payment for that service.

To help interpret the question concerning the nature of the “right” to remuneration, a private interpretation of the Pontifical Council for the Interpretation of Legislative Texts [=PCILT] acknowledged and reinforced the right of a presbyter to support based on the location of c. 281 in the 1983 *Code*.

PCILT says:

The fact that can. 281 is found in the chapter of Book II that sets forth the obligations and rights of clergy leads to the logical conclusion that remuneration is a right: a cleric has a right to adequate remuneration.¹³

This is an important clarification of the issue of support in light of the commentary proposed by Lynch and others. Furthermore, the interpretation by PCILT lends considerable strength to the argument that a right to adequate remuneration exists within the parameters of the Church’s teaching on social justice and flowing from it, the right to support exists as a natural and strict “right” (*ius*) in either commutative or distributive justice as discussed below.

¹³ PCILT, Decree, N. 7194/2000, in favour of the Archbishop of Melbourne, George Pell, April 29, 2000, in THE CANON LAW SOCIETY OF AUSTRALIA AND NEW ZEALAND, *Newsletter* 2, (2000), p. 42.

It might be useful to clarify some terminology at this point. The notion of “social justice” has a long tradition in the Church. However, its application within the context of the political and economic theories of capitalism, communism and socialism undergoes considerable development beginning with Leo XIII’s encyclical, *Rerum novarum* (1891), to our own day.¹⁴ The Church’s understanding of the term, “social justice” may be described within the following parameters:

1. It is the equivalent of the earlier general or legal justice, for its object is the common good.
2. In the name of the common good, it commands all specific acts of justice—at a minimum, commutative and distributive justice acts.
3. It is given some central thrust toward *organizing* the institutions of a social and juridical order. It is from this organized and productive society that benefits will be distributed.
4. Social justice commands, individuals, organizations and the state.¹⁵

The simplest notion of justice commands that each ought to render another his or her due. In order to regulate this principle of law: “Legal justice is that which sets out the overall ordering or norms which ought to govern social behavior”.¹⁶

Legal justice exists in two forms of justice—commutative and distributive. *The New Dictionary of Theology* describes justice in the following terms:

¹⁴ See M. WALSH and B. DAVIES (eds.), *Proclaiming Justice & Peace*, rev’d ed., Mystic, CT. Twenty-Third Publications, 1991. The editors have compiled the relevant papal documents to show the evolution of the Church’s doctrine in regard to social justice in a marketplace economy from Leo XIII to John Paul II.

¹⁵ KOMONCHAK, J. A., M. COLLINS and D.A. LANE, *The New Dictionary of Theology*, Wilmington, Delaware, Michael Glazier, 1987, p. 551. “The term social justice became enshrined in papal teaching, especially that of Pius XI in his 1931 *Quadragesimo anno* (nos. 57, 8; 69, 88; cf. 110, 70) and his 1937 *Divini Redemptoris* (no. 51)” p. 551.

¹⁶ *Ibid*, p. 550.

The two particular justices are named for the objects to which general justice impels us. First is commutative justice which is the justice that lies between individuals or groups. [...] First, it is generally said that commutative justice is strict justice, implying mathematical equality. But Catholic social teaching has always insisted that commutative justice, as all justice, is personal as well, and must be a loving respect extended to the other. The second note is that commutative justice is not that of individuals simply as individuals. It is always the justice of *parts* of a social whole, hence always exercised within the embrace of the common good of that social whole and under the ordering of the virtue of general justice.

Distributive justice is the justice of the whole to the parts (individuals, groups, classes). Those who hold authority have a prominent role in achieving the common good, including [...] productive economy, distributing burdens involved in producing that good and then distributing benefits therefrom. Aristotle considered proportionality to be the guiding norm of this justice. [...] The law-maker will look also to need as well as ability to contribute.¹⁷

These respective forms of justice comprise the foundational elements that constitute the basis upon which the presbyter's support rests. Justice is the foundation of charity. As will be shown, the very nature and dignity of being a human being, and being able to contribute to the building of human society through human labour, demands a human being be the subject and object of rights and obligations in the matter of support. Presbyters share this dignity as part of the human community.

By virtue of the religious and kinship bonds created by the sacraments (c. 845) of baptism¹⁸ (c. 96), confirmation (c. 879), and holy orders (c. 1008), the Lord

¹⁷ Ibid., p. 551. "The Catholic tradition adopted Aristotle's three forms of justice, legal, commutative and distributive (Nichomachean Ethics) via Thomas Aquinas who elaborated them in his *Secunda Secundae*" p. 551.

¹⁸ See G.J. ROCHE, "The Poor and the *Code of Canon Law*: Some Relevant Issues in Book II", in *SC*, 30 (1996), p. 312.

incorporates a presbyter into the Mystical Body of Christ and the Church. In addition, the juridical bond of incardination incorporates a presbyter into the sacerdotal college of a particular church (1983 *Code*, cc. 265; 266). Such bonds are the primary source of rights and obligations of a presbyter in his relationship with the members of the Church and a diocese/bishop; the law defines the rights and obligations of the Christian faithful.

2.1.2 Sources of Support in General and for the Presbyter

The documents, *LG*, *GS*, *Ad gentes*, *AA*, *CD*, *PO*, *ES*, *I*, the *Directory on the Pastoral Ministry of Bishops* [=Directory], and the *Code* make clear those who have the obligation to provide support to a presbyter incardinated into a particular church. Associated with these obligations are certain rights that respect the various roles of the Christian faithful in a diocese. Support is not solely restricted to financial support, but rather, the various religious and juridical bonds echoed in the ecclesiastical and canonical tradition call for a holistic support.

The Christian faithful of the Latin churches make up the ordinary membership of a diocesan church within the territorially defined boundaries of a diocese (c. 372). The membership consists of the laity, one or more bishops, presbyters, and deacons. Each of these possesses the obligations and rights associated with the support of the presbyter.

The law obliges the diocese/bishop to provide support, but the diocese/bishop must obtain support from others in order to satisfy the financial obligations of the diocese. Generally, the first source of material support for the diocese/bishop and

the presbyters of a diocese reside in the laity. The laity has both an obligation and a right in the matter of their contribution to the support of the presbyter. The bishop has a primary obligation to see to the provision of support for presbyters serving the diocese (c. 384), whether incardinated or simply providing ministry to the diocese with permission of the bishop. The presbyters themselves possess some responsibility to provide support to their brother presbyters when they possess the means to do so.

2.1.3 The Role of the Christian Faithful in the Support of the Presbyter

Vatican II recognized the growing interdependence of people and societies and the growing disparity between the rich and the poor in its pastoral constitution, *Gaudium et spes*¹⁹. The Council reaffirmed the value and dignity of each human person and defined certain rights and obligations common to all persons. *GS* expressed these rights and obligations in the context of the common good:

[...] there is a growing awareness of the sublime dignity of the human person, who stands above all things and whose rights and duties are universal and inviolable. He ought, therefore, to have ready access to all that is necessary for living a genuinely human life: for example, food, clothing, housing, the right freely to choose his state of life and set up a family, the right to education, work, to his good name, to respect, to proper knowledge, the right to act according to the dictates of conscience and to safeguard his privacy, and rightful freedom even in matters of religion.²⁰

¹⁹ *GS*, no. 63, in FLANNERY, p. 969.

²⁰ *GS*, no. 26, in FLANNERY, p. 927.

Gaudium et spes established the manner in which one person ought to show respect for another:

[...] everyone should look upon his neighbor (without any exception) as another self, bearing in mind above all his life and the means necessary for living it in a dignified way (cf. Jas. 2:15-16) lest he follow the example of the rich man who ignored Lazarus, the poor man.²¹

The Council also incorporated a type of mission statement for the Christian faithful in its decree, *Ad gentes*, no. 36:

As members of the living Christ, incorporated into him and made like him by baptism, confirmation and the Eucharist, all the faithful have an obligation to collaborate in the expansion and spread of his Body [...]. So all the children of the Church should have a lively consciousness of their own responsibility for the world, they should foster within themselves a truly Catholic spirit, they should spend themselves in the work of the Gospel. However, let everyone be aware that the primary and most important contribution he can make to the spread of the faith is to lead a profound Christian life. Their fervor in the service of God and their love for others will be like a new spiritual breeze throughout the whole Church, which will appear as the sign raised up among the nations.²²

It is into such contexts as these that *AA*, *PO* and the 1983 *Code* seek to situate the role of the Christian faithful and the provision of support to the Church's ministers. The Council fathers were aware of the human tendency of "hoarding" the goods of the earth and that even clergy might be tempted to build up earthly treasures. Consequently, they admonished those with administrative responsibilities in the churches against this danger. The Council fathers were rather specific. They did not envisage either a diocese or a presbyter building

²¹ *GS*, no. 27, in FLANNERY, p. 928.

²² *Ad gentes*, no. 36. English translation in FLANNERY, R. FITZMAURICE (transl.), p. 350p. 850.

large reserves of capital out of surplus funds. According to M. Schmaus'

interpretation, the Council fathers intended that surplus funds

[...] must not be invested as capital, but used, rather, for the good of the Church or for charitable purposes. It counts as the fulfilment of these purposes if surplus is applied to a fund for aged clergy, as the text explains later on.²³

The Council continued to promote voluntary poverty²⁴ as a Christian value suggesting that charitable purposes be the object of any "surplus" funds. This admonition included a diocese as much as it included the individual presbyter. Naturally, such terminology as "for the good of the Church" admits of any number of possibilities, but one possibility is definitively mentioned—a fund for aging clergy. Obviously, the Council fathers were aware of problems of both the accumulation of wealth by some diocesan bishops and by some other clergy while other ministers lived in poverty.²⁵

²³ M. SCHMAUS, "PO, Articles 17-22," in *Commentary on the Documents of Vatican II*, H. VORGRIMMER (gen. ed.), R. WALLS, transl., vol. 4, London, Herder and Herder, 1967-1969, p. 291. I examined the material in *Communicationes* around the development of cc. 538, § 3 and 281. The *coetus De Populo Dei*, in *Communicationes*, 13 (1983), pp. 287-288, refers, in part, to what will become c. 538, § 3. There is discussion focused on the issue of the age of retirement but with little mention of where shelter will come from after retirement. The same *coetus* refers to what becomes c. 281 in *Communicationes*, 14 (1983), p. 80, but does little more than express what is already in the 1983 Code. From then to the present, there is little discussion on the matter. See J.B. HESCH, *A Canonical Commentary on Selected Personnel Policies in the United States of America Regarding Decent Support of Diocesan Priests in Active Ministry*, CLS, no. 544, Washington, DC, The Catholic University of America, 1994 and J.I. DONLON, *The Human Rights to Equitable Sustenance and to Mobility: An Evaluation of the Canons of the Codex iuris canonici to the Proposed Revision of the Code of Canon Law*, CLS, 510, Washington, DC, The Catholic University of America, 1984, for the development of the subject in *Communicationes*.

²⁴ See PO, no. 17.

²⁵ See SCHMAUS, "PO, Art. 17," in *Commentary on the Documents of Vatican II*, vol. 4, pp. 288-292.

Who are the Christian faithful and what are their respective roles in the matter of support for a presbyter in retirement?

The Christian Faithful

<i>Presbyterorum ordinis</i>	1983 <i>Code</i> , c. 222
[...] the faithful are bound by a real obligation of <i>seeing to it</i> ²⁶ that the necessary provision for a decent and fitting livelihood for the priests is available. ²⁷	§ 1. The Christian faithful are obliged to assist with the needs of the Church so that the Church has what is necessary for divine worship, for the works of the apostolate and of charity, and for the decent support of ministers. § 2. They are also obliged to promote social justice, and, mindful of the precept of the Lord, to assist the poor from their own resources.

The Council fathers were aware that proper support was lacking in some places for a variety of reasons. They sought to rectify the situation. Some members of the Christian faithful failed to satisfy their obligation to support a presbyter on the faulty premise, “God will reward you”²⁸. Furthermore, that the Council fathers were specific indicates that they were serious about the problem and issue of support.²⁹ A presbyter had an obligation to assist the poor and a right to be refreshed by means of a holiday. The sense communicated by the decree does not indicate a pious exhortation; but rather, the Christian faithful have a “real obligation” not only to provide but also to ensure that such provision is actually

²⁶ Italics added.

²⁷ *PO*, no 20. English translation in FLANNERY, p. 899.

²⁸ SCHMAUS, “*PO*, Art. 20,” in *Commentary on the Documents of Vatican II*, vol. 4, p. 296.

²⁹ *PO*, no. 20, in FLANNERY, p. 899. *PO*, no. 20 is discussed in detail below. The intention here is to simply express the awareness and commitment of the Council fathers to the issue of presbyteral support and to make the Christian faithful aware of their obligations in this regard.

made. Furthermore, the Council also laid a real obligation upon the bishops:

“Bishops are bound to warn the faithful of their obligation in this regard”³⁰. The language is direct and expresses a sense of urgency.

A number of points are noteworthy from the document and c. 222. The same sense of “real obligation” in *PO*, no. 20 finds expression in the 1983 *Code*, c. 222, §1, but with some differences. The canon extends the objects worthy of support. Support included not only the support of the Christian minister, but also, those other “needs” declared in c. 1254, § 2³¹. Though the canon does not express the same sense of urgency, it does express the necessity of a corporate and individual effort by the Christian faithful to support the ministry of the Church, and its ministers.

The canon’s location is in Book II, “The People of God,” Title I, “The Obligations and Rights of All the Christian Faithful,” and before Book II, Title II, “The Obligations and Rights of the Lay Christian Faithful.” Consequently, one may conclude that “Christian faithful” is an inclusive term in the canon that refers to priests (bishops and presbyters), deacons, religious³², and laity. As members of

³⁰ *PO*, no. 20, in FLANNERY, p. 899.

³¹ 1983 CIC, c. 1254 § 2: “The proper purposes are principally: to order divine worship, to care for the decent support of the clergy and other ministers, and to exercise works of the sacred apostolate and of charity, especially toward the needy.”

³² Many members of religious communities are not clergy. If a religious is a member of a religious institute of consecrated life, he or she does normally not have funds to alienate for purposes of providing general support to the Church or its clergy. This does not preclude the religious institute from complying with the law according to the demands of its own proper law.

the Christian faithful, diocesan clergy also have an obligation to provide support to their own brothers when it is possible to do so according to c. 275³³.

Canon 222 applies specifically to the Christian faithful of the Latin churches and cites the obligation of the Christian faithful to support the various endeavours of the church, including the support due to the “ministers” of the church. The canon determines the criterion in the exercise of the obligation—social justice. Canon 222, § 2 establishes the obligation of the Christian faithful to implement the principles of social justice espoused by the Church. In order to satisfy the obligation to ensure the practice of social justice, the Christian faithful have the right to demand some type of “accountability” from persons charged with such responsibility. The practice and process of accountability becomes one of the functions of applying and practicing social justice.³⁴ Since the Christian faithful include ecclesiastical leadership, the canon also appeals to church leadership to promote social justice. The same leadership must practice social justice.

Another important change occurred from the Council to the canon. Where the subject under discussion is the presbyter in *PO*, the *Code* notably broadens the notion of who is eligible to receive such support. Where *PO* uses the term “priests”, the canon uses the term “ministers”. Sacred ministers are clerics who are bishops, presbyters and deacons according to c. 207. According to c. 222,

³³ See 1983 CIC, c. 394.

³⁴ Canons 1277-1285 demonstrate some practical considerations concerning “accountability” pertaining to the temporal goods of the churches.

ministers worthy of support include laypersons upon which competent authority confers an official ministerial function or an ecclesiastical office according to cc. 145, § 1 and 228.

In addition, *PO*, no. 20 gives a greater dimension and expression to the obligation of support and extends a right of cooperative participation among all members of the Christian faithful. *PO* indicates that the Christian faithful have the obligation not only of providing support in a generic manner, but also, the decree makes all the Christian faithful responsible for “*seeing to it*” that necessary provision is made. According to *PO*, along with bishops and presbyters, lay people are to assure that the support “available” is decent and fitting. By implication, the decent support of a presbyter is not solely the purview of the bishop or of the presbyters of a diocese in this matter; but also, the document lays the obligation directly upon the laity. This is a significant shift in ecclesiastical documents.³⁵

To exclude the laity from the process of determining *what* constitutes decent support according to conditions of service, time and place, is to deny the expertise of the laity. The lack of lay participation could deny the presbyter the possibility of proper and decent support.

The Council fathers recognized that a layperson is particularly sensitive to the financial elements of life since his or her very life and the lives of his or her loved

³⁵ Except for diocesan pastoral or parish councils and financial officers, few, if any terms of reference verifying adequacy of support actually exist.

ones depend upon it. In addition, the laity provides the majority of financial support³⁶ for the maintenance of a diocese, a parish and the diocesan presbyters in Ontario. A primary source of support to the churches and a presbyter rests in the free-will offerings, donations and bequests of the lay membership of the churches in Ontario.

Different levels of financial expertise exist in the laity, bishop and presbyters of a diocese. *ES I*, no. 8, acknowledged this expertise when, in reference to the establishment of a diocesan *institutum* to care for the material needs of the clergy, the *motu proprio* says that the bishop “[...] is to have the assistance of delegated priests, and, where it seems useful, of laymen expert in economic matters as well”³⁷. *ES I*, no. 8 found expression in c. 228, § 2.

There is a significant difference in the respective experiences of a layperson and a priest when it comes to financial matters. In general, lay men and women tend to appreciate the financial dimensions and implications of living in the world in a way that most presbyters³⁸ in Ontario have not, to date. A layperson lives on the economy and within the economic standards applicable to a particular time and place. To live on the economy means, to live according to income and assets measured against the expenditures according to the demands of place and time.

³⁶ See 1983 CIC, cc. 1260, 1261.

³⁷ PAUL VI, *ES I*, no. 8 in FLANNERY, p. 596.

³⁸ The exceptions are those who have entered priesthood as a second career or who have become priests after living on the economy and working a considerable number of years at some profession or occupation other than that of a cleric.

The difference between the two elements indicates either a positive level of security or a negative level of debt and/or poverty.

The life and the financial experience of the clergy are different. The majority of bishops and presbyters have never had to live on the economy. Some have never had a full-time secular job nor maintained themselves according to their actual income prior to ordination; some have never acquired their own home, nor have some maintained their own residence. Often a priest left the family home to attend the seminary where the seminary provided room and board; after ordination, most went to a parish as an associate. The parish provided room and board along with a small stipend to cover personal expenses. The priest paid a token rent.³⁹ He usually received a car allowance when diocesan regulation permitted him to acquire a car.

The presbyter's expectation of "being looked after until death" and the ambivalent and generally negative attitude toward the acquisition of material goods⁴⁰ has had

³⁹ In Canada, Canada Customs and Revenue Agency [=CCRA [=formerly Revenue Canada]] requires a diocese to establish a determined amount as a taxable housing allowance for a pastor and/or associates living in a parish house.

⁴⁰ See M. SCHMAUS, "PO, Art. 17," in *Commentary on the Documents of Vatican II*, vol. 4, pp. 290-298. In his commentary, Schmaus expresses the Council fathers' concern that bishops and presbyters practise voluntary poverty and use temporal goods for their stated purpose. The Council fathers' obviously express the ideal case. In point of fact, to practice voluntary poverty one must have the disposable income to do so. Furthermore, in many places in Ontario, the traditional pre-Vatican II "Catholic" emphasis on "getting into heaven" and "other worldly" endeavours, as well as the promotion of passive acceptance of suffering due to any adverse circumstances, did little to engage either a lay person or a presbyter in actively pursuing his or her own natural or legal rights either in secular or ecclesiastical society. Moreover, among the RC's in Ontario, poverty tended to be understood more in the context of a religious vow of poverty rather than the biblical fact of poverty as a privation and something not to be emulated. For many in

its impact. Such attitudes tended to be common in a pre-Vatican II clergy.⁴¹

Consequently, some presbyters failed to develop a sense of personal financial responsibility, even to the extent of making no financial provision for their own futures. Furthermore, some presbyters may have lacked experience and possessed little knowledge of financial planning, or failed to consider the development of financial equity for “a rainy day” or for retirement. Too much concern with “spiritual matters” may have led some to neglect those temporal matters necessary to viable support in retirement.

Before Vatican II, a presbyter did not expect to be without full-time ministry, support and a place of residence as long as he lived, unless age or illness caused incapacity. Consequently, he had no pressing need to look long term or save for retirement because retirement did not exist per se. Even after the 1983 *Code*, and while in active ministry, many presbyters fail to recognize the extent of the benefits provided by a parish residence. The saying, “you don’t miss it ‘til it’s gone”, strikes home only after many of the “hidden” benefits of rectory living are

Ontario, the biblical notion of poverty was not too far removed from reality until government sponsored welfare plans of the twentieth century, the rise of labour unions, and the wealth and security brought about by the expanding economy of the 1960’s.

⁴¹ See Appendix C, NATIONAL CONFERENCE OF CATHOLIC BISHOPS, The Bishops’ Committee on Priestly Life and Ministry, *Fullness in Christ* © [=Fullness in Christ Fullness in Christ], Washington, DC, United States Catholic Conference, 1979. The questionnaire is used and adapted with permission. With my adaptations, the surveys are called: “Priests’ Survey on Retirement”, and “Diocesan Survey on Retirement”. My adaptation of the Priests’ Survey on Retirement, Q. 131 reads: “Usually, pastors receive additional compensation for administrative duties attached to the office of pastor. Would you be in favour of additional compensation for administrative duties attached to other ecclesiastical offices or appointments?” Twenty-five respondents answered in the negative, twelve responded, yes. It appears that even some of the clergy themselves see no reason to be compensated according to the criteria of *PO* and the law.

no longer available. This element of “retirement shock” can happen to persons in the early stages of retirement. The cost and lack of such “hidden benefits” may have a detrimental effect on the financial and emotional security of a retiree, as will be shown in Chapter Three.

Who is best suited to determine realistic economic standards of remuneration in active ministry and benefits in retirement for a presbyter? What constitutes just and honourable remuneration, especially in “times of plenty”? Most bishops and presbyters lack the existential experience of living according to the economic standards of a time and place. This places a bishop and most presbyters in a vulnerable and even, untenable position.

The source of the untenable position exists both in a conflict of interest between the bishop and a presbyter in the matter of support, and also in the general lack of financial experience in some presbyters and bishops due to reasons already cited. Concerning the former, the task of the bishop as the chief administrator of the diocese is to manage the financial resources of the diocese in a prudent manner and according to secular and canon law (cc. 391, 393, 1274, 1276, and 1278). However, he might well try to protect the assets of the diocese and parishes to such an extent that the support due to the presbyter does not conform either to the criteria established by *PO* or to the economic standards of time and place.

The current practice in Ontario dioceses is to establish scales of remuneration for active clergy and clergy in retirement outside of the context of a provincial council or diocesan synod as was the ordinary canonical practice before Vatican II

and the 1983 *Code*. In the pre-Vatican II canonical tradition, the bishop summoned those persons defined in law (1917 CIC, c. 358) to a diocesan synod. Such persons “[should treat] only questions which touch the particular needs of the clergy and the people of that diocese”.⁴²

One such issue was the determination of what constituted support for a presbyter in the diocese. According to the 1917 *Code*⁴³ the determination was made within the context of a canonical title of benefice. Where the canonical title of benefice did not exist in English Canada, the plenary councils of Quebec and the provincial councils of Toronto and Kingston established some financial criteria relative to the support of the presbyter.⁴⁴

“To promote the common pastoral action of different neighboring dioceses according to the circumstances of persons and places [...]”⁴⁵ is the general purpose of the ecclesiastical provinces. A provincial council is designed discuss issues of mutual concern. A diocesan synod seeks to

increase faith, the organization of common pastoral action, and the regulation of morals and of the common ecclesiastical discipline which is to be observed, promoted, and protected.⁴⁶

There is nothing to suggest that the issue of presbyteral support could not constitute part of the agenda of either a provincial or a particular council.

⁴² 1917 CIC, c. 356. Translation in WOYWOD, p. 161.

⁴³ In order to erect a benefice, a bishop had to ensure that the minimum resources determined by a synod were available in order to provide support to the beneficiary, according to 1917 CIC, cc. 1410, 1415. Chapter Three considers the financial considerations of the Canadian councils.

⁴⁴ These councils are reviewed in the matter of presbyteral support in the next chapter.

⁴⁵ 1983 CIC, c. 431, § 1.

⁴⁶ 1983, CIC, c. 445.

The composition of the membership of such councils is different between the two *Codes*. The 1983 *Code*, c. 463, § 1, 5° includes laypersons as participants to be summoned to a diocesan synod whereas, the 1917 *Code*, c. 356 did not. The churches of Ontario do not currently appear to be continuing this canonical tradition of calling a synod for the purposes stated. Consequently, the bishop and his advisors normally determine what constitutes decent support for a presbyter incardinated in the diocese or any presbyter working in the diocese. The level of support is not always subject to review by laypersons, except perhaps by those who are in the employ of the diocese.

The active participation of laypersons in the development of policy and practice in consideration of the decent support due a presbyter is very appropriate and desirable given the tradition, law and current practice. There are indications of an expanding role for laypersons concerning the support and living arrangements of a presbyter that will become more obvious in the next chapter.

2.1.4 *Christus Dominus, Ecclesiae sanctae I*, the *Directory on the Pastoral Office of Bishops*, and Canon 384

These documents address the issue of the bishop's obligation toward the presbyters of the diocese: *Christus Dominus, Ecclesiae Sanctae I*, the *Directory on the Pastoral Ministry of Bishops* and the 1983 *Code*.

The Bishop's Obligation to a Presbyter

<i>Christus Dominus</i> ⁴⁷	<i>Ecclesiae sanctae I</i> and the <i>Directory on the Pastoral Ministry of Bishops</i>	1983 <i>Code</i>
A bishop should be solicitous for the welfare—spiritual, intellectual, and material—of his priests, [...]. A bishop should be compassionate and helpful to those priests who are in any kind of danger or who have failed in some respect. They must look after the wellbeing of their priests—spiritual, intellectual and material—so that they may be able to live a life of holiness and piety, and to fulfil their ministry faithfully and with spiritual profit. [...] With sympathetic understanding and practical help they should take care of priests who are in danger of any kind or who have failed in some way.	<i>Ecclesiae sanctae I</i>, no 8⁴⁸ says: Patriarchal synods and episcopal conferences will see that, whether in each individual diocese or for several dioceses in common or for the whole territory, norms shall be laid down for the provision of a proper living for all clerics who are, or have been engaged in ministering to the People of God. The remuneration of the clergy shall be first of all on the same scale for all in identical circumstances, taking account of the nature of the office and the conditions of time and place. The living should be sufficient to permit clerics a decent sustenance and to enable them to assist the poor. These episcopal conferences will also see that [...] adequate provision will be made for insurance, for health assistance, as it is called, and for the maintenance of the clergy in sickness and old age. The Directory, § 117⁴⁹, says: Further, the bishop reminds the whole diocesan community [...] of everyone's duty in this need⁵⁰ [...].	He⁵¹ is to have a special concern for the priests, to whom he is to listen as his helpers and counsellors. He is to defend their rights and to ensure that they fulfil the obligations proper to their state. He is to see that (<i>egeat</i>) they have the means and the institutions needed for the development of their spiritual and intellectual life. He is to ensure that they are provided with adequate means of livelihood and social welfare, in accordance with the law.⁵² Since clerics dedicate themselves to the ecclesiastical ministry, they deserve the remuneration that befits their condition, taking into account both the nature of their office and the conditions of time and place. It is to be such that it provides for the necessities of their life and for the just remuneration of those whose services they need.⁵³ Since clerics dedicate themselves to ecclesiastical ministry, they deserve remuneration which is consistent with their condition.

⁴⁷ *CD*, no. 16. English translation in N.P. TANNER (ed.), *Decrees of the Ecumenical Councils*, G. ALBERIGO, J.A. DOSSETTI, P.-P. JOANNAU, C. LEONARDI, and P. PRODI, in consultation with H. JEDIN, vol. 2, Sheed and Ward, Georgetown University Press, 1990, p. 927.

⁴⁸ *ES*, I, no. 8, in FLANNERY, p. 596.

⁴⁹ SC FOR BISHOPS, *Directory on the Pastoral Ministry of Bishops*, p. 59.

⁵⁰ The "need" referred to is the need to provide support.

⁵¹ "He" refers to the bishop.

⁵² 1983 CIC, c. 384. English translation in *Code of Canon Law Annotated*, p. 305.

<i>Christus Dominus</i> ⁴⁷	<i>Ecclesiae sanctae I</i> and the <i>Directory on the Pastoral Ministry of Bishops</i>	1983 <i>Code</i>
	[...] the bishop takes fitting measures to foster the spirit of solidarity among his priests such as mutual benefit societies, a fund from which they could borrow at a very low interest, and especially by establishing some common fund which can take care of the obligations and needs of the clergy and the people who are serving the Church.	taking into account the nature of their function and the conditions of place 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. Suitable provision is likewise to be made for such social welfare as they may need in infirmity, sickness or old age. ⁵⁴ Provision must also be made so that they possess that social assistance which provides for their needs suitably if they suffer from illness, incapacity, or old age.

The first point of interest is the language of *CD*, *ES I*, the *Directory*, and the *Code*. *CD* uses the verb “should be solicitous” (*adimplere valeant*) that seems to speak more to an exhortation than a command. In *ES I*, “will see to” (*Curent*) seems to speak in the language of command. *ES, I* commands an episcopal conference to see to the support of the clergy.

The law does not bind individual bishops to the decrees of an episcopal conference (c. 455, § 4). The *Directory* indicates the bishop’s obligation is to remind the Christian community of their duty to provide support to the clergy. There is no indication that the bishop, as the representative of the diocese, bears

⁵³ 1983 CIC, c. 281, § 1. English translation in *Code of Canon Law Annotated*, p. 234.

⁵⁴ 1983 CIC(A), c. 281, § 2. English translation in *Code of Canon Law Annotated*, p. 234.

some direct obligation to conform to both canon and secular laws concerning support. The *Code* simply indicates that a presbyter deserves support without indicating who is directly responsible for it. The *Code* lays no direct obligation on a bishop except “to see to the provision of support”. Much of the language around the issue of support does not communicate the admonitions in the legal and prescriptive language of a command.

The language shifts and turns. *CD* seems to exhort, *ES I*, speaks to an episcopal conference’s obligation (*will see that*) to see to the support the presbyter, while the *Directory* “reminds”, all in a spirit quite different from the canon. The canon conveys something quite different. Though the canon speaks strictly in terms of suitable provisions and social welfare, the documents help interpret the respective canons concerning support.

The notion of “social welfare” is open to considerable interpretation ranging from bare sustenance to a provision of honourable support in conformity with the dignity of the person and the value of human labour. In the case of honourable support, social assistance consists of intellectual, emotional and spiritual well being, as well as the physical support implied in food, shelter and clothing.⁵⁵

Aside from the bishop’s theological role, he is the chief executive administrator and representative of the diocese. The bishop remains subject to the precept of c.

⁵⁵ See A. H. MASLOW, “Holistic-Dynamic Theory,” in J. FEIST and G.J. FEIST, *Theories of Personality*, Fourth Edition, New York, NY, McGraw Hill, 1998, pp. 488-519. Maslow provides one theory among others of what elements constitute “well being” for an individual.

1286, even if he has engaged the services of a diocesan administrator, lay or cleric.

Administrators of goods:

1° in the employment of workers are to observe meticulously also the civil⁵⁶ laws concerning labor and social policy according to⁵⁷ the principles handed on by the Church;

2° are to pay a just and decent wage to employees so that they are able to provide fittingly for their own needs and those of their dependents.⁵⁸

The canon affects any persons with administrative and financial responsibility in the diocese whether the person is the administrator or the one receiving the benefit of that administration. However, confusion remains concerning the exact “employment status” of a presbyter: is he an employee⁵⁹? If not, what is his status

⁵⁶ The terminology, “civil” law, can cause confusion in Canada. The Province of Quebec uses the French Civil Code of 1805 as a source for its non-criminal law. In this dissertation, the terminology, secular law, refers to criminal and civil law enacted and/or promulgated by the Federal or Provincial governments of Canada.

⁵⁷ See KENNEDY, *New Commentary*, 2000, p. 1488. Kennedy comments on the unfortunate order of wording in the canon that places “civil laws concerning labor and social policy” before mentioning Church “principles”, and the English translation of the word “*iuxta*.” Kennedy maintains that the order of words should be reversed and that the primary translation of the Latin should be understood as “alongside,” rather than its secondary meaning of “according to.” In fact, secular law often does not meet the requirements of social justice; secular law determines a *minimum* hourly wage in Ontario. As witnesses to the gospel, the churches and their administrators should surpass such minimal requirements for remuneration, benefits and pensions when resources permit. Such a practice would permit a presbyter and a layperson to practice voluntary poverty.

⁵⁸ 1983 CIC, c. 1286. The use of the term “dependents” has a broader connotation within the canonical tradition. The term includes not only a spouse and children, but also a presbyter’s parents or his siblings who are in need of assistance.

⁵⁹ See K.R. O’BRIEN, *The Nature of Support of the Diocesan Priests in the United States of America*, CLS, no. 286, Washington, DC. The Catholic University of America, 1949. The author discusses three secular court cases to the nature of a presbyter’s employment contractual status vis-à-vis a diocese. To the issue that an employment contract existed between the presbyter as an employee and the diocese as an employer, the Courts responded in the negative in all three cases in the United States. The Courts rendered the decisions in the late 1890’s when the major social institutions as government, business and the churches possessed considerable political and economic power. A different paradigm ruled society. Employees of any kind had little rights.

in view of an administrator's obligations to comply not only with secular law, but also with the Church's principles of social justice? Whether a presbyter is an Episcopal Vicar for Temporal affairs or a pastor, he is obliged to implement the social justice principles of the Church in favour of the lay employees of an ecclesiastical institution. Should a presbyter not benefit from those same principles whether he is canonically defined as a "worker" or not?

This canon is a clear demonstration of the Church's conviction concerning its own principles of social justice. Social justice is not theory but makes a practical demand on the financial resources of a diocese and its representatives. The social teachings of the Church include those human rights common to all persons. Furthermore, the law extended these human rights to all the Christian faithful engaged in ministry or labour on behalf of a diocesan church or any of its parts. The *Code* does not specifically include a presbyter when it declares that the laity possess these rights, however, based on *GS*, *Ad gentes*, and the rights attributed to all the Christian faithful by the *Code*, it is difficult to justify a church's self-exemption from the social justice teachings and law of the Church. Should a church exclude a particular group of the Christian faithful simply because they are presbyters? If not directly excluded by the law or within the strict parameters of

According to a case cited by O'Brien, "[... it] would be doing a wrong to the Catholic Church and degrade its priesthood from the high position were we to hold that the relation between the bishop and his priest was that of hirer and hired, or employer and employee" (*Twigg v. Sheehan*, 101 Pa. 363 (1882)), p. 83.

c. 17, one can presume the favour of the law. As a member of the Christian faithful, the right to a decent wage extends to the presbyter.

Canon 1286 makes a direct connection to the secular law concerning contract for hire that gives some depth to the notion of wage. Based on the notion of natural and strict justice, the canon establishes a juridical right neither a bishop nor a pastor can abrogate, extinguish nor suppress. Furthermore, a member of the Christian faithful cannot surrender the canonical right to obtain support due in justice. The “pay” is earned by human labour and by the dignity associated with efforts of a person to contribute to his or her own welfare and the welfare of the community. Within its financial capacity, the diocese or another diocesan agency owes the salary as a matter of natural and commutative justice.

Given contractual dimensions contained in c. 1286, 1°, the canon establishes the obligation of an administrator. The meaning and interpretation concerning “pay” is clear: a just and honourable wage or salary is due according to the ordinary law of contract of hire⁶⁰, and according to the economic standards of time and place. Former practices relative to token and gratuitous “stipends” or “honoraria” do not constitute remuneration when interpreting the criteria for a just and honourable wage under the 1983 *Code*. Ecclesiastical administrators are bound to exercise this right in favour of a presbyter.

⁶⁰ The contract may be implicit. Nevertheless, it remains a contract. In addition, secular law in Ontario determines a minimum wage for full-time and part-time labour. Minimalism is not the intent of the documents or the canons.

The solicitude expressed for the presbyter who is ill, incapable, aged, who is in danger, or who has failed in some way, clearly conveys the spirit of the sacramental bonds created and constituted by baptism, confirmation and holy orders. The Council fathers further affirmed the sacramental bond created by orders but added a juridical implication to the meaning of “mission”:

Thus the act of consecration creates a sacramental link between bishop and priest, but does not create membership of the presbytery. It is only canonical mission by which the bishop grants the faculty to exercise a ministry that incorporates a priest into the community of the presbytery (Cardinal Döpfner, Munich), for “the welding of priests into a community is required by the unity of the ministry itself” (Patriarch Mèouchi of Antioch).⁶¹

The Council fathers made no mention of incardination in this context; however, the juridical bond of incardination reflects the sacramental “bond”. Such bonds further strengthen the relationship linking a diocese/bishop, the presbyterate and a presbyter. In fact, with the omission of titles of ordination in the 1983 *Code*, the juridical bond of incardination now serves the purpose of bonding a minister to ministry in a particular church. Incardination creates a contractual relationship between the diocese and a presbyter because it makes both parties subject to rights and obligations determined by law—one party is to offer ministry, the other is to provide support in the form of remuneration and other forms of support.

The *Directory* follows and includes *ES I*, no 8. Furthermore, the *Directory* provides additional clarification of the Church’s intent with its implications of compassion, mercy, and forgiveness: “[...] the bishop deals generously with a

⁶¹ P.-J. CORDES, “*PO*, Art. 8,” in *Commentary on the Documents of Vatican II*, vol. 4, p. 248.

presbyter who has left the sacred ministry" (§ 112). The sacramental "bonds" continue to call forth a response from the Christian faithful, and especially a bishop's obligation to see to the provision of support to a presbyter under a variety of circumstances, even distressing ones.

The issues of a presbyter seeking voluntary laicisation, along with the treatment of presbyters convicted of offences at secular criminal law and canon law provides a great challenge to the churches. If a church seeks to exist as a divine "sign" of God's love and compassion, these Christian qualities offer witness to the God of forgiveness, generosity and compassion to the world. In love and compassion, the noted documents and the canons seek to maintain the health of the community and to offer Christian witness by the community's support to the presbyter in need, even in these adverse circumstances and in the face of the unforgiving⁶² and even vengeful.

The documents and canons manifest the sensitivity of the Christian faithful to the evolving social justice principles of the Church. The formulation of such principles in the law of the Church and their implementation by ecclesiastical leadership serves to enhance both the health of the Christian community and the Church's ability to offer Christian witness to the world.

⁶² Victims of assault and their families are justifiably angry and hurt. However, even if the assault cannot be forgotten, it must be forgiven according to the most fundamental of Christian teachings and tradition. Compassion must replace hatred, since hatred only leads to despair. Bishops have a primary role in their witness to forgiveness and compassion at the same time they express sorrow and hope for both victim and perpetrator.

2.1.5 The Application of Commutative and Distributive Justice

The *Directory* gives application to the principles found in *CD*, no. 16, *PO*, nos. 20-21 and *ES I*, no. 8. Furthermore, the *Directory* refers to two species of justice that have some import concerning support. “The bishop is also concerned that presbyters receive just remuneration and that distributive justice is put into practise” (§ 117, a). The two notions of justice need only brief explanation here. The documents, the *Directory* and the *Code* incorporated both the notion of commutative and distributive justice. Strict justice demonstrates the character of commutative justice because it “[...] concerns obligations as between persons (e.g., exchange of goods) and requires proportionate equality in dealings of person to person”.⁶³ An individual exercises commutative justice ordinarily in a variety of contractual relationships when social equality is not a criterion in the negotiation; e.g., hire, sale.

One might suggest that the *Directory* recognizes at least an implicit contract for hire between the diocese and a presbyter. The *Directory* makes reference to commutative justice and the obligation between persons in an exchange of service: the presbyter offers the labour of his ministry; the bishop accepts the offer of labour and is obliged to see to the provision of just remuneration. Unlike the terms of title and tenure under the 1917 *Code*, the documents and 1983 *Code* allude to a different type of relationship. The quality of the new relationship

⁶³ *Black's Law Dictionary*, p. 864,

demonstrates an act of commutative justice and is in effect during the presbyter's active working life.

On the other hand, distributive justice “[...] concerns obligations of the community to the individual, and requires fair disbursement of common advantages and sharing of common burdens”⁶⁴. The bishop represents the diocese, a defined community of the Christian faithful with an obligation to support the presbyter. Consequently, the bishop exercises distributive justice when he makes provision for a presbyter in sickness, old age, or who is otherwise impaired.

The reference to “social welfare” in c. 281, § 2 refers to the bishop's canonical obligation to make provision for a minister who is without means. Particularly in the absence of government assistance programs that provide healthcare, disability insurance or pension plans, the bishop is to see to this support for a presbyter. It is a right to support founded in distributive justice.

Where such “social welfare” plans *do* exist and a presbyter has contributed to them or has had contributions made on his behalf, the source of the right to continuing support for a presbyter in adverse circumstances is twofold. The right exists in both commutative justice and distributive justice. Commutative justice is the source of the greater right insofar as contributions and benefits are a

⁶⁴ Ibid.

designated component of the employment contract. In other words, the presbyter has contributed to his own future financial requirements *via* a pension plan or trust. In addition, if a diocesan-sponsored plan is financially inadequate to provide decent support according to the economic standards of time and place, distributive justice asserts the presbyter's right to additional support from diocesan funds, if available.

The documents and *Code* are very clear in that they declare a presbyter deserves support based on his incardination into the diocese and his membership in the diocesan presbyterate. The right is only manifest if one accepts that a presbyter deserves his wage within the parameters of commutative justice, which is the context of c. 281, § 1. The *Code* is vague on how the presbyter receives this support.

2.1.6 The Role of the Presbyter in Support

Canon 222, §1, makes *all* the Christian faithful responsible for the provision of support to the presbyter. As a member of the Christian faithful and the presbyterate of a diocese, a presbyter shares this responsibility to see to his own support as well as the support of his brothers. *PO*, no. 21, speaks to the issue of the establishment of a number of types of common funds⁶⁵ into which a presbyter

⁶⁵ 1983 CIC, c. 1274 gives some definition to various types of such funds. See R.M. KIFFMAN, "Defining and Structuring the Diocesan Collection," in *The Implementation of Universal Law in Canada in the Matter of Decent Support for Active Diocesan Priests and Diocesan Priests in Retirement*, Ottawa, ON, Saint Paul University, 1996, pp. 72-84.

might contribute and receive funding. Within a general context of social security for a presbyter, *PO*, no. 21, says:

It is also desirable that as far as possible there should be set up in each diocese or region a common fund to enable bishops to satisfy obligations to people employed in the service of the Church and to meet the various needs of the diocese. From this fund too, richer dioceses would be able to help poorer ones, so that the abundance of the one may supply the want of the other (Cf. 2 Cor 8:14). [...] This common fund also should be made up mainly of moneys from the offerings of the faithful [...].⁶⁶

The notion of a diocesan “common fund” is not very clear. The notion and erection of a common fund is even more complex in the secular law tradition of Canada. However, given that such a common fund is described in *PO*, no. 21 within the context of social security for a presbyter, three general categories of a common fund may be applicable: it can refer to a fund established in the context of an operating budget of a diocese or parish, part of which is used to remunerate the clergy; it can refer to a fund designed to provide for clergy incapacitated or retired; and it can also refer to some type of a financial institute (*institutum*) properly erected for a specific purpose by competent authority according to canon and secular law (c. 1274, § 5). An *institutum* may be a pious foundation (c. 1303-1307), a secular trust fund, or both, established to make financial provision (remuneration, benefits or annuity) for an incardinated cleric of the diocese who is active, incapacitated or “retired.”

⁶⁶ *PO*, no.21, in FLANNERY, p. 900.

PO, no. 21 is even more specific. It exhorts the presbyter to participate in fraternal associations established by competent authority for the purposes of providing support to the presbyterate. Canon 278, § 2 supports the principle of mutual support as contained in *PO*, no. 21.

Fraternal Support

<i>Presbyterorum ordinis</i> , no. 21	1983 <i>Code</i> , c. 278
Priests should assist this organization when it has been set up, moved by a spirit of solidarity with their brother priests, sharing their hardships (Phil. 4:14), and at the same time realising that in this way they can, without anxiety for their future, practice poverty with a readier appreciation of the Gospel and devote themselves completely to the salvation of souls. ⁶⁷	§2 Secular priests are to hold in high esteem especially those associations which, having statutes recognized by competent authority, foster their holiness in the exercise of the ministry through a suitable and properly approved rule of life and through fraternal assistance and which promote the unity of clerics among themselves and with their own bishop.

Canon 278, §2 is rather inclusive. *Presbyterorum ordinis*, no. 21 reflects *Christus*

Dominus, no. 28. Building upon these documents, cc. 275, § 1 and 278 § 2, speaks to the bonds of brotherhood shared among presbyters incardinated in the same diocese, both sacramental and juridical. The canon encourages the fraternal dimension of the bond by advocating the formation of associations for mutual support and benefit.⁶⁸

A practical application of a presbyter's offer of support through a fraternal organization occurs where a common fund⁶⁹ exists to provide support to a presbyter under a variety of circumstances. In a case where a diocese or a parish

⁶⁷ *PO*, no. 21, in FLANNERY, p. 900

⁶⁸ See CORDES, Art. 8, in *Commentary on the Documents of Vatican II*, vol. 4, pp. 253-255.

⁶⁹ See 1983 CIC, c. 1274.

has extremely limited funds, such a common fund could provide support for a presbyter who is without a source of support or when a presbyter's support is inadequate during incapacity or in "retirement".

The nature of the various bonds would morally oblige a presbyter to participate in such a fund under normal circumstances. Personal contributions to the common fund might find their source both in mandatory and/or free-will offerings of a presbyter during the period of his active ministry, in retirement or as a voluntary bequest as part of his Last Will and Testament.

Once again, the notions of the sacramental and juridical bonds take on great importance when one considers that most presbyters in North America today grew up in nuclear families and are subject to the disciplinary practise of mandatory celibacy in the Latin churches. Support, over and above that provided by a diocese, cannot always come to the presbyter from a family source, as the data in the next chapter will confirm. In addition, it becomes questionable whether or not it is possible for a presbyter to experience a future "without anxiety," without adequate financial security, especially as a presbyter grows older and costs of living continue to increase.

2.2 Documentation and Law: Sources and Loss of Support

Christus Dominus, *Ecclesiae sanctae I*, and *Presbyterorum ordinis*, and the *Directory* address the issue of ministry and the obligation of the Christian faithful to support the presbyter. The 1983 *Code* incorporates the material addressed by

these documents. The presbyter obtains support from various sources during active and inactive ministry. Canons 538, § 3 and 281 make specific references to the support of the presbyter. The law grants certain rights to a presbyter and establishes some criteria in the matter of support. However, who is responsible for the actual provision of support is less clear if a presbyter does not hold an ecclesiastical office or ministry.

Given the universal nature of the law of the Church, the canons state principles and conditions surrounding the notion of ministry and support but they are not specific in detail. Since the 1983 *Code* does not define but only describes ministry throughout the canons, a primary concern here is with the notion of an ecclesiastical office. An ecclesiastical office is the presbyter's ordinary source of support during his active working years and, perhaps, during temporary incapacity. In the absence of an office, the canonical tradition and law prior to Vatican II and the 1983 *Code* placed the obligation upon the diocese to support an incardinated presbyter ordained under the title, "service to the diocese. Today, the source of the diocesan obligation to support a presbyter rests in the juridical bond of incardination.

2.2.1 A Primary Source of Support – Appointment to Office

Ecclesiastical Office According to the Codes, 1917 & 1983

1917 <i>Code</i> , c. 145 ⁷⁰	1983 <i>Code</i> , c. 145
§1. In the broad sense of the term, an ecclesiastical office is any employment which is legitimately practiced for a spiritual purpose. In the strict sense, an ecclesiastical office means a stable position created either by the divine or the ecclesiastical law, conferred according to the rules of the sacred canons, and entailing some participation at least in ecclesiastical power, whether of orders or jurisdiction.	§1. An ecclesiastical office is any post which by divine or ecclesiastical disposition is established in a stable manner to further a spiritual purpose. ⁷¹ §1. An ecclesiastical office is any function constituted in a stable manner by divine or ecclesiastical law to be exercised for a spiritual purpose (CLSA (1998)).
§2 In law, the term ecclesiastical office is to be used in its strict sense, unless the context clearly indicates the contrary.	§2. The duties and rights proper to each ecclesiastical office are defined either by the law whereby the office is established, or by a decree of the competent authority whereby it is at one and at the same time established and conferred. ⁷²

According to the 1917 *Code*, an ecclesiastical office required a participation in the ecclesiastical “power” of orders in order to acquire the power of ecclesiastical jurisdiction. The 1983 *Code*, c. 145, broadens the notion of an ecclesiastical office. A cleric or a layperson may occupy an ecclesiastical office. Under the auspices of the 1917 *Code*, an ecclesiastical office provided the juridical right to obtain support from that office. The office was a source of support for a presbyter. In the 1983 *Code*, some problems exist because it is not always clear that the possession of an ecclesiastical office determines a right to receive remuneration. For example, is a cleric or a layperson appointed to the ecclesiastical office of acolyte, reader or catechist automatically granted a right to

⁷⁰ 1917 CIC, c. 145. Translation in WOYWOD, p. 79.

⁷¹ 1983 CIC, c. 145. Translation in the *Code of Canon Law Annotated*.

⁷² Ibid.

remuneration? Is a deacon appointed to part-time ministry in a parish entitled to a right to remuneration in commutative justice?

Canon 145, § 2 grants canonical rights to one possessing an ecclesiastical office, but one must appeal to other canons and diocesan directives for such answers.

Might one infer that the canonical tradition of support continues in the transfer of the right to support and its association to an ecclesiastical office, ministry or function from the 1917 *Code* to the 1983 *Code*?

The bishop's free conferral of an appointment to an office provides juridical status to the appointee. Upon taking canonical possession, the law transfers the obligation to provide the support to the office.⁷³ In the ordinary circumstances of a parochial appointment, the source of support moves from the diocese to the place of ministry. Canons 533, §1 and 550, § 1 grant a pastor or parochial vicar a right to occupy a parish house. Furthermore, the presbyter acquires actual support and the right to the residence associated with the office. If the appointment does not include a residence, the support necessary to acquire a residence remains a part of the obligation of the diocese under the juridical bond of incardination.

Interpreting this canon in the strict sense, the 1917 *Code* mandated that only a presbyter and a bishop could possess an ecclesiastical office because possession of an ecclesiastical office involved the power of governance and the full care of

⁷³ An appointment to a diocesan office makes the diocese responsible for the provision of support according to the demand of commutative justice.

souls. As noted in the last chapter, the title of ordination⁷⁴, including “service to the diocese”, provided the right to support even if it did not always provide a designated place to minister.

The 1983 *Code* omitted the canonical titles and suppressed benefices that defined the place of ministry and provided a source of support for a presbyter. Today, by ordination and its juridical effect, incardination into a particular church, the cleric receives the right to minister in the diocese, in general. Consequently, for a presbyter, the *de facto* source of the right to support is now an effect of the juridical bond of incardination. In practice, the *de facto* source of material support is an ecclesiastical ministry. The 1983 *Code* changed the nature of an ecclesiastical office, but the law did not change the presbyter’s right to stability while in office (c. 193), the right to continuing support during a transfer (c. 191, §2), or even the right to support during a process for removal from office under some circumstances (c. 195).

Furthermore, under the current understanding of an ecclesiastical office, the basis of remuneration contingent upon possession of an office is also broadened to include both clergy and laypersons, those not possessing full care of souls⁷⁵; for example, an episcopal vicar for temporal affairs, a vicar *forane* or a layperson in charge of a parish (c. 517, § 2). The source of support for persons possessing non-

⁷⁴ 1917 CIC, c. 454.

⁷⁵ 1983 CIC, c. 150.

parochial ministerial offices originates in the diocese. A supra-parochial office includes such offices as a vicar general (c. 475), an episcopal vicar (c. 476), or a vicar *forane* (c. 553-555).

Other persons may also receive remuneration from a diocesan source because they are engaged in providing ministry by virtue of a non-traditional canonical office but an ecclesiastical office nevertheless; for example, a Diocesan Director [=DD] of Religious Education, DD Liturgy, DD Social Action, etc. The Council fathers envisaged that

[...] the priests involved [in serving the diocese as a vicar general, vicar *forane*, etc.] would have to be relieved of their parochial duties, especially as the priest is directly "first a member of the presbytery of a diocese, and his primary office is to accept responsibility for the Church at large rather than to exercise a mission in this parish or to that group of people or even in some supra-parochial ministry"⁷⁶.

In addition, those occupying other employment tasks, such as a social worker, a professional counsellor, a teacher of religion, and others, may also receive remuneration from the diocese whether or not the bishop creates such functions as ministries.⁷⁷

⁷⁶ CORDES, *PO*, Art. 8, in *Commentary on the Documents of Vatican II*, vol. 4, p. 250. The Council fathers did not envisage the "double-tasking" of these ecclesiastical ministries of diocesan co-ordination or supervision. It is questionable if double-tasking can occur even with ministries to special groups (e.g., immigrants, prisons, foreign labourers) in the same person who is also a pastor.

⁷⁷ 1983 CIC, c. 157.

The 1983 *Code*, c. 145, calls for the reinterpretation of the notion of office in the strict sense. Ordinarily, any constituted social institution⁷⁸ structures itself in the manner appropriate to its purpose and goals. Essential components of organizational structure and management are the assignment of roles and the designated functions attached to those roles. The institution associates rights and obligations with levels of responsibility to which are attached different levels of compensation. In general, the social organization of the churches complied with this model before the 1983 *Code*.

Now a difference occurs. The 1983 *Code*, c. 145, seems to remove any connection between a diocesan “office” and the material support associated with it. Under the auspices of the 1917 *Code*, title, office and support existed in harmony as already described in Chapter One.⁷⁹ After the 1983 *Code* and even before, in the North American context, the proposed notion of office is not, and was not connected to a “title” as a possessory “thing” (*res*) at law, also discussed in Chapter One. Consequently, the support does not originate in the *fructus* generated by the proprietary and possessory title and managed by the beneficiary.

⁷⁸ In establishing a public institution, a bishop must comply with the formalities of canon law, and possibly, secular law, according to the norm established by c. 1274, § 5.

⁷⁹ According to WOYWOD, 1917 CIC, cc. 1431-1433 command a bishop to appoint other clergy to a benefice “[...] to assist a pastor who cannot take proper care of his parish either because of sickness or other disabilities, or because of a large or scattered Catholic population” (vol. 2, p. 193). Such an appointee received “title” to a portion of the *fructus* of the pastor’s benefice when assigned by the bishop to assist a pastor who was incapacitated or otherwise unable to perform ministry or administration. The law determined the upper limit of the *fructus* granted as title; the bishop determined the content of the title within the parameters determined by the law according to 1917 CIC, c. 1429.

Rather, the bond of incardination seems to be the source of the right to support for an incardinated presbyter of a diocese who receives support in the form of remuneration and residence according to cc. 281 and 538, § 3. The ecclesiastical office is the actual provider of the support in the form of remuneration and residence rather than a title for ordination. This revision of the law re-defines the notion of office and tenure, as it existed in the 1917 *Code*.

Though the Canadian RC church in English Canada did not introduce the benefice system, one can appreciate the underlying motives that brought about the suppression of the benefice system by *PO*. Economic inequality among the clergy, inefficient use of ecclesiastical resources, lack of episcopal control over the finances of founded benefices, administrative duties detracting from time devoted to ministry were some of the reasons why *CD*, no. 8, *PO*, no. 20, advocated, and 1983 *Code*, c. 1272, legislated, the suppression of the benefice system.⁸⁰

Undoubtedly, the Council fathers sought the good of the churches in the other changes they brought about as well. The Council sought two other canonical administrative acts for the “good of the churches”: the greater mobility of the clergy (*CD*, no. 31; *ES I*, nos. 20, 31; 1983 *Code*, c. 522), and the administrative

⁸⁰ See V. DE PAOLIS, “The Maintenance of the Clergy: From the Council to the Code” in *Vatican II: Assessment & Perspectives: Twenty-Five Years After (1962-1987)*, Vol. 1, R. LATOURELLE (ed.), New York, NY, Paulist Press, 1988, p. 670. See also R. T. KENNEDY, in *New Commentary*, 2000, p. 1473.

removal of an incumbent from the office of pastor by a diocesan bishop (*CD*, no. 31, *ESI*, no. 20; 1983 *Code*, c. 192).

Even with such changes, the legislator shows concern for the continued support of those transferred from one office to another or of a person removed from office. A bishop may transfer a presbyter from one office to another according to law; but also, the law provides right of recourse to a transferred presbyter (c. 190). With transfer and the act of taking canonical possession, or until resolution of the recourse, a right to support remains according to c. 191, § 2:

The person transferred receives the remuneration assigned to the prior office until the person has taken canonical possession of the other office⁸¹.

An administrative act of removal is a serious matter and the law places limitations upon competent authority to exercise this right. Even with the exercise of this right by decree of the competent authority or the law itself,⁸² c. 192 carries this proviso, “[...] without prejudice to rights possibly acquired by contract, [...]”⁸³.

J.H. Provost says:

If a contract is involved, its provisions must be respected in addition to the causes and procedures specified in canon 193. The terms of the contract are to be interpreted in keeping with the applicable civil law on contracts (see c. 1290)⁸⁴.

⁸¹ 1983 CIC, c. 191, § 2.

⁸² 1983 CIC, c. 194.

⁸³ 1983 CIC, c. 192.

⁸⁴ J. H. PROVOST, in CLSA, *New Commentary*, 2000, p. 225.

In the tradition of contracts and in North America at least, an implicit contract for hire seems to exist during the period of active ministry with some implications for support in retirement.⁸⁵ This being said, in the administrative act of appointment, transfer or removal from an office, the law establishes certain rights to support and residence as part of the contractual agreement for an incardinated presbyter. Other considerations might apply in the case of a non-incardinated presbyter who offers ministry in a diocese. Canon 538 addresses the issue of resignation from office by a presbyter in his senior years and his continuing support.

2.2.2 Document Sources for Resignation from Office

Two sources from Vatican II provide the canonical basis in the matter of resignation from office and the requirement of the bishop to see to the continuing support of a presbyter who lawfully resigns his ecclesiastical office at the requested age and has his resignation accepted. Upon such acceptance, the presbyter acquires a new status—a retired presbyter.

Document Sources—Resignation and Continuing Support

<i>Christus Dominus</i> , no. 31	<i>Ecclesiae sanctae I</i> , no. 20 (3)
Parish priests who on account of advanced years or for some other grave reason are unable to perform their duties adequately and fruitfully are earnestly requested to tender their resignation spontaneously or when the bishop	In execution of prescription number 31 of the Decree <i>Christus Dominus</i> all parish priests are requested to voluntarily submit their resignation to their own bishop not later than the completion of their seventy-fifth year. The bishop having

⁸⁵ In some cases, the right to support and residence associated with the common law notion of contract might well have serious implications for a diocese if a bishop improperly removes someone from an office, or if a bishop does not see to the provision of support in the form of a residence for a presbyter. Wrongful dismissal might be the juridical issue of such a case at secular law.

<i>Christus Dominus</i> , no. 31	<i>Ecclesiae sanctae I</i> , no. 20 (3)
invites them to do so. The bishop will make <i>suitable provision</i> for the support of those who retire. ⁸⁶	considered all the circumstances of place and person shall decide whether to accept, or defer acceptance of, the resignation. The bishop shall <i>make provision for the living and residence</i> of those who resign. ⁸⁷

The documents outline four concerns of the church:

1. the effective rendering of ministerial service to a local parish of a diocese;
2. the determination of criteria to identify when the tasks associated with ministry may be impaired by the "condition"⁸⁸ of the presbyter, presumed to occur at age seventy-five;
3. the obligation of the diocese and the co-responsibility of the bishop to provide suitably for the support and residence of a resigned presbyter; and,
4. that appropriate *provision* of support and residence is to be made for the presbyter who resigns his office and has his resignation accepted.

The decree refers to "suitable provision"; the *motu proprio* describes "suitable provision" in terms of "living and residence". *ES*, I, no. 20, refers to these two expensive financial realities for both a diocese and a presbyter if considered within the context of the economic standards of time and place. The concerns of *CD* and *ES I* find expression in the 1983 *Code* c. 538.

⁸⁶ *CD*, no. 31, in FLANNERY, p. 583. Italics added.

⁸⁷ *ES*, I, no. 20 (3), in FLANNERY, p. 603. Italics added.

⁸⁸ The general interpretation of the "condition" of the person will be considered later. For now, one definitive criterion is advanced age determined to be seventy-five. Though not mentioned in the canon, other criteria are possible: incompetence or gross inefficiency, physical or mental incapacity to perform tasks associated with the nature of the employment. In some cases, the reasons for the incapacity or incompetence might be obvious. In others, it might not be as obvious.

2.2.3 Canon 538, Resignation from Office and Support

The universal law determines *when* a presbyter ceases to hold a particular office and when universal or particular law requests a presbyter to submit his resignation from office to the bishop. When the bishop accepts the resignation, the office becomes vacant. The canon establishes the principle of support for a presbyter who has submitted his resignation in accordance with c. 538.

§ 1 A pastor ceases from office by removal or transfer carried out by the diocese bishop according to the norm of law, by resignation made by the pastor himself for a just cause and accepted by the bishop for validity, and by a lapse of time if he had been appointed for a definite period according to the prescripts of particular law mentioned in can. 522 [...]

§3 When a pastor has completed seventy-five years of age, he is requested to submit his resignation from office to the diocesan bishop who is to decide to accept or defer it after he has considered all the circumstances of the person and place. Attentive to the norms established by the conference of bishops, the diocesan bishop must provide suitable support and housing for a retired pastor.

This canon does not refer to ecclesiastical offices other than parochial offices because the canon appears at the end of the section on parishes, pastors and the internal administrative structuring of a diocese and a parish, and before defining the vacancy of a parish (c. 539). The canon seeks to make clear when a presbyter holding an office ceases to hold that office and the office becomes vacant. In § 3, the canon opens the door to a new canonical notion—retirement—life without an

ecclesiastical office and the “suitable support and housing” (*congruae sustentationi et habitationi*⁸⁹)” that goes along with it.

Elements of *CD*, no. 31, and *ES I*, no. 20 (1), clearly establish the limitations imposed upon the stability of tenure of office by the law, the bishop or the presbyter himself. Aside from the death of an incumbent, an office becomes vacant by resignation (cc. 187-189), transfer (cc. 190-191), removal (cc. 192-195 and 1740-1747), and privation (c. 195). Vacancy of office also occurs by the expiration of the term (c. 192, § 2) imposed on the office when a national conference promulgates such a decree and a diocesan bishop implements it in the diocese.

The canon defines the age at which a pastor is requested to submit his resignation:

“[...] not later than the completion of his seventy-fifth year”. There is a determinate age posed to allow for retirement. There is no immediate loss of office until the bishop accepts the resignation, the term of office has expired, or the right of recourse to retain the office has been exhausted.

The law does not impose compulsory retirement based on age alone. A reply from the Pontifical Commission for the Interpretation of the Decrees of Vatican II, dated July 7, 1978⁹⁰, declares that the bishop cannot remove a pastor who

⁸⁹ The English translation provided for this section by the *Code of Canon Law Annotated* is “suitable maintenance and residence”.

⁹⁰ PONTIFICIA COMMISSIO DECRETIS CONCILII VATICANI II INTERPRETANDIS in *AAS*, 70 (1978), p. 534.

refuses to retire at the predetermined age automatically. The bishop would have to follow the procedures given in the *Code* for the administrative removal of pastors.⁹¹

Canon 538, § 3 establishes the principle of support for the resigned presbyter, adequate support and housing, but without qualification. The law leaves it to the national bishops' conferences to implement. The *Code* mandates bishops' conferences of the various countries and regions to establish particular law or norms pertinent to the issue of the support of a retired parish priest (*parochus*) for their respective regions. The diocesan bishop is able to exercise his obligation to make provision for the "maintenance and residence of the presbyter who has resigned". An individual bishop has the obligation to apply the law in his diocese as he sees fit.

The CCCB established two decrees of some import for the diocesan presbyter. In 1985, the CCCB decreed the possibility of six-year terms of office for pastors and associate pastors.⁹² In 1988, the CCCB decreed a right to support in retirement based on c. 538, § 3; the decree is subject to greater discussion in Chapter Three. The CCCB decree expands the notion of *parochus*, including "priests incardinated in the diocese"⁹³. Furthermore, canon law (cc. 533, §1; 550, §1), custom and

⁹¹ P. A. DIGIROLAMO, "Senior Status and Retirement" in *Clergy Procedural Handbook*, R. R. CALVO, and N.J. KLINGER (eds.), Washington, DC, CLSA, 1992, p. 277.

⁹² See CCCB, Decree, *Official document*, no. 532, 14-05-1985 in *SC*, 19, (1985), pp. 173-175.

⁹³ See CCCB, Decree, *Official document*, no. 599, 28-06-1988, in *SC*, 22 (1988), pp. 479 and 481.

canonical praxis in Ontario continue to mandate “residence” as an essential component of a presbyter’s support in active ministry and in retirement.

2.2.4 *Presbyterorum ordinis* and Support in Canon 281

Because remuneration received during active ministry has a distinct impact on income in retirement, particularly when pension plans or trusts are involved, a discussion of remuneration is necessary. Remuneration bears on the subject of a presbyter’s support in three ways:

1. whether the amount of remuneration during active ministry allows the presbyter to save for retirement;
2. the number of years of participation and the amount of contributions made to a public or private pension plan normally affects the level of financial benefit paid by the pension or trust fund in retirement; and,
3. the fact that a presbyter contributes to, or has contributions made on his behalf to a pension plan alters the source of the right to pension compensation.

In what framework does the ordinary notion of remuneration exist? A major setting exists within the notion of contract. A contract is an “[...] agreement between two or more persons which creates an obligation to do or not to do a particular thing”⁹⁴. Both contracting parties become subjects of rights and obligations. Proportionate remuneration to the service rendered is a principle of a contract of hire.

In the determination of remuneration under a contract of hire, a fundamental criterion resides in the notion of commutative justice. Upon the basis of

⁹⁴ *Black’s Law Dictionary*, p. 322.

commutative justice, in a contract of hire, an employer contracts the labour or services of another (employee) and legitimately expects certain things to be done. According to *Black's Law Dictionary*, an employer is: "One who employs the services of others; one for whom employees work and who pays their wages or salaries"⁹⁵. Furthermore, a key feature that defines an employer rests in the fact that an employer can direct how the employee is to perform the labour or service; the employer has a right to supervise the employee to ensure the work is being performed satisfactorily and according to established procedures.⁹⁶

According to *Black's Law Dictionary*, an employee is

[a] person in the service of another under an contract of hire, express or implied, oral or written, when the employer has the power or right to control and direct the employee in the material details of how the work is to be performed⁹⁷.

⁹⁵ *Black's Law Dictionary*, p. 525.

⁹⁶ The major identifiable feature of the secular status of "employee" concerns the levels of employer control over the employee. A church exercises specific control over a presbyter by means of ecclesiastical and particular law. The control is to an extent unparalleled in any other professional field of service. The presbyter shares in the rights and obligations of the Christian faithful defined in the 1983 Code, cc. 208-223; the rights and obligations of clerics, cc. 273-289; and, the obligation and rights attached to an ecclesiastical office or appointment, cc. 515-572. Some of these are reasonably clear (c. 530); others admit of considerable interpretation (cc. 281, 1274). There is considerable direction governing and regulating "how" a presbyter performs ministry. Not all law is in the *Code*. There is liturgical law that governs the performance of the sacraments and other rites and rituals of the RC Church and diocesan particular law. The presbyter is also subject to considerable supervision by ecclesiastical superiors from the bishop to a vicar forane (cc. 273, 436, § 1, 1°, 555). Not only in the performance of his professional duties is a presbyter subject to ecclesiastical law and supervision, but also in his personal, spiritual, and communal life. The presbyter is told how to dress (c. 284), when and what to pray (c. 276), where to live (cc. 280, 283), with whom to associate or not (cc. 277, 278), what activities are to be avoided or forbidden (cc. 285-287, § 2).

⁹⁷ *Black's Law Dictionary*, p. 525.

Employers expect certain levels of competence, responsibility and accountability, and even integrity, loyalty and trust (though these latter three are harder to quantify). The employee reasonably expects just and honourable recompense, fair treatment, healthy working conditions, and personal respect. Another reasonable expectation of both parties is “due process” in the event of a dispute.

A contract can be explicit or implicit. An explicit contract follows certain formalities. The conventions of the matter and place determine the formalities of a written form of contract. It states specific rights and obligations on the part of the parties to the contract. An explicit contract affords considerable protection of rights to both contracting parties and clarifies expectations. Moreover, the more explicit contract reduces the potential for misinterpretation of rights and obligations and there is a greater possibility for establishing criteria for acceptable performance evaluations, reviews and accountability. It is the misunderstanding or misinterpretation of what constitutes a respective right or an obligation that can seriously compromise any contractual relationship, even one between a bishop and presbyter. Generally, such relationships become adversarial only when one of parties feels misunderstood or unfairly treated.⁹⁸

⁹⁸ Though considerable law regulates the relationship between a presbyter and a diocesan bishop, and administrative tribunals are mentioned in the *Code* in c. 1400, § 2, problems continue to exist around the issue of due process on a local level. See L.G. WRENN, in “Book VII, Processes [cc. 1400-1752],” in CLSA, *Commentary 2000*, p. 1614-1615. Wrenn explains: “If, for example, a person is aggrieved by a decision or decree of a bishop, recourse is had not to an ordinary tribunal but to the appropriate Roman Congregation. In turn, recourse against the decision of that congregation is made to the *Signatura* acting as an administrative, not an ordinary tribunal.”

PO, no. 20 provides some canonical foundations for the notion of decent, honourable and just remuneration as a source of support to the presbyter.

Completely devoted as they are to the service of God in the fulfilment of the office entrusted to them, presbyters are entitled to receive a just remuneration. For "the laborer deserves his wages" (Lk. 10:7).⁹⁹

It is significant that *PO* links the notion of "just wage" to a scriptural base; however, herein lays a number of problems. *PO*, no. 20 goes on to say:

[T]he right to the revenues attached to the endowment of the office—shall be regarded as secondary and the principal emphasis in law given to the ecclesiastical office itself¹⁰⁰.

The Council fathers seemed to want to disassociate ministry from the office that provided support. This is a rather interesting administrative anomaly. It could well be a cause of considerable confusion in the application and in the administration of justice. Though there are varieties of ministries, a church attaches no corresponding "value" to any of them as did 1 Timothy 5:18.

Previously, it was rather clear that the presbyter derived support from the possession of an ecclesiastical office. The *presumption* was that the incumbent was dedicated to the service of God and performed the ministerial service associated with the office as requested by the bishop. The Council fathers now seem to suggest that support does not originate in the office but because the

⁹⁹ *PO*, nos. 20, 21, in FLANNERY, pp. 898-899. I have already noted the implication of this quotation from Luke in Chapter One and elsewhere. Parallels to the scripture reference regarding wage also include Mt. 10:10; 1 Cor. 9:7; 1 Tim. 5:18.

¹⁰⁰ *PO*, no. 20, in FLANNERY, p. 899.

presbyter is devoted to the service of God and/or engaged in a function of ministry. Indeed, if such is what the Council fathers suggest, the separation of ministerial service from remuneration is a little difficult in a North American milieu.

The first part of the statement seems to establish the principle of “a fair and just wage” as the basis of remuneration and within the framework of canonical equity. Luke’s statement, “the labourer deserves his wage”, is a matter of a strict right (*ius*) in the sense of commutative justice, originating in an implicit contract of hire between the employer and the labourer (employee).

Furthermore, “an honourable and just wage” has significant implications even in a framework of canonical equity. Canonical equity “[...] applies the law with mercy, [...], it is a higher form of justice, an expression of Christian love, or charity”¹⁰¹. In secular law, canonical equity refers to “[...] the spirit and habit of fairness”¹⁰² even beyond that of strict justice. The principle of a decent wage includes the elements of commutative justice and equity based on the financial realities and circumstances described in the terms of reference provided in *PO*, no. 20. It is logical that canonical equity demands that the diocese provide greater remuneration in times of plenty and that a presbyter accept a reduced

¹⁰¹ J.M. HUELS, in CLSA, *New Commentary*, 2000, p. 79.

¹⁰² *Black's Law Dictionary*, p. 540.

remuneration in times of limited resources, notwithstanding a presbyter's right to relocate should the support not be adequate to his needs.

The interpretation of *PO*, no. 20, links the Church's teachings on social justice to the common understanding of "wage" and a right of recompense in virtue of commutative justice. Yet, both J. E. Lynch in *New Commentary*, 2000¹⁰³ and T. Rincón in the *Code of Canon Law Annotated*¹⁰⁴, suggest that the *Code*, c. 281, § 1 does not intend to grant a right (*ius*) in the strict sense of commutative justice. Furthermore, by using the term, "remuneration"¹⁰⁵, rather than "wage, pay or salary (*merces*)", the intent of the Council fathers was, as Lynch explains,

[...] to avoid the usual association of "job and wages". The performance of the ministry establishes a claim to remuneration but not in the same way that a laborer's work creates a right to wages¹⁰⁶.

Such an interpretation suggests a number of problems. The *Oxford Dictionary* defines "remuneration" out of the Latin root, (*remunerari*,) f. *munus*, *munera*, gift¹⁰⁷) and therefore is consistent with the interpretation of Lynch and Rincón; however, whether in Latin or English, the term still implies and means, "pay for

¹⁰³ LYNCH, in CLSA, *New Commentary*, 2000, p. 366-367.

¹⁰⁴ *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus*, Libreria editrice Vaticana, 1983. English translation in *Code of Canon Law Annotated*, [= *Code of Canon Law Annotated*], E. CAPARROS, M. THÉRIAULT, J. THORN (eds.), Montreal, Quebec, Wilson & LaFleur Limitée, 1993, pp. 234-235.

¹⁰⁵ *Cassell's Latin Dictionary* provides the root words for the term: *munus*, *muneris*, "gift, affectionate service, favor," and "office, function, employment, duty," p. 355; or, *re-muneror*, to repay, recompense" p. 480. The synod appears to favour the root "*munus*" for its interpretation.

¹⁰⁶ LYNCH, in CLSA, *New Commentary*, 2000, p. 366. Lynch cites the source of his explanation as *Acta Synodalia* 4, pars 7, p. 226, n. 22.

¹⁰⁷ *The Concise Oxford Dictionary*, "remuneration", p. 880. See Chapter Two, 2.1.1, for context of "*remunerare*" in Roman property law.

service rendered; serve as or provide recompense for (toil, etc.)”¹⁰⁸. In addition, Lynch says: “Remuneration [...] is a term that extends beyond what is necessary to meet basic needs”¹⁰⁹.

Why does *PO*, no. 20, specifically link the labourer to his pay: “The laborer deserves his pay”? Should not the OT/NT economic model provide the basis for interpretation of the saying? The interpretations provided by Lynch and Rincón seem to completely distort the meaning of the phrase contained in Luke, Matthew, and in Paul’s epistles, 1 Cor and 1 Tim, the meaning of which calls for an interpretation within the cultural and economic context of the biblical saying.

To suggest that the right (*ius*) is not a right even during the active ministerial life of a presbyter does not appear to stand in conformity with *GS* and *Ad gentes*. One cannot have it both ways: either one is in conformity with the social justice teachings of Vatican II regarding the dignity of the human person and human labour, or one is not. The law obliges the Christian faithful to provide support. Where an obligation exists, so does the right to receive the benefit of another’s obligation. The presbyter does have a strict right (*ius*) to remuneration founded in commutative justice according to the norms of natural justice.

If the right does not find its source in commutative justice, where there is a proportionate value between the “job” and the “wage”, the only other alternative

¹⁰⁸ Ibid.

¹⁰⁹ LYNCH, in CLSA, *New Commentary*, 2000, p. 368.

is that the right exists in distributive justice.¹¹⁰ However, distributive justice concerns the community's obligation and provision of support to an individual in a slightly different context of social justice. The leadership of society has the obligation to protect certain rights for the common good of society (*GS*, no. 26), and to provide for its membership as best it can by an equitable distribution of available resources.

Without both forms of justice engaged, support can exist within either the realm or theory of communism, or within the practice of those committed to institutes of consecrated life who hold property "in common". Neither communism nor consecrated life is an option in the provision of support for a diocesan presbyter during his working life or thereafter.

Lynch's interpretation may be legitimate and conform to a particular interpretation of the language of the documents in a tradition very different from that of North America. Even so, why should the law or its commentators seek to "avoid the *usual* relationship between job and wages" and its association to social justice in North America? That is exactly the notion present in the OT/NT principles and *PO* itself uses the language.

The interpretations of both Lynch and Rincón seem to severely limit the presbyter's right to support by separating his human "labour", the source from

¹¹⁰ T. RINCÓN, in *Code of Canon Law Annotated*, pp. 234-235.

which he is able to acquire support, from the *means* by which he acquires support—the worth of that labour translated into honourable wages.

The stance taken by the noted commentators might well have another implication in our North American cultural milieu, that failing to obtain decent support from a diocese, perhaps the presbyters might form a labour union or a professional association to acquire and to defend their rights to a decent wage and benefits.

The commentators seem to want to justify the avoidance of such a situation.

According to his commentary on *PO*, no. 20, Schmaus states:

[t]he Council goes into very necessary detail and expresses the desire that the priest's remuneration should enable him to help the poor and also suitably recompense those who work for him. Quite clearly the Council only went into these unexpected details because it was aware of some distressing facts. Here a condemnation is being made of that attitude which repays services rendered with a pious "God will reward you". The Council even mentions vacations – the restoration of the pastor's energies. The duty is squarely laid upon the bishops of ensuring that all priests get a proper holiday. These details are not casuistic; indeed, it is these trivialities that exhibit the modernity of the Council¹¹¹.

The *Code of Canons of the Eastern Churches* is very direct in the matter of a right to support in the form of remuneration. Canon 390, § 1 says, "Clerics have the right to a suitable sustenance and to receive a just remuneration for carrying out the office or function committed to them [...]"¹¹².

¹¹¹ SCHMAUS, Art. 21, in *Commentary on the Documents of Vatican II*, vol. 4, p. 295-296.

¹¹² *Codex canonum Ecclesiarum orientalium auctoritate Ioannis Pauli PP. II promulgatus*, Typis polyglottis Vaticanis, 1990. Translation from the Latin-English version: *Code of Canons of the*

The theories of natural justice, commutative and distributive justice, continue to be the bedrock of the Church's teachings of social justice. Justice is the root of charity; without the practice of justice, can one genuinely practice Christian charity? The interpretation provided by the noted commentators does not account for a very different socio-economic reality in the twentieth and twenty-first centuries in North America and Canada. The development of social programs for its citizens in the early twentieth centuries and the expanding economy of the last sixty years have provided considerable wealth for many and added greatly to the quality of life of the citizens of Canada and Ontario.

The question of poverty among the majority of the population has not been a major issue in the Canadian economy for approximately sixty years. The Ontario dioceses have also benefited substantially during this period of economic prosperity. While *PO* attempts to separate ecclesiastical ministry from remuneration, ministry does not alter the criteria established for remuneration by *PO*, no. 20 and reflected in c. 281.

2.2.5 Criteria and Remuneration in *PO*, no 20 and Canon 281, §1

Criteria Established for Remuneration

<i>PO, no 20</i>	<i>Canon 281, § 1</i>
Taking into consideration the conditions of different places and times as well as the nature of the office they hold, the remuneration to be received by each of the priests should be fundamentally the same for all living in the same circumstances. It should be in keeping with their status and in addition should give priests the means not only of providing properly for the salary of those who devote themselves to their service but also of personally assisting in some way those who are in need. [...] Moreover, priests' remuneration should be such as to allow the priest a proper holiday each year. ¹¹³	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.

PO, no. 20, elucidates six principles and indicates different levels of remuneration that find expression in c. 281, § 1:

1. remuneration based on the conditions of time and place;
2. remuneration according to the nature of the office;
3. remuneration in keeping with the clerics' status;
4. remuneration received should be fundamentally the same for all living in the same circumstances;
5. remuneration is to be sufficient to provide a proper salary for those providing services to a presbyter
6. remuneration is to be sufficient to assist those in need.

Canon 281 contains these same principles and criteria established by *PO*, except for the principle of "assisting in some way those who are in need". The principles appear to be simple enough, however, each one admits of considerable

¹¹³ *PO*, no. 20, in FLANNERY, p. 899.

interpretation. Furthermore, most of these principles establish the foundation of all contracts for hire and virtually all employment circumstances.

The Condition and Nature of Responsibilities

The organizational chart of any social institution stratifies and assigns a particular status to each role in the organization from a small grocery store to General Motors to a diocese or parish. Ordinarily, an organization assigns an economic and/or social value as well as status to each defined role. Status relates to “social and economic value” which is linked by the terms “condition and nature of responsibilities”. The first criterion of just remuneration associates remuneration with the nature, condition, and responsibilities attached to the specific type of employment.

By way of introduction, these criteria contain a number of difficulties. The first problem is the failure of the churches to assign an economic value to a determined status in the organization. This has lead to considerable confusion even within the determination of an “asset-value” attachment to the criteria above. A link does exist between status and responsibilities. In context then, “responsibility” refers to a determined degree of authority conferred upon a person according to the corporate structure and organization to make or effect decisions on the part of the institution or any of its parts. Policy and administrative procedures relative to accountability within the structural construct of the institution define levels of responsibility.

The terms “condition” and “nature” require some clarification. All social institutions have goals or a purpose. An institution structures itself in such a manner as to accomplish its goals with the greatest degree of efficiency.

Institutional structure defines roles and functions that coordinate the operation of the various components of the institution. An organisation chart describes the relationships between the various components of the institution.

The organisation chart displays the organization’s structure and includes the assignment of status by a placement of the respective roles in the overall operations of the institution. Job classifications (roles) and job descriptions (functions) give definition to those who perform employment tasks on the part of the institution. Performance objectives provide a measure whereby the institution expects an individual member to conform to the mission and proceed to the implementation of the institution’s aims. Within this context, the use of the term “nature” of responsibilities refers to the roles that people play in the operations of the institution. An employee’s remuneration is commensurate with the assigned status and the nature of responsibilities as designated by the roles.

For our purposes, the organisational chart of a diocese indicates that the bishop of a diocese possesses greater institutional status than does a presbyter, a pastor more status than an associate pastor, an episcopal vicar possesses more status than a vicar *forane* or a pastor. Canons 528, 529, and 530 convey those objective elements and values of the institution to which a pastor conforms himself in order to comply with the defined purpose of the institution that he serves. Consequently,

the status and the degree of responsibilities associated with the structural role provide a variable basis for remuneration from the lowest to the highest echelons in the institution.

Some confusion exists around the interpretation of the notion of “condition.” The term can be associated with objective or subjective elements of service defined under a contract of hire. Objective conditions of service include the terms of agreement contained in a written or oral employment contract. Such conditions include pay scales associated with each job classification, criteria for promotion, the rights and privileges of seniority; grievance procedures adjudged by an impartial administrative tribunal, and even circumstances under which work might cease (too hot, too cold). A subjective condition of service refers to the skill level of compliance to specific job descriptions and the degree of competence with which the assigned person executes and exercises his or her duties.

Here “condition” is associated not so much with the degree of responsibility¹¹⁴ ascribed to a particular role or function in the churches; but rather, condition is associated with the person in whom responsibility rests. In other words, condition tends toward the more subjective conditions of service, that is, the elements of responsibility and what flows to and from the person with defined responsibilities.

¹¹⁴ The reference is to the organizational structure of the social institutions without reference to sacramental orders per se.

A condition of responsibility can be corporate or individual. The greater the degree of status and administrative authority in a corporation or diocese, the greater the responsibility for the consequences of decisions made. Since a public juridical person cannot make moral or juridical decisions, it is the individual or group making a decision that carries the moral responsibility for its corporate decisions. The bishop is responsible for the moral and juridical decisions of the diocese according to c. 393; the pastor is responsible for the moral and juridical decisions of the parish according to c. 532.

A condition of responsibility in an individual is a very different matter. A presbyter's ability to *discern* the proper solution or resolution to a problem amongst many options determines the real "value" of that person to the institution. The bishop gives one presbyter responsibility for a very large parish and not another, the bishop appoints one presbyter a vicar general and not another. Consequently, professional status, along with the subjective ability to effectively "discern and do the job" according to the nature of the institution indicates a variable base of remuneration commensurate with the condition of responsibilities.

The results from this author's diocesan survey indicate that the majority of dioceses reporting simply remunerate every presbyter within the defined seniority groupings the same amount regardless of the conditions or the nature of the presbyter's responsibilities. The next most common practice is remuneration

based on the number of years of service or ministry.¹¹⁵ Any corporate body tends to value experience in its members. Seniority presumes an “asset-value” of experience to the social institution. Twenty years of service is more highly valued than two years of service.¹¹⁶ The greater a person’s status, the greater the numbers of years of service provide a sliding scale of remuneration from lower to greater. This is not the experience of presbyters in Ontario.

Some offices and assignments within a diocese require specialized training. The bishop selects the candidate. Upon successful completion of training, the bishop ordinarily assigns the presbyter to the task that required the additional training. The law supports the notion that a skill acquired through specialized education in order to perform specialized tasks indicates a variable base of remuneration as a condition of responsibilities. This does not appear to be the practise of the Ontario dioceses or the experience of presbyters in Ontario.¹¹⁷

According to *PO* and the canon, persons deserve remuneration according to criteria established. The principle of equal pay for equal work under the same conditions generally applies providing the conditions and responsibilities are

¹¹⁵ See Diocesan Survey on Retirement, My Diocesan Survey on Retirement, Question [=Q] 82: Does your diocese offer remuneration based on years of service, years of ordination, type of ministry.” The majority response was “same for all”—author.

¹¹⁶ Some diocesan pay scales are based solely on years of service (seniority) regardless of the responsibilities attached to the ministerial task(s) assigned to a presbyter.

¹¹⁷ See Priests’ Survey on Retirement, Question [=Q]. 85a reads: “Do pastors in your diocese receive additional compensation, over and above their remuneration for parochial administrative duties?” My Q. 85b reads: “Does your diocesan policy provide additional compensation for provision of diocesan administrative duties/serves which are in addition to his primary office/ministry in any of the following, [...]?”

actually the same.¹¹⁸ But, the guiding principle seems to be that those who hold the same office (i.e. pastor) receive the same remuneration; the principle of “consistent with their condition” is not a component of the equal pay for equal work principle in Ontario, as indicated in the survey questionnaire.¹¹⁹ Nevertheless, the law indicates the justice of sliding scales of remuneration for various levels of conditions, responsibility, seniority and specialized training. The “condition” of differences is not a consideration in diocesan practise in Ontario. The matter of the relationship between a presbyter and the diocese to a parish form two different sources of support and engage the bond of incardination as well as the principle of commutative justice. First, in the matter of personnel (pastors, pastoral associates), c. 281, § 1 does not support an egalitarian notion of equal pay for equal work or the flattening of pay scales when distinctive differences of conditions, responsibilities and training do exist.

¹¹⁸ See G. F. READ, “Incardination and the Bishop’s Financial Responsibility toward his Clergy” in *Canon Law Society of Great Britain and Ireland Newsletter*, no. 111, London, England, Canon Law Society Newsletter, Sept. 1997. Read states that in England “[...] the payment of salaries on an equal basis from a common fund is not yet widespread, and in many dioceses the pay of clergy varies from parish to parish according to the size of the Christmas and Easter collections, amount of stole fees and other variable factors. Much remains to be done to overcome inertia on the part, probably of clergy, more than bishops [...]” p. 22. The fact that there appears to be resistance on the part of the concerned presbyters to adopt an “equalization” policy speaks volumes about the attitudes of the presbyters. Their reluctance to change might confirm that the factors and variables noted in c. 281 are valid. Presumably, those with larger parishes carry greater responsibilities and greater volumes of “work.” Why should they not receive greater financial compensation? The attempts at such “equalization” procedures do not always accomplish what they intend. They may well create more inequalities, loss of morale and stifle initiative.

¹¹⁹ See Diocesan Questionnaire, Question 82 reads, “Does your diocese offer remuneration based on [...]” Question 85 reads, “Do pastors in your diocese received additional compensation [...]”

Canon 281, § 1 would seem to suggest that where diocesan and parish resources permit, different pay scales or additional financial recompense are in order for a presbyter performing different ministries, particularly if there are two different funding sources. When situations of multi-tasking¹²⁰ do occur, natural justice presupposes each appointment is a part time employment with pay scales duly adjusted according to the nature of the task in order to reflect this “condition” for the presbyter. Such items as seniority, experience, specialized training, additional costs to the sources of funds associated with two or more tasks, percentages of time dedicated to each task, are some factors that determine equitable recompense for service for the presbyter and for the source of funding—the ministerial offices or ecclesiastical ministries.

Remuneration According to Conditions of Time and Place

“Conditions of time and place” indicate the awareness that economic, geographic and demographic conditions vary around the world. Indeed, conditions can vary from diocese to diocese and even within different areas of the same diocese. This is not only an objective economic reality but also a subjective one for a diocese. Objectively, the canon recommends remuneration be tied to the standards of the local economy, but the canon is not very explicit as to how this is to be calculated. From a Canadian perspective, certain objective standards are available and

¹²⁰ Multi-tasking is discussed below in 2.2.9. Suffice to say, multi-tasking is occupying two or more offices or ministerial functions simultaneously.

provide a basic economic standard. The minimum standard of the context of “conditions of time and place” is the economic base determined annually by Statistics Canada [=StatsCan] and Human Resources Development Canada [=HRDC¹²¹]. HRDC produces the *Low Income Cut-Offs* [=LICOs] in cooperation with StatsCan’s measure of the “cost of living index”. *LICOs* is the benchmark income required to live in different sized cities in Canada based on family size, income expended on food, shelter and clothing. An income below the benchmark indicates an economically deprived person and makes such a person eligible for government assistance.¹²²

A second objective standard provides income levels based on a study of comparative professions, occupations and compensation packages applied generally or within a particular situation. Should the base remuneration compare a pastor of a large city parish to a fireman, a school principal, or a businessman? Should the base remuneration of a bishop compare to the Chief Operating Officer of a small or middle-sized corporation, a hospital administrator, or an elected politician? Every one of the occupations noted already receives an income substantially higher than a presbyter or a bishop. The Human Resources [=HR]

¹²¹ The government separated HRDC into two departments just before the final submission of this dissertation. Currently, HRDC consists of Social Development Canada [=SDC] and Human Resources and Skills Development [=HRSD]. SDC is responsible for all issues of social services relative to the various government public pension and welfare programs; HRSD is responsible for all employer-employment issues. Except in a few instances, HRDC has been retained in its SDC function.

¹²² More detail and application of these standards will be provided in Chapter Three.

department of any corporation can engage the services of a management-consulting firm or even develop this type of information itself.

Subjectively, the financial resources available to each diocese are different and the bishop can only operate within those financial constraints imposed by the financial condition of the diocese. The canon acknowledges that some discrepancy might exist between a diocese's need-to-pay and diocesan financial resources, but the failure to provide decent support for a presbyter should be the exception, not the rule. If the resources are not available, there are two options available to the presbyter: to accept reduced remuneration; to offer service to another church that has the financial resources available.

In either case, a presbyter cannot refuse sacramental ministry to one who seeks ministry (petitioner) simply because the petitioner is poor (c. 848). Indeed, this author suggests that very few presbyters would refuse someone ministry based on their inability to provide a stipend or stole fee. However, a presbyter has the right to go elsewhere if a diocese is unable to provide decent support.

The concern of the canon is for the decent remuneration of the presbyter.

Remuneration should be compatible and in conformity with the economic standards and the real cost of living of the time and place. The research data indicates that this is not the case at the time of the survey.¹²³ If income is

¹²³ See Diocesan Survey on Retirement, Q. 84 a, b. The data places the average income of a diocesan presbyter at an annual income of \$ 16,992, slightly over *LICOs*, \$14,992. The diocesan figure does not include the value of housing.

considerably below the standards of time and place, it can impede the presbyter's ability to fulfil his financial obligations (creditors, family, and charity) during active ministry and directly affect his financial security in retirement.

"Conditions of time and place" might also include other factors. Dependent upon the resources of a diocese or a parish, financial considerations could take into account travel expenses and the different expenses associated with rural and urban areas or even between deaneries. The travel expenses of a presbyter are very different in a city parish located two blocks away from the chancery compared to a parish with extensive territory, two hundred miles from the cathedral or chancery. Cost of living is also considerably different between a presbyter living in a rectory residence with minimal housing costs to himself and a presbyter living on the economy while offering ministry as a chaplain, while doing studies or while teaching in a local school.¹²⁴ The canon accounts for these variables. So should the remunerative pay scales of a diocese, according to *PO* and c. 281, § 1.

Remuneration Based on Personal Needs and Required Services

The canon also acknowledges that remuneration must provide for the "needs of his own life" and the ability to provide for the "payment of services they need". The *Code* makes part of the determination of the amount of remuneration such

¹²⁴ This presumes the teacher who is a presbyter is not receiving a salary comparable to his counterpart who is a layperson.

factors as the costs originating from the requirement to make a retreat¹²⁵, the right to take a holiday¹²⁶, the admonition to continue studies¹²⁷. There is an obligation to pay creditors and an admonishment to practice charity.¹²⁸ There is also a presbyter's obligation to provide financial assistance and support to his family if needed.¹²⁹ Furthermore, after the promulgation of the 1983 *Code*, an expectation has developed in Canada that a presbyter makes some provision to provide for his retirement years.

Within the economy of Ontario, substantial amounts could be required to satisfy these expressed needs given the relatively low financial resources of a presbyter in active ministry. Many dioceses already provide some subsidy for such things as an annual retreat and an education allowance as part of a compensation package. Secular law already requires all employers to contribute a percentage of an employee's income to a vacation fund for the benefit of the employee. In Ontario, the diocese or parish pays vacation pay to a presbyter as a financial benefit.

Many companies, government and government-funded institutions often provide a variety of other benefits as part of a compensation package. An important benefit revolves around hospital and medical insurance plans that include such items as

¹²⁵ 1983 CIC, c. 276, §2, 4°.

¹²⁶ 1983 CIC, c. 283, § 2.

¹²⁷ 1983 CIC, c. 279.

¹²⁸ 1983 CIC, c. 282, § 2.

¹²⁹ LYNCH, in CLSA, *New Commentary*, 2000, p. 367 quotes John Paul II, who, while referring to clerics employed by the Holy See, noted that they should have the means "[...] to carry out the duties of their state, including responsibilities which they may have in certain cases toward parents or other family members dependent on them" (*Origins* 12 (December 9, 1982), p. 420).

dental services, and costs of prescription pharmaceutical drugs, etc. Such plans vary both in benefits and in divisions of cost. The determination of remuneration should consider such issues.

In addition, an employer compensates for transportation expenses incurred on behalf of the company or provides such transportation. Many companies provide relocation expenses when an institution requires a change of work venue. Such expenses include the employment of professional movers for those who possess more than might fit in a couple of suitcases. Some dioceses provide such benefits; others do not.¹³⁰

Some needs are very relative to an individual presbyter. This requires some prudence and consideration according to the circumstances of time and place, on the part of competent authority. One presbyter may own a considerable amount of furniture and personal effects [=F & E¹³¹], another may own very little. Many presbyters now have possessions both for work and play far in excess of what was available to a presbyter a century ago, or even fifty years ago. Either the diocese or a parish may provide insurance coverage for diocesan or parish property,

¹³⁰ Many lay people are often willing to help move the priest to his new appointment without charge. What is not an ordinary consideration in the mind of the priest when he asks, or the layperson that agrees to help, or a diocese that permits such activity, is the liability associated with a layperson being injured. Suppose an accident occurred and the volunteer layperson is unable to work, temporarily or permanently. Who is going to be held liable? Does a parish or diocesan insurance policy cover such an eventuality? If the priest himself is injured while moving, is he entitled to government workman's compensation or a disability pension when such activity can in no way be associated with his job description according to canon or particular law or perhaps the terms of an insurance policy?

¹³¹ F & E consists of all personal property owned by an individual and is transportable, from clothing to compact discs.

including the F & E belonging to the parish, but to what extent are personal belongings covered by diocesan or parish insurance? Many presbyters now possess at least some items of value. A presbyter should acquire a homeowner's or tenant insurance package to cover loss through fire or theft.¹³² Do current remuneration scales reflect such expenditure for private property insurance services?

To Provide for the Equitable Payment of Those Whose Services They Need

"To render to each his or her due" is the foundation of natural justice. In order to satisfy the demands of natural justice, any contract for hire includes "just" remuneration in order to satisfy financial obligations. This criterion of remuneration, "to provide for the equitable payment of those whose services they need", is not unique to a diocese, a parish or to an individual. This criterion was certainly a component of remuneration contained in the notion of the canonical titles of ordination. As the representative of the juridical person of the parish, the pastor paid all of the operating expenses of the parochial benefice. As the possessory title-holder, the pastor paid for such services as a housekeeper, a parish schoolteacher, a groundskeeper, a grocer, a clothier, and other expenses out of the endowment and usufruct of the benefice.

¹³² A parish insurance policy for fire or theft may cover only parish property, not the personal property of a "renter".

Until after World War II, Canada was a rural country whose economic base was agricultural. The majority of people were generally farmers whose assets and financial fortunes varied with the time of year, the quality of the crop, and the ebb and flow of the market. Many Canadians and farmers were generally without many assets and often could contribute little to the church on a continuing basis throughout the year. As with his parishioners, the presbyter's creditors often waited for payment until the farmer sold his products. Only then could the parishioners make a financial contribution to the parish. The people made these major contributions at Christmas and Easter.

In some places by custom or particular law, where the title of benefice did not exist in Ontario, the Christmas and Easter collections¹³³ appeared to function in the same manner as the *usufruct* of a benefice years ago. According to particular law in Ontario, the Christmas and Easter collections constituted part of the salary of a presbyter. The pastor provided for his own daily needs and "for a rainy day"¹³⁴. He paid obligations incurred by the parish (local merchants), provided salary for his housekeeper, caretakers and other persons associated with his personal or parish maintenance. Today, the Ontario bishops have replaced a

¹³³ See *Acta et decreta primi concilii provincialis torontini in ecclesia metropolitana Sti. Michaelis celebrati mense septembris MDCCCLXXV*, "Decretum XVIII," Toronto, ON, Typis Hunter, 1882, p. 31. See also G.F. READ, "Document No. IV, Incardination and a Bishop's Financial Responsibility Towards His Clergy," in CANON LAW SOCIETY OF GREAT BRITAIN & IRELAND, *Newsletter*, no. 111, September 1997, p. 22. Read notes that the Christmas and Easter collections continue to form part of the income of the clergy in England.

¹³⁴ There were no insurance plans to pay for a doctor, hospital or medicine if sick; no unemployment insurance for parish staff and workers; no worker's compensation for a parish employee if he were injured or killed accidentally until almost into the middle of the last century.

pastor's right to these two collections by establishing the salary to be paid by the parish.

One way many of the dioceses in Ontario solved the problems associated with inequalities of income among presbyters generated by the two collections became the general rule: offer all the presbyters the same basic income no matter what they do or under what circumstances they do it.¹³⁵ Some dioceses introduced a minor variation, usually years of service. Today, these approaches have become the norm and they are of considerable financial benefit and advantage to a diocese and its parishes in Ontario.¹³⁶ These approaches are not to any great advantage to a presbyter's future financial security.

Generally, the dioceses of Ontario have derived considerable financial benefit from the "financial good times" of the past sixty years, as have the parishes.

However, few presbyters have benefited financially since a presbyter's salary remained low during this time. The survey of diocesan priests in retirement confirms the financial shortcoming of the diocesan pension plans at the time of the study. Many retired presbyters could not maintain their current quality of life

¹³⁵ See Diocesan Survey on Retirement, Q. 82 reads: "Does your diocese offer remuneration based on: [...]?"

¹³⁶ Compensation packages in secular corporations and businesses range from those that pay minimum wage and no benefits to those that provide very generous compensation packages and benefits for their employees. The "company town" in Canada, with its secular corporate policies of low pay and subsidized housing, disappeared only in the last century largely due to the establishment of unions.

on a pension annuity provided by a diocesan plan.¹³⁷ The survey also indicates that the majority of presbyters of the pre-Vatican II generations did not expect to have to retire or make provision for their retirement.¹³⁸ This has placed some such presbyters in a vulnerable and precarious financial position today.

In Ontario today, the parish exists in both an ecclesiastical and secular dimension with different impacts upon the financial status of a pastor. Though the pastor represents the juridical person of the parish at canon law, he possesses no right to the *fructus* of the juridical person he is representing; rather, the diocese establishes the rate of remuneration and benefits that the parish pays to a presbyter employed by the parish or the diocese. Generally, the parish provides for both the personal needs and services of the presbyters assigned to the parish.

Active presbyters receive residence (room and board) and services associated with room and board as part of a compensation package. The diocese includes the housing benefit when it calculates the residence¹³⁹ benefit even if the “benefit”

¹³⁷ See Diocesan Survey on Retirement, Q. 45b reads: What is the current amount of your diocesan pension benefit? The compiled average income for a retired presbyter in Ontario is \$1156 per month, at the time of the survey in 1998. Pensioners supplement income by means of the Canada Pension Plan. A substantial number of retired priests also receive Old Age Security payments. In addition, there are those who supplement their income with dividend income from investments or who have obtained income from family inheritance.

¹³⁸ See Appendix, “Priests’ Survey on Retirement,” Q. 106a: Did you ever really expect to retire for reasons other than health? Yes-19; No-21. “Earlier on we were given the impression that you’d be active to the end or that it was “worldly” worrying about money.”

¹³⁹ 1983 CIC, c. 533. The history of this canon originated in a period when bishops and presbyters tended to be absent landlords from their benefices and travel was difficult. Communications by word or mail were also very difficult. The circumstances that promoted the canon no longer exist to the same degree; yet, the obligation of residency is interpreted rather strictly in the Province of Ontario even though the canon says “*prope ecclesiam*”. Canadian interpretation and practice does

has been unrealistic, until recently.¹⁴⁰ This partially explains the artificially low salary scales established by a diocese for its presbyters and paid by the parishes.

In Ontario, residence limits and has a dramatic impact upon the notion of sufficient funds and the “just remuneration of those whose services they need.” Since the parish normally pays the majority of household and service expenses as part of the operating expenses of the parish, the notion of a presbyter’s personal expenses takes on a completely new meaning. Consequently, a diocese’s perception of “sufficient funds” has consistently narrowed over the years. In effect, the factor of the lowest common denominator appears to be “sufficient funds” as the base of remuneration scales for a presbyter.

However, two other criteria determining “sufficient funds” for a presbyter are found in the ancient traditions: that of providing support to parents and siblings and the practise of charity. The obligation to support one’s family originates in the Decalogue and is confirmed in Mk. 7:11-13 and Mt. 15:5-6. To “honour” father and mother (family) includes the provision of material support as required.

Today it is extremely rare that a diocesan compensation package takes into account the presbyter’s obligation to provide support to parents or family should the need arise. Furthermore, given the actual incomes from church sources in Ontario and the personal expenses of most clergy, one might validly question the

allow for exceptions. One such exception occurs during the period of building or renovating a church; another exception occurs when a presbyter is not working in parish ministry.

¹⁴⁰ Chapter Three considers the subject of residence.

ability to comply with the obligation to support charities. Currently, these two criteria do not appear to be a consideration in computing a presbyter's remuneration.

Given the law as stated and interpreted, the egalitarian practice of "treating everyone equally" is questionable. The law does not indicate that all presbyters in a diocese must receive the same remuneration except in a very specific set of circumstances. In fact, *PO*, no. 20 and c. 281, § 1 convey the opposite.

2.2.6 Interpretations of Canon 281, §1

"Is remuneration due to the fact that the cleric performs ministerial work or due simply to his incardination into the particular church [...]?"¹⁴¹ Two considerations flow from this question. Lynch suggests "[...] on the basis of grammar, a cleric deserves remuneration from the Church when he devotes himself to ecclesiastical ministry"¹⁴². The canon does not specify clerics need to be incardinated nor does the canon say anything about full-time or part-time ministry. Even those clerics merit support that are not incardinated but still offer ministry and/or hold a canonical office in a diocese.

Is the "cause" of remuneration due to the subjective intention of the presbyter to dedicate himself to ministry, or from the objective reality of the appointment to

¹⁴¹ LYNCH, in CLSA, *New Commentary*, 2000, p. 367.

¹⁴² LYNCH, in CLSA, *New Commentary*, 2000, p. 368.

minister in general or from particular ministerial acts? The cause of remuneration can come from all three possibilities.

A second consideration indicates that the bond of incardination reflects a contractual relationship between the diocese and a presbyter. The bishop freely assigns the presbyter a place to minister and the law says that the bishop will see that a presbyter obtains maintenance and residence; the obligation of the presbyter is to minister in the location indicated and provided by the bishop in accordance to the law.

When we consider c. 281, “Since clerics dedicate themselves to ecclesiastical ministry [...]”, we recognize the subjective intention and offer to serve by the ordinand and the acceptance of the offer by a bishop. The 1983 *Code*, cc. 265 and 266, now determines that it is “[t]hrough the reception of the diaconate, a person becomes a cleric and is incardinated in the particular church [...] for whose service he has been advanced”¹⁴³. The very fact of sacramental ordination to the diaconate establishes a bond of incardination to a particular church thereby providing a place of stable ministry and a perpetual source of support, subject to the qualification of c. 281, §3.

When the bishop confers sacramental ordination under the law of the 1983 *Code*, there are six effects.

¹⁴³ 1983 CIC, c. 266: “§ 1. Translation in CLSA, *New Commentary*, 2000, p. 331.

1. With the act of ordination, the Church, through the bishop, accepts that the cleric has the *intention* to serve a particular church in general as well as to offer ministry in a specific place.
2. The act of ordination creates an additional sacramental bond between a bishop and a presbyter, or a deacon.
3. The fact of ordination gives actualization to the intention of a deacon or a presbyter to offer ministry in the church in which he is incardinated.
4. The ordination to the diaconate effects canonical incardination into a particular church.
5. The bishop freely confers a specific ministry by providing a deacon or a presbyter with a mandate to a ministerial office or some other ecclesiastical ministry.
6. The presbyter's "intention" to minister is presumed to continue to exist¹⁴⁴ until the presbyter himself revokes it. Revocation may occur when the presbyter departs from ministry, submits a petition that requests laicisation and a decree of laicisation is executed, or consistently refuses to accept a ministerial appointment offered by the bishop.

The law itself or competent authority can alter the cleric's status:

1. when competent authority overrules the intention after the fact of ordination by the law,¹⁴⁵
2. by a juridical act¹⁴⁶,
3. by the acceptance of the presbyter's resignation, or
4. when the law or a juridical "act" by competent authority changes the status of the presbyter (from active to inactive), or

¹⁴⁴ 1983 CIC(A), c. 78. Ordination is a privilege not a right. The fact of ordination continues to exist until the contrary fact can be proven at law in which case it is an invalid ordination. The proper intention to receive sacramental orders is presumed to continue to exist until the opposite can be proven. The intention to receive the sacrament of orders cannot be revoked after the fact of ordination. However, the intention to minister remains consistent with the intention to remain incardinated in a particular church. The intention to minister can be revoked by a deacon or by a presbyter himself with the consent of the bishop, as in the case of excardination. The intention to "serve" is transferred from one diocese to another.

¹⁴⁵ Invalidity of ordination must be proved. Since the presumption is in favour of the validity of the order, the burden of proof rests with the petitioner. The bishop could introduce the case; e.g., 1983 CIC, c. 1708.

¹⁴⁶ A declared sentence of the tribunal in a penal matter (c. 1612) and its proper execution (cc. 1650; 1653), an administrative decree declaring invalidity of orders (c. 290, 1°), or a rescript of laicisation by the Holy See (c. 290, 3°) and its execution, constitute such juridical acts.

5. when a bishop removes the presbyter from membership in the ministerial priesthood of the RC church (return to the lay state by a judicial or administrative decree), thereby severing the bond of incardination but not the kinship bonds created by the sacraments.

Unless a bishop removes the presbyter from ministry by a juridical act and does not merely transfer him from active to inactive status, the presbyter's *intention to be available* is of juridical importance. Before the canonical age of retirement, the bishop freely confers upon the presbyter some type of a stable ministry through which he obtains support and housing. Otherwise, there is no "stable" ministry even with the presbyter's continuing intention—there is only the possibility of individual acts of ministry. This is not the canonical tradition and should only be a condition of retirement or special circumstances.

However, the intention to be available can continue even after a presbyter's retirement. One without a canonical office and with diocesan faculties continues to manifest the intention to minister in individual acts of ministry. In such a case, a presbyter has a right to remuneration for *ad hoc* ministerial service.

This notion of the "intention" to serve extends beyond the ecclesiastical domain. The secular domain gives an excellent contextualization of the term when it places the issue of "intention" to perform service in some professions or occupations. Secular legislation in Ontario addresses the issue of the intention to provide service and gives the notion "status" according to the *Employment Standards Act*, wherein

[...] work shall be deemed to be performed [...] where the employee is not performing work and is required to remain at the place of employment, (i) waiting or holding himself [...] ready for call to work [...].¹⁴⁷

Police, fire services, doctors, lawyers, are “on call” to respond to an emergency and are “on duty” whether they are actively engaged in an act or action at a particular moment or not. In a like situation is any presbyter with the intention to minister even if he is not providing a particular ministry at any moment.

The actual appointment and offer of a specific ministry is the right of the bishop, not the presbyter. Whether or not an incardinated presbyter receives a specific ministry does not change the obligation of the diocese to provide support in the usual manner; i.e., remuneration, residence and other benefits accruing to an incardinated presbyter with an ecclesiastical office, or a disability or pension annuity in the absence of a ministerial office. A diocese continues to have the obligation to provide support to the presbyter as long as the presbyter remains subjectively *dedicated* to ministry, that is, maintains the intention to minister and does so when called upon either by the nature of an ecclesiastical appointment, by individual acts of ministry or when retired.

Some condition of the person of the presbyter may preclude an appointment to an ecclesiastical office or a particular ministry; however, unless specifically excluded from doing so by the law, a presbyter with intention may still perform some type

¹⁴⁷ PROVINCE OF ONTARIO, *Employment Standards Act*, Reg. 325, Art. 12, (1), (b), (i).

of ministry or employment task in order to acquire and continue to deserve support.

The actual decision regarding the level of support does not rest solely with the bishop. The principles of natural justice and the spirit and intention of the law limit the bishop's discretion in this matter. The level of support must be consistent with the principles of social justice established by the Church and according to the criteria established by the *Code* and particular law.

Naturally, a level of support could vary widely considering the resources available within a given diocese. Furthermore, under the 1917 *Code*, even if a presbyter returned to the lay state, the bishop continued to retain the obligation to see to the support of the presbyter as necessary. The canonical tradition mandated that a presbyter should not be left without a means of support or destitute.¹⁴⁸

The notion of support quantified by the term, "sustenance," can be described as "to keep from failing; provision of necessities"¹⁴⁹. Does such a definition satisfy the requirement established by the terms of *PO*, no. 20? It does not. Lynch says:

¹⁴⁸ 1917 CIC, cc. 2303, §2; 2304; 2305 refer to the departure from the clerical state. If the priest was indigent, the bishop should provide for him as best he can. If the deposed cleric continued to show no sign of amendment, the bishop could stop even the charitable subsidy. In decisions and jurisprudence rendered under the canons of the 1917 *Code*, the learned authors did not have available recent advances in medical science concerning medically defined compulsive mental disorders.

¹⁴⁹ *The Concise Oxford Dictionary*, "support," p. 1072.

“Remuneration [...] is a term that extends beyond what is necessary to meet basic needs”¹⁵⁰.

The criteria established by *PO* extend beyond a “minimalist” notion of support. By their very natures, the right to an annual vacation, family obligations and the duty to support of the poor go beyond the notion of bare sustenance or minimal and frugal levels of personal support.

2.2.7 Remuneration: Canon 281, §1 – Interpretation and Commentary

In order to appreciate the longer-term implications of this paragraph, remuneration and the need to make provision for future retirement exist as interdependent realities. In today’s socio-economic context, resources and sources of support during active ministry determine the quality of life of a presbyter in retirement. Paragraph 1 of the canon considers remuneration during active ministry.

The outline and focus of *PO* is readily detectable in c. 281, §1, but what is missing from the canon is even more significant. First, nowhere in the canon is the principle of a honourable and just wage associated with the notion of remuneration. Second, neither the Latin *Code* in general nor this canon in particular establishes the juridical “right” to a ministerial office or an employment task, as does the *Code of Canons of the Eastern Churches* in c. 371.

¹⁵⁰ LYNCH, in CLSA, *New Commentary*, 2000, p. 368.

Having fulfilled the requirements of law, clerics have the right to obtain from their eparchial bishop an office, ministry or function to be exercised in the service of the Church.¹⁵¹

One might argue that the *Oriental Code*, promulgated as it was in 1990, is more current and better reflects the mind of the legislator.¹⁵²

The term “remuneration” is not clearly defined in c. 281, § 1, nor is it very specific due to the universal significance of the *Code* and its application in many different national economic circumstances. However, in the composition of what constitutes “remuneration,” the canon includes all those factors noted in *PO*, no. 20, which quantify or attempt to formulate at least some criteria for the construction of what constitutes decent support. The canon indicates a presbyter “[...] deserves remuneration which is consistent with [his] condition”¹⁵³.

The canon identifies a specific group of the Christian faithful and determines what they do in order to obtain remuneration under this canon. Some members of the Christian faithful are clerics; for them, remuneration originates in either possessing a ministerial office (*munus-function*) or another ecclesiastical ministry.

¹⁵¹ *Code of Canons of the Eastern Churches*, c. 371, p. 193.

¹⁵² The implication is significant for the interpretation of the Latin *Code* in terms of a right to remuneration acquired by office and a presbyter who is “unassignable”. Simply stated, either a presbyter must have a ministry from which he might derive his support or he must acquire support by means of a retirement or a disability annuity. In the Oriental churches *sui iuris*, a presbyter cannot be “status-less”.

¹⁵³ 1983 CIC, c. 281, § 1. Translation in CLSA, *New Commentary*, 2000, p. 366.

There are four implications to the terminology: first, by utilizing the word “cleric” in the *Code*, c. 281, § 1, the legislator broadens the scope of participants.

1. Clerics are bishops, presbyters and deacons.
2. Any cleric with an intention to minister and engaged in an ecclesiastical ministry assigned by the bishop, possesses the right to remuneration. He has technically “earned” his wage in commutative justice and as part of an obligation implicit even in an oral contract for hire.
3. The term “ministry” provides for a variety of ministries or types of employment that are capable of providing remuneration.
4. The term, ecclesiastical ministry, reaches beyond the scope associated with ministerial offices or functions according to c. 145. Consider the canonical office of the vicar-general *vis-à-vis* a diocesan director of religious education. The latter may be an ecclesiastical ministry but it is not a ministerial function according to law unless so constituted by the bishop.

The focus of *PO* is the ministerial priesthood. Ordinarily, the cleric is a deacon or presbyter incardinated into a particular church to serve a particular ministerial office or function. Canon 281, §1 affirms that a cleric assigned to a *munus*¹⁵⁴ (canonical *office* or ministerial *function*) receives remuneration from that source of ministry.

The possession of a canonical office at law is not the only means by which a cleric obtained remuneration. Any legitimate task to which a bishop appointed a cleric can become the source of remuneration. The following section pertains to remuneration by assignment as another source of remuneration.

¹⁵⁴ The *Code* uses the term, “*munus*”. The CLSA translated the term as “function”; the *Code of Canon Law Annotated* translated the term, “office” (p. 234). The revised CLSA, *New Commentary, 2000*, translation avoids using the term “office” in order to be consistent with the revision of the meaning of an “ecclesiastical office” according to c. 145.

The CLSA translation prefers to use the term “remuneration” directly related to “taking into account the nature of their function” (*ratione habitae ipsius muneris naturae*). The focus is on the cleric’s ecclesiastical function (*munus*) rather than the particular office (*officium*). Such a focus gives a broader and a more flexible interpretation as to how the diocese may order the distribution of resources intended as remuneration.

However translated, *muneris naturae* still makes it convenient to group together all who possess the same ecclesiastical function. All pastors occupy a similar ecclesiastical function. Therefore, according to *one* of the criteria of *PO*, every pastor should get the same remuneration. In fact, in many places this could well be the case, but is it the case everywhere? Many presbyters may possess the same ecclesiastical office of pastor; do all pastors function according to the same conditions and responsibilities? The canon also addresses this issue.

When one considers the CLSA, *New Commentary*, 2000 translation of the canon, a very different picture emerges with the statement of remuneration “[...] which is consistent with their condition”. Take the example of two pastors. One pastor provides ministry and administrative management to a large urban parish with two thousand families, seven masses on a weekend, three schools, a nursing home, 120 marriages a year, 42 different organizations functioning under the “parish” umbrella; the other pastor provides ministry to a small rural parish with 65 families and two masses on the weekend. The former clearly operates under a different set of “conditions” than the rural pastor. The pastors possess the same

“office;” the conditions of the pastor’s responsibilities are very different between the two parishes. The level of pastoral responsibility is certainly one condition that merits a difference in remuneration between the two pastors. This is consistent with criteria established by Saint Paul in 1 Tim. 5:17-18 and with the allocation of a particular benefice by a bishop.

In addition to remuneration “consistent with their condition” as an objective reality, remuneration tied to the “condition” of the person can also be a subjective reality. Such is the case for all those engaged in ministry by a diocese. Those who possess entry-level professional competencies meet the minimum standard for admission to ministry.¹⁵⁵ Some tasks require specialized training; e.g., judicial vicar, notary, archivist, episcopal vicar with a specialized area of competence (education, temporal goods), theology professor or a teacher of religion in a school. Such persons normally possess or require education and training over and above what the institution classifies as entrance level qualification for generalized ministry.

One element of the subjective reality pertains to professional qualifications¹⁵⁶ acquired, maintained, enhanced and financed by the presbyter through his own efforts or at the request of, and with the financial assistance of the diocese. A

¹⁵⁵ The canons of the 1917 *Code* recommended continuing formal education and clergy examinations for at least five years after ordination. 1983 CIC, c. 521, §3 maintains some sense of continuity when it states that conferral of the office of pastor may be accomplished even by examination.

¹⁵⁶ See SCHMAUS, Article 19, in *Commentary on the Documents of Vatican II*, vol. 4, p. 295. The Council fathers saw continuing education as one of the necessary aids to enhance the quality of life of a presbyter.

presbyter is able to enhance his professional competency by continuing education especially in those disciplines consistent with, or associated¹⁵⁷ with one's chosen field of endeavour, especially theological endeavours.

Consistent with NT criteria and according to *PO* and c. 281, § 1, those who earn "enhanced competencies" through higher education and who use them for the good of the Church, comply with the criterion that promotes additional entitlement to "[...] remuneration consistent with their condition". It is an entitlement because it fits the criteria of "consistent with [the presbyter's] condition" and usually involves selection and appointment by the bishop.

2.2.8 Remuneration and Appointment by Assignment

When a bishop provides an appointment to a person that confers a diocesan status by virtue of the function, but which is not a *munus* (canonical office) specified in the *Code*¹⁵⁸, the person possesses an employment task as an assignment.

Assignment in this sense refers to the fact that "care of souls" is not the sole criterion and source for remuneration.

Assignment is a remote cause of remuneration possibly due to ministerial orders, clerical status, specialized training or even a person pursuing advanced studies. In addition, such an assignment might include selected personnel who may have particular competence in music or liturgy, religious education, immigration or

¹⁵⁷ "Consistent with" refers to theological, scriptural or pastoral studies; "associated with" refers to arts & humanities, social sciences, business, management and finance programs, and the like.

¹⁵⁸ Canonical offices include a vicar general, episcopal vicar, finance officer, and the like.

social services, marriage preparation programs, the Rite of Christian Initiation programs, etc. Some of these assignments may be either the sole source or a partial source of remuneration for a cleric so assigned. The assignment can become the basis for remuneration with the rate of remuneration dependent upon the nature of the function.

2.2.9 The Problem of Multi-tasking and Double-Dipping

As the shortage of presbyteral personnel increases so also does the major problem of multi-tasking and double-dipping. Double-dipping is a much less serious problem and will be considered below. Multi-tasking occurs when a bishop assigns one person to more than one ecclesiastical function or employment simultaneously.¹⁵⁹ Sometimes one particular task could be canonically incompatible with another. When incompatible, it is an objective condition contrary to the law itself. The 1917 *Code*, c. 156, and the 1983 *Code*, c. 152, state “[...] offices which together cannot be fulfilled at the same time by the same person, are not to be conferred upon one person”¹⁶⁰. The issue here is incompatibility; for example, the law does not permit one person to occupy the office of a diocesan administrator and the office of a diocesan financial officer at the same time (c. 423, § 2). A conflict of interest is evident in an appointment to incompatible offices.

¹⁵⁹ Furthermore, multi-tasking highlights the problem of shortages of personnel. For a presbyter to continue to accept multi-tasking may be laudable, but what is the real cost of the service to the community and to the health of that individual?

¹⁶⁰ 1983 CIC, c. 152.

J.H. Provost suggests “incompatibility” may also refer to the person

[...] in the sense of too much for a particular person to take on
[...] would be a legitimate impediment leading a cleric to decline
an appointment by his bishop (c. 274, §2)¹⁶¹.

Provost’s observation is relevant in our time. Bishops and presbyters face the problems associated with decreasing numbers of clergy. Health considerations are a serious issue. For a bishop to appoint or not appoint, for a presbyter to accept or not accept an additional appointment becomes a matter of considerable discretion, discernment, and courage.

Multi-tasking is common in the dioceses of Ontario. One presbyter may hold a variety of functions or assignments at the same time. One might be the pastor of more than one parish; one might be a pastor, an episcopal vicar, and the diocesan vocation director all at the same time. The 1983 *Code* recognizes the effects of the personnel shortages of presbyters and makes compensation by altering the law to suit the circumstances in cc. 517 and 526. These canons derogate from the canonical tradition that did not allow the same person to hold title to more than one benefice at a time or to be the pastor of more than one parish simultaneously. Excepting appointment to non-compatible canonical offices, multi-tasking has become a routine practice in Ontario.

Along with multi-tasking is the notion of “double-dipping”. What is the relationship between a ministry, employment tasking and remuneration? The

¹⁶¹ J. H. PROVOST, in CLSA, *New Commentary*, 2000, pp. 208-209.

assignment depends upon the granting authority and the source of remuneration.

A couple of examples will suffice to explain the differences. A presbyter assigned by the bishop or seconded to teach full time in a school in Ontario, but not as a chaplain, requires the school board to remunerate the presbyter as a teacher. The source of funding for this remuneration is the school and not the diocese directly.

On the other hand, the bishop may assign this same person to part-time ministry in a parish but not as a full time parochial vicar. In fairness to the Christian faithful of the parish, the presbyter may not receive a full-time remuneration from the parochial assignment because he is not engaged in full time ministry to that parish. However, in commutative justice and according to the canon, his “condition of service” on a part time basis merits some type of remuneration. The bishop, pastor and presbyter determine the remuneration based upon the agreement or terms of service. This is not an example of double-dipping; it is remuneration for part-time ministry.

Double-dipping means that one person accepts two full-time offices or tasks and the remuneration from these two *different* sources of support at the same time. In effect, the implied terms of the employment contract cannot be met in one of the offices or assignments.¹⁶² In our case above, double-dipping would mean that the

¹⁶² The notion of the “double-dipping” finds its canonical counterpart in 1983 CIC, c. 152 and in 1917 CIC, c. 156 in the context of incompatible offices. Exceptions to multiple appointments to ecclesiastical functions exist in application of 1983 CIC, c. 517, 526. The canons do not address the specific issue of remuneration in these situations.

presbyter would accept remuneration for performing full time service both at the school and as a full-time parochial vicar of a parish, *simultaneously*.

Concerning multi-tasking and double-dipping, many bishops not only double or even triple task some of their presbyters, but there seems to be either little provision for any additional remuneration or little compensation for the primary source of remuneration, normally a parish, for the loss of services the presbyter might have been expected to render. Multi-tasking and double-dipping without additional compensation is a failure to comply with the demands of social justice, both natural and commutative justice, as well as the norms of the *Code* under c. 281, § 1.

2.3 Support and Incapacity in Canon 281, §2

In general, support includes the satisfaction of those personal and social needs that provide a decent quality of life to a presbyter according to the economic and social standards of time and place. Regarding incapacitated priests, a source of support refers to a diocese and/or government funding for persons permanently or temporarily disabled or incapable of obtaining remuneration and residence from either an office or other ecclesiastical employment. The right to continued support originates in the OT/NT kinship bonds, sacramental bonds as well as in the juridical bond of incardination. Furthermore, a fundamental human right to support finds its source in distributive justice. If the presbyter is a participant in a pension plan and contributed to it, a right to support also exists in commutative justice.

2.3.1 The Notion of Support and Incapacity in General

Various situations and conditions contribute to the incapacity of an individual to generate an income from gainful employment. In such a situation, support provides a safety net of social services for those unable to provide essential materials or services for themselves. Depending on the reason for support, social services normally include the ability of a person to acquire food, shelter, clothing, health care, as well as, financial resources for personal needs and necessary services (retreat, transportation, vacation, continuing education, etc.).

Incapacity is any situation in which a person is incapable of, or lacks the ability to obtain, gainful employment due to external economic conditions or conditions of the person or personality. An important distinction exists between incapacity and disability.

A disability is [t]he want of legal capability to perform an act [....]
As used in connection with workers' compensation acts, disability is usually a composite of actual incapacity to perform the tasks usually encountered in one's employment and the wage loss resulting therefrom (i.e., impairment of earning capacity), and physical impairment of the body that may or may not be incapacitating. [....]

Statutory definition of a "disability," for social security benefits purposes, imposes three requirements: that there be a medically determinable physical or mental impairment which can be expected to result in death or to be of long-continued and indefinite duration; that there be an inability to engage in any substantial gainful employment; and that the inability be by reason of the impairment.¹⁶³

¹⁶³ *Black's Law Dictionary*, p. 461. This dissertation uses the term "disability" in its proper sense.

A physical disability or mental impairment might well exclude a person from any possibility of obtaining gainful employment either temporarily or permanently. A disability and/or pension plan defines a variety of medical conditions and provides the terms of eligibility for a person to obtain such a pension.

Government and/or private insurance plans exist to provide support when a person meets the criteria established by such a plan.

Incapacity has an additional implication when it falls outside of the statutory definition of a disability. A person who does not fulfil the criteria for a defined physical or mental disability but who is unable to work, temporarily or permanently, is “incapacitated”. Consequently, there is no eligibility to access a disability pension per se. There may be no insurance plan available that identifies the incapacity as a cause for obtaining any type of support under the terms of the plan. In such a case, incapacity outside of disability must find support from sources other than public or private insurance plans.

Bare sustenance (necessity) is not the criterion of the level of support intended by the canonical tradition or the canons in cases of disability or incapacity.

Nevertheless, support generally remains contingent upon the resources available to a diocese. Objectively, bare sustenance occurs when a presbyter possesses an income that is the equivalent of, or below, the *LICO*s figures established for a time and place by StatsCan. In such a situation, a presbyter is unable to take a vacation or offer hospitality to family or friends. A annuity from a disability/pension plan should establish support for the disabled or the

incapacitated at a level appropriate to maintain a quality of life in conformity with human dignity, comparable to other members of his peer group of similar socio-economic classification and within the standards of the economy of time and place.

According to c. 281, § 1, a priest receives no remuneration under this paragraph if he is unable to work or provide service either temporarily or permanently and for whatever reason. However, he continues to possess the right to support in view of his continuing intention to provide ministry, the canonical tradition of the bond of incardination and the demands of distributive justice.

2.3.2 Support and Incapacity Due to Physical or Mental Infirmary

Canon 281, §2 considers the presbyter who is not able to comply with the requirements of ministry thereby making him ineligible to obtain remuneration under the terms of c. 281, § 1.

Provision must also be made so that they possess that social assistance which provides for their needs suitably if they suffer from illness, incapacity, or old age.¹⁶⁴

Normally, incapacity due to physical incapacity, physical illness or the physical and mental decline attributable to disease or the aging process is clearly recognizable and medically definable. It is readily visible in the physical deterioration and/or the mental condition of a person. Mental illnesses that require mandatory hospitalisation and/or continuing psychiatric treatment would

¹⁶⁴ 1983 CIC, c. 281, § 2.

be within the terms of this canon for an incardinated presbyter, even as an outpatient.¹⁶⁵

The advances in medical sciences are of particular importance for our time. Medical authorities now recognize particular illnesses associated with mental disorders such as alcoholism and other addictions, extreme anxiety complexes and even compulsive sexual disorders.¹⁶⁶ Often with professional medical assistance and/or drug therapies, such disorders are medically treatable and some are controllable.

However, the acting-out of some of these disorders by a presbyter can impact negatively on a diocese, a parish, and secular society. The disorder must be regarded not only in the context of an individual personal health issue, but also as a management issue that needs to be resolved by executive administrative authority and law.

Should a cleric's misconduct lead to his return to the lay state after due process, the Christian faithful retain the obligation to treat the presbyter with dignity and

¹⁶⁵ The same might well apply to any presbyter working in a diocese depending on the nature and terms of the contract between the diocese/bishop and the presbyter.

¹⁶⁶ See AMERICAN PSYCHIATRIC ASSOCIATION, *Diagnostic and Statistical Manual of Mental Disorders: DSM-IV-TR*, M.B. FIRST and H. A. PINCUS (General Editors), fourth edition, Washington, DC, American Psychiatric Association, 2000. An authoritative manual for mental disorders with their definitions and brief description include: "Substance Related Disorders, pp. 191-223; Sexual & Gender Identity Disorders, pp. 535-565. See also R. J. FRANCES and S. I. MILLER (eds.), *Clinical Textbook of Addictive Disorders*, New York, NY, The Guilford Press, 1991.

compassion.¹⁶⁷ Furthermore, if a presbyter he has offered ministry and made financial contributions to a diocesan pension plan, he has a right to at least a portion of the annuity according to the principles of equity and proportionality.¹⁶⁸

According to the circumstances and on behalf of a diocese, a bishop possesses the obligation to see to the provision of decent support for an incardinated presbyter suffering from physical or mental disorders, even sexual disorders. The bishop satisfies this obligation within the limits of the financial resources of the diocese and according to a presbyter's circumstances and the mental competence of an individual to handle his own affairs. The utilization of the resources of a diocesan pension plan also satisfies the bishop's obligation to see to a presbyter's support when unfortunate circumstances cause the presbyter's incapacity. The source of the obligation originates in c. 281, §2, the rights granted by distributive justice, and the laws of charity in addition to commutative justice if the presbyter made contributions to a pension plan.

If the mental disorder occurred in an incardinated presbyter after the fact of ordination, a right to continuing support for life from a diocese may be said to

¹⁶⁷ See CD. no. 16; PO. no. 21. See also CORDES, Art. 8, in *Commentary on the Documents of Vatican II*, vol. 4, pp. 254-255. The Council fathers were aware that priests face difficult circumstances and some have failed in some way. The feeling was that "[t]hese men should not 'be treated as men for whom it were better had they never been born,' whose only course is despair (Gomes Dos Santos of Goians, Brazil), [...]. It is there in a critical situation that brotherly love must be maintained and provide genuine assistance, tactful admonition and prayer so that none be allowed to fall" (p. 155).

¹⁶⁸ *Black's Law Dictionary*, p. 1219. Proportionate means "Adjusted to something else according to certain rate of comparative relation." Thus, the principle of proportionality here refers to a pro rated payment of certain benefit entitlements to a pension based on such items as age of the presbyter, length of service, amount of contribution, or number of years to retirement.

exist analogous to the standards present for members of religious institutes in similar circumstances according to c. 689, §§ 2, 3.¹⁶⁹

The right to human dignity continues even in a presbyter's adverse circumstances, as do the sacramental bonds creating kinship among members of the Christian faithful and among brother presbyters.

2.3.3 Support and Sanctions

The Church's approach to imposing discipline upon those who violate ecclesiastical law is unique. This system of law seeks a return of the offender "to the fold", not revenge or punishment for its own sake. Canon law is a system of law that seeks to be sensitive both to the needs of society as well as to the needs of the offender. In the administration of order and justice, there are medicinal or expiatory penalties as well as penal remedies and imposed penances.

Two canons are particularly important in the context of support when a church takes disciplinary action against a presbyter. They are cc. 195 and 1350. Canon 195 provides the bishop with the authority to remove someone from office by decree even though the livelihood of that same person depends on the office.

¹⁶⁹ 1983 CIC, c. 689, says: "§ 2. Physical or psychic illness, even contracted after profession, which in the judgement of experts renders the member mentioned in § 1 unsuited to lead the life of the institute constitutes a cause for not admitting the member [...], unless the illness had been contracted through the negligence of the institute or through work performed in the institute. § 3. If, however, a religious becomes insane during the period of temporary vows, even through unable to make a new profession, the religious cannot be dismissed from the institute."

If by a decree of the competent authority, and not by the law itself, someone is removed from an office on which that person's livelihood depends, the same authority is to ensure that the person's livelihood is secure for an appropriate time, unless this has been provided for in some other way.

The bishop of a diocese is the competent authority who issues a decree of removal from an office, but by doing so, the bishop assumes direct responsibility for and the obligation to provide support. The canon uses the terminology that support is due "[...] for an appropriate time [...] unless this has been provided for in some other way". In the interpretation of "appropriate time," three criteria are possible:

1. the presbyter is offered another office or assignment when the condition causing the removal no longer exists (a temporary condition);
2. if a permanent condition of the person exists that precludes the offer of an ecclesiastical office or employment, the bishop may have no alternative but to accept the resignation of the presbyter; and
3. the presbyter possesses personal financial resources to the extent that these resources provide a quality of life compatible with human dignity according to the standards of time and place and relatively comparable to the quality of life of other retired presbyters.

These criteria do not exclude the right to at least a portion of a pension annuity if the presbyter contributed to the plan.

The issue of sanctions and support raises a number of considerations. In the interests of fairness and public perception, it would not be remiss for a diocese to have a standing conciliation and arbitration board available to evaluate such situations. Furthermore, such a board could make recommendations to the bishop regarding a decent level of support that a presbyter might receive in he is in difficult circumstances. Such a board should consist of competent laypersons and representatives from the senior clergy.

It is difficult to determine the exact level of financial support that a presbyter might receive in such a variety of situations and conditions. However, the implication is that the matter is serious enough to warrant removal from office either permanently or temporarily. The canon calls for some temporary provision of funding support for one removed from his source of support. Such terminology as “appropriate time” is relative and imprecise. In the interests of justice and canonical equity, another consideration follows.

If the offer of early retirement is due to a medical condition or incapacity in the condition of the person, what can a diocese offer during the “appropriate time”? If the diocese, presbyter or a public agency requests or suggests treatment or retraining, who pays for it if the condition of the person does not fall within the parameters defined as a medical disability? Under the former and current scales of diocesan remuneration and fees for such services, it is unlikely that many presbyters will possess the personal financial resources for treatment or retraining without financial assistance.¹⁷⁰ Should treatment or retraining be a consideration, distributive justice suggests the diocese¹⁷¹ provide financial support for such treatment or training for the presbyter. The diocese must provide support within the constraints of its financial position.

¹⁷⁰ For a presbyter returned to the lay status by law, indult or at his request, government re-training programs may be an option.

¹⁷¹ The bishop must consider the financial resources of a diocese. The presbyter, if he has creditors, must pay his debts to the extent possible. If no income is forthcoming, or too little, a removed or dismissed presbyter's lack of income might impede treatment or job opportunities, depending upon the situation.

The task of the bishop and presbyters of a diocese is to manifest brotherly love toward each other, particularly for a brother in serious trouble.¹⁷² The law shows the concern of the Church for the presbyter and his continuing support, for the well being of the Christian faithful, and society, in c. 1350 even when the law imposes penalties:

§1 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.

§2 In the best manner possible, however, 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.¹⁷³

In light of our subject of support, a presbyter removed by law¹⁷⁴ from the exercise of ministry for the sake of the common good and welfare of the faithful or removed by decree of a bishop should continue to receive support. Though the canon continues to speak of a “clerical state”, the intent is clear. Canons 195 and 1350 demonstrate the Church’s strongest affirmation of the human dignity that remains attached to the cleric who “stands-in-need”¹⁷⁵. The application of support in the context of these canons applies support in an entirely different context than

¹⁷² See *PO*, nos. 20, 21. See also CORDES, Art. 8, in *Commentary on the Documents of Vatican II*, vol. 4, pp. 254-255. The admonition of the Council fathers in this matter was more than simple and pious exhortation; brotherly love is an obligation imposed in Christian charity that is also encompassed in the canon.

¹⁷³ 1983 CIC, c. 1350. English translation in CLSA, *New Commentary*, 2000, p. 1564.

¹⁷⁴ 1983 CIC, cc. 1331-1333; 1339-1340; 1044.

¹⁷⁵ 1983 CIC, c. 1008. See WM. H. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process*, Ottawa, ON, Faculty of Canon Law, Saint Paul University, 2000, p. 77. Woestman cites the obligation of charitable support in context of c. 1350.

that of c. 281, §2. However, canon 281, § 2 supports the intention of cc. 195 and 1350.

These canons attempt to keep the relationship between a bishop/diocese and a presbyter alive through the offer of support that expresses the Church's ongoing concern for the reconciliation and healing of a wounded brother. On the other hand, the church must respect the privacy and wishes of the presbyter who may wish to sever the relationship and even the support. The presbyter and brother may refuse an offer of assistance. However, to be true to its own mission, the diocesan church must not refuse to offer support, spiritual, emotional and material, to a presbyter in need. The diocese must continue to offer support to the presbyter according to the resources available to the diocese.

2.3.4 Sanction and Loss of Support and Residence

Two canons appear to deny support to a presbyter when a court declares or imposes a penalty.

If the excommunication has been imposed or declared, the offender: [...] does not appropriate the benefits of a dignity, office, any function, or pension, which the offender has in the Church.¹⁷⁶

A suspension prohibiting a person from receiving benefits, a stipend, pensions, or any other such thing entails the obligation of making restitution for whatever has been received illegitimately, even if in good faith.¹⁷⁷

¹⁷⁶ 1983 CIC, c. 1331, §2, 5°.

¹⁷⁷ 1983 CIC, c. 1333, §4:

Both these canons impose a sanction that withdraws an ecclesiastical pension.

The canons located in Book VI, "Sanctions in the Church" Chapter One,

"Censures", tend toward a perception of the notion of a pension that might no

longer be relevant or enforceable under Canadian (or USA) secular law. T. J.

Green acknowledges that the law forbids an excommunicated individual to

receive "[...] income from any ecclesiastical dignity, office, function, or pension,

[...]"¹⁷⁸, but he goes on to say:

In the case of clerics, however, this last provision must be interpreted in light of canon 1350, § 1 on the basic right to support of even the excommunicated cleric. Furthermore, civil law implications of possible deprivations of income must be considered in preparing contracts for church employees¹⁷⁹.

Green's commentary affirms even an excommunicated cleric's right to support under c. 1350, § 1, but appears to limit "civil law implications" to contracts with church *lay* employees who may also be subject to an excommunication. In this matter, the canons presuppose total ecclesiastical control over a pension, its funding, and distribution. Such may not be the case, as will be shown below.

Concerning c. 1333, § 4, Green continues to maintain the interpretation of a suspension and loss of pension support in light of cc. 1350 and 281,¹⁸⁰ but goes on to say: "If the suspended cleric profits illegitimately from the income related to

¹⁷⁸ T. J. GREEN, in "Delicts and Penalties in General, c. 1331, § 2, 5°, in CLSA, *New Commentary*, 2000, p. 1550

¹⁷⁹ Ibid.

¹⁸⁰ Ibid, p. 1552.

his office, he is to make restitution to the Church in justice even if he acted in good faith”¹⁸¹.

In spite of the canon law stated, it might be rather difficult to deny an ecclesiastical pension to an excommunicated presbyter in Ontario depending on the context. Normally, if the presbyter contributed to a pension plan or trust established by a diocese for its presbyters under the legislation of common law, the presbyter will have a legal right to *some* benefit both at secular law, according to commutative justice, and canonical equity. Consequently, if an excommunicated or suspended cleric has contributed to a pension plan constituted at secular law, he has a strict right to full or partial pension compensation as determined by the regulations of the pension plan. The fact of excommunication or suspension might have no bearing on the right to receive benefits from a pension fund.

If a diocese did not constitute a pension plan at secular law and the presbyter has made no financial contribution to it, there *might* be some basis at secular law to withhold or withdraw the benefits of such a plan, providing exclusions are written into the plan. This might occur if the diocese provides a pension to presbyters in view of cc. 281, §2, and 538, §3. It would be for the ecclesiastical or secular courts to decide the matter based on the principles of natural justice if the diocese took such an action and the presbyter contested the action.

¹⁸¹ Ibid.

However, given what has been said about c. 1350, the free conferral of a pension is a means of showing and witnessing to the Church's forgiveness and ongoing concern and hope for an offender's healing and reconciliation. The Church's obligation of "witness" continues even if the bishop judges the cleric incapable of further public ministry or if the Church returned the cleric to the lay state.

2.3.5 Support and the Unemployable or the Unassignable

If the bishop does not provide the presbyter with a ministry that provides remuneration, the presbyter is technically unemployed. The status of being unemployed indicates that some exceptional circumstance precludes employment. All diocesan positions are full; no full-time ministry or other employment is available. It is reasonable to assume that such a situation would be temporary given the canonical tradition of Chalcedon founded in c. 6.

There is another situation whereby a presbyter may become unemployable. If, in the discretionary judgment of the bishop and after due process, he cannot provide *any* permanent employment to the presbyter, the presbyter is unassignable. G.

Ingels states,

[i]n the absence of a proper process, there is no basis in law to declare a presbyter "unassignable;" hence, the congregation directed that this presbyter has the right to an assignment, [...]¹⁸².

¹⁸² G. INGELS, Opinion, "Canon 281, Right of Unassignable Priest to Remuneration," in *Roman Replies and CLSA Advisory Opinions 1997*, p. 37.

The term “unassignable” indicates that some condition exists *in the person* of the presbyter *himself* that, in the judgement of the bishop, prevents the granting of a ministry or employment task. The bishop makes this determination for the well being of the individual and/or the common good of the Christian faithful and secular community.¹⁸³

A diocese possesses what can only be termed as an exclusive employment contract of hire with each presbyter.¹⁸⁴ A presbyter is subject to another limitation if unemployed or unassignable. A presbyter cannot offer his services to any secular institution or any other employer without the consent of the bishop (cc. 285; 286). The law itself prevents a presbyter from engaging in business or certain types of occupation.¹⁸⁵ Consequently, a presbyter lacking employment is unemployed in the technical sense, or unassignable due to the condition of the person. Without the permission of the bishop to seek secular employment apart from the diocese, the presbyter is without a means to obtain remunerative income and residence apart from the diocese. The presbyter has no visible means of support.

In distributive justice, a presbyter, unemployed due to external circumstances of the place (no ecclesiastical office open at the moment), has a legitimate right to

¹⁸³ See G. INGELS, *Opinions*, c. 281, pp. 36-39. See also G. INGELS (1989), and J. H. PROVOST (1989, revised 1993), *Opinions*, “Canon 281, Obligation of Support to a Priest in Treatment,” in *CLSA Advisory Opinions 1984-1993*, pp. 63-67.

¹⁸⁴ 1983 CIC, cc. 265-272; 285, 286, 287, § 2.

¹⁸⁵ 1983 CIC, cc. 285; 286; 287, § 2 and 1392.

support from the diocese or the bishop himself according to the canonical tradition. This support continues until such a time as the external circumstances change and the presbyter receives a ministry or employment task from which he then receives remuneration either in his diocese of incardination or another.

The bishop possesses the right to restrict access to support or temporarily limit support in order to encourage the presbyter to accept employment or to attempt to correct inappropriate behaviour specifically in reference to c. 281, § 1.¹⁸⁶ A presbyter's refusal to accept a ministerial office or employment task without a legitimate reason¹⁸⁷ proportionally decreases the right to support under the same canon.

Both the bishop and the presbyter play a part when a presbyter is unassignable due to a condition temporary in nature. A proportional right to support continues to exist. The bishop might offer the presbyter employment when the condition attributed to the presbyter that caused the temporary status of unassignable no longer exists. A presbyter proportionally decreases the right to support if he has not taken the opportunities available to change his condition if he is capable of doing so.¹⁸⁸

¹⁸⁶ This is not necessarily true for a retired presbyter obtaining pension benefits who fails to comply with a bishop's order or request. The ecclesiastical title of pension no longer exists if a diocese has constituted a pension plan or trust according to secular law.

¹⁸⁷ 1983 CIC, cc. 285; 286; and 1392.

¹⁸⁸ The disease of alcoholism, its treatment, and recovery might be an example under this paragraph.

A presbyter might be unassignable due to a condition diagnosed by competent medical authority as a permanent condition. Distributive justice and c. 281, § 2 admit of the obligation to support based on resources available and the material circumstances and condition of the one seeking support, at least proportionally. Such a right is conditional under some circumstances, namely, the resources of a diocese and the circumstances and condition of the presbyter.

The canons express the mind of the Church and the legislator: the Church should not permit a presbyter to be without financial support if possible. The obligation of the bishop (and brother presbyters) to provide spiritual support, fraternal charity and even financial assistance to a presbyter in difficulties does not cease even if the presbyter rejects the support and assistance at a given moment.¹⁸⁹

2.3.6 Classifications of Support in Cases of Incapacity, Removal, and Sanction

There are a variety of circumstances that enter into the consideration of support to a presbyter due to unusual circumstances. To summarize the factors in consideration of support in the matter of incapacity, disability, invalid orders under various circumstances, the following situations are offered with some indications of sources of support due a presbyter in such situation.

1. A presbyter suffering from incapacity due to physical infirmity, physical illness or mental decline attributable to an acknowledged disease or the process of aging receives support under c. 281, § 2. The source of support originates in funds provided by the diocese,

¹⁸⁹ Mt 18:12-14; Lk 15:4-7 are references to the “lost sheep” and the Good Shepherd.

government or private¹⁹⁰ institutional pension plans or pension trusts or any combination thereof.

2. A presbyter suffering from a physical or mental disability according to criteria established under the terms of a government or private insurance plan receives support from such sources providing that the funds satisfy his needs and are at least compatible with his peers. The primary obligation to provide support has shifted from the diocese to another provider. Even so, other elements of a compensation package might well continue to be the obligation of a diocese should support from non-diocesan sources¹⁹¹ be less than is required to sustain a decent life according to circumstances and the physical or mental competence of the presbyter. This could include subsidization for food, shelter, clothing, health insurance, retreat and education allowances, and even long term health care depending on circumstances.
3. A presbyter suffering from a mental disorder that creates incapacity to minister and that does not satisfy the criteria for disability support according to the terms of a government or private insurance plan, receives support from a diocese under c. 281, §2. The primary obligation to support remains with the diocese. The minimum level of support is the income determined by *LICOs* and should be comparable to his peers. Even so, extenuating circumstances and canonical equity might make greater financial demands on the diocese¹⁹² than the amount determined by *LICOs*.
4. One who has simulated sacred orders with malice or fraud and found culpable and who has had his order declared to be invalid according to the decision of an ecclesiastical court has no juridical right to support. Nevertheless, the law of charity continues to prevail in a matter of need, depending upon particular circumstances.

Having considered some of the situations that might give rise to the provision of support to a presbyter in unusual circumstance, what constitutes support and what are the criteria of support in a given situation? In the interests of justice and

¹⁹⁰ Private plans refer to non-government sponsored plans. A corporation may establish a pension plan for employees, or a teacher's association may establish a plan for its members. Public plans are government sponsored plans, such as, Canada Pension Plan, Old Age Supplement, etc.

¹⁹¹ A presbyter may be in possession of a pension, full or partial, from a source other than the diocese. A partial pension refers to a presbyter who taught school, engaged in hospital, prison or military ministry, but who did not stay in that type of employment until eligible for a full pension.

¹⁹² Residence is a component of a presbyter's compensation package. A bishop may deem that residence in a parish rectory might not be in the best interest of the diocese, a parish or even the individual. According to the resources of the diocese, a diocese may fulfil the obligation by providing the security for, and the security of, a rental unit or some other commercial accommodation during such time as the problem is being resolved.

canonical equity, the bishop might well convene a board of arbitration or conflict resolution who might also consider compensation packages for presbyters who retire early or who leave active ministry for other causes. In the interests of fairness, such a board should include laypersons and representatives of the clergy.

The board might consider the following factors in their deliberations:

1. the presbyter's length of service and any financial contributions to a diocesan pension plan by him and/or on his behalf;
2. long-range financial considerations of early retirement are of considerable financial importance to a diocese and a presbyter facing retirement. The board should consider future employability, factors due to age, education, professional qualifications, and the potential earning power of the individual are some considerations. Treatment and/or retraining might be possible for some, not for others.
3. In consideration of the sufficiency of a presbyter's personal assets, some investigation should confirm the fact of self-sufficiency without intruding into the privacy of the presbyter.

The cooperation of the presbyter would be of considerable help, but neither a board nor a bishop could oblige a presbyter to reveal his personal financial assets, a right protected by c. 220. On the other hand, some presbyters might be wont to "suffer in silence" in a misguided appropriation of guilt, embarrassment, fear or simply because they do not like to "make waves".

2.4 The Notions of Resignation and Retirement

The voluntary resignation of a presbyter in his senior years or when prevented from engaging in ministry for some reason gives rise to the notion of retirement. Though the word "retirement" is not specifically used or defined in the *Code*, essentially, the status of "retired presbyter" means a presbyter no longer has the

obligation of offering continuous ministerial service in his diocese of incardination or in any other place, at the request of the bishop. According to cc. 538, § 3 and 281, § 2, the diocese/bishop of incardination assumes the primary obligation to see to the support of the retired presbyter.

2.4.1 The Canonical Notion of Resignation

The juridical act of “resignation” follows certain formalities that imply the cessation of providing ministry on a continuing and stable basis resulting in the loss of remuneration and possibly, residence. The presbyter incurs the condition of being “unemployed.” Resignation is a technical process that involves both objective and subjective elements. In general, there are five juridical elements to a formal act of resignation.

1. A person of sound mind¹⁹³ offers to terminate ministry and vacate an ecclesiastical office to one responsible for providing for the office, for a just cause¹⁹⁴ either orally in the presence of two witnesses or in writing.¹⁹⁵
2. The bishop must accept the offer of resignation within three months by competent authority; otherwise, a new juridical act must take place.¹⁹⁶
3. The presbyter must freely offer the resignation. If there is an element of force or “grave fear, substantial error, malice or simony¹⁹⁷”, and unless competent authority requests the resignation according to c. 1742, § 1, the act is not resignation per se,¹⁹⁸ but rather might constitute an invalid termination of employment by competent authority.

¹⁹³ 1983 CIC, c. 187.

¹⁹⁴ 1983 CIC, c. 187.

¹⁹⁵ 1983 CIC, c. 189, §1.

¹⁹⁶ 1983 CIC, c. 189.

¹⁹⁷ 1983 CIC, c. 188.

¹⁹⁸ 1983 CIC, c. 188.

4. Competent authority must have a positive reason to accept the resignation.¹⁹⁹ Positive reasons include the "good of the Church" or the good of the individual.
5. In c. 538, § 3, the law itself requests the pastor submit his resignation to the bishop upon reaching the seventy-fifth year or at a time designated by particular law.²⁰⁰

There are subjective elements involved in resignation. The act of resignation affects the financial livelihood and security of the presbyter. Therefore, a primary consideration is whether or not the presbyter's offer is freely given and whether or not the retiree feels that he will have sufficient financial security and housing to provide a decent life under normal circumstances in retirement. Excluding health and financial considerations, other personal reasons may prompt the decision to submit a resignation²⁰¹ or a reluctance to submit a resignation.²⁰² Nevertheless, the law requests a pastor to submit his resignation.

Canon 281, §1 or §2 makes no mention of the term "resignation" or "retirement".

However, resignation in the case of old age or illness is one of the voluntary procedures available by which the *Code* allows a pastor or presbyter to vacate an office, a ministry, or terminate an employment task. The condition of unemployment and loss of remuneration is effective upon the acceptance of resignation by the bishop. The diocese/bishop then assumes the responsibility to see to the provision of support for the presbyter.

¹⁹⁹ 1983 CIC, c. 189, §2.

²⁰⁰ 1983 CIC, cc. 354, 538, § 3.

²⁰¹ Other reasons might include a desire to shed administrative responsibility

²⁰² Some might fear a loss of status and esteem; some might be workaholics; extroverted personalities might miss the activity and people associated with a parish.

2.4.2 The Canonical Considerations of Resignation

There are four canonical considerations to resignation from an ecclesiastical office or ministry:

1. resignation implies the loss of an ecclesiastical function or ministry;
2. the presbyter loses his source of remuneration and the right to residence under c. 281, § 1;
3. there is the question of voluntary or involuntary resignation; and,
4. there is a question of the retention or the withdrawal of the ecclesiastical faculties of a diocese.

The first and second considerations are self-evident as are the considerations of voluntary resignation; already noted is the issue of involuntary resignation.

According to even an implicit contract of hire, a presbyter possesses an obligation to offer service on a continuing basis. However, the presbyter's obligation ceases upon the acceptance of a letter of resignation or a verbal statement to that effect before two witnesses. The following juridical acts prevent a presbyter from offering ministry:

1. the obligation to minister ceases upon the execution of an administrative decree of removal that might also include a status of unassignable *de facto*;
2. the obligation to minister may cease as a result of a decree in the form of a sanction imposed by an ecclesiastical court and executed;
3. the obligation to minister ceases upon a rescript of dismissal issued by the Holy See and executed by a diocese.

In the aforementioned situations, the presbyter has ceased providing ministry on a habitual and continuing basis. Consequently, the strict right to remuneration and residence ceases under c. 281, § 1.

That a presbyter's obligation to work has ceased under c. 528, § 3 or upon a specific term of service does not preclude the possibility of his *voluntarily* performing a requested service. He may work on a part-time basis for remuneration if resigned or even unassignable providing he has retained diocesan faculties. This ministerial service is voluntary and on an *ad hoc* basis. He receives remuneration for a service rendered based on either the regulations or guidelines of a diocese, or according to the agreement reached between the parties.

2.4.3 The Transfer of the Obligation of Support

Canon 538, §3 establishes a bishop's responsibility to see to the support of a presbyter who resigns his office according to the law. Canon 538, §3 establishes that a presbyter has a right to that security that finds its source in suitable financial support and residence when he resigns his ministry, office or employment. The presbyter who has resigned is now a presbyter without a ministry, an office, or a ministerial task; consequently, he is without the right to residence and remuneration from a parish or from a diocesan office.

When the pastor resigns his office, the law itself transfers the obligation of support and residence from the office of *parochus* to the diocese according to canonical tradition and as a result of the juridical bond of incardination. The diocese now assumes the obligation of support for the incardinated presbyter.

Canon 538, §3, assures decent support and some arrangements regarding residence for a resigned pastor and/or presbyter. Canons 384 and 281 seek not only to protect the presbyter from poverty, but also, to comply with the

longstanding canonical tradition of the Church's responsibility to provide for the support to its presbyters under a variety of circumstances.

2.4.4 The "Retired" Presbyter

The Council occurred just over forty years ago. The *Code* has just pasted its twentieth year. The entire notion of a presbyter being formally "retired" is relatively new. Though canonical research on the subject of the retired presbyter may be a limited does not mean to say that there is not a substantial body of law and direction on the issue of support. Indeed, the canonical tradition indicates that the issue of support extends as a continuum from active ministry into that time of a presbyter's life when he no longer has the obligation to assume a ministerial office at the bequest of the bishop.

Upon reaching the universal or particular canonical age at which the law requests a presbyter to submit to the bishop a resignation from ministerial office, and, upon acceptance of that resignation for the good of the Church and/or the good of the individual, the presbyter incurs the status known in secular society as "retired". The status of "retired" does not necessarily mean the presbyter ceases ministry altogether, it means he does not hold a permanent ministerial office and he obtains remuneration from particular acts of ministry.

Subject to the norms of canon and/or secular law, the presbyter obtains the rights associated with the status of a retired presbyter. The *Code* determines the rights, the particular law or norms of the presbyter's diocese, or in the law or norms

established by a national episcopal conference of bishops²⁰³ provides for the implementation and the application of the universal law.

The aforementioned Vatican II documents and the particular canons define and demonstrate the necessity of the Christian faithful and a diocesan church to provide support to a presbyter both during active ministry and during formal retirement, disability, or when a presbyter is otherwise unable to obtain support from ministry. The juridical bond of incardination assures a presbyter of the continuing right to life-long support from his diocese unless the bishop has made other arrangements with the concurrence of the presbyter. The law provides for the extinction of the “right” to support because of an ecclesiastical penalty excluding a right to a pension annuity if warranted. However, the *Code*, c. 1350 clearly demonstrates the canonical tradition: the Christian faithful have an obligation and the law mandates that no presbyter is to be left destitute even if he has been returned to the lay state, voluntarily or involuntarily. Under the 1917 *Code*, the dignity associated with the clerical state provided the source for the law, this admonition now finds its source in the dignity of the human person and a community’s obligation to provide support according to the teachings of the Church on social justice.

The law gives some definition and criteria to the nature of support to a presbyter. There is no reason to indicate that the nature or quality of support should

²⁰³ See *Code of Canon Law Annotated*, pp. 1301-1434.

substantially change because a presbyter retires. The only significant difference concerning support between an active and inactive presbyter is the source of that support. In active ministry, the presbyter derives support because of offering ministry on a continuing basis by means of a ministerial office or function; the inactive presbyter receives support from the diocese. How the diocese structures this support is the purview of the bishop.

The question of “housing” is an issue of paramount importance to a presbyter, whether active, inactive, or retired. Housing exists as a right but there is little clarity or critical examination concerning this subject. Housing is a normal component of support for an active presbyter under normal circumstances, but how does the bishop apply the law to an inactive or retired presbyter? The issue is problematic for a diocesan presbyter facing or living in retirement since he no longer has a right to occupy a parish house. It is also problematic for a diocese that has the obligation to see to the provision of housing for a presbyter who is ill, incapacitated or retired.

Chapter Conclusions

With the suppression of canonical titles, the Council and *Code* call for a restructuring of the manner, the sources and the criteria whereby the Christian faithful provide support for a diocesan presbyter. The problem is not in the dearth of law; it is in the implementation and interpretation of the law by a national conference or a particular church and in the lack of any standards of measurement. The nature of support resides in the canonical tradition of Anglo-

North America as well as including those rights encompassed in *GS*, no. 26. The provision of housing is a component of support for a presbyter in active ministry. In effect, the inordinately low salary provided to a presbyter would make it virtually impossible to obtain housing on the economy, to say nothing of the laws and diocesan praxis concerning “residence”. The law builds “housing” into the very structure of *how* the Church ensures support. Housing continues to exist as a component of the support due a presbyter in retirement. Housing is a matter for serious consideration by both a diocese and a presbyter due to the financial costs associated with this element of a presbyter’s support in retirement. The next chapter considers this matter.

The *Code* places the canons squarely in the context of “time and place” and truly demonstrates the Church’s desire for a diocese to exercise not only the principle of subsidiarity in this matter; but also, the canons provide criteria by which to calculate the quality of support due to a presbyter. The *Code* leaves it to the respective national conferences of bishops to implement the law by establishing norms for their own territories regarding the support of the presbyter. Even if the Christian faithful retains the obligation to provide and to see to the support, how the diocese provides the support due to a retired presbyter remains the responsibility of the bishop. Similar to any social institution, the diocese can only make provision according to the amount of the resources available. Aware of this economic reality, the *Code* calls for the establishment of a special fund to provide for the needs of a presbyter under all adverse circumstances.

The canons do not support an egalitarian notion of support; i.e., remuneration is the same for all presbyters. The law conveys the opposite. The *Code* calls for fairness of remuneration by taking into account a variety of circumstances that give some determination to the quality of support due a presbyter in active ministry. Since the documents and canons place some obligation upon a presbyter to provide for his own future as well as his brother clerics, he can fulfil this obligation only if the quality of support obtained during active ministry allows him to make provision for himself in retirement.

How are we to understand the *Code*'s use of such language as "wage" and a proper interpretation of the term, "remuneration"? There appears to be a continuing desire to disassociate the notion of minister and ministry from being either a "worker" or a "professional" who is entitled to earn a living like anyone else. There appears to be a reluctance to acknowledge that a true contract for hire stands as the basis of the relationship between a presbyter and a diocese/bishop. The Roman social structure and the legal contract of hire known as *mandatum*, continues to influence the interpretation of the *Code*'s use of the term, "remuneration".

A significant cultural shift has occurred. The churches of Ontario do not live in a Roman patriarchal society, the source of the system of patronage and the basis of the interpretations of the aforementioned terms. The maintenance of such philosophical orientations and interpretations within an Anglo-North American market economy makes it difficult to integrate a presbyter's right to support

within the context of the social justice teachings of the Church in the churches of North America.

Chapter Three indicates how the presbyter in retirement has fared over the past forty years by providing objective standards of measurement and evaluating the implementation and application of the canons relative to the support of the presbyter in active ministry, and in retirement.

CHAPTER THREE

THE IMPLEMENTATION AND APPLICATION OF THE LAW CONCERNING SUPPORT OF THE PRESBYTER IN THE PROVINCE OF ONTARIO

Introduction

There is a requirement and a need for periodic re-evaluation of the quality of support to the ministers of the gospel. The previous chapters have indicated the OT/NT traditions, the historical canonical tradition of many centuries, the relevant documents of Vatican II, and the pertinent canons of the 1983 *Code*.

The changes wrought by Vatican II and the 1983 *Code* affected the churches in North America. The purpose of this chapter is:

1. to demonstrate the historical elements of decent support in a North American context;
2. to determine selected elements of decent support according to the canonical traditions in a North American context;
3. to apply the notions of decent support and housing in general and its application in the Province of Ontario;
4. to review the CCCB decree based on c. 538, § 3, and to provide commentary; and,
5. to test the application of the law in the Province of Ontario by demonstrating the status of support of a presbyter in retirement by means of a statistical compilation of two surveys adapted from the United States Catholic Conference [=USCC], The Bishops' Committee on Priestly Life and Ministry, *Fullness in Christ*®.¹ The surveys are the "Diocesan Survey on Retirement" and the "Priests' Survey on Retirement".

One survey provided questions to a participating diocese concerning diocesan policy and retirement issues; the other survey provided questions to a sample of

¹ See USCC, *Fullness in Christ*®, 1978. The study is used and adapted with permission. Compiled results from two sample surveys are included where appropriate throughout this chapter. See Appendix C, Annexes 1 and 2.

retired clergy in Ontario on retirement issues. The compiled surveys provide a profile of a sample diocese and a presbyter in retirement.

3.1 Law in Canada Concerning Support from a Historical Perspective

After the British conquest of New France, ecclesiastical benefices were common in the Church of England and in the Anglican Church of Canada but not common in the Roman Catholic dioceses in either Canada (excepting Quebec) or the United States. The ordinary title of ordination in Canada was “service to the church”. Under ordinary circumstances, the bishop conferred a canonical office upon the presbyter. The presbyter received a place to minister and a source of support.

A number of ecclesiastical councils issued certain decrees that mandated specific fees for specific services that made provision for the support of a presbyter. By all accounts, a presbyter received support in conformity with the economic standards of time and place.

3.1.1 Particular Law in Canada and the Province of Ontario

Benefices did not exist in the RC Church in Ontario; however, the title, “service to the diocese” was the ordinary title for ordination and served the same functional purpose. Note the differences between the ordinary proprietary titles of the 1917 *Code*, c. 979 with its connection to a place of ministry and a source of support and the nature of a non-proprietary title with its support components designated as housing and a salary.

Without the title of benefice to provide support in Canada, various particular councils established the criteria for the provision of support to a diocesan presbyter. Furthermore, the financial scales appear to have been in conformity with the economic standards of time and place.

3.1.2 The Councils of Quebec and Toronto

The Plenary Council of Quebec, the Provincial Councils of Quebec and two Provincial Councils of Toronto and the Provincial Council of Kingston provided particular law² in the matter of material support for diocesan presbyters. The Canadian colonies applied many of the customs and much of the law of the founding nations. Material support for the presbyter ranged from “salaries” and land grants provided by the state, tithes, clergy dues both before and after the English conquest and the signing of the Treaty of Paris, 1673. European religious communities provided ministry and support to their members in Canada until the formal establishment of Canadian dioceses.

Only a very few support issues made their appearance prior to and up to the seventh provincial council of Quebec from the period of 1660 to the provincial councils of Toronto and Kingston in 1938. Aside from recurring decrees around

² See J. A. SCHMEISER, “The Development of Canadian Ecclesiastical Provinces, Councils, Ritual & Catechisms: From the Time of Bishop François de Montmorency-Laval (1658) to the Plenary Council of Quebec (1909),” in *SC* 5 (1971), pp. 135-165. The author presents a concise overview of the subject. An extensive bibliography is also included. I am indebted to F. G. Morrissey for his permission to use his unpublished class notes, DCA 2207d, *Canadian Particular Law* (1984-1985), Faculty of Canon Law, 1985. Morrissey’s thorough study of the subject of the historical evolution of the Canadian churches and the ecclesiastical legislation in Canada provides an extensive historical perspective from the founding of New France to the 1983 *Code*. Particular legislation is contained in Part II of the notes, “Legislative Activity in the Canadian Church: Particular Legislation, Synods and Councils,” pp. 122-151.

the issues of tithes, clergy dues and the lack of payment, tariffs were set for funerals and marriages (First Synod, Quebec, 1690). The Third Synod (1698) authorized collections for upkeep of church buildings and pew rents as established by the bishop. The bishop's permission was necessary to send Mass stipends outside of the diocese. Priests were not to accept more or less than the established diocesan tariff for any ministerial service (Sixth Provincial Council of Quebec, 1878).

The plenary council of Quebec (1909) contains two items of note concerning support. The council accepted the title of patronage as a valid title in Quebec, providing there was a minimum of two hundred (\$200) dollars a year.³ The second item sought to stabilize and equalize "salaries" of pastors and assistants in the poorer parishes:

Where the faithful are not obligated to provide the ten percent (10%) tithe or a specific amount of money in a diocese nor is such likely to be imposed, the bishop will determine the salary (*salarium*) to be received by the parish priest or the mission rector and their assistants. That salary will be taken from all the resources of the (diocesan) church, aggregate or surplus [...].⁴

The diocesan church provided support to a parish that could not afford to pay a pastor. In addition, where the people were too poor to provide for the priest in their parish (as might well have happened in rural Quebec at the time), all the resources of the diocesan church were available to provide support to the clergy.

³ *Acta et decreta concilii plenarii quebecensis primi*, no. 495, anno Domini 1909, Quebeci, Typis "L'Action Sociale," 1912.

⁴ *Ibid*, decretum 627b, p. 446. Translation is mine.

During the first provincial council of Toronto, (1875), two decrees affected the support of the clergy: sick priests were to receive financial assistance (no. XVI); salaries consisted of all stole fees, one-half of funeral fees, the Christmas and Easter collections, and the clergy dues (no. XVIII).⁵

The second provincial council of Toronto⁶ (1938) added more detail beyond that provided by the first council concerning support. Since the council is silent on the subject of the voluntary offerings of the Christmas and Easter collections, it appears they continued to belong to the pastor. The second council provided a breakdown of a fee structure for manual stipends, funerals, baptisms, baptismal certificates, and matrimonial fees in decrees nos. 127, 128 and 130 respectively. It might be useful to establish some criteria as to the monetary "value" attached to these various fee for service activities.

In 1938, the tax established by decree no. 127⁷ for a solemn high funeral mass was at twenty-five (\$ 25) dollars. The partial proportioning is as follows: *pro celebrante*, five dollars (\$ 5); the deacon, two dollars and fifty cents (\$ 2.50); the subdeacon, two dollars and fifty cents (\$ 2.50); *pro depositione*, two dollars (\$ 2); *pro ecclesia*, twelve dollars (\$ 12); *ius stolae*, one dollar (\$ 1). The stipend

⁵ *Acta et decreta concilii provincialis torontini primi*, decretum 18, in ecclesia metropolitana Sti. Michaelis celebrati mense septembris MDCCCLXXV (1875), Toronto, ON, Typis Hunter, 1882, p. 31.

⁶ *Acta et decreta concilii provincialis torontini secundu*, nos. 18, 91, 127, 128, in ecclesia metropolitana Sti. Michaelis celebrati 13,14,15 decembris (1938), Toronto, ON, Typis Hunter, 1940, pp. 35, 37-38.

⁷ See 1917 CIC, c. 831. "The local ordinary has the right to fix by decree the amount of the manual stipends in his diocese, which should, insofar as possible, be done in a diocesan synod; [...]." Translation in WOYWOD, vol. 1, p. 506.

was one dollar (\$ 1) for a read mass (no. 127); a sung mass was five dollars (\$ 5) with an even split between the celebrant and the church (no. 127).

The tax and allocation fee by office for ordinary cases submitted to the first instance court was seventy-five (\$ 75) dollars (no. 91, § 2, 1°); for a second instance court, the fee was set at twenty-five (\$ 25) dollars (no. 91, § 2, 2°).⁸

How did these tariffs compare to the general economy in Canada and southern Ontario? In 1919, “[...] wage rates of \$1.00 a day or less for 10 hours of hard work was common”⁹. In the Ontario of 1940, wages for labour amounted to a gross income of about fifteen dollars a week for a single person, seventeen dollars for a married man, or approximately eight hundred and fifty (\$850) dollars per annum for a family man. By 1957, a typical gross wage for a labourer was approximately one hundred dollars a month. By 1963, a typical gross wage for a female labourer was approximately one dollar an hour or approximately one hundred and sixty dollars a month, gross. In 1972, to rent a furnished room in a rooming house in a medium sized city was approximately thirty-five dollars (\$35) a week.

In 1969, a typical income for a diocesan presbyter in Southern Ontario included a diocesan gross salary of one hundred dollars a month plus room and board, mass

⁸ *Acta et decreta concilii provincialis torontini secundu*, in ecclesia metropolitana Sti. Michaelis celebrati 13,14,15 decembris (1938), Toronto, ON, Typis Hunter, 1940, pp. 35-50. See similar legislation in *Acta et decreta concilii provincialis kingstoniensis primi*, nos. 91, 92, 127, 128, Kingstoniae in ecclesia metropolitana celebrati diebus 6, 7, 8 decembris 1938, pp. 35. Further such legislation is found in pp. 38-39.

⁹ N.D. COCHRANE, “Foreword,” in M.V. JORDAN, *Survival: Labour's Trials and Tribulations in Canada*, Toronto, ON, McDonald House, 1975, p. viii. Mr. Cochrane, MLA, was Deputy Minister of Labour in the Government of Manitoba in 1973.

stipends and a portion of stole fees. The price of a new medium-sized North American produced car was approximately four thousand (\$4000) dollars including tax and licence.¹⁰

For the times, the tariffs established by the council of Toronto were substantial in view of a general working-class economy. The breakdowns of fees for services rendered were in conformity to, and generally generous according to the economic standards of time and place.

3.2 Selected Elements Constitutive to Decent Support

The canonical tradition of sources of support for both the diocese and the presbyter admits of tithes, government subsidies and the voluntary offerings of the people. In Canada and in the Province of Ontario most dioceses and presbyters obtain support from the voluntary offerings of the people and from public and private pension plans. Over the past forty years, the economic opportunities available to the general population anticipated the possibility of wealth and prosperity to an unparalleled level in the economic history of this geographical area. Has this period of prosperity contributed to a financial security that permits a presbyter's standard of living to be at least comparable to his lay peers, that is, other middle class professional persons?

The very notion of support in the canonical tradition refers to more than a minimum wage sufficient to provide for the most basic of the physical needs. This is particularly so when it is a presbyter in retirement. A variety of sources

¹⁰ Figures are from my family, personal knowledge and experience in southern Ontario.

provides a base of measurement to determine the adequacy of support. Two major considerations are the accumulated results of two surveys that were part of the study; the other originates in the Government of Canada, Statistics Canada [=StatsCan] criterion *Low Income Cutoffs* [=LICOs] and Human Resources Development Canada [=HRDC] refinement of it, *Market Basket Measure* [=MBM]. Other minor selections of data provide points of comparison. The canonical right to housing raises some problems in terms of acquisition and financing.

The surveys provide some interesting insights into the condition and circumstances of a group of presbyters born around 1922, ordained around 1949 and retired around 1994. The survey results of dioceses indicate little in the way of policy initiatives on the issue of retirement by the participating dioceses at the time of the survey. The issues surrounding a retired presbyter are not unique to Ontario. A study by J.F. Connollen found¹¹ the relationship between life satisfaction in retirement and the presbyter's perceptions of diocesan retirement issues and income have a considerable influence on a presbyter's state of well-being in retirement.

¹¹ See J. F. CONNOLLEN, *The Relationship of Life Satisfaction to Retired Diocesan Priests' Perceptions of Church Retirement Policy and Their Retirement Behaviors*, Arts and Sciences Studies, no. 525, Washington, DC, The Catholic University of America, 1989, for a comprehensive social sciences study regarding the satisfaction of retired priests in the USA. I will discuss Connollen's dissertation below. See also D. B. COZZENS, *The Changing Face of the Priesthood*, Collegeville, MN, The Liturgical Press, 2000; and, W.D. PERRI, *A Radical Challenge for Priesthood Today: From Trial to Transformation*, Mystic, CT, Twenty-Third Publications, 1996, for some of the implications and impacts of a changing world upon contemporary clergy. These latter two authors highlight psycho-social problems associated with the RC priesthood in the early 21st century. They cite causes, effects and the proposal of some solutions.

3.2.1 Application of the Principle of a Just Wage and Implications for Support

Human work, whether exercised independently or in subordination, proceeds from the human person, who as it were impresses his seal on the things of nature and reduces them to his will. By his work a man ordinarily provides for himself and his family, associates with others as his brothers, and renders them service; he can exercise genuine charity and be a partner in the work of bringing divine creation to perfection. [...] [Jesus Christ] is the source of everyman's duty to work loyally as well as his right to work; [...] remuneration for work should guarantee man the opportunity to provide a dignified livelihood for himself and his family on the material, social, cultural and spiritual level to correspond to the role and the productivity of each, the relevant economic factors in his employment, and the common good.¹²

Gaudium et spes declares the source, the right to work and the right to decent support as it emanates from the dignity of the human person and his or her labour.

A person offers his or her labour in order to contribute to the welfare of the human community and thereby to transform creation according to the will of Christ.

J.I. Donlon makes an interesting point when he discusses the principles of a just wage or lay workers and the canonical tradition of sustenance as a basis of support for clerics:

For [lay] workers, the *magisterium* speaks of a just wage for work—financial remuneration for the person's labor. For the cleric, it speaks of support and sustenance—that he have the means necessary for his livelihood. While the worker is paid a wage and through this pay is able to meet his needs, the cleric may meet his needs through both financial remuneration given him as well as other benefits provided him [...] his sustenance [is concerned with more than just financial remuneration] – both present and future.¹³

¹² GS, no. 67. English translation in FLANNERY, pp. 972-973.

¹³ J.I. DONLON, *The Human Rights of Priests to Equitable Sustenance and Mobility: An Evaluation of Canon Law from the Codex iuris canonici to the Proposed Revision of the Code of Canon Law*, CSL, no. 510, Washington, DC, The Catholic University of America, 1984, pp. 150-151.

Donlon's distinction between the "just wage" of the worker and the "support and sustenance" of the cleric is somewhat misleading since he seems to imply a distinction of radical proportions.

The notion of "just wage" must fit within the entire context of remunerative support from the very nature of both divine and natural justice. Such a distinction of persons no longer exists if one accepts the principles of justice espoused by the Church: first, the dignity of all human persons as children of God demands the equitable and fair application of justice; and second, the notion of an honest and a "just wage" originates in the dignity of work emanating from human labour.

Therefore, a wage is "just" when it is within the social and economic standards of time and place relative to the status of the individual and the nature of the work.

The presbyter possesses the same rights as a layperson, the church he serves ought to treat him justly and to respect his ministry/labour. The church ought to base the presbyter's sustenance and support on the principle of a "just wage".

The individual person must satisfy and meet a variety of personal and social needs according to the economic standards in Ontario. A salary and support are not mutually exclusive realities. Indeed the former flows into the latter and comprises a portion of overall support for a presbyter. Even an implicit contract of hire between the diocese and a presbyter must ensure the dignity of the person both in active ministry and in retirement by means of just compensation during active ministry and decent pension benefits in retirement.

In acknowledgement of the necessity of working persons to make a decent living and to provide some limits upon those who would exploit the labourer, the federal and provincial governments provide legislation governing the relationship between employees and employers. Important components of such legislation are the amount defined as a minimum wage by provincial regulation, employer contributions to Canada Pension Plan [=CPP], Employment Insurance [=EI], private pension plans, holiday pay and housing allowances; these are but some criteria governing employment in Ontario.

Furthermore, the terms “wage or salary” carry a slightly broader implication when applied to “income” in a Canadian context. According to the National Council of Welfare, income permits the development of financial resources to comprise the following or parts thereof:

[...] wages and salaries, net income from self-employment, investment income, government transfer payments (for example, [...], Old Age Security, and provincial tax credits), pensions, and miscellaneous income (scholarships [...], for example). The definition of income excludes gambling wins or losses, capital gains or losses, receipts from the sale of property or personal belongings, income tax refunds, loans received or repaid, lump sum settlements of insurance policies, and income in kind¹⁴.

A just wage is a vitally important component of decent income according to the description. A decent income and the accumulation of at least some assets over time allow a person to satisfy current financial obligations as well as to prepare for unexpected events and for the future. The level of income acquired by an employed

¹⁴ NATIONAL COUNCIL OF WELFARE, *Report on Poverty*, in “Fact Sheet, Poverty Lines,” Chapter 1, in <http://www.nccwb.ca/htmldocument/reportpovertypro/chap1.htm>, 8/10/00.

person during his or her active working years normally determines whether a person will live a life of comparative dignity in retirement or suffer anxiety and even poverty in retirement and old age. A person's income and employment opportunities ordinarily decrease after retirement, one can assume that the intended meaning and implication of a "just wage" considers these matters according to the documents, canonical tradition and the law. Furthermore, this notion of a "just wage" conforms to the intent of the social justice policy of the Church as well as the OT/NT principles.

The Church provides no specifics in the determination of what constitutes a just wage in a dollar value. However, it does establish certain criteria already noted in the previous chapter. Furthermore, the law leaves it to a provincial council to determine such matters for the province; notwithstanding that each bishop has the right to determine a presbyter's wages and benefits just as any employer does. The question is: do the presbyter's wages conform to the standards of time and place? The Government of Canada does provide a basis for the determination and measurement of what might constitute a just wage.

Under ordinary circumstances, when diocesan support includes a residence component, it is difficult to deny that diocesan support to a presbyter is just. This remuneration/residence combination is one of the serious problems associated with retirement of presbyters, as will be shown. Suffice to say here, that for the past forty years, the approach taken by a diocese to provide presbyteral support is

dangerously short-sighted in today's marketplace economy, tax structures and statistics¹⁵, especially for a retired presbyter.

3.2.2 Historical Components of Support for a Presbyter

In the conclusion to his canonical study on the subject of support for a presbyter, P.M. Hannan provided a fairly detailed and comprehensive statement of what constituted "income" or a "compensation package" in secular language. The income standards were for *circa* 1950 in the United States and his interpretation of the law and the canonical tradition according to his time and training under the 1917 *Code*.

The canonical concept of the fitting support, *congrua sustentatio*, of the secular clergy means that measure of maintenance which provides a living proper to the clergy in consideration of their dignity and merits according to the economic standards of the locality. Such a fitting support includes, therefore, in addition to the essentials of adequate housing, food and clothing,¹⁶ a proper allowance for medical care, study, moderate recreation, donations to charitable

¹⁵ The statistics are revealing. See R.A. SCHOENHERR, *Full Pews and Empty Altars: A Demographic of the Priest Shortage in United States Catholic Dioceses*, Milwaukee, Wisconsin, University of Wisconsin Press, 1993. Schoenherr's study shows that at a time of increasing RC population, there is a serious decline in the numbers of presbyters able to offer ministry. The study includes personnel projections for many US dioceses. See also M. ADAMS, *Sex in the Snow: Canadian Social Values at the End of the Millennium*, Toronto, ON, Penguin Books, 1998. According to Adam's descriptions of Canadian society, a definition of value systems describes the twelve tribes of Canada. I can only conclude that the source of financial support for the churches is shrinking and will likely continue to do so. The largest group, the Boomers, (43% of the population) do not list religion among its values and do not normally identify with or support a particular church (pp. 206-211). Religion appears to be a value for only the senior Elders (65+), who are a diminishing population base (pp. 212-217), and for about 9% of another group Adams identifies as Anxious Communitarians (p. 209). With such a prognosis, it becomes urgent to ensure mechanisms are in place to ensure decent support for retired clergy.

¹⁶ Hannan's "essentials of adequate housing, food and clothing," conforms precisely to the fundamentals utilized by the government to determine the *Low Income Cut Offs*, discussed below.

causes, prudent provision for the future (unless an adequate pension system is in effect in the diocese), and support of the dependent members of one's family if such support is not available from other near-relatives.¹⁷

The “unless” clause contained in brackets is noteworthy since it refers to a diocesan pension. Hannan seemed to infer there was no need to make prudent provision for the future if a diocesan pension existed. Perhaps this was his experience. There was another consideration more in conformity with the ecclesiastical attitudes of the time: “Earlier on we were given the impression that you’d be active to the end [of your life] or that it was ‘worldly’ worrying about money”¹⁸. In practise, one survey conducted as part of this dissertation indicates that 46% of the retired clergy questioned, did not expect to retire; 42% did expect to retire but mostly due to considerations of poor health.¹⁹

Hannan highlights elements of a longstanding canonical tradition in two particular points: first, the son and brother’s duty to support, or assist in the support of a dependent member of the family as required; and second, economic standards of the time and the place determine what constitutes an honest compensation package. Given the times and economic circumstances around 1950, the annual income estimated for the time is comparably substantial for an active presbyter even without a residence allowance.

¹⁷ P.M. HANNAN, *The Canonical Concept of congrua sustentatio for the Secular Clergy*, CLS, no. 302, Washington, DC, The Catholic University of America, 1950, p. 200.

¹⁸ Priests’ Survey on Retirement, Question [=Q.] 106a: “Did you ever really expect to retire for reasons other than health?” This is a direct quote from one of the respondents and decidedly speaks to the prevailing attitudes of the clergy prior to Vatican II.

¹⁹ Ibid.

It is estimated that an annual aggregate of income of about \$2400 is necessary for the proper support of a pastor in a busy parish if he must use a car in his pastoral work; an assistant pastor, who presumably has fewer social and charitable obligations as well as a smaller medical expense than a pastor, needs an income of about \$1800 a year if he must use a car in his work. [...] These amounts should be sufficient to enable the priests to save something for disability or eventual retirement, but certainly not enough to dispense with assistance from the diocese in the event of long disability or retirement.²⁰

At the same time, Hannan is well aware that even this recommended income was still insufficient to satisfy a presbyter's possible future financial demands. The presbyter would remain forever dependent upon the diocese/bishop in the event of long-term disability or retirement.

Hannan goes on to make an astute observation about the expanding economy of the post-World War II era and the common financial approach of the RC bishops to their presbyters during a time of relative prosperity:

While the income of the Church has increased enormously, the income of the clergy has remained at a very modest level. In many of the wealthy parishes the salaries of the clergy constitute only three per cent of the income of the parish²¹.

Clearly, the bishops had priorities that did not include increasing the salaries of the clergy during a time of plenty. The consequences for a presbyter meant that he fell further and further behind financially, with less chance of providing for himself if he became incapacitated or retired. The presbyters themselves appear to accept the continuous reduction in their incomes vis-à-vis the economic standards of time and place. Why a presbyter would accept such reductions is difficult to determine. Explanations could include a complete trust in the bishop to continue making

²⁰ HANNAN, *The Canonical Concept of congrua sustentatio for the Secular Clergy*, p. 202.

²¹ *Ibid.*, p. 203.

provision or a presbyter's lack of appreciation of his own impending financial situation in case of either incapacity or retirement. Unless a bishop (and a presbyter) has made a considerable financial commitment to a diocesan pension plan, under the financial criterion at the time of the 1997-1998 surveys, a presbyter is likely to find himself close to or below the Canadian poverty line in retirement or incapacity, as indicated by the survey discussed below.

Following Hannan, Donlon confirmed the canonical tradition concerning decent support for a presbyter; but also, he highlighted a significant shift in the canonical emphasis concerning the presbyter's source of support.

His [a presbyter's] remuneration is not based on a right flowing from title or office, but as compensation for his work. It is more akin to the salary that a worker receives because of his labor in the factory or the mines.²²

Donlon reflected one of the significant changes of the 1983 *Code*. His analogy to the worker and the worker's right to his wages is striking when measured against the canonical traditions of the medieval feudal era and the 1917 *Code*. The presbyters went from being a landlord-employer to becoming an employee of a diocese. Donlon indicated a profound shift of perception relative to the secular realities of the nature of employment, contracts and salaries in the Americas.

The right to a "salary" parallels the nineteenth century industrial notion of "worker and wages" to the NT meaning of wages and the right of a worker to obtain his or her wages without delay. These same dynamics relate to a presbyter who is, by

²² DONLON, *The Human Rights of Priests to Equitable Sustenance and to Mobility: An Evaluation of Canon Law from the Codex iuris canonici to the Proposed Revision of the Code of Canon Law*, p. 102.

definition, a professional person²³ with a right to a decent salary. By 1984, Donlon indicated the growing awareness of an economic shift in conformity with his own cultural experience in North America. The implied contract established by the Roman patron-client relationship between a bishop and a presbyter was in decline.

A good deal of Donlon's dissertation expresses the worldview and framework of both a canonical tradition born out of the medieval period and the law in light of the 1917 *Code*.²⁴ This tends to limit the scope of the implementation and application of his principles in the North American post-industrial economy.

The dissertation of J.B. Hesch²⁵ provides an extensive review and commentary on the pertinent ecclesiastical documents concerning presbyters in active ministry. Hesch traced the principles of support contained in the ecclesiastical documents and followed their development as they unfolded in *Communicationes* and then found expression in the respective canons of the 1983 *Code*. He identified the

²³ Based on *Black's Law Dictionary* definition of a profession as "[a] vocation or occupation requiring special, usually advanced education, knowledge, and skill [...]. The labor and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual. [...] The term originally contemplated only theology, law and medicine, [...]" p. 1210. Thus, a presbyter complies with the definition of a professional person.

²⁴ See DONLON, *The Human Rights of Priests to Equitable Sustenance and to Mobility*, pp. 96-102. Though he is writing in 1983, his appraisal of stipends and stole fees has an odd ring in 2003 where both stipends and stole fees are added to the general revenue of a parish in many parishes in Ontario. The presbyter's salary is supposed to be compensation for both stipends and stole fees. Nevertheless, following the canonical tradition of the 1917 *Code*, Donlon indicates that (Mass) stipends belong to the priest because a donor offers the stipend as recompense for a specific service. Stole fees belong by right to the pastor because stole fees are not for providing a specific service, but rather "[...] an offering by the faithful in recognition of the constant care involved in ministering to the spiritual needs of the people [...]" (p. 100). Donlon also refers to the right and a continuing practice of the pastor withholding parts of stipends and stole fees from an assistant to defray costs for the presbyter's room and board. One relevant point he makes regarding stole fees is this: "[...], one should not include the income from stole fees when determining the priest's support, since not all priests are entitled by law to this income" (p. 101).

²⁵ J.B. HESCH, *A Canonical Commentary on Selected Personnel Policies in the United States of America Regarding Decent Support of Diocesan Priests in Active Ministry*, CLS, no. 544, Washington, DC, The Catholic University of America, 1994.

fundamental notions and the components of support that Hannan acknowledged. Hesch's study identified "[...] some twenty-seven criteria regarding priestly support based on the *ius vigens* studied in context"²⁶. He utilized these criteria in determining the strength and weaknesses of various aspects of remuneration or support policies of a number of dioceses in the United States that had been gathered by the National Association of Church Personnel Administrators. From his study, Hesch concluded:

Strengths often noted were the emphasis on the importance of adequate remuneration for priests, flexibility in policies, a concern for equitable and fundamentally equal pay for diocesan priests, and the consultation of priests as the policies were formulated. Common weaknesses included a lack of specificity concerning who is responsible to ensure priestly support and the sources of such support, the frequent failure to encourage communal living and the voluntary embrace of a simple life-style, and the failure to encourage priests to use available public social assistance²⁷.

3.2.3 Government of Canada – Determination of Financially Deprived Persons

The National Council of Welfare, and the Household Surveys Division Income, Expenditures and Housing Data section, in conjunction with survey data from Statistics Canada [=StatsCan], devised a formula²⁸ and a standard to determine the financial income level at which point a person or family is declared legally poor. Samples of 33,896 (1998) households in various demographic areas determined normative standards for income spent on shelter, food and clothing in 1997. The

²⁶ HESCH, *A Canonical Commentary on Selected Personnel Policies in the United States of America Regarding Decent Support of Diocesan Priests in Active Ministry*, p. 305.

²⁷ Ibid.

²⁸ CANADA, STATISTICS CANADA, Catalogue No. 13-551 describes the procedure for the determination of the *Low Income Cut-Offs* [=LICOs], pp. 7-10.

results constituted the database for Statistics Canada's [=StatsCan] annual determination of *LICO*s.

The benchmarks for the data-base used

[...] in this report for the year 1997 are technically known as the 1986 base *LICO*s, because of the year in which spending on food, shelter and clothing was surveyed²⁹.

The government adjusts the rate of inflation annually. The National Council of Welfare provided *LICO*s for the year 2000³⁰ in full. According to the figures provided, a single person required a basic income of \$ 14,992 per annum if he or she lived in a city with a population of 100,000 to 499,999 persons. This was the income benchmark for one person in a city with the noted population. The government determined that an income for one person at or below this amount indicated that such a person was economically deprived, legally poor.

The 1986 report also found a distinct anomaly in the amounts spent on satisfying basic needs between those above and below the benchmark. The report found that the average Canadian family spent 36.2 % of gross income on the basic physical needs of food, clothing and shelter; but also, the report found that some groups actually spend a disproportionate portion of their gross income to satisfy these same basic needs. To offset the findings of the report regarding the disproportion, StatsCan decided, "[...] 20 percentage points (not percent) is a reasonable measure

²⁹ NATIONAL COUNCIL OF WELFARE, *Report on Poverty*, in "Fact Sheet, Poverty Lines," Chapter 1, no. 3, in <http://www.ncwcnbes.net/htmldocument/reportpovertypro/chap1.htm>, 81/10/00.

³⁰ NATIONAL COUNCIL OF WELFARE, "Estimates of Statistics Canada's Low Income (1986 Base) for 2000" [= *LICO*s, 2000], in <http://www.ncwcnbes.net/htmldocument/principales/povertyline.htm>, 81/10/00. I have provided figures for 1998 and 2000. I use *LICO*s for the year 2000 in this location because the figures are more relevant today than when evaluating the surveys in 1998. *LICO*s figures are provided in the Appendix G, Annex 1, for 1998 and 2000.

of the additional burden”³¹. In effect, this means that a person at or below the stated *LICO*s measurement spends approximately 56.2% of his or her gross income on food, clothing and shelter. An example will help to clarify the significant difference.

Rent or mortgage payments are a fixed expense whether the income level is \$ 42 K³² or \$ 14,992.³³ As a rule, one spends approximately one-third of one’s income on shelter. In this example, one needs a monthly income of at least \$ 2400 in order to spend \$ 800³⁴ for an apartment. An unfurnished two-bedroom apartment in a city of 100 – 500 K will amount to \$ 800 unless the economic circumstances of the place determine a shortage or abundance of housing.

However, where one household spends 36.2 % of its income on food, clothing and rent, the other³⁵ spends 56.2 % for the same basic needs for the same residence.

Both individuals pay the same rent, \$ 800.

In 2000, HRDC developed a more sophisticated tool to provide a standard of measurement below which a person might require public assistance. *The Market Basket Measure*[=MBM]—*Constructing a New Measure of Poverty* incorporates

³¹ Ibid.

³² CJOH Radio Station, Ottawa, Ontario, 10 November 1999. During a news report, the station cited average incomes in the Ottawa region at \$42 K for a single person; \$ 62 K as an average for two persons. At the time, Ottawa was not an amalgamated city. “K” designates “x 1000.”

³³ Figures are gross, before tax and other deductions.

³⁴ TRADER MEDIA DIOCESE, *Renters News*, “Ottawa-East Region’s Guide to Apartments, Condominiums, Houses and Shared Accommodations,” vol. 6, issue 20, Oct. 10-24/00. Actual costs for comparable *parish* housing are more realistic at \$1000-\$1500 per month, according to *Renters News*.

³⁵ See <http://www.ncwcnbes.net/htmdocument/reportpovertypro/chap6.htm>. The report provides considerable data on the status of poverty in Canada by identifying a variety of groups by age, marital status, income levels, etc.

both StatsCan's measure of low income (*LICOs* and the *Low Income Measure*).

What is of particular interest is the composition of the *MBM*.

The market basket on which the *MBM* is based includes specified quantities and qualities of goods and services related to food, clothing and footwear, shelter, and transportation. It also contains other goods and services such as personal and household needs, furniture, telephone service and modest levels of reading, recreation and entertainment (e.g. newspaper and magazine subscriptions, fees to participate in recreational activities or sports, video rentals, tickets to local sports events).³⁶

HRDC suggests that the *MBM* is an economic standard that identifies a quality of life that should be available to all Canadian citizens.

3.2.4 Application of Just Wage and Employment Standard to a Presbyter

The purpose of this section is to highlight and demonstrate the real dollar income and the value of work attributed to the presbyter in parish ministry in an urban parish. With a population base of 100 K to 500 K, the *LICOs* (2000) base is \$ 14,992. The official pay statement of income and deductions issued to a presbyter by a diocese or a parish is another standard to measure a "wage and its relationship to justice" in Ontario. One might rightfully suggest that the presbyter is not an hourly employed worker. Nevertheless, he usually lives in the same location that he ministers and by tradition is "on duty". Hypothetically, he is supposed to be "available" in the same sense as others are "on duty" when they offer their services in the locations associated with their professions (medicine, engineering). Furthermore, other professional persons calculate their time and

³⁶ HRDC, *Market Basket Measure*, in "Understanding the 2000 Low Income Statistics Based on the Market Basket Measure," in *Applied Research, Bulletin*, May, 2003, p. 2.

charge by the hour for their services. The calculation is for purposes of comparison. In determining an hourly wage, the point is simply to provide data for comparison to the notion of an honest and just wage for a presbyter according to the criteria established in *PO*, no. 20 and c. 281, § 1. In an active urban city parish, the presbyter may well spend at least nine hours a day for six days³⁷ actually engaged in parish administration, meetings, instructions, visiting schools, hospitals or homes, sacramental preparation, sacramental or other ministerial celebrations, or "on duty". With a gross salary of \$ 1,476.92 per month³⁸, this amounts to an hourly wage³⁹ of \$ 6.84 per hour plus room and board⁴⁰. The minimum wage in Ontario was \$ 6.85 per hour as of 1 January 1995⁴¹. The residence factor is not included since not all presbyters obtain this benefit.

The support for a presbyter in a parish includes housing. Each diocese determines its own fees and charges are standard across the diocese. The parish or other

³⁷ This amounts to an accumulation of 216 hours a month. An unwritten rule is one day off a week in a number of dioceses in Ontario. In some cases, the "time-off" begins after the morning Mass until sometime the evening of the same day.

³⁸ Figure from my monthly pay stub.

³⁹ See *Employment Standards Act* [=ESA], RSO 325, in "General" in "Interpretations," 11. (2), R9.7. "Subject to the definition of "regular rate" in section 1 of the *Act*, in determining the regular rate or regular wages of an employee whose hours of work differ from day to day or who is paid on a basis other than time, for the purposes of Part XIV of the *Act* [...] shall be determined by calculating the average of the employee's weekly earnings, exclusive of overtime pay, for the weeks the employee has worked in the period of thirteen work weeks preceding the date the employee would have been entitled to receive notice of termination." R.R.O. 1990, Reg. 325, s. 11.

⁴⁰ The range of fees charged for a presbyter's room and board [=R & B] in Ontario ranges from \$ 50 to \$ 600 a month among the six reporting dioceses in the survey. Further consideration of R & B occurs later when the real costs are calculated. For now, I am using minimum government standards in the amount of \$ 341 a month. According to survey results, the average at the time of the survey was \$ 362. Some might consider the low R & B rates (\$50 a month) a benefit to a presbyter; they are not, as will be shown.

⁴¹ As of January 1, 1995, the minimum wage in Ontario under classification of general employment is \$ 6.85 an hour according to *ESA*, RSO, 325, in "General" in "Interpretations," 10., (1), 4., R9.6.

diocesan residence charges and collects said fees from the presbyters occupying diocesan housing. Such fees tended to fluctuate widely.

Government regulation requires the reporting of this “accommodations allowance” as taxable income. Canada Customs and Revenue Agency [=CCRA, formerly Revenue Canada], T-4 “statement of income” form provides a box for this figure. Either way, such allowances are taxable. The tax implications for a presbyter are considerable and are subject to greater discussion below.

3.2.5 Long Term Detrimental Effects of an Artificially Low Salary

The term “artificial” best expresses the situation because a “low salary” does not paint a true picture of the real cost to the presbyter; nor does the low salary express the real expense to a parish that provides a residence to a presbyter.⁴² Two factors and views come into play when a diocese and a presbyter consider residence under the auspices of a just wage and income. Normally, residence takes at least one-third of a person’s salary, either rental or home ownership. In the case of home ownership, equity⁴³ builds (or declines) over time. Home ownership is a significant asset and acts as an equity and security factor for senior or retirement years. Presumably, by the time of retirement, the equity would be substantial due to outright ownership that, in turn, generally reduces housing costs at a time of lower income.

⁴² The real cost of “housing” will be shown in greater detail below.

⁴³ In this context, “equity” refers to a financial asset, real property (real estate) whose value increases or decreases according to real estate market conditions.

Both the natural right to a just wage and the ability to acquire real estate ownership⁴⁴ are rarely possible for a presbyter due to the conditions of employment (e.g. low wages, obligation of residence). If a presbyter receives income solely from a diocese, his remuneration normally precludes the possibility of either renting or owning during the period of active employment. In addition, according to the survey, the current level of retirement benefits⁴⁵ provided by a diocesan pension annuity would appear to preclude home ownership in retirement. A presbyter would require an independent source of income in order to acquire home ownership.

A further consequence of artificially low salaries coupled with a housing allowance is even more damaging to the long-term financial welfare of the presbyter in Canada. Government and private retirement plans base benefit annuities on the level of contributions made by an employee and employer. The question of who contributes and how much they contribute is of considerable importance to both employer and employee in the construction of a pension plan or trust. Where contributions are shared⁴⁶, the plan determines the rates and percentages of contributions made by the employer and employee. Often, the

⁴⁴ This is not to say that presbyters do not own property. However, without outside sources of income or without pooling resources (partnerships), it would be virtually impossible. Would a commercial bank provide mortgage money to persons with the current gross annual income of most employees of dioceses?

⁴⁵ Diocesan Survey on Retirement, Q. 35f provides a gross compiled average annuity of \$ 1182 per month (\$ 14,184 annually), Priests' Survey, Q. 45b, provides a compiled average annuity of \$ 1156 per month (\$ 13,872 annual).

⁴⁶ In the case of a diocesan plan, the diocese and/or the parishes might be the sole contributor to a pension fund; the presbyter makes no contribution. This type of arrangement does not fit the criteria established in Chapter Two. The presbyter has an obligation to provide for his own future welfare as well as to contribute to the common welfare of his brother presbyters.

contributions are a percentage of the employee's salary. Since the pension annuity cannot exceed the resources of the pension fund, contributions and an annuity may vary according to a variety of circumstances. Ordinarily, the annuity obtained by the retiree is proportional to individual earnings and diocesan and/or parish contributions.

Human Resources Development Canada, Canada Pension Plan Division⁴⁷, indicates equal share payments to the plan by employee and employer in government registered pension plans. Contributions to the Canada Pension Plan [=CPP] determine an individual's benefit rates; the more contributed the higher the benefit to a pre-determined maximum. In June 2000, a variety of government plans and subsidies provided an annuity or assistance to qualified pensioners. The full CPP pension benefit at age 65 was \$ 762.92 and if disabled \$ 917.43.

A substantial difference in return exists when a presbyter receives his pension from CPP based solely on the amount of contributions as determined by the presbyter's salary. Over a twenty-year working period, where different incomes between the two exists, one presbyter might receive a retirement pension of \$ 590.43, another \$ 310⁴⁸ based on years of employment and the amount of contributions.

⁴⁷ HRDC, Canada Pension Plan Division, at [http:// www.hrdc-drhc.gc.ca/isp/cpp/gener_e.shtml](http://www.hrdc-drhc.gc.ca/isp/cpp/gener_e.shtml), 12/09/00, p. 3.

⁴⁸ Figures are taken from the CPP portfolio of two actual presbyters with different earning experiences.

Other possible benefits include the maximum Old Age Security⁴⁹ Pension [=OAS]. This government pension is available to all seniors but it is taxable income. Therefore, the government taxes at least some of this income from those with middle to upper incomes. OAS assists those seniors with limited and often fixed incomes. In July-Sept 2000, the OAS was \$ 424.12.

The maximum Guaranteed Income Supplement [=GIS] is a government financial subsidy that is only available to seniors below a defined income. For the successful applicant who is single, he or she could receive an additional monthly income up to \$ 504.05. However, the GIS is only available to seniors with low incomes to bolster their OAS benefits if that is their major source of income. The Minister of Finance ties GIS to levels of retirement income available to retirees and the cost of living Index that is released quarterly.

Contributions to various public or private retirement plans are contingent upon earned income. An employee cannot contribute more than permitted by government regulation to CPP or to a registered saving plan or a registered retirement savings plan. To take advantage of the inherent deferment of taxes, a taxpayer should make maximum contributions at all times, though it is questionable just how many are able to do so.

Unfortunately, during a presbyter's working life, the salary is generally so low that it is almost impossible to take advantage of this "tax break." Consequently,

⁴⁹ HRDC, Canada Pension Plan Division, in http://www.hrdc-drhc.gc.ca/isp/oas/rates_1e.shtml, 12/09/00.

he is unable to use this tax resource to provide for his future security from within the constraints imposed by a low diocesan salary. Such a situation might also hamper his ability to provide support to his brother presbyters either by contributing to a common welfare fund after retirement or by a bequest after death.

3.3 Selected Problems Associated with Accommodations & Residence

The issue of a presbyter's housing was not a notable problem for a presbyter before the 1983 *Code*.⁵⁰ Since the 1983 *Code*, a presbyter needs to find a place to live in retirement. That this issue is new is evident from the lack of definition and clarity of diocesan policy. It is clear that canon law and the CCCB decree include "residence" and "accommodations" as part of the diocesan support due to a presbyter in retirement. However, neither the *Code* nor the CCCB decree, cited below, give any definition or description to the terminology nor did the decree establish clear principles or criteria in this matter. Furthermore, neither the *Code* nor the decree designates the person with the specific obligation in the matter.

⁵⁰ In the revision and redaction process of what became 1983 CIC, cc. 538, § 3 and 281, § 2, I could find little discussion about where a presbyter might acquire housing or how he might finance it. Donlon's study included the revisions to the proposed *Code* up to its publication in 1983. He reports no prior discussion on this matter. *Communicationes* has very few references to discussions around "housing" in the noted canons. The *coetus*, *De Populo Dei*, vol. 13 (1983), pp. 287-288, refers, in part, to what will become c. 538, § 3. There is discussion focused on the issue of the age of retirement with little mention of where shelter will come from after retirement. The same *coetus* refers to what becomes c. 281 in vol. 14 (1983), p. 80, but does little more than express what is already in the 1983 *Code*. From then to the present, there is little discussion on the matter. Furthermore, other than what is stated in the 1988 CCCB decree, the Commentary to the decree also sheds little light on the subject of a presbyter's housing if not in parish ministry or retired.

The question of “housing” admits of various considerations and factors for the diocese, a parish, and active presbyters in parish ministry and a retired presbyter. What constitutes “accommodations” and under what circumstances? What residence is available? What is the “real” cost associated with residence? Is there a problem for retired clergy in gaining access to accommodations in a parish residence? What are the tax implications of clergy housing for the diocese, the parish and the presbyter? These central issues have considerable financial implications for a presbyter both in active ministry and in retirement.

3.3.1 Terminology of “accommodations,” “residence,” “housing”

Canon 538, § 3 uses the Latin term, “*habitationi*” [= *habitatio, onis, f*], in reference to the residence entitlement of a pastor who has had his resignation accepted. *Cassell’s Latin Dictionary* translates *habitatio* to mean: “dwelling, habitation”⁵¹. The *Oxford Latin Dictionary* provides the following definition: “1. a place to live in, residence. 2. (The action or fact of) lodging, residence; the right of living in a house. b. the cost of lodging, rent”⁵².

Within the canonical tradition, a diversity of opinion reigns because the issue never had the import that it does now. Since the very notion of retirement did not exist for a “priest” from biblical times, and since a canonical title of benefice or “service to the diocese” ordinarily provided the parameters of support and

⁵¹ *Cassell’s Latin Dictionary: Latin-English and English-Latin*, J.R.V. MARCHANT and JOSEPH F. CHARLES (eds.), London, England, Cassell, 1931, p. 246.

⁵² *Oxford Latin Dictionary*, P.G.W. GLARE (ed.), Oxford, Clarendon Press, 1968-1986, p. 782.

residence according to the 1917 *Code*, the issue of housing for a retired presbyter is entirely new.

What “a place to live” means is open to considerable interpretation by the noted commentators. In both the 1985 and the 2000 editions of the CLSA commentaries, “*habitationi*” is translated as “housing”. In the CLSA *Commentary* (1985), concerning c. 538, § 3, J.A. Janicki, interprets *habitationi* to mean “[...] the diocesan bishop must provide suitable *room and board* for the priest”⁵³. In the CLSA, *New Commentary*, 2000, J.A. Renken interpretes “*habitationi*” to mean, “suitable support and housing”⁵⁴, also in reference to c. 538, § 3. The National Conference of Catholic Bishops, *Norms for Priests and Their Third Age*, no. 8⁵⁵ also uses the term “housing” in its *Norms* further to c. 538, § 3.

In his commentary on c. 538, § 3,⁵⁶ Renken comments on everything else but what the bishop’s obligation might mean in terms of “housing” for a retired presbyter.

Hesch’s study confirms the lack of clarity on the issue. What constitutes “housing”? Who has the obligation to provide it and who is responsible to see

⁵³ J. A. JANICKI, in CLSA, *Commentary*, 1985, p. 434. Italics are added.

⁵⁴ J. A. RENKEN, in CLSA, *New Commentary*, 2000, p. 711.

⁵⁵ NATIONAL CONFERENCE OF CATHOLIC BISHOPS, “Norms for Priests and Their Third Age,” 18 November 1987, in *Implementation of the 1983 Code of Canon Law, National Conference of Catholic Bishops: Complementary Norms*, Washington, DC, United States Catholic Conference, 1991, pp. 6; 50-52, in *Code of Canon Law Annotated*, prepared by THE CANON LAW SOCIETY OF GREAT BRITAIN AND IRELAND, in association with THE CANON LAW SOCIETY OF AUSTRALIA AND NEW ZEALAND and THE CANADIAN CANON LAW SOCIETY, E. CAPARROS, M. THÉRIAULT, J. THORN, (eds.), Montreal Wilson & Lafleur Limitée, 1993, pp. 1417-1419.

⁵⁶ See J. A. RENKEN, in CLSA, *Commentary* 2000, pp. 711-713.

that the presbyter's housing is decent, not only in retirement but in active ministry.⁵⁷ One implication of the lack of clarity on the issue is evident from Connellon's study.

Priests in the small dioceses, the longer they are retired, feel less satisfied since they foresee no possible behaviors for realistically improving their financial security or housing and living conditions.⁵⁸

Such a finding in the study has serious implications for all presbyters especially in view of the demands of c. 281, § 2. Canon 281, § 2 calls for suitable provision to be made for those suffering from illness, incapacity and old age; yet, there is a notable absence of any commentary concerning the issue of "housing" in regard to c. 281, § 2. In either of the CLSA commentaries, *Commentary 1985* or the *New Commentary, 2000*, Lynch might have made some comment regarding this important issue for a diocesan presbyter. Where might a presbyter find housing if suffering from "illness, incapacity, or old age"? Who is obliged to provide it and who is responsible to see to its decent provision and maintenance?⁵⁹ Nothing is said about the issue in reference to either c. 538, § 3 or c. 281, § 2 where increasing numbers of clergy retire, fall ill and confront this issue in North America.

⁵⁷ See HESCH, *A Canonical Commentary on Selected Personnel Policies in the United States of America Regarding Decent Support of Diocesan Priests in Active Ministry*. The author indicates that a variety of housing policies exist from diocese to diocese. Hesch arrives at no definitive conclusion to this matter of "the private living space" of the priests in active ministry (p. 307).

⁵⁸ CONNOLLEN, *The Relationship of Life Satisfaction to Retired Diocesan Priests' Perceptions of Church Retirement Policy and their Retirement Behaviors*, p. 220.

⁵⁹ J. E. LYNCH, in *The Code of Canon Law: A Text and Commentary*, J.A. CORIDEN, T. J. GREEN, and D. E. HEINTSCHEL (eds.), commissioned by the Canon Law Society of America, New York, NY, Paulist Press, 1985, pp. 216-218; *New Commentary on the Code of Canon Law*, J.P. BEAL, J.A. CORIDEN, T. J. GREEN (eds.), commissioned by the Canon Law Society of America, New York, NY, Paulist Press, 2000, p. 369.

The 1983 *Code of Canon Law Annotated* [=1983 *Code(A)*]⁶⁰, c. 538, § 3 translated “*habitationi*” as “residence”. In his commentary on the canon, J. Calvo does not allude to the fact of residence or consider where the former pastor will take up “residence” in retirement considering he no longer possesses the right to residence in the parochial house (c. 533, § 1).⁶¹ In addition, while commenting on c. 281, § 2, Rincón does not consider the issue of housing under the auspices of “social welfare” for a presbyter in need due to “infirmity, sickness or old age”⁶². What constitutes “housing” under the term social assistance? Who has the obligation to provide and maintain such housing under the described circumstances? The lack of consideration by the commentators suggests that there is no problem at all, the lawgiver and commentators wish to avoid the subject or there is a serious lack of experience surrounding the issue.

The Canadian decree uses the English, “accommodations and maintenance” (*congruae sustentationi et habitationi*) as essential elements of support due the presbyter in retirement. Neither the Canadian decree nor the canon comment or describe:

1. the nature of the accommodations, dwelling, lodging, residence or housing,
2. possible sources of acquisition or funding;
3. how the bishop is to make such provision; and,
4. who has the obligation to see that such maintenance and accommodations is honourable and decent.

⁶⁰ *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus*, Libreria editrice Vaticana, 1983. English translation in *Code of Canon Law Annotated*, E. CAPARROS, M. THÉRIAULT, J. THORN (eds.), Montreal, Quebec, Wilson & LaFleur Limitée, 1993.

⁶¹ J. CALVO, 1983 *Code(A)*, pp. 395-396.

⁶² T. RINCÓN, 1983 *Code(A)*, pp. 234-235.

There does not appear to be any consistent understanding of the Latin, *habitatio*, by English translators when they translate the ecclesiastical documents or the *Code*.

The words of the canon and the decree associated with a place for a presbyter to live are confusing with the exception of the parish house. Within the Canadian context, “accommodations” and “residence” admit of some variety of definition and description. The differences by definition carry considerable implications in the matter of compliance with the law or the decree. Some clarification of terminology is necessary.

According to *The Concise Oxford Dictionary*, “accommodation” refers to “lodgings, living premises”⁶³; “lodgings” refer to “rooms hired elsewhere than in a hotel”⁶⁴; and, “premises” refers to “house or building with grounds and appurtenances [something accessory to main building, such as a barn, a garden, a garage, etc.]”⁶⁵. Any type of these accommodations might or might not include meals supplied and/or provided [=board], or a meal allowance, as part of the tenancy agreement. By its very nature, the rental agreement defines the area of occupancy and the use of “common areas” (e.g., the kitchen, lobby). These types of accommodations tend to be impermanent. For purposes of this dissertation, the term “accommodations” refers to lodgings with board, or in common parlance, a person who owns a residence provides “room and board” to a lodger for a fee.

⁶³ *The Concise Oxford Dictionary*, “accommodation,” p. 7.

⁶⁴ *Ibid.*, “lodging,” p. 593. In North America, the implication is either a rooming house (a room only) or a boarding house where a person provides room and board to the “roomer.”

⁶⁵ *Ibid.*, “premises,” p. 810.

The notion of “premises” as a “house” or a “house with grounds” seems to extend the notion of occupancy to include the right of possession of the entire property rather than the limited occupation inferred by a “room and board” connotation. Such a house (with or without grounds; e.g., a condominium)) can satisfy the requirements of a residence. “Residence” has the connotation to reside, that is, “have one’s home; house”⁶⁶. A residence may include a detached or attached house, an apartment, and a condominium. A house or condominiums are residences that admit of two types:

1. direct ownership or title to the house and property, unlimited occupancy in perpetuity under normal circumstances; and,
2. a rental property with unlimited occupancy for a time specified by the rental agreement.

An apartment is a rental property; a house or a condominium may also be a rental property. In the case of direct ownership, the person holding the title has the absolute right of possession and occupancy, as well as all the rights associated with the title, i.e., to acquire, manage, maintain and alienate the property under title.

In the case of a rental property, the titled owner may restrict the possession and limit the length of time of occupancy by means of the terms of the agreement as defined in the lease. A person may rent a house and have the right to occupy the house, but a renter cannot alter the physical structure of the building or property or alienate the property. The tenancy is usually more permanent in nature, usually lasting for at least one year.

⁶⁶ Ibid., “reside,” p. 885.

For ecclesiastical law to use the term, “housing,” is even more vague. It can actually include the sense of either “accommodations” or “residence” or both. Nevertheless, as a derivative of the words, “premises” and “house”, the weight of interpretation is in favour of a “house” as a residence, either by title of ownership or occupancy by rental agreement.

This interpretation obtains support in consideration of c. 533, where the 1983 *Code* uses *in domo paroeciali*. Two English translations refer to the term, *domo*, as a “house”: the 1983 *Code of Canon Law Annotated* (p. 391) and the CLSA, *New Commentary, 2000* (p. 704). The pastor’s residence is a house; the house is a residence in this context. The law grants the pastor the right to occupy the residence (c. 533) that is the parish house.

How can these notions of accommodations apply to a presbyter in active parochial ministry? By the definition above, by virtue of his appointment to a canonical office, the pastor, upon taking possession of that office (cc. 527, 532, 1284), has a right to occupy and the obligation to maintain the official residence of the parish (533⁶⁷). However, neither the canonical tradition nor the 1983 *Code* defines precisely the legal relationship between the residence belonging to the juridical person of the parish and the pastor who is its administrator. The law obliges a parochial vicar to reside in the parish (c. 550, § 1).

⁶⁷ The pastor determines and procures furniture, provides physical maintenance, determines auxiliary services to be acquired be that a caretaker or cook, etc. These are not the prerogatives of someone with accommodations in a residence.

Under the 1917 *Code*, one who held a title of benefice, the pastor, took possession of the residence and the *usufruct* as components of his title. The relationship established by the title was a type of possessory ownership (*dominium utile*). The only thing that he could not do was to alienate the property of his benefice.

Since no titles exist under the 1983 *Code*, such a relationship implying a type of ownership cannot canonically exist even though there is a wide popular presbyteral perception to the contrary. The common perception of a presbyter amounts to the following: the parish house is “the pastor’s” house and he has all the rights and obligations associated with this “official residence” according to ecclesiastical and secular law and custom (c. 533). In fact, is it really “the pastor’s house”? With no title but only an assigned ministerial function, one could easily argue that the parish house is not the pastor’s house; ownership of all church property in Ontario belongs to the diocese in ordinary circumstances. This includes the parish house.

The residence remains as part of the juridical person of the parish, but no type of juridical ownership to any property resides in the pastor in either canon or secular law. A pastor has a canonical right of occupancy. However, it seems the nature of the relationship is more in the context of a secular and unwritten rental agreement. The pastor has the legal use of the property owned by the diocese.⁶⁸ In effect, the

⁶⁸ The canonical tradition is relatively clear in that there was little doubt that the parish was the pastor’s parish by virtue of the title and the right of tenure. Pride of ownership and the right of tenure must have impacted upon the effectiveness of his administration. Such a pastor was not a tenant in the same way one might understand being a tenant in a rental unit of some kind today. With the notion of title gone, the lack of clarity here makes it difficult to determine exactly where

pastor and any associate pay a fee for residence or for accommodations obtained from the diocese with the parish apparently acting as a type of rental agent of the diocese. The pastor and any associate living in the parish house seem of occupy the residence based on an implied tenancy agreement.

The diocese sets the fees and not the parish, which should be the case if the parish were acting as a juridical person. This would allow for different rates for rent according to the nature of the property. In spite of these difficulties, the parish collects and keeps the rent.

By the definition of accommodation already provided, an associate pastor in a parish receives accommodations in the form of “room and board” as part of his right to support. The same right applies to any active presbyter assigned by the bishop to occupy specific parish accommodations while engaged in diocesan ministry. Other than a formal assignment of a parochial vicar to a parish by the bishop, the pastor possesses the right to determine who might otherwise receive accommodations in the parish residence. Therefore, with the consent of the pastor, a retired presbyter can receive “accommodations” in a parish house and pays the parish the fees established by the diocese.

Once again, such an occupancy agreement tends toward the unwritten, except in the case of a parish assigned to a clerical religious institute or a clerical society of

the obligations associated with maintenance resides, especially when the juridical person of a parish does not have any status in common law in Ontario. Could parishes be compared to branch offices of a corporation where ultimate control and supervision, even over the physical plant, rests with the diocesan corporation? If so, central control of parish maintenance may well save individual parishes substantial amounts of money.

apostolic life. Canon 520 requires a written agreement between the diocese and the religious institute when a religious institute takes charge of a diocesan parish.

“Maintenance” has two shades of meaning in the context of support. In the canonical tradition, “maintenance” includes all those elements necessary to support the physical, mental, emotional and spiritual well being of the now retired former pastor (c. 538, § 3) or any retired presbyter (CCCB decree, no. 31) incardinated in the diocese. In addition, maintenance suggests and includes the notion “to keep equipment, etc, in repair⁶⁹”. Concerning this latter definition, the obligation of maintenance of parish properties normally resides in the pastor charged with the administration of the parish.⁷⁰

The implications of “maintenance” are far-reaching when it concerns the interpretation of the Canadian decree and its application by a bishop to an incardinated presbyter who is retired. Given the definitions, descriptions, and contexts, precisely who possesses the obligation of maintenance of property in the case of a retired presbyter?

Having considered some of the elements associated with the notion of housing, some confusion continues to exist around the issue of the terminology in use pertaining to residence and maintenance, accommodations, and housing. For purpose of this dissertation, the terms are as follows:

⁶⁹ *The Concise Oxford Dictionary*, “maintenance,” p. 610.

⁷⁰ The failure to see to the maintenance of parish property could make the pastor personally liable to damages if suit were brought against him by the bishop or a parishioner.

1. "housing" will be a generic term inclusive of both "accommodations" and "residence," otherwise the terms mean what they say;"
2. the minimal acceptable standard of housing is "accommodations;" and, the optimum standard is "residence."

Ordinarily, the bishop and all pastors occupy a residence and pay rent for the use of the property that forms part of the juridical person of the parish. During active ministry, other presbyters pay rent and occupy parish accommodations unless they own a personal residence. What happens to a retired presbyter?

A fundamental presumption is that a presbyter who retires from an official residence might reasonably expect an equivalent standard of living and residence in retirement, but with some reservations. Naturally, not all of the advantages of a parish house are likely to be available at little or no cost to a retired presbyter who was a pastor. Regardless of the lack of defined policy and specifics in Ontario, common practice does indeed provide a standard of financial measurement for the real cost of housing.

3.3.2 The Question of Housing in a Parish

In Ontario, the ordinary practise is for a retiring presbyter to find his own housing within the financial constraints imposed by his personal income and personal assets. Today, a retiring or retired presbyter might not be able to presume that there are always accommodations available in a parish house. A presbyter facing retirement must consider a number of options, some of which are not directly under his control. Will a selected pastor accept the request for accommodations in the parish house by a retiring presbyter? Under what terms and conditions might a pastor make such an offer and under what conditions might a retired

presbyter accept the offer? Even with a written agreement, which is the most desirable procedure, another anomaly exists. Presuming that a retired presbyter does find a pastor who will take him in, there is nothing to suggest that a new incoming pastor might not advise the retired presbyter to make other living arrangements. There is no canonical obligation that requires an incoming pastor to accept a retired presbyter's accommodation agreement made by the former pastor.

The consideration or lack thereof regarding the issue of housing for a retired presbyter is a clear determination of conformity or lack of conformity to the demands of the law. The primary obligation to provide housing for a retired presbyter rests with the juridical person of the diocese, represented in the person of the bishop. The bishop possesses the responsibility to see to the provision of housing for a retired presbyter. The lay Christian faithful have the obligation to see that the resources are available to a presbyter to acquire decent housing in retirement.

3.3.3 Classifications of Available Housing

In this matter of housing for a retired presbyter, what constitutes accommodations and residence, and under what circumstances? If there is no direct diocesan policy in place, housing exists as an open option to the presbyter conditioned only

by his financial resources.⁷¹ There are at least four classifications and possibilities:

1. accommodations in a parish residence;
2. accommodations provided by the diocese in a residence that has rental accommodations available, with or without a "board" component;
3. a retirement residence in a self-sufficient retirement development and/or to acquire accommodations in an extended care residence; and,
4. the ownership of a personal residence.

Ordinarily, the diocese possesses secular title to and owns all diocesan ecclesiastical property (*dominium directum*) in the dioceses in Ontario.⁷² This includes parish churches, missions, rectories, cemeteries, office buildings (chancery), etc.

Therefore, on behalf of the juridical person of the diocese, the bishop administers the various properties (c. 1276) through a variety of agents, a pastor of a parish being one.

Though the bishop routinely appoints presbyters as pastors and assistants to parish residences during active ministry, bishops appear reluctant to simply appoint a retired presbyter to a parish residence for purposes of accommodations. The bishop tends not to exert direct control over a pastor's decision to accept or reject an application by a retired presbyter for accommodations in a parish residence. The pastor decides to accept or reject the request or the continuance of a prior agreement. This raises a question of both justice and charity: should not a formal,

⁷¹ Some conclusions will be drawn and discussed below on this issue from the survey responses provided by participating dioceses of Ontario and retired presbyters.

⁷² Only the bishop may suppress a parish or alienate diocesan properties in Ontario. Religious institutes possess title to their own acquired properties and must act in accordance with their constitution and statutes in the same matters.

or even informal, accommodation agreement involving a retiree be binding on succeeding pastors? Who makes the accommodation agreement: the juridical person of the parish or the person of the pastor?

The first chapter considered this matter; therefore, some precedent is available. Under the 1917 *Code*, upon acceptance of his resignation, the pastor lost title to his benefice. The bishop assigned a portion of the assets of the benefice to the former and now resigned pastor in the form of a title of ecclesiastical pension. It was irrelevant if the pastor changed; the obligation of the title of pension remained.

The situation today is different but parallel. A formal arrangement is not between the pastor as a private person, and a retiree; it is a contractual agreement, formal or informal, between the parish as a juridical person, a pastor as its administrator, and the retiree. The parish provides the actual accommodations; the retiree pays the rent to the parish and not to the person of the presbyter-pastor. Thus, the incoming pastor should be bound by the agreements (contracts) made in good faith by the former pastor on behalf of the parish (c. 1290) and the retiree; in this case, a contract for accommodations.⁷³ This said, there might be considerable objection to this principle by an incoming pastor.⁷⁴

⁷³ Whether or not a retired presbyter would want to stay where he was not wanted is another question.

⁷⁴ In a similar fashion, an incoming pastor might dismiss parish staff engaged by a prior pastor and do so without cause. This issue is bound to continue to create problems. One resolution to such a problem is this: the corporation sole of the diocese function as the employer for all lay staff, including lay staff in parishes. Some clergy seem to be unaware that lay employees are subject to

In current practise, the pastor who resigns his office expects to vacate the parish and the official residence in favour of the new incumbent. What is available to the retiring presbyter?

Types of Housing for a Retired Presbyter

Option One: Parish house	Option Two: Diocesan Residence
Accommodations⁷⁵ in a Parish house The diocese establishes the base price for accommodations and/or the pastor arranges the terms of accommodations. Suites or room(s) are likely furnished, a common table may exist, various services may be included (cooking, cleaning, heated garage, etc.). The pastor may or may not request the ministerial services of a retiree on a regular basis depending on the agreement. The retiree may offer to provide ministry on a regular or an "ad hoc" basis. The retiree may or may not receive remuneration for services rendered provided such remuneration is applied to the reduction of his rental fees or other services provided by the parish. Such remuneration for service is a right but dependent upon the terms of the agreement between the pastor and retiree.	Housing in a Diocesan Residence A diocese has a number of options in his regard: 1. A diocese may rent space in a residence owned by another but who provides rental accommodations. 2. A diocese might purchase a number of residential properties, retain title, but rent the property to a retired presbyter at fair market value. 3. A diocese might bulk rent a number of apartment or condominium units and rent units to a retired presbyter at fair market value. 4. A diocese might reserve or rent a number of accommodations for its retired presbyters from a religious institute. The retiree pays fair market share. Fair market value and share presupposes that the retired presbyter receives enough of a retirement benefit to be able to afford such a residence or accommodations. The diocese may offer or provide accommodations to a retired presbyter or offer and provide housing in a diocesan owned/rented residence.
Option Three: Retirement Residence and/or a Health Care Facility	Option Four: Private Ownership of a Personal Residence
Retirement Residence with Nursing Home Facilities This classification implies that a retired presbyter might require increasing care due to the process of aging, illness or disability. The fear of growing <i>dependence</i> on others	Personal Residence Owned or Rented by a Presbyter This classification implies that a retired presbyter has the choice and the financial resources available to obtain either title-ownership to property or rent property for his personal use. An important

the same human and legal rights and obligations under canon and secular law as any other employee in secular society.

⁷⁵ The terms, "accommodations" and "housing" have been described above and are now applied here.

weighs heavily upon all aging persons but particularly a retired presbyter, celibate, and perhaps without family support. Availability and costs associated with such residences and health care facilities and services are serious considerations for an aging retired presbyter. Often, a retired presbyter does not have the financial resources available for such a facility. The retiree would require assistance from the diocese.	consideration in this decision is the cost associated with "setting up house."⁷⁶ Personal residence might include a partnership or a shared expense arrangement between two or more retired presbyters who are friends. Such an arrangement can satisfy and diffuse the financial burdens and also provide a modicum of community life and companionship.
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For a retired presbyter the issue of housing in retirement is a serious consideration and will have a considerable bearing on his degree of life satisfaction in retirement. Much will depend on housing resources, options and availability in the diocese, his personal desires, health considerations and the status of his financial assets.

3.3.4 The Real Cost of Housing

Retirement and/or disability benefits can only be relevant in terms of the provision of decent support when the real cost of living in an area includes and applies to the costs of housing. Though the law states the obligation and right, it does not provide an economic "standard". Even so, a standard is available: apply normal costs of housing and associated expenses of a similar type of housing within a particular location and co-relate them to a presbyter living in a parish house. Such a process provides a component of a "value" or a standard upon which to evaluate the total income of a presbyter. In order to determine a total

⁷⁶ The price of fixed expenses of mortgage and taxes, utilities, the initial investment for furniture and other household necessities can amount to "start-up" costs in the range of \$10 K. Furnished apartments cost substantially more to rent per month as are shown below.

“value” income of a presbyter in Ontario⁷⁷, one must calculate the housing benefit and then add salary and other income derived from ministry.

Almost everyone appreciates the costs and value of home ownership or even of occupying a rental property. The financial consideration of housing has not been of concern to most presbyters because a presbyter expects “free” housing as part of his support. One tends not to notice what is simply “taken for granted”.

Perhaps this helps explain the lack of consideration of the subject by the commentators.

What is the benefit and cost of parish house living? The estimated gross dollar housing *benefit* to a presbyter living in one sample (but real) Ontario city with a 100 K to 300 K population follows. Figures translate the monthly costs associated with living in a parish residence⁷⁸ with maintenance and other benefits. The box provides an equivalent street value for similar residence/accommodations and living expenses in a city of 100 K-200 K in 2000. The accommodations figures do not include other persons “living-in”. The figures are approximate and represent one person and are rounded off to the dollar.

⁷⁷ The value income will vary considerably depending on the location and size of population in Ontario, the socio-economic circumstances of the area, and so on. The following model tends to describe the “process,” as well as to highlight the “hidden” values.

⁷⁸ Rental units are taken from the newspapers of cities with a population range of 100 K to 300 K, Hamilton, London, Waterloo, Sault Ste Marie via internet, 30 October 2000. Monthly rental prices for 2 BR furnished range from Hamilton, \$700-950; London, \$1200-2000; Waterloo, \$1750; Sault Ste Marie, \$450-800; Brantford, suite, \$1200; Ottawa, \$2500-4000. Newspaper subscription costs calculated on the “per annum” base price of the Globe and Mail, plus averaged Hamilton Spectator and Citizen: Globe and Mail, \$ 258; Hamilton Spectator, \$169; Ottawa Citizen, \$213.

Sample Street Value for Furnished Housing for an RC Presbyter

Estimated Housing Costs and Services per Month (2000)	
Furnished accommodations including private bath, full use of all residential facilities; or, a fully furnished parish residence	\$ 1200
Household Goods: personal and accommodations maintenance such as food, cleaning materials, disposable goods, costs of hospitality to visitors	\$ 300
Newspapers	\$ 38
Cleaning Services ⁷⁹ (most large <i>parish</i> residences of 2000 to 3000 sq. ft. would require a minimum 8 hours per week). Figures quoted are based on 1300 square feet of space. Based on out-service contract, \$12. @ 8/hrs per wk).	\$ 384
Cooking Services (non live-in, incl. shopping, 5 days/5 hrs/day @ \$10 for 4 wks; prepares lunch and leaves dinner for reheating.	\$ 1000
Laundry Service based on commercial "wash & fold" @ \$ 1 per pound @ 20 lbs, week, @ 3x per month	\$ 60
Cable Service	\$ 35
Insurance on personal furniture and effects	\$ 9
Telephone Service (Basic, personal)	\$ 23
Totals	\$ 3049 ⁸⁰

The estimated costs associated with providing housing for a presbyter amounted to \$ 3049 per month in 2000. The following are not part of the costing equation: size, age and condition of buildings, location of property, property insurance, actual costs of utilities, maintenance of the property, and the payment of property taxes. Also, custom will dictate whether the presbyter or the parish will pay for particular services usually deemed to be for personal use (newspapers, cable, personal phone, etc.).

The presbyter may also receive other benefits that are not specifically identified as part of a presbyter's compensation package. A presbyter might receive medical and supplemental health insurance, dental insurance, automobile insurance, and

⁷⁹ An apartment for 1 person would require 2-4 hours at least every two weeks depending on the size of a one bedroom apartment that might range from approximately 800 –1000 sq. ft.

⁸⁰ I requested a number of homeowners to review the costs to determine the viability of the figures presented. The homeowners indicate these are conservative estimates based on services provided.

be part of a prescription drug plan.⁸¹ Though such benefits are also a common component made available to employees of many secular institutions, they are of substantial financial benefit to a presbyter. These benefits may also comprise part of a presbyter's benefits in retirement.

Though the above is a demonstration and sample only, it provides some real cost data. Some implications follow when there is a financial accounting relative to both the operating expenses of the parish and the "real" income of a pastor. In effect, a presbyter in a parish may receive a compensation package that includes a gross housing value at \$ 3,049 and a salary that is worth approximately \$ 1,425⁸². The compensation package is valued at \$ 4,474 gross a month, or an annual "value" income of \$ 53,688 gross. This "value" income figure bears no significant relationship to a presbyter's taxable income as declared on a CCRA, T-4, during his years of active ministry. The income and taxable allowances declared on a T-4 consists of, in part, the presbyter's gross annual salary and the amount of the annual housing allowance established by the diocese, normally much below market value.

There is another side to this scenario of artificially low housing costs while in active employment. A retired presbyter expressed it quite well:

⁸¹ Due to the variety of costs associated with such insurance plans, these items were not included in the above calculations.

⁸² Priests' Survey on Retirement. Question 84a reads: Please provide the highest amount and the lowest amount on your remuneration scale for active priests (excluding car allowance, if applicable): lowest remuneration compiled is \$ 1409 (\$ 16,908 annual gross income); highest remuneration compiled is \$ 1423 (\$ 17,076 annual gross income).

[...], I would suggest all priests who are approaching their retirement, that they should set aside or invest in something solid long beforehand. Then they are not going to approach those in authority for some assistance. After all, we do have a living free when we are in our parishes and should be able to save 'something' for the inevitable day. While they are in parishes, priests live pretty well, in most cases, so much better than their parishioners - vacations down south, golf, sports games, have the better cars, clothes, etc.⁸³

The view expressed by this presbyter is not necessarily the view shared by many of the other respondents to the survey. A question remains. How much could a presbyter save for retirement on a gross monthly income of \$ 1423 without accounting for the mandatory government deductions and payment of rent?

According to CCRA, there can be no free "housing allowance" since housing allowances are taxable and not a tax-free benefit according to the *Income Tax Act*. Therefore, the diocese must establish a "fee for housing" for its presbyters in active ministry who occupy or acquire accommodations in a parish house. The parish deducts the appropriate fee from both the pastor residing in the parish house and other presbyters receiving accommodations in the parish house, including a retired presbyter. Traditionally, the fee established was merely nominal. The compiled survey rates housing cost for an active presbyter in residence at the time of the survey amounted to \$ 110⁸⁴ per month or \$ 1,309 per annum. Such figures bear no resemblance to the real costs of housing. CCRA is suggesting that the RC dioceses change.

⁸³ Letter: F. VOORWERK to R. M. KIFFMAN, 3 June 1998. Used with permission.

⁸⁴ Priests' Survey on Retirement. Question 86 (1) reads: CCRA no longer permits a tax-free allowance for clergy room and board. What is the amount established by your diocese as the room and board fee for a priest living in a rectory? (1) if assigned to the parish the compiled fee is \$ 109 per month.

CCRA has been reviewing the R & B amounts the diocese sets and charges a presbyter for residing in a parish house. At the time of writing, CCRA reviewed the housing allowance of one Ontario diocese. The diocese in question was charging its presbyters \$ 50 a month for R & B.⁸⁵ CCRA suggested a more appropriate value of a minimum of \$ 600 a month for such parish housing.⁸⁶ The diocese had to increase the salaries of its clergy to account for the recommendations made by CCRA and to offset the taxable increase in housing.

There are other implications to the artificially low housing fees for both the operating expenses of the parish as well as for the resident presbyter.

Nevertheless, the compensation package of the parish presbyter is the concern. To that effect, the focus now concerns the possible additional tax benefits rendered by the government in favour of a presbyter who is eligible to claim a housing deduction as a taxpayer.

3.3.5 Tax Implications of Housing for a Presbyter

The clergy housing deduction was introduced into the [Income Tax] Act in 1949. It allowed a clergy housing deduction for a taxpayer who was "a member of the clergy or a religious order or is a regular minister of a religious denomination" [Income Tax Act, c. 148, R.S.C. 1952, paragraph 11(1)(q)]. Its purpose

⁸⁵ For some reason, there appears to be a great aversion by the dioceses of Ontario to use terminology other than R & B allowance when referring to a presbyter's housing, such as rent. I cannot discover the motive and resistance to simply accepting the *de facto* situation that rectories are no longer boarding houses with four assistant priests in residence under the authority of the pastor.

⁸⁶ A new issue is likely to surface as the rent for a residence comes more into line with real costs of housing: why should I pay \$x rent, when I could *buy* a house or condo in the neighbourhood of the parish for much the same price and start to develop some equity for my future retirement?

was described in the 1949 Budget Speech as: "conforming the exemption now granted to clergymen in respect of the rental value of a free residence provided by a congregation and in addition extending the exemption to rent paid by a clergyman renting his own quarters where a free residence is not provided by the congregation" [March 1949 Budget Speech, cited in D.M. Sherman, ed., *Income Tax Act Department of Finance Technical Notes*, 10th ed. (Toronto: Carswell, 1998)]. Thus, the clergy housing deduction was added to the Act to confirm and clarify the legal basis of Revenue Canada's then existing administrative practice.⁸⁷

Today, according to CCRA, *Income Tax Act*, "Interpretation Bulletin (IT-141R):

Clergy Residence Deduction, Paragraph 8 (1)(c)" [=Bulletin], May 4, 2000⁸⁸,

housing allowances are no longer a tax free allowance but taxable (§ 21). To

compensate for this former non-taxable allowance, the *Income Tax Act*, paragraph 8

(1) (c), now allows a deduction for a clergyman's residence if the taxpayer is a

member of the clergy and complies with the status and function tests⁸⁹ contained in

the bulletin. When the tests are satisfied, the clergyman may deduct

[...] the value of the residence or other living accommodations [...] to the extent that that value is included in computing the taxpayer's income for the year [...] or rent paid by the taxpayer for a residence or other living accommodations rented and occupied by the taxpayer, or the fair rental value of a residence or other living accommodations owned and occupied by the taxpayer [...] but not [...] exceeding the taxpayer's remuneration from the taxpayer's office or employment [...]⁹⁰.

What are the implications of paragraph 8? To most non-Roman Catholic

clergypersons employed by other religious institutions, this tax deduction for

⁸⁷ R. B. HAYHOE, "The Interpretation of Religious Terms in the Courts: The Clergy Housing Deduction" in *Journal of the Church Law Association of Canada*, vol. iii, no.2 (2000), p. 166.

⁸⁸ See Appendix B, CANADA CUSTOMS AND REVENUE AGENCY, *Income Tax Act*, "Interpretation Bulletin (IT-141R): Clergy Residence Deduction, Paragraph 8(1)(c)" [=Bulletin], May 4, 2000.

⁸⁹ See M. THÉRIAULT (ed.), "Jurisprudence," in *SC*, 34 (2000), pp. 247-284. The author has compiled cases settled at common law around the issue of taxpayers claiming the clergy residence deductions. See also HAYHOE, "The Interpretation of Religious Terms in the Courts: The Clergy Housing Deduction," pp. 164-186.

⁹⁰ Bulletin – Paragraph 8(1)(c) of the *Act*," p. 6, Appendix B.

housing is a financial tool that can be used to great advantage during a person's working life. As a tax deduction, tax refunds provide opportunities in the realm of personal financial planning and preparations for retirement. For the presbyters of a diocese, the tax advantage is lost because of low salary and minimal housing costs. An annual tax deduction of \$1308 is substantially different from \$ 7200 as a housing deduction when a presbyter applies the respective amounts to his taxable deductibles.

The application of the principle of proportionality indicates a considerable difference in applying the two standard systems of financial operations: one where a tax advantage exists, the other where there is no tax advantage. Consider the difference when the current gross taxable annual income for an employee is \$17,100 with the housing tax deductible of \$ 2,900⁹¹, compared to an annual gross income of \$53,688 with the housing tax deductible of \$14,400. The tax refund after taxes that includes the housing deductible with other deductibles can amount to a substantial amount of a tax refund.

This refund can be applied either to develop equity in property, investments or registered and/or retirement savings plans to provide for some financial security in retirement. In effect and in the case of artificially low compensation packages for presbyters in active ministry, the presbyter loses a financial opportunity to provide for his future. Thus far, most presbyters in parish ministry have been

⁹¹ Priests Survey on Retirement. Question 35d reads: "What is the fee for a retired priest living in a diocesan rectory?" The response indicated a fee of \$ 362.50 per month.

unable to take advantage of this taxable benefit to any real effect if their remuneration is from church sources only.

3.4 Canadian Conference of Catholic Bishops, Decree No. 31, *Official Document*, no. 599

The *Code* provides legislation pertaining to the support of the presbyter while he is in active ministry, when he suffers from a temporary or permanent illness and when he retires. However, the *Code* is also aware of the complexities of the issue when application must occur in a wide variety of cultures and economic circumstances. Consequently, the *Code* applies the notion and principles of support only in the broadest of terms. Ecclesiastical law directs a national episcopal conference to establish and implement particular norms for its territory. However, final authority rests with each bishop to determine how he will apply those norms in the diocese he represents.

3.4.1 The Canadian Decree and its Structure

Under the authority of c. 455, the Canadian Conference of Catholic Bishops applies c. 538, §3 in decree no. 31, entitled “Support for Retired Priests [=presbyters].” It reads:

In accordance with the prescriptions of canon 538 §3, and the provisions of canon 281 §2, the Canadian Conference of Catholic Bishops hereby decrees that, taking into account the principles of natural justice and equity, as well as the traditions and circumstances of each diocese:

1. Each bishop shall see to it that a specific and funded plan is established to provide adequate support and accommodations for all retired [presbyters] incardinated in his diocese; available Government pension programs, public pension plans and other social benefit programs shall be taken into account;

2. Each bishop shall also see to it that [presbyters] incardinated in the diocese who become incapacitated before the regular retirement age, will receive sufficient assistance to provide for adequate support and accommodations, taking into account any social assistance programs to which they may be entitled;
3. The administration and verification of the adequacy of these retirement and disability funds shall be entrusted to persons who are recognised as being truly competent in the field⁹².

The structure of the decree falls into four parts:

1. the preamble-title;
2. part 1 of the decree speaks to the support owed to one who resigns his office thereby becoming formally retired. Canon 583, §3 flows from the principle of commutative justice to the law, c. 281;
3. part 2 of the decree speaks to the support entitlement of one who must retire *before* the formal age requested and determined by ecclesiastical law due to infirmity or sickness. This originates in the application of distributive justice to the law, c. 281, §2; and,
4. part 3 of the decree addresses the issue of competence in the administration and security of retirement and disability funds.

The title defines its canonical sources and communicates a certain positive spirit and intent. Briefly considered, the notions of natural justice and equity refer to a standard of honesty and decency. Even so, the interpretation of such terms can be in the eye of the beholder without any objective standards. Thus, the references to the “traditions and circumstances of each diocese” must refer to a diocesan history, but what exactly does this mean? The notion of a “tradition” of support in a diocese is very general. One might consider the nineteenth century and the early twentieth century Canadian canonical traditions of establishing standards of presbyteral support and fees for ministry by means of a provincial council and/or diocesan synod. However, the continuance of such a tradition has not been the practice in Ontario since the Second Provincial Council of Toronto in 1938. These Councils

⁹² CCCB, Decree no. 31, *Official document*, no. 599, 28 June 1988 [=OD, 599], in *SC*, 22 (1988), pp. 478-481.

took place long before the significant socio-economic changes that have occurred in Ontario since that time.

The preamble also uses the term “circumstances”. The notion of “circumstances” must, at least in part, refer to those juridical principles and components of support interpreted within the context of the economic standards of the Province of Ontario according to the conditions of time and location.

Part one and part two of the decree acknowledge distinct differences. The framework of part one is the right acquired by the presbyter when he has conformed to the request to submit his resignation according to c. 538, § 3. The degree of the comparative right to obtain support and the obligation of the diocese to provide support is very high. This is evident in that the decree calls for a specified fund maintained at levels determined to be adequate to provide support to all the incardinated presbyters who would be beneficiaries of such a fund [=pension plan, fund, trust or arrangement]. Ordinarily, a pension plan can describe such a fund. The decree implies that the presbyter has acquired a right (*ius*) to support, the source of which originates in commutative justice and the law (cc. 538, § 3 and 281, § 1).

The framework of part two is the right acquired by the presbyter who retains the intention to provide service, provides service but becomes incapacitated “[...] before the regular retirement age”. The comparative degree of the right to obtain support and the obligation of the diocese to provide support is still high but could be more relative and proportional than the right described in part one, if neither a retirement or disability plan exist. If a plan does exist, c. 281, § 1 provides the

right to support. If the diocese does not have a formal disability fund as a component of its pension plan, other factors need consideration. This is evident in that this part of the decree does not call for a specified fund maintained at levels determined to be adequate to provide support to all the incardinated participants. Rather, not only does this part of the decree seem to convey the notion of “exception”, but also the nature of the fund, its sources and distribution appears to be more discretionary and indeterminate. The decree implies that the presbyter has acquired a right to support, but the source originates in the application of distributive justice and the law (c. 281, § 2) according to individual needs and resources available to the diocese.

The language of part two appears to confirm the factor of “need” and resources available to a diocese; for example, “sufficient assistance” and “adequate support” carry a connotation of minimalism and the satisfaction of basic sustenance requirements of food, shelter, and clothing, noted by Hannan. It does not appear to consider the other elements of support indicated by Hannan, Hersh and Donlon. Such minimalism is not the intent of the Church’s canonical tradition or the current canons as already discussed elsewhere. Equity, justice and generosity do not exclude a mutual consciousness of the resources available either by a bishop or by a presbyter.

3.4.2 The Decree and Selected Commentary

The nature of the decree itself is of considerable importance. *Christus Dominus*, no. 21,⁹³ uses the term “retired” in the English translation. The *Code* provides for the resignation of an office, but it does not use the word “retired”. Though a presbyter might resign an office, the 1917 *Code* did not envisage the contemporary notion of retirement. Part one of the CCCB decree uses the word “retired”.

In current English usage of the term, “retire,” refers to the

[t]ermination of employment, service, trade or occupation upon reaching retirement age, or earlier at election of employee, self-employed, or professional. Removal of fixed assets from service⁹⁴.

Retirement affects the status of the person in his relationship to the diocese, not in terms of incardination, but in terms of his place of ministry and source of support.

The usage of the term “retired” is an application *to* universal law *of* the cultural milieu in which the bishops wrote the Canadian decree. In Ontario today, the notion of retirement is widely accepted fact in secular society. In fact, the general norm for the age of retirement in Canada is 65, and even lower in some sectors of the economy.

⁹³ See *CD*, no. 21, in FLANNERY, pp. 575-576. Though the reference is specifically to bishops who resign, the principle is appropriate: “[...] If the competent authority accepts the resignation it will make provision for the suitable support of those who have retired [...]” p. 576.

⁹⁴ *Black’s Law Dictionary*, pp. 1316-1317.

The canon is not in conformity with secular law in Canada. Secular law mandates the age of sixty-five as the compulsory age of retirement⁹⁵, though this arbitrary age continues to be challenged in secular courts⁹⁶. Nevertheless, participants of public or private sponsored pension plans and trusts are eligible to receive a pension annuity at age sixty-five, or earlier if such is allowed by the statutes and by-laws of the plan.

For the churches with retirement ages over that determined by secular law, another complication exists in the matter of retirement and legislation pertaining to a pension annuity. If one is a participant in a registered retirement plan subject to government regulation, as is the Canada Pension Plan, one cannot continue to make pension contributions at the same time one is receiving an annuity from that same plan. Ordinarily, an employee's CPP contributions to a registered plan cease at age sixty-five even if an annuity is received and a presbyter continues to offer service after the age of sixty-five. However, age sixty-five is not absolute.

Depending on circumstances, CPP regulations permit a contributor to continue to contribute to age 69 and defer receiving the annuity until that time.

The decree speaks of "retired presbyters" and not just retired "pastors" as expressed in the canon. Hence, the decree greatly extends the scope of eligibility

⁹⁵ See GOVERNMENT OF CANADA, "Department of Justice", *Canadian Human Rights Act*, 1976-77, c. 33, s.1; Part 2, s.7; s. 15 (6)(c), "[...] "age" means an age of 18 years or more, except in subsection 5(1) where "age" means an "age" that is 18 years or more and less than 65 years." See also PROVINCE OF ONTARIO, *Human Rights Code*, 1990, "Mandatory Retirement," 5(1), 10. Rev'd Statutes of Ontario, Chapter H.19, Feb 28, 2003. Equal employment opportunity is found in R.S.O. 1990, c. H.19, s 5(1); 1999, c. 6, s. 28(5); 2001, c. 32, s. 27(1). See

⁹⁶ See D.E. CODE, "Mandatory Retirement is Best," in *Ottawa Citizen*, 5 Jan., 2004; Staff Writer, "Ontario to Scrap Retirement at 65," *Kitchener-Waterloo Record*, 30 Jan. 2004.

for support. This has two implications. First, the decree addresses the eligibility for support to all presbyters incardinated into the diocese, whether such a presbyter resigned voluntarily (cc. 538, §3; 281, §2) or involuntarily (c. 281, §2). The title would seem to confirm this as a direct intent of the decree when it links c. 538, §3 directly to 281, §2. Second, this linking of the two canons also infers that support is due to those incapacitated in some manner and unable to provide continuing service either temporarily or permanently (c. 281, §2).

The decree indicates that presbyteral support derived from a specific (retirement and/or disability) fund established by the diocese [=diocesan pension plan] take into account any income derived from any source outside of the diocese, notably, public, private and other social benefit programs.⁹⁷ Thus, if a presbyter has retirement income from a source other than the diocese, the decree appears to demand that this resource comprise part of a diocesan benefit package to the individual presbyter in retirement. This injunction poses a number of problems. It is not unreasonable for a diocese to consider a presbyter's income from government pension plans (CPP) in determining an annuity from a diocesan pension plan but only under one condition: when every single presbyter presumably receives the same annuity from a government or other extra-ecclesiastical plan. In all other cases, each presbyter would have to provide the specific information. Such information might not be forthcoming from everyone. This situation would create an imbalance, an injustice.

⁹⁷ All of these various plans and sources of support are discussed below where application is made to the law and the decree.

Furthermore, the OT/NT traditions discount the practice of adjusting ministerial remunerative income downwards based on other available personal or family resources and assets as noted in Chapter One. In addition, in our time and within this context of retirement, the subject of deferred taxable income is of some importance. Suffice to say here that certain types of pension annuities are not based on distributive justice but commutative justice, even if it is a common fund. The annuity exists as deferred income similar to a savings plan. Therefore, consistent with the OT/NT tradition, to adjust pension annuity downward based on a presbyter's assets from outside of the diocese constitutes an injustice.

The Government of Canada does use a type of "means test" for persons applying for certain government subsidies. CCRA has the authority to investigate the veracity of claims for additional funding over and above the amount provided by CPP. Furthermore, the Government of Canada and Ontario empowers various government agencies to investigate, enforce and prosecute those who make claims based on fraudulent information.

The general approach of government in this matter is to provide support based on distributive justice. Because of its wide responsibility, the numbers of persons it seeks to serve and the quality of its resources, the government bases its support on a minimum standard according to the economic standards established by the *LICO*s. This method may be somewhat acceptable because assistance is based on defined standards of measurement and it is relative to a considerable number of mitigating circumstances, including family size, number of dependents, location, age, health, etc.

This approach is less acceptable from a church that proclaims social justice but has few, if any, standards of measurement. In addition, unless poverty is a real issue for a diocese, the point becomes somewhat moot. Otherwise, minimalism is not the intent of the documents of Vatican II or the law. Furthermore, the presbyter does not make a formal application for assistance from the diocese; he receives the diocesan pension and/or disability annuity as a right upon the bishop's acceptance of his resignation.

The moral values already supporting the law specified in c. 281 supersede some of the implications of the Canadian decree. To link the issue of "need" to an individual's sources of income in the construction of a pension annuity becomes a very subjective dynamic indeed. Such a process suggests the diocese conduct some type of "means test" to discover extra-ecclesiastical sources of income. Given the right to privacy issues involved (c. 220), it is debatable how effective such a process might be. It also establishes an extremely subjective and relative relationship of the diocese/bishop toward the presbyter. To what extent the diocese/bishop might investigate the veracity of the claim is open to debate.

However, a diocese's case for a "means test" is stronger if a presbyter petitioned the diocese or the pension fund for financial assistance in addition to an annuity the presbyter already receives from the fund. Such a request might occur in a case of long-term disability or in the eventuality of a requirement for full care facility.

Further to the discussion of a diocesan "means test", the administrative difficulties are evident in that the number of individual "needs" corresponds to the number of presbyters. Total incomes and benefits (public and/or private) will vary from

presbyter to presbyter in retirement. According to the principles of equity it becomes morally questionable whether such a criterion as “need” could be implemented as a criterion by a diocese under what was previously said.

In all fairness, if a presbyter contributes to more than one plan and he receives an annuity from more than one plan, should the diocese/bishop penalize him for it?

The decree would seem to imply, yes. However, can the acquired right to an annuity obtained under a diocesan sponsored plan be suspended, lost or reduced for one annuitant who is also a member of a non-diocesan plan?

The delivery of the annuity is contingent upon the statutes of the plan; the presbyter has a right to the annuity if he has complied with the regulations of the plan. Therefore, both natural and commutative justice indicates that a diocesan annuity cannot be reduced simply because a presbyter has financial resources and assets over and above the diocesan annuity. The acquired right to a diocesan annuity continues no matter how many pension annuities a particular presbyter has at his disposal, providing he has met the conditions of the diocesan plan.

The decree uses the term “accommodations” rather than housing or residence so there is some lack of clarity as to the intent of the decree in this matter; does the decree mean a right to R & B in a parish house or does the decree mean a right to a residence? Under parts one and two of the decree, an accommodation is a component of support.

Where c. 538, § 3 uses the expression “maintenance and residence”, the decree uses the term “accommodations”. The canon clearly echoes the decree in terms of

the right to housing but does not define or determine what constitutes housing: residence, accommodations in a parish house or elsewhere, or even compensation in lieu thereof.⁹⁸

Housing clearly exists as a component of support and it is a right possessed by an incardinated presbyter. It remains the obligation of the bishop to see that housing is available and provided, but the decree itself goes no further than to state the right, without stating the procedure, the method or the mechanics of such implementation.

Currently, it is the sole responsibility of the bishop to establish guidelines and funding in the matter of housing. In practice, those presbyters who retire with independent sources of income possess the option to purchase or rent their retirement residences where they wish. What happens in equity and fairness when a presbyter does not have an equal opportunity in his choice of housing due to the inadequacy of a diocesan pension annuity?

In addition, because of the lack of principles of implementation, the decree makes no comment concerning the nature of the housing or possible sources of funding for housing. Most pension annuities distributed by a diocese are insufficient to provide for housing apart from residing in the residence of a diocesan parish

⁹⁸ A housing subsidy might be required as a portion of support when a presbyter's annuity income is too low and housing costs are too high. The intent of the law demands housing as a real obligation, an essential component of support. In some places, a housing subsidy might be the only way to satisfy the diocesan obligation.

house. A presbyter's personal financial situation⁹⁹ or the resources of the diocese or a diocesan retirement annuity may limit the option of housing available to a retired presbyter.

Part 3 of the decree takes note of the administration of funds established to provide support to a presbyter in retirement. Who are these administrators? Ideally, but not exclusively, they should be the Christian faithful as already discussed in the previous chapter under c. 222. Professional and administrative competence describes an important criterion of an administrator of a retirement and disability plan, trust or arrangement. The establishment and management of pensions is an extremely complicated and technical field of secular law and accounting practice. Administrative competence on the part of diocesan personnel would certainly include obtaining the advice of professionals in the field of pensions, their constitution, management and disbursement.

Once established, the decree speaks in the plural of "competent persons" who are to "[verify [...]] the adequacy of these retirement and disability funds". The intent is that more than one person has direct influence in the management of the plan. Ordinarily, a professional firm or persons with expertise in the field develop, implement and, at least partially, supervise such a plan. Unless specially trained, few presbyters would have the competence to manage such plans without assistance from competent professionals in the field.

⁹⁹ Pension annuity from the diocesan corporation, CPP, OAS, and, perhaps, the Guaranteed Income Supplement [=GIS], might be the total financial resources available to a presbyter in retirement.

Ultimately, the intent of this part of the decree is twofold:

1. to ensure the adequacy of funds to provide support to retired or disabled presbyters; and,
2. to make such plans as secure as possible from outside secular litigation.

Administrators need to protect the assets of pension and disability plans, especially during this time of heightened litigation against the churches and their personnel. Such a demand for security might well entail government registration of the plan according to the requirements of secular law.

This is certainly the direction indicated by c. 1274, § 5: "If possible, these institutes are to be established in such a way that they also have recognition in civil law"¹⁰⁰. A simple test to determine whether or not there is at least some form of government registration is: Are financial contributions to the plan tax deductible? Only such a registered plan has the capacity to withstand the assault of civil litigation against the diocese unless the suit is against the plan itself.

3.4.3 Limitations of the CCCB Decree

While recognizing the difficulties in establishing defined principles in the matter of retirement and disability support when there are so many variables, four problems emerge:

1. without objective criteria, the support provided to the retired may be actually deficient;
2. without providing specific norms in the decree, a diocese has little in the way standards either to develop process or evaluate progress as to what exactly constitutes satisfaction of the juridical requirement for maintenance and housing for a presbyter;

¹⁰⁰ 1983 CIC, c. 1274, § 5. English translation by CLSA, *New Commentary*, 2000, p. 1475.

3. to function on an *ad hoc* basis with regard to a non-instituted *disability fund*, ecclesiastical and secular, endangers those most vulnerable and those who have a right to decent support and housing according to distributive justice and cc. 281, §2, and 538, §3; and,
4. without any norms more specific than already stated in the decree, a presbyter has little in the way of guidance to determine whether or not the diocese is respecting his right to support; that is, to decent maintenance and housing.

Given such limitations of the decree, a bishop retains the final obligation to see to the provision of support for a disabled or retired incardinated presbyter of the diocese. A bishop ought to make serious inquiries as to the well being of each of his presbyters, either personally or through another. Even with this inquiry, it is conceivable that a retired or incapacitated presbyter may not be very willing to reveal his true living situation for whatever reason.

Many presbyters have a positive and responsible attitude toward their personal finances and the virtue of poverty. Many have a profound respect for their bishop that might actually work against them because they might not want to “bother the bishop”. A presbyter may very well put himself, his health, or the economic security of his family members or friends at risk.

Other business and government institutions deal with many variables in the determination of pension and disability plans. They devise retirement plans and pensions according to defined criteria and make adjustments as necessary. So also should a diocese make plans as a matter of justice and in order to comply with the regulations of both canon and secular law.

The decree defines its canonical sources and communicates a certain spirit and intent that are highly respectful of the Church’s canonical traditions regarding the

decent support of a presbyter in retirement. Nevertheless, a diocese does not exist in a vacuum, socially, culturally or financially. The decree seeks implementation in such circumstances as fall under the common law and the economic standards of the Government of Canada and the Province of Ontario.

3.5 The Application of the Law in Canada and the Province of Ontario.

The commentary above explained and interpreted the appropriate canons in the 1983 *Code* and their implementation in the CCCB decree. It now remains to test the implementation of the law or its lack of implementation by appealing to its application in a particular case. A number of objective standards are available against which to evaluate the level of support available to a retired presbyter.

There are a number of limitations placed upon the surveys imposed by time, expense and availability of subjects, the dioceses of Ontario and the retired clergy of those dioceses.

To establish some objective standards as to exactly what income is appropriate for a presbyter "living on the economy" within the last five years, three Canadian standards are presented: Statistics Canada's *LICOs*, a Schema of the Real Cost of Living in a Parish House, and the Survey results from the Questionnaire submitted to Corpus Canada, entitled *Inactive Priests Survey*.

Two American sources¹⁰¹ provide data for comparison: a graph presentation in the percentage of giving as a percentage of income among twenty denominational churches in the USA, and, the 1999 sample of weekly wages including clergy provided by the US Bureau of Labor Statistics.

These economic standards provide some basis to evaluate the results of the other two Questionnaires submitted to dioceses and retired presbyters in Ontario. The result of one survey intends to profile a diocese's support to a presbyter in retirement. The second survey intends to provide a portrait of a diocesan presbyter in retirement.

A presbyter requires an income to satisfy and provide for his needs, immediate and future, and perhaps for the needs of others (family). The amount of income and other support available contribute considerably to his quality of life. Having lived throughout active ministry with little financial remuneration, but considerable benefits, many of those benefits are no longer available at no cost to the retired presbyter in retirement. How does the presbyter fare in retirement?

3.5.1 The Tools and Methods of the Objective Economic Standards and the Survey Instruments

The tools of evaluation that provide some standards against which to judge the adequacy of support provided to a presbyter in retirement are as follows:

¹⁰¹ Financial figures representing US dollars are not converted from US dollars to Canadian dollars. Conversion tends to be misleading because the purchase power of the dollar is directly related to costs of living in each respective country. The reader may convert the value for sake of general comparison but continue to bear in mind that the conversion is only relative to place and time.

1. Government of Canada, StatsCan's "LICOs;"
2. The Estimated Real Cost of Housing applied to a rectory;
3. the responses derived from a questionnaire provided to the members of Corpus Canada via the March-April issue of *The Journal* (2000).¹⁰² Though only six former priests participated from different areas of Canada, the data provided is of considerable value due to the conformity of the responses concerning income requirements.
4. The *National Catholic Reporter* presents a graph giving a portrayal of "Giving as a Percentage of Income" in the United States from a study by the Centre for Applied Research in the Apostolate, Georgetown University.¹⁰³
5. Statistics of median weekly wages in the United States from the US Bureau of Labor Statistics provides the weekly wages of clergy in 1999.¹⁰⁴
6. The survey and base questionnaire sought to present a sample portrait of diocesan support to a presbyter and a sample portrait of a diocesan presbyter in retirement. The original questionnaire was used and adapted with permission from the study proposed by the United States Catholic Conference, The Bishops' Committee on Priestly Life and Ministry, *Fullness in Christ*, published in 1978. The adapted questionnaires are in Appendix C.

The "Survey on Retirement and Retirement Programs for Diocesan Priests" consisted of two different questionnaires. The "Diocesan Survey on Retirement" sought to elicit information from participating dioceses of Ontario concerning their retirement policies and practice with retired priests of the diocese. The "Priests' Survey on Retirement" sought to elicit information from selected diocesan priests in retirement concerning various aspects of their retirement. The diocesan survey

¹⁰² E. KUTAMA, "A Survey and Commentary from Saskatchewan," in CORPUS CANADA, *The Journal*, vol. 3, no. 2 (2000), March-April, Vancouver, BC, Xristos Community Society, p. 8. The questionnaire was part of the newsletter. The responses were in the form of confidential and personal correspondence to me. See Appendix C, Annex 3.

¹⁰³ D.R. HOGE, C. ZOCH, P. MCNAMARA and M.J. DONAHUE, in CARA Report of the *Center for Applied Research in the Apostolate* at Georgetown University, "Giving in Five Denominations," from a graph created using the figures of Dean Hoge's article in the book *Financing American Religion*, M. CHAVES and S. MILLER (eds.), Washington, DC, Altamira Press, 1999, in *National Catholic Reporter*, "Giving As A Percentage of Income," April 23, 1999 at <http://www.natchath.com/public/graph.htm>, Jan. 26, 2000.

¹⁰⁴ US BUREAU OF LABOR STATISTICS, "What People Earn," in "Parade Magazine," in *St. Petersburg Times*, 27 February 2000, p. 4.

sought information about current diocesan pre-retirement and retirement programs, and retirement compensation packages for diocesan priests. The retired diocesan priests survey sought information about a retired priest's view of his diocesan retirement programs and policies as well as his degree of satisfaction with his current living, ministry and financial situation.

Fifty retired presbyters received the invitation to participate; forty-seven responded but two were unable to complete the questionnaire for health reasons; forty-five completed the survey. The object was not an extensive technical research project. Financial costs precluded more than a small sample. The intent was to present a small sample, a "snap-shot" of the diocese and a retired priest. Simple reworking of the questions into statements occurred by simply adding together the majority responses. Where numbers were close, both figures were included in the portrait. The purpose was to provide data for comparison at a local level.

The participating dioceses and retired clergy received and returned the surveys over a four-month period in 1997-1998. The "Base" numbers continue in the context of 1998 though there are some updates. In addition, circumstances may have changed in some dioceses and for some presbyters in the meantime. This can be an advantage because this dissertation supplies a greater base line for comparison and evaluation of the subject in a particular location.

As to the procedure, each diocesan bishop in Ontario received a letter requesting his participation in the survey and the names and addresses of the retired clergy incardinated in the diocese. The letters to both the bishop and participating

presbyters assured confidentiality of individual responses. The public would receive only the combined tabulated results.

Of the fourteen dioceses in Ontario, six participated directly, one participated in a prior informal study and chose not to participate again¹⁰⁵, six chose not to participate. One diocese had no diocesan priests at the time of the survey. Participating dioceses submitted the names of their retired priests. I selected a small working number randomly from the lists and sent letters soliciting their participation. Forty-seven priests out of fifty responded affirmatively to the request. Forty-five out of forty-seven actually completed the survey.

Unfortunately, due to the circumstances of advanced age and poor health, some priests were not able to either participate fully or answer all of the questions. Consequently, some discrepancies exist in the tabulated results. The completed Questionnaire makes note of this factor.

Calculation consisted of simply adding together Yes and No responses where indicated, or by noting No Answer and the number by an open and closed bracket [*]. In questions that asked for a narrative response, Appendix C contains all the responses. Editing in the appendixes occurred both to avoid repetition and for purposes of brevity; each compiled survey includes all the responses.

The combined and tabulated results comprise the two narrative accounts.

¹⁰⁵ See R. M. KIFFMAN., "A Local Church," in *The Implementation of Universal Law in Canada in the Matter of Decent Support for Active Diocesan Priests and Priests in Retirement*, Ottawa, ON, Saint Paul University, 1996, pp. 109-116.

3.5.2 The Standards of Measurement

Statistics Canada provides the first objective standard of financial measurement to determine adequacy of income according to the *LICO*s. The survey took place in 1997 and the *LICO*s figures reflect that year. The figures for the year 2000 provide the reader with a measurement of difference. Annual rates of inflation provide the base for increases.

*Low Income Cut-Offs (1986 Base) for 1997 and 2000*¹⁰⁶

Family Size	Community Size				
Population	500 K +	100 K- 499999	300 K- 99999	Less than 30 K	Rural Areas
1 person (1997)	\$16,320	\$14,335	\$14,004	\$12,766	\$11,110
1 person (2000)	\$17,068	\$14,992	\$14,645	\$13,351	\$13,xxx

Age is not a factor in the *LICO*s. There is another element to the figures when government research relates income to age. In the StatsCan calculations, the average income of an unattached man 65 or older was \$ 12,661 per annum (\$ 1056/mo.), below the poverty line, in Canada in 1997¹⁰⁷. The government offers additional assistance to those at or below the above-boxed figures or extracted from them.¹⁰⁸

¹⁰⁶ CANADA, STATISTICS CANADA, in "National Council of Welfare," in <http://www.ncwcnbes.net/htmldocument/principales/povertyline.htm>, 28/10/00. First line figures are 1997, second line are 2000. Printing deficient on Rural for year 2000.

¹⁰⁷ CANADA, STATISTICS CANADA, in "National Council of Welfare," in Poverty Profile, Table 12, p. 65, in <http://www.ncwcnbes.net/htmldocument/reportpovertypro/chap6.htm>, 28/10/00.

¹⁰⁸ The Old Age Security Pension and Guaranteed Income Supplement amounted to \$8032 per annum or an additional \$670 per month for qualified recipients. Of the 82 K men in this category, 96% of this group required assistance. See http://www.hrdc-drhc.gc.ca/isp/oas/rates_le.shtml.

The second standard of measurement is the estimated costs associated with the value of housing to an active presbyter. This standard is accurate according to its parameters. Costs may vary depending on location and particular circumstances.

The estimated cost of housing for an active presbyter in a city in Ontario of 300 K is \$ 3049 per month¹⁰⁹. This figure is a “street value;” the presbyter does not actually receive such funds nor does he have the option to receive such funds.

This may change under the new criteria established by CCRA and more presbyters become aware of the implications.

The survey indicates that the mean compiled average of monthly income of an active presbyter was \$ 1416 in 1997. Combine the housing benefit with remunerative income and this provides an annual pre-tax income, in theory if not in fact, of \$ 53,580 to an active presbyter under the circumstances described. As already explained, there is little tax advantage to the presbyter under the present order.

Corpus Canada is a national association of RC clergy who have departed from active ministry, many of whom are now married. This organization requested its membership to participate in a short survey to provide some additional economic data regarding costs of living from their experience of living on the economy.¹¹⁰

The six survey results submitted by the respondents of the *Corpus Canada* provide some interesting data from their experience of living on the economy. Thus, their responses justify a third standard of measurement in terms of annual

¹⁰⁹ See 3.3.4.

¹¹⁰ See Appendix C, Annex 3.

income and basic housing costs per month. The tabulated average size of the city they lived in has a population of 533 K. With three “no” answers, three others did respond. There was an averaged income of \$ 37.3 K in city Alpha. The averaged rental or basic housing (mortgage and taxes) costs were \$1013.¹¹¹

When asked what a single person would require for income in order to live a comfortable life, there were four “no” answers. The respondents are all now married men and probably did not want to hazard a guess. Two of the six respondents suggested a single person required an income of \$ 3000 a month to live a comfortable life-style in retirement. When asked what a married person required in order to live a comfortable life in retirement, the six responses averaged \$ 3,267 per month.

The comparative costs between the estimated costs at street value of an active presbyter living in a parish compared with the compiled results estimated by the *Corpus Canada* respondents show a minor difference of \$ 49. The amounts are close enough to provide reasonable confirmation of the estimated housing costs provided the active presbyter at the time of the surveys.

The churches obtain the bulk of their financial support from the voluntary offerings of the people. In a recent US study, the *National Catholic Reporter* presented a graph to demonstrate “Giving as a Percentage of Income” by the adherents of twenty Christian religions; from a high of 7.3% by the Latter-day

¹¹¹ Calculation for housing @ 1/3 of monthly income is accurate: $\$37.3K/12 = \$3,108K/3 = \$1,036$ per month.

Saints to a low of 1.2% by Roman Catholics. The study concluded, "As a rule of thumb, 75 percent of the money in a typical church is given by 25% of the people"¹¹².

There is no particular reason to not suggest a similar response in the Canadian context. One could hardly suggest that 1.2% is a generous response of the people to the needs of the churches. It does raise a serious question for ministers of the church: why is there such a lack of generous response by the RC faithful?

Figures released by the US Bureau of Labor Statistics in 1999 peg median weekly wages for all Americans at \$ 549 or \$ 28.5 K annual gross income. Clergy sit at \$ 657 weekly or \$ 34.1 K annual gross income. Of the 136 professions and occupations, the *Parade Magazine* notes twenty that require an undergraduate university degree with their corresponding salaries.¹¹³ Clergy are not included in the latter but fit between a high school teacher with an annual gross income of \$ 33 K and a palaeontologist with an annual gross income of \$ 35 K who are included. These figures would be rather low for most comparable professions in Canada, except for the RC clergy.

¹¹² NCR, "Giving," April 23, 1999, at <http://www.natchat.com/public/graph.htm>, 1/26/00.

¹¹³ See *Parade Magazine*, Appendix F.

3.5.3 The Diocesan Survey on Retirement

The tabulated results and the narrative developed from the Diocesan Survey on Retirement¹¹⁴ provide a brief sketch of the participating dioceses of Ontario, their retirement policies and information concerning retired presbyters.

In 1998, the combined results indicated that the diocese consisted of 141 diocesan priests. Thirty live in retirement. Twenty-six lived in the diocese and four outside of the diocese. The majority of diocese report they are unaware of any pre-retirement programs available.

The diocese, a parish, a presbyter or combinations thereof contributed to the diocesan pension/disability plan. The amount of financial resources in the plan determined the possibility of the rate of annuity to a beneficiary. The pension board determined the annuity based on the constitution, statutes, and resources of the plan. In the case of a presbyter's withdrawal from the diocesan pension plan, the majority indicated that the pension plan allowed for a transfer, either in part or in whole, to another plan.

During active ministry, the presbyter's earnings and/or contributions to a pension plan, diocesan or another, should determine the amount of retirement annuity.

Contrary to the criteria of *PO*, no. 20 and c. 281, § 1, and with the exception of seniority, the RC Diocese offered the same remuneration to all its active

¹¹⁴ See Appendix C, Annex 2: *Fullness in Christ*©, Diocesan Survey on Retirement. The survey occurred in 1997-1998. Where identical numbers are present in a response, the alternative is in brackets [...] or noted by reference to a neighbouring diocese. The survey comprises the majority number in any response to a question. Some variation occurs due to responding to more than one component of a question.

presbyters; regardless of the conditions of their ministry or the nature of the office they held during active ministry. Without scales of remuneration based on the criteria established in the documents and the law while in active ministry, all presbyters also received the same diocesan pension annuity and benefits in retirement. The annual rate of inflation was the normal base for salary increases; the same criterion provided the base for an increase to the pension annuity and benefits in ordinary circumstances.

Pastors or presbyters holding more than one office at the same time did not receive additional compensation, nor was compensation split between the resources of the various offices held. In the RC Diocese, policy required that Mass stipends be split between the celebrant and the parish account.¹¹⁵

The RC Diocese paid an active presbyter an average of \$ 1416 per month with a car allowance of \$ 397¹¹⁶. If assigned to a parish, the presbyter paid \$ 109 per month for accommodations, if he worked for the diocese but not assigned to the parish, he paid \$ 247 per month for accommodations. A presbyter not employed by the diocese or parish but rather by some outside agency (e.g. hospital or prison ministry, etc.) but who lived in a parish house, paid \$ 225 per month for

¹¹⁵ Contrary to 1983 *Code*, c. 946.

¹¹⁶ See Diocesan Survey on Retirement, Question 84b. The question and response reads: "What is the amount allocated to car allowance? \$ 397*," Appendix C, Annex 2. Some confusion existed around this issue. When the government removed the car allowance as a non-taxable allowance, most dioceses simply added the former car allowance amount to salary. The compiled amount noted in this question is presumed to be a car allowance over and above the salary. Auto expenses can still be deductible when the presbyter uses an automobile in the performance of his duties. A record of use and expenses is required in order to apply for and to obtain the deduction.

accommodations. A retired presbyter living in a parish house paid \$ 643.63 for accommodations.

Concerning issues of retirement, the questionnaire included questions pertinent to the status of diocesan representation, pre-retirement programs, policy, financial issues, retirement age, living arrangements, ministerial roles in retirement and a few miscellaneous items. The survey results indicated that the RC Diocese had no presbyter serving full time as a delegate or vicar for retired presbyters; however, there was a part time delegate. Consultation on retirement issues consisted of a presentation by, and discussions with, the Diocesan Personnel Board. Age groupings were a factor in determining eligibility and election of members to the RC Diocesan Retirement Board. A neighbouring diocese had both elected and appointed members.

The RC Diocese was not aware of any organizations established to assist in the development of its retirement policies nor had it sent any representatives to any workshops on the subject. Furthermore, there was no policy or resource material available from any retirement institute nor was any material available to retiring presbyters. Consequently, the RC Diocese had no pre-retirement program for priests.¹¹⁷

The diocese has a definite retirement policy that is clearly stated and followed. Diocesan presbyters participated in the formulation of that policy. The diocese

¹¹⁷ Diocesan Survey on Retirement. Questions 17-32 seek to determine the content of a pre-retirement program. Since there are no such programs for 5 out of 6 respondents, the questions become irrelevant but revealing.

encouraged active presbyters to be financially supportive of their brother presbyters through personal donations or bequests over and above any required contributions; the diocese encouraged retired clergy to do the same.

Policy included support to those who were physically/mentally incapable of ministry but not yet at the canonical age for retirement. Diocesan policy takes into account presbyters who may be unassignable due to a condition of the person (e.g., convicted of a criminal offence, questionable theology, incapacity to manage people or administer property, etc. [3]). There is no diocesan policy to provide support for a presbyter placed on administrative leave or who is seeking laicisation. The diocesan pension plan¹¹⁸ allows for admittance of non-incardinated diocesan presbyters.

The diocese has a definite policy that provides for various housing options in retirement. These options range from homes for the elderly, nursing home facilities as well as living arrangements in rectories or residing in one's own residence. The diocese sets the fee for accommodations in diocesan facilities and rectories.

However, the diocese does not consider the costs associated the various types of housing in the calculation and determination of annuity and retirement benefits.

Furthermore, the diocese provides no extra financial allowance or subsidy for a retiree who may choose to live outside of a parish house in either his own residence, an apartment. The two most common choices in our diocese were for a retired presbyter to acquire accommodations in a parish house or to acquire and

¹¹⁸ The term "pension plan" is used in its most generic sense to include any type of structured financial support provided in retirement; i.e., an ecclesiastical institute or public government plan.

occupy a private residence. If the retiring presbyter chose to acquire accommodations in a parish house, the pastor and retiree worked out the details.

Diocesan policy establishes who bears responsibility for the funeral expenses of a deceased diocesan presbyter [3]. A neighbouring diocese has no policy on the matter [3]. For them, the presbyter's estate pays. In one instance where the presbyter had no assets, the bishop paid.

The diocese has a canonically erected and constituted pension fund [=plan] for retired presbyters. There is a disability component in the plan that a presbyter may access if he meets the requirements. The bishop constituted the pension fund as an institute according to c. 114, and as a pious foundation according to cc. 1299-1306. Though the diocese acknowledged the need to protect the assets of a diocesan pension plan, the diocese/bishop *did not incorporate the diocesan pension plan at secular law or did he registered the plan with the secular government in some manner.*¹¹⁹

The diocese finances the fund by diocesan contributions and by taxing the parishes or the institution in which the presbyter offers ministry. The diocese manages the retirement fund. Participation is mandatory for incardinated presbyters. Should a presbyter withdraw from the plan, his pension assets are transferable either "in whole or in part" to another pension plan.

¹¹⁹ Italics added for emphasis. This lack of compliance with 1274, § 5 places the diocesan pension institute at risk of civil litigation as already noted.

Diocesan presbyters make no personal contribution thereby missing an opportunity to provide for their own future welfare and to provide for the welfare of their brothers. In the neighbouring diocese, both the diocese and each priest contribute to the plan.

Diocesan policy provides for a presbyter to retire anywhere from 65 years of age to the age 75. At 75, the law requests the pastor to submit his resignation from office to the bishop. In the diocese, the average age at which a presbyter retires is 74 years of age.

When calculating the amount of financial support allotted to a presbyter in retirement, there is no consideration of income annuities or assistance from outside sources in diocesan calculations (government plans (CPP, etc.)). In normal circumstances, pension benefits are the same for all presbyters. In addition, the diocese makes provision for a presbyter who requires full-time nursing care, the costs of which exceed his retirement income.

By means of its canonically erected pension institute, the RC Diocese provided support in the following manner to its retirees: an annuity for \$ 1182 per month in 1998 (\$ 14, 184 pre-tax dollars). Other benefits included medical health insurance [5], dental insurance [3], education allowance [2] and a retreat allowance [1]. There is an annual review to account for periodic adjustments. The annual rate of inflation index governs the upward adjustments to the annuity.

The pension fund makes provision for clergy who are unassignable [3] but the neighbour's fund does not [3]. In this latter case, a pension may be payable: when

the bishop accepts the presbyter's resignation "from duty"; when the diocesan administration makes arrangements with a retiree on an "ad hoc" basis; or, when the bishop authorizes continuous payment to a presbyter from a diocesan operating fund (i.e. from general revenues). No funds are available from the pension fund for those placed on administrative leave or who petitioned for laicisation.

Retired presbyters have a wide range of ministerial opportunities available. The three main ministries include part-time parish work, offering Mass, hearing confessions and visiting the hospitals and the elderly. The diocese encourages retirees to offer ministry to small country parishes.

The diocese keeps in regular communication with retired presbyters through official diocesan communications, invitations to clergy conferences, and continuing education workshops to which a retiree is invited. The diocesan mailing lists are updated annually providing the names and addresses of retirees.

To date (1998), the diocese has not conducted any studies to determine the activities, needs or attitudes of retired diocesan clergy. The neighbouring diocese did conduct a "needs" assessment regarding housing requirements but the diocese did not share the results from the needs assessment.

Overall, there has been a mixed response to the concept of retirement. Some agree and others disagree with an arbitrary age. Even before actual retirement, some pastors resign their parishes due to specific health considerations or a desire

to surrender administrative tasks; however, they wish to continue pastoral ministry.

There is a diocesan requirement to balance the needs of presbyters and also maintain control over diocesan and/or plan assets and dispersals at the same time.

The diocesan fund is a plan designed to provide “frugal comfort” to retirees.¹²⁰

3.5.4 The Priests’ Survey on Retirement

By reviewing and tabulating the various sections of the survey, Priests’ Survey on Retirement,¹²¹ the circumstances of a retired presbyter emerged.¹²² The respondents were incardinated presbyters from the participating dioceses in Ontario retired from fulltime ministry. The survey identifies status, preparation for retirement, and the presbyter’s appreciation of the diocesan retirement policy and pension plan. The survey also considers the presbyter’s current personal financial status, retirement age, living arrangements, and ministerial roles in retirement. Some miscellaneous items check the personal satisfaction levels of individuals relative to issues of support and personal well-being in retirement.

The first observation considers the worldview and values accepted by this generation of priests. They express it best themselves: “Earlier on [my generation] were given the impression that [we would] be active to the end or that

¹²⁰ Diocesan Survey on Retirement. See Q. 81 and response: “Do you have additional comments or suggestions regarding clergy retirement?” Response. “1. Plan designed to provide frugal comfort.” Appendix C, Annex 2.

¹²¹ See Appendix C, Annex 1: *Fullness in Christ*©, Priests’ Survey on Retirement.

¹²² See Appendix C, Annex 1. It is important that the reader remember that compiled results may provide almost contradictory responses. This is because the narrative attempts to convey not the response of any one presbyter to any issue but many. The responses provided are in relationship to particular issues and must be considered in that light.

it was “worldly” worrying about money”¹²³. These priests were born around 1923 and ordained around 1950. The experience of many is summed up in the statement, “In the 40’s and 50’s, after ordination we were on Mount Tabor for about 3 weeks, until we arrived at our first appointment – then we ascended Mount Calvary”¹²⁴. Within this milieu, these presbyters were “surprised” by retirement.

Diocesan policy on retirement existed; the presbyters were aware of the terms. The bishop, his delegate and/or the Diocesan Personnel Board considered and resolved retirement issues. The diocese had no delegate/vicar to represent the retired presbyters. Though the diocese expressed satisfaction with its policy, a small *majority* of the respondents rated the policy as unsatisfactory rather than satisfactory [11-10], with another group rating the policy as poor (Q. 33a).

The survey indicated that the majority of retired presbyters expressed a general satisfaction with retirement but with some reservations. However, the satisfaction was not unanimous. Some retired presbyters expressed either unhappiness or dissatisfaction with their current “lot” in life. The circumstance of retirement tends to limit or reduce a presbyter’s social or financial status; hence, respondents saw little possibility of improving their quality of life in retirement.

¹²³ Priests’ Survey on Retirement, Q. 106. This is a direct response from a respondent.

¹²⁴ Ibid., A direct response from a respondent contained in the concluding observations and comments.

According to the survey results, presbyters due to retire were unaware of any pre-retirement or retirement programs¹²⁵ or organizations that might have provided information or counselling services. The diocese had no formal educational programs or literature to prepare a presbyter for retirement. None of the diocesan presbyters indicated that they had ever attended a workshop on the subject. However, the diocese did provide some information regarding an impending retirement. Most, but not all, presbyters felt that the information that they had obtained from the diocese about their retirement was enough [23]. Enough presbyters did not feel the same way [18] that might indicate a problem of either fact or perception.

In fact, the majority of presbyters prepared themselves for retirement. Their immediate preparation included an assessment of their financial position, consultations with various professional persons (lawyer, accountant), diocesan priest friends [5] and family members [5], and the exploration of opportunities for ministry in retirement.

Even before retirement, the diocese recognized the effects of ever increasing administrative responsibilities upon pastors. Mechanisms were in place in the diocese where a pastor might withdraw from the administrative responsibilities of a pastor of a parish in favour of becoming an associate pastor. A pastor could make such a request before submitting his resignation at the canonical age or the

¹²⁵ Priests' Survey on Retirement, Section II. Pre-Retirement Programs for Diocesan Priests, questions 18-20 are irrelevant since no diocese had such programs at time of survey.

age established by particular law. One of the respondents had taken the opportunity to reduce his administrative responsibilities in such a manner.

The majority of presbyters believed that there should be a mandatory age to retire and expressed satisfaction with the retirement age established by the diocese in its particular law. The age recommended by the retirees for retirement was 70.

Retirement was voluntary for most of the respondents. More often than not, health considerations either permitted or called for retirement. The respondents also indicated that the presbyter and the bishop should be the sole parties to a negotiation to retire; it should be at a time a presbyter feels ready or feels the personal need to depart fulltime active ministry.

The issue of the fraternal support provided to a retired presbyter, calls for some further investigation by others. Though the majority did express satisfaction with the fraternal support provided [28], half again expressed the opposite [14]. Even with apparent problems, there is also a sense of collegiality among this group.

The majority intend to make a donation or bequest to a diocesan fund dedicated to the support of retired or incapacitated priests by means of a Last Will and Testament.

According to Connollen's study, levels of education can influence the degree of satisfaction experienced in retirement and enhances the possibility of *ad hoc*

ministry in retirement.¹²⁶ The majority of retired presbyters reported that their education consisted of an undergraduate diploma.¹²⁷

Most retired presbyters indicate that they never expected to retire for reasons other than health. Most presbyters expressed that they are very satisfied with their retirement. The statistical averages of the respondents included the age of 75¹²⁸ (1998), ordained for 48 years, in poor health and retired within the last five years at age 70. There was a requirement for prescription medication for a recurring medical problem. The respondents rated the medical/dental benefits provided by the diocese or as a component of the pension plan as satisfactory.

It is revealing to note that the respondents did not know if they were eligible to receive a disability benefit from the plan nor did they know what such an amount might be. They did believe that any diocesan disability benefit would not provide compensation greater than a regular pension.

Concerning opportunities to offer ministry in retirement, a majority expressed that they were very satisfied with ministerial opportunities available. The most common forms of ministry available to a retired presbyter included offering Mass and hearing confessions, working part-time in a parish and by visiting hospitals

¹²⁶ See CONNOLLEN, *The Relationship of Life Satisfaction to Retired Diocesan Priests' Perceptions of Church Retirement Policy and their Retirement Behaviors*, pp. 142-148.

¹²⁷ Considerable confusion existed around the meaning of this question and many respondents had some problem answering. It did refer to post secondary education but some of the respondents interpreted it to also mean high school diploma. The results of the Ontario study were so confused as to defy analysis of the question. I can only suggest that the education level of this group does not seem to be a factor of satisfaction as it was in Connollen's study.

¹²⁸ Ages and figures are generally rounded off from data provided in the Priests' Survey on Retirement.

and the elderly. A minority [18 or 40%] indicated that the same ministerial opportunities [18] were not available to all. Some respondents name poor health as a major consideration for a lack of opportunity; other presbyters are simply not asked for one reason or another.

The survey revealed additional financial considerations and some of the living circumstances of a retired presbyter. In general, the retired presbyters rated the support obtained from the diocesan pension plan as "satisfactory" [22], or "very satisfactory" [16] and they feel very secure financially. Most presbyters had participated in the diocesan pension plan and made regular contributions to it. They receive an annuity of \$ 1156 per month from the plan (\$ 13,872 annual pre-tax dollar).¹²⁹ Respondents also indicated that they received income from CPP and/or OAS. Others received dividend income from investments.

Transportation is generally not a problem in terms of availability or finances. A clear majority of respondents own title to their own car [38]. The survey indicates that in 1998, a retired presbyter owned a 1992 Oldsmobile (Q. 48b).

A small majority of respondents owned property [22 or 49%]; the rest did not [20 or 44%] (Q. 47b). In the compilation of the monthly expenses of the retired presbyters revealed the following: a housing payment of \$ 643.63; car payment, \$ 335; auto insurance, \$ 87.08, telephone, \$ 37, cable, \$ 25 (Q 50). Other expenses include house repairs, utilities, taxes, food, laundry, newspapers, home

¹²⁹ The reader will note that income from *ecclesiastical sources* is less than the monthly expenditures.

insurance, credit cards, Internet and charities. The respondents indicated that they could pay their bills on time, had a cash reserve of more than \$1000 (Qq. 51-52) for an emergency, spent about \$ 2095 on a vacation, and enjoyed recreational and leisure activities (golf membership, concerts, sports events) in the neighbourhood of \$ 1268 annually or \$ 105 per month. The respondents reported an average current annual gross income from all sources at \$ 32 K with total assets of \$ 150,000.¹³⁰

The majority did not worry about their current financial situation; they had been able to save some money for retirement from their diocesan remuneration, stole fees and stipends. However, this group was also aware that some of their confreres were financial deprived [8 or 18%]. The reason given by some for the financial problems of others were either poor financial management or that there was simply not enough income.

Diocesan policy on housing indicates that retired presbyters have divergent opinions. The top four options available in the diocese are:

1. residing in one's own home or apartment,
2. accommodations in a parish house of choice,
3. accommodations in a home for the elderly and/or the infirm who may require short or long term care, and
4. accommodations with family or friends [15] or in a diocesan group residence for priests [15].

¹³⁰ Where the number of respondents answer is the same or significantly different, both are noted in brackets and with an average provided to the profile where warranted. The spread to provide the averages for total assets are \$ 25 K to \$ 39 K; \$ 75 K to \$ 225 K.

The three most common arrangements in my diocese are residing in one's own home or apartment, accommodations in a parish house of choice, and accommodations in a short or long term care residence for the elderly if such health considerations are present.

A small majority of presbyters expressed general satisfaction with the housing policy [19 or 42 %], but almost as many indicated dissatisfaction [17 or 37%].

Those living in a rectory report that they require the permission of an incoming new pastor to retain and remain in their living quarters. Generally, those presbyters occupying accommodations in a parish house express satisfaction with the fees established by the diocese though there is some disagreement on this matter.

A small majority of respondents preferred to live in their own home [18 out of 38 responses]. The next largest group preferred to live in a rectory of their choice [10 out of 38 responses]. Those living in their own residences freely admitted that they could not keep their home if they depended solely on a diocesan pension.¹³¹ Twenty-nine out of thirty-eight respondents who answered this particular question reported living their housing preference.

The quality of a retired presbyter's living space made a substantial contribution to personal feelings of well-being. Some criteria that contribute to feelings of well being are as follows: enough private space, availability of cooking and cleaning

¹³¹ See Priests' Survey on Retirement, Survey Responses, in the section "Concluding observations, comments," Appendix C, Annex 1.

services, an ability to entertain family and friends, personal phone and TV, private washroom.

The respondents reported that their living space is in good repair, painted within the past five years, the furniture is less than ten years old, and plumbing, electrical and snow removal services are available. Slightly more than half of the retirees have a garage available to them [22 to 21]. There is an even split between those retired presbyters who report that they are able to have a pet and those who do not have the same opportunity [20 to 20]. Those who occupy their own residence have the greater freedom of choice.

Since retirement, the presbyters report that their respective dioceses have remained in communication by means of invitations to clergy conferences and continuing education workshops [38], by formal invitations to special diocesan and/or parish functions [35] and through official diocesan communications [32]. The names and addresses of retired presbyters appear in the diocesan directory or the register of retired clergy. All the priests of the diocese receive an updated diocesan directory annually.

A retired presbyter's social life included maintaining communication with friends by phone on a regular basis [33], going to dinner with friends once or twice a month [31] or occasionally going to the theatre, a movie or a sporting event. They also attended diocesan or parish events as available [22]. Some were involved with senior's groups, Knights of Columbus, and family. When requested to rate their current degree of social involvement, the majority reported themselves as

moderately inactive socially; i.e., they engaged in fewer than five social events described immediately above.¹³²

A number of questions sought to elicit the direct experience and attitudes of retired presbyters by letting them respond to questions in their own words. In some cases, a direct quotation best describes their answers. When asked what advice a survey participant would give to a younger priest if he asked for advice concerning retirement, the following represent the order of priority: prepare financially, prepare with a positive attitude and consider housing options carefully, cultivate activities that can continue in retirement (Qq. 107a,b,c.) One retiree wrote, "I cannot envision a young priest asking for advice from an older priest"¹³³.

On a few other general issues concerning the role of poverty in the life of a religious and a diocesan priest; terms for pastors; the pastor *emeritus*; some reflections on their years of ministry; savings from remuneration, additional compensation for extra work, feedback and evaluation, the respondents offered the following summarized responses to the posed questions.

Q. 108a: Do you feel that the virtue of poverty as expressed and practiced by a priest with a vow of poverty is different from the virtue of poverty as expressed and practiced by a diocesan priest?¹³⁴

¹³² Priest's Survey on Retirement, Q. 104a. "In which social activities do you engage over a one month period." Among the options, these 5 out of 8 events represent the majority of social activities.

¹³³ Priest's Survey on Retirement, Q. 107. A response to the question: "If a younger priest asked your advice to help him prepare for his future retirement, what three suggestions would you offer?" The generational distinction appears to be very severe today.

¹³⁴ Ibid., Q. 108a.

According to the respondents, the virtue of poverty as expressed and practiced by a presbyter with a vow of poverty is different from the *virtue* of poverty as expressed and practiced by a diocesan priest [24]. The vow is not only what makes the difference. A diocesan presbyter and a “religious” presbyter live different life styles. The life style is not solely in the different contexts and notions of community, but also in the perceived and actual levels of security, financial support and educational possibilities. All three of these support and opportunity “levels” favour a “religious” according to the perceptions of the diocesan respondents.¹³⁵

Q. 109a. Do you feel that an appointment as pastor to a specific parish should be regulated by a specific number of years and a maximum number of terms.

The majority of respondents felt that there should be a defined term for the appointment of a pastor [30]. The rationale for such terms indicates that change is good for the people and the priests. Change means that neither party need suffer a “bad” priest or a “bad” parish, forever [18]. The retired presbyters supported the notion that a bishop should not name a retiring pastor as a pastor *emeritus* in his former parish because “a ball club cannot have two managers.”¹³⁶

“Very satisfactory” best describes the personal feelings of a majority of retired presbyters when they reflect upon their years of active ministry. Other than being a pastor [40], some held a diocesan directorship or a variety of chaplaincy positions (school/hospital) over the period of their careers. Many held the office

¹³⁵ Ibid. The narrative form is based on the compiled results of Q. 108b.

¹³⁶ This is a direct quote from a priest respondent that accurately reflects the attitude, Q. 110b. The preceding question referred to a former pastor residing in the parish from which he retired with the title *emeritus*. The overwhelming response was no. Question 110b reads: “Why?”

of pastor as well as another diocesan appointment simultaneously. Nevertheless, they did not favour additional compensation for the performance of “extra duties.” These retired presbyters believed that all should obtain the same remuneration and seemed to be unaware of the different criteria for remuneration established by *PO*, no 20 and the *Code*, c. 281, §1.

When questioned about affirmation and feedback from ecclesiastical superiors during active ministry, they rated the feedback as “good”. The respondents did not indicate the nature of the “feedback”. Furthermore, they indicated that they would have had no problem with an annual review of their ministry and administration by an ecclesiastical superior. In fact, they were in favour of it.

When the retirees considered their “last days”, the majority have made a Last Will and Testament [40] and will be paying their own funeral expenses. They have named an executor (family/friend) and a copy of their Will is “on file” at the Chancery.

3.5.5 Particular Observations of the Surveys

The notion of equality as a principle of justice is very difficult to quantify and qualify in practice. It is even more difficult to interpret. The review by Velasio De Paolis, “The Maintenance of the Clergy: From the Council to the *Code*”¹³⁷, highlights the inequalities present under the notion of title in the 1917 *Code* and the attempt of the Council fathers to rectify the causes of the inequalities. Has the

¹³⁷ See DE PAOLIS, “The Maintenance of the Clergy From the Council to the Code,” in *Vatican II: Assessment and Perspectives: Twenty-five Years After (1962-1987)*, vol. 1, pp. 668-697.

1983 *Code* resolved this problem? If the canons are specifically followed, yes; if not followed, no. The canons advocate that all presbyters receive equal remuneration when they minister under the same conditions and circumstances. The quest for fairness and equality exists. However, the practice has been to compensate all presbyters in Ontario as though they were one group—a classification that includes all presbyters functioning as pastors, associates, diocesan officials, chaplains, etc. without distinction, rather than by the particular nature of the office, status, circumstances and conditions of time and place under which a presbyter may offer ministry. Under such conditions of service of this corporate group of presbyters, there is one inescapable conclusion: the well-meaning attempt to treat all presbyters equally has led to considerable inequality for presbyters both in active ministry and in retirement. Associate pastors fall under the same considerations.

The surveys manifest some elements of inequality or lack of balance in the current practices relative to support of a presbyter in retirement. Neither the diocese provides for, nor does a presbyter expect to receive additional remuneration for the administrative duties attached to the office of pastor or for a presbyter holding more than one office simultaneously. In fact, the majority of the retired priests exhibited a strong aversion to the very idea of extra pay for extra work. The rationale for this aversion seems to rest either on a presumption of “equality” among the presbyters or in the prevailing attitude that it was “worldly to worry about money”. The fact that this was the ordinary practice in the Ontario churches can indicate that the presbyters simply accepted the *status*

quo without critical review. The few presbyters in favour of the practise of additional compensation for additional work suggested that the labourer is worthy of his hire. This latter view is more consistent and in conformity with c. 281.

The retired presbyters indicated that they would have been in favour an *annual* review of their ministry and administration by an ecclesiastical superior. The *Code* provides the particular church with a structure that considers supervisory roles (bishop, vicar general, episcopal vicar, vicar *forane*) but formal annual reviews of presbyteral personnel are not a usual component of these canonical offices. According to the principle of subsidiarity and the structure of the *Code*, the lowest level of authority, in this case, the vicar *forane*, should exercise this function. Though c. 555 does not call for an annual review specifically, there is no indication that the bishop could not make such a demand for formal and written reports from either an episcopal vicar or a vicar *forane*.

The retirees were vague about the nature of their supervision and suggested that no such annual review took place. Should this be the case, it would suggest that either the bishop has not provided the vicar *forane* with direction in this regard or if appointed, the vicar *forane* is not fulfilling his rather extensive canonical and supervisory obligations as provided for in the law.

The social and economic values of Canadian society demand just compensation for those services that society perceives to be of value: talent and ability to supervise. Without appreciating such values and lacking proper compensation for those entrusted with supervisory responsibility in the churches, the entire sense of hierarchy is flattened.

This “common identity” of presbyter, without any type of distinction, might also account for the majority view of the survey that no one should obtain additional compensation for additional responsibilities. As a result, the various canonical offices have little public validation other than increasing the presbyter’s workload and perhaps adding a little honorary status.

There are notable differences when it comes to appreciation of housing costs and it is a cause for some concern among retired presbyters. The diocese proposes a compiled average accommodation fee of \$ 109, \$ 247 to \$ 225 respectively for an active presbyter depending on employment circumstances. Those retired presbyter’s living in a rectory pay \$ 362.50 for room and board and live in a parish house at the pleasure of the pastor. Some retirees expressed the view that they should not be required to pay more than a presbyter pays in active ministry. Some retirees felt that because they had worked for years at next to no cost to a parish, they had “earned” the right to continued reduced housing costs in retirement. Those living on the economy in their own residence pay \$ 643.63 monthly in basic residence costs. The housing difference is almost double.

In addition, there is a double negative effect also present in the financial arrangements for housing. At a time when CCRA allows a housing tax-deductible benefit to a presbyter in active ministry, the artificially low rental fee for housing reduces the taxable benefit to an active presbyter. Income refunds the presbyter might have invested in real estate or in a retirement saving plans are not. The negative impact continues into retirement.

The respondent of one diocese described the purpose of the diocesan pension fund in such terms as to provide “frugal comfort” to retirees. What this means is rather difficult to determine. It raises the question of who governs the plan and for what purposes. Frugal support is understandable if the financial support were coming directly out of the general revenues of the diocese and thereby subject to the demands of distributive justice. Can the same be held to be true if the bishop has erected a pension plan as a public juridical person according to the norms of c. 114, and as an autonomous pious foundation, according to the norms of cc. 1303, § 1, 1°. The bishop retains the right of vigilance over the governing body of such an institute.

One must question taking this “frugal” approach unless the diocese or the pension plan possesses very limited assets and resources. If the opposite is true and the diocese or pension plan are reasonably secure, fairness and generosity is the canonical norm. The primary obligation and legal requirement of the governors or trustees of a diocesan plan is to provide decent support to the beneficiaries of the pension plan, not the diocese. It is the obligation of the trustees to keep the bishop informed about the adequacy of the plan in its relationship to the beneficiaries. The bishop has the authority to alter the rates of contributions necessary to maintain the fund at adequate financial levels.

There is a sharp difference of opinion between the diocese and the retired presbyter concerning the clarity of diocesan policy on retirement. Where the respondents participating on behalf of the dioceses believed the diocese had a clear policy regarding retirement, the retired presbyters decidedly disagreed. The

retirees were aware of diocesan policy on some of the retirement issues at least; yet, they expressed that there was considerable vagueness and some indicated the diocese was without a clearly defined policy. Such uncertainty adds to the anxieties of a retired presbyter, particularly if the bishop changes. In addition, a small number of respondents mentioned that they felt there was no appeal process against the actions of a bishop, might also contribute to some feelings of uncertainty.

This situation of uncertainty tends to exist more as a possibility where pensioners obtain funds from a general fund controlled by the bishop, or a type of a pension established as a diocesan pious foundation (cc. 1299-1306). When such funds are established both canonically and according of secular law, the constitution, statutes and bylaws should provide clarity to the policy.

Other factors caused dissatisfaction around housing issues. Some presbyters felt that even though they had offered years of service at next to, or at no cost, to the diocese or a parish, the diocese charged a retired presbyter *more* for accommodations in a parish house than it charged an active presbyter.

Finding accommodations may be a problem for some, and such accommodations are not necessarily secure. A retiree may have to find a pastor to accept him (not all do). The retiree lives in a parish house at the pleasure of the pastor, an incoming pastor may request the retiree find other accommodations. Depending on the arrangements, the retired presbyter may now be required to pay for fringe benefits and services obtained free while in active ministry. Such concerns can create considerable anxiety for a presbyter facing or in retirement. A written

policy and agreement between a pastor and a retiree seeking accommodations should be both the norm and binding on succeeding pastors.

The fact that only 26% of retired presbyters cannot afford to live in the housing they wish, might suggest a minor shortcoming in diocesan retirement policy and planning, as well as in the financial considerations of the diocesan and the individual in this matter. However, when one considers that those who own or rent their residence are able to do so only because they possess sources of income above and beyond that provided by the diocese, this paints another picture. Aside from CPP and OAS, more than half the respondents reported additional income from investments.

Undoubtedly, the problems associated with housing may explain some of the strong dissatisfaction of retired presbyters with a lack of diocesan policy and adequacy of financial support in this critical area of a retired presbyter's life.

There is a very strong emphasis of individuality in determining needs and researching a variety of aspects pursuant to retirement. "Self" was the most prominent answer to the question of who assisted in the research for retirement. Far behind and secondary were a professional person, priest friend and family friend. There appears to be a possibility of denial of the fact of retirement or reluctance to sharing personal information among this test group. The well-known and generally accepted mystique of the diocesan presbyter as the "Lone Ranger" remains in evidence even today according to the survey results.

Most retirees were unaware whether they had or were eligible for a disability pension from his diocesan plan. If there were a disability component, they presumed that it would not be in excess of the normal retirement benefit. There seems to be a lack of communications regarding this issue. A presbyter may not be aware that physical or mental disabilities often cost more and require a higher annuity and pension benefit in order to offset increased costs of care or equipment. Health was a major consideration in a presbyter's retirement decision. The failure to be aware of sources of disability funding and other resources is surprising.

One of the housing options suggested by respondents was for a retired priest to obtain housing with family or friends. Two good reasons militate against this practice: first, the bond of incardination assigns to the diocese the primary obligation to care for its incardinated presbyters, not a presbyter's family; and second, in a consideration of charity, an extra person to care for might create a financial burden for the presbyter's family or even for his friends.¹³⁸ Investigation of the individual case might determine "why" a presbyter might choose this option: is it because he does not have the financial resources to do otherwise; or, is he making the choice freely and contributing financially to family or friends for his housing maintenance? Uncertain policy, housing considerations might also

¹³⁸ See CATHOLIC BISHOPS' CONFERENCE OF NIGERIA, *Particular Complementary Norms to the Revised Code*, Lagos, 1989, pp.23-24, in *Code of Canon Law Annotated*, pp. 1375-1376. See also KIFFMAN, "Specific Differences in the Decrees," in *The Implementation of Universal Law in Canada* [...], pp. 101.

account for the fact that the majority of respondents report that they feel “moderately secure” financially.

Mass stipends and stole fees should reflect the standards present in the economy of time and place.¹³⁹ Today, there is often little relationship or relevance to such economic standards between the diocesan standards for offerings for a Mass stipend or for the time associated in sacramental preparation as they apply to stole fees.

The majority of retired presbyters managed to save some of their Mass stipends and stole fees during their active ministry. The *Code* considers Mass stipends and stole fees in cc. 945, §1 and c. 1264, 2° respectively. The *Code* grants a right to any priest celebrating Mass to receive the stipend and the one celebrating a sacrament to receive at least part of the stole fee. According to F.R McManus, the current practise in many places may be to “split” Mass stipends or even to give totally stipends entirely to the parish. This is the case reported by the majority of the participating dioceses of Ontario.

¹³⁹ See SACRED CONGREGATION OF THE COUNCIL, “Diocesan Tax for Masses: To be Proportionate to Cost of Living,” 15 Jun, 1918, in *AAS*, 10-504. English translation by T.L BOUSCAREN, in *Canon Law Digest* [=CLD], vol. 1 (1917-1933), Milwaukee, WN, The Bruce Publishing Company, 1934, p.396. See also SACRED CONGREGATION OF THE CONSISTORY, “Diocesan Tax for Masses: Increase Recommended for Italy,” Letter, 29 Jun 1919, in *AAS* 10-277. English translation by T.L. Bouscaren, in *CLD*, vol. 1, p. 396. The diocesan bishop determines the offerings (or rates) for Mass stipends and stole fees. On the other hand, the Christian faithful live in an context that is both sensitive to the economic standards of time and place, and also they have the obligation and right to voluntarily contribute to the good of the Church and its ministers. Given that lay persons determine value based upon cost, and pay rates for various services according to the local economic standards, what does it say about sacramental “value” when a mass stipend is \$ 5 or \$ 10 and a carton of cigarettes is \$ 60, a funeral bouquet is \$ 25 and above, a wedding cake is \$ 500? It appears that the “offerings” established for many sacramental ministries are not in conformity with the economic standards of time and place.

In some parishes, all Mass stipends are given to the parish or diocese. According to McManus, the rationale for such an action appears to be that in return for the stipend, the presbyter receives a salary equal to or higher than his income had he kept the offerings.

This is legitimate provided it is voluntary, i.e., provided that each priest is free to retain the Mass stipend rather than to accept the additional salary.¹⁴⁰

The law, c. 945, says: “any priest celebrating or concelebrating is permitted to receive an offering”¹⁴¹. McManus’ commentary can cause considerable confusion. When a diocese or a pastor simply mandates such a practise, how voluntary is the practice? What constitutes a salary and what is an “additional salary”? In fact, the Mass stipend tends to supplement the poor pay or inadequate income of many presbyters, active or retired, not only in Canada but also around the world.

The same is true of stole fees according to c. 1264, 2°. Even if a provincial council determined the maximum offering that may be requested and a diocesan bishop devised a split between a parish and celebrant, the original intention of stole fees was to provide for the continuing support of the presbyter in charge, at least in part.

The practice does not conform to the historical or the canonical tradition where “fees for services” existed for centuries and were in addition to a presbyter’s stipend/salary. Furthermore, the practice does not conform to the intentions of

¹⁴⁰ F. R. McMANUS, in CLSA, *New Commentary*, 2000, p. 1131.

¹⁴¹ 1983 CIC, c. 945, § 1. Translation in CLSA, *New Commentary*, 2000, p. 1131.

c. 281, § 1, where remuneration refers not only to a wage but also to payment for services rendered for those in active ministry. A justification for such actions exists only if an active presbyter's salary is truly in conformity with the recommendations of the *Code* and the economic standards of time and place.

Mass stipends and stole fees can form an important part of a presbyter's income in retirement. If the presbyter performs the service, he has a right to honest and just compensation. There is a considerable discrepancy between income and expenditures in the retired presbyter's compiled figures of a monthly statement. The survey indicates that a retired presbyter could not afford to live in retirement on the income provided from his diocesan pension annuity. This should not be a surprise given the financial history of clergy remuneration in Ontario. Clergy of this generation received a small monetary stipend and accommodations. Even so, according to CCRA, this stipend constituted employment income and was taxable. In addition, this stipend determined the amount of the presbyter's contribution when the government inaugurated the CPP.

It is interesting to note the real source of a presbyter's substantial pay increases over the past fifty years. CCRA's evaluations of the diocesan financial assessment for a presbyter's housing and changes to the *Income Tax Act* have been the greatest contributors to enhancing the financial status of a presbyter. Financial advances are evident in two specific areas: the so-called car allowance and the housing allowance. The term "allowance" is somewhat misleading today. In the past, these were tax-free allowances; today they are not. In the past, clergy received a tax-free car and housing allowance that might easily exceed the amount

of the monthly wage stipend. When the government removed the car allowance as a non-taxable allowance, most dioceses simply added the former car allowance amount to the presbyter's monthly stipend (salary). This increased the presbyter's taxable income and he paid taxes on the increase. However, the presbyter may still use at least a portion of auto expenses as a tax deduction when he uses the automobile in the performance of his duties. When claimed as a business expense and a tax deduction, CCRA requires proof of expenses to support the deduction.

The second great financial improvement concerns the housing "allowance". Recently, CCRA has been re-appraising the deduction for housing allowance for all denominations of clergy, including RC clergy. Given that diocesan figures provided for accommodations bear no resemblance to financial reality, CCRA has suggested to at least one diocese in Ontario that they increase the fees paid by their presbyters for housing costs. CCRA indicated that the minimum acceptable amount would be \$ 600. Eventually, the other RC dioceses in Canada will also be required to follow suit and increase salaries to account for the increases in housing demanded by CCRA.

The fact that the diocese must "[...] maintain control over assets and dispersals at the same time it provides frugal support [...]"¹⁴² has serious implications for the security of the presbyter in retirement, as noted above. First, it implies that the diocese has no separate institute incorporated at secular law for the support of retired presbyters. The participating dioceses of Ontario did not have their

¹⁴² See Diocesan Survey on Retirement, Q. 81.

retirement funds constituted at secular law. This is an extremely dangerous situation given liability actions against dioceses today. Even if a bishop constituted such a trust at canon law, it is unlikely to have standing at secular law. Such a situation of risk stands in contradiction to the intention of the ecclesiastical documents, the canonical tradition and cc. 538, § 3, 281, 384, and 1274, §5. Finally, a diocese that has failed to comply with c. 1274, § 5, and failed to institute its pension fund, plan, trust or arrangement at common law, places that fund in danger of civil litigation and loss. Without the protection of secular law, the presbyter is in danger of losing his pension annuity and benefits.

Second, the use of such terminology as “frugal support in retirement” is inconsistent with the OT/NT tradition of justice and generosity. The canonical tradition calls for equity, honesty, fairness and justice. Since the *Code* calls for a fund distinct from the diocese to provide for retired presbyters, the diocese does not carry sole responsibility for the provision of support to a retired presbyter. The Christian faithful have the obligation to provide support for the presbyter. Therefore, contributions originate in not only out of the resources of the diocese, but also from the resources of the parishes, the lay faithful and the presbyter himself. Since the diocese is not expending its own “personal” resources in this matter, there is little need for “frugal support” unless the resources of the diocese and the plan are insubstantial due to the economic circumstances of time and place.

Chapter Conclusions

The CCCB utilized c. 538, § 3 as the juridical base for its 1988 decree concerning the support of a presbyter in retirement in Canada and Ontario. The decree established “support” based on the criteria of “adequate support and accommodation” [=residence] and expands the notion of support to encompass all presbyters incardinated in a diocese. Therefore, the juridical bond of incardination extends a right to presbyters to support from the diocese in retirement or when disabled. The determination of a presbyter’s right to support in the context of illness, incapacity, and old age leads c. 538, § 3 to find particular expression in both in c. 281, § 2 and c. 281, § 1.

Support can be “adequate” or “decent” when objective standards determine the quality of measurement. The Christian faithful calculate the quality of presbyteral support at a level in conformity to the economic standards of time and place according to the canonical tradition.

The “Priests’ Survey on Retirement” indicates that a presbyter’s quality of support likely surpassed the norms of the economic standards of time and place in Ontario during the retired respondents’ early period of active ministry. The virtually “free” housing allowance was a real financial benefit to a presbyter at that time given the very low salaries. Furthermore, the notion of incardination and the title of ordination, “service to the diocese”, a requirement of the 1917 *Code*, ensured that a presbyter had a permanent place in which to minister and a guaranteed source of support for life. The notion of “retirement” did not exist as a canonical reality before the 1983 *Code*. After 1983, a presbyter must think about

and make some provision for this own future retirement. In Ontario, the acquisition of decent support during the years of active ministry determines and qualifies the level of support available to a presbyter both if incapacitated or in retirement.

The survey indicates that the participating RC dioceses of Ontario utilize only one component of the criteria established by c. 281, § 1, and then only in the most general fashion. In practice, “taking into account the nature of their function”, tends to refer to all pastors without distinction. The only qualifying difference among presbyters that a diocese currently acknowledges in its pay scales, is “seniority” based on predetermined blocks of time in service.

Contrary to the stated principles in the *Code*, a diocese/bishop do not consider a presbyter’s conditions of service and the nature of his function in the context of remuneration. There is “no double honour” for those holding demanding offices or with special skills and training. The diocese/bishop provides no added compensation or for those who are gifted administrators or for those who offer ministry to a large urban parish, to name but a few qualifications demanding fairer compensation.

The failure to utilize the other criteria determined in the *Code* makes it more difficult for a presbyter to comply with an obligation imposed upon him by the law and canonical praxis. As a member of the Christian faithful, not only has a presbyter the obligation to satisfy his financial obligations during active ministry; he must make some provision for himself in retirement as well as to assist to his

brother presbyters, his family, and the poor. Without decent support, the presbyter cannot fulfil these obligations.

The choice of housing is a serious consideration for presbyters facing retirement. It is largely dependent upon the financial resources made available during active ministry. The evidence provided by the survey respondents indicates a serious flaw in the current practice of providing remuneration for presbyters in active ministry. Many variables contribute to such a determination, such as the individual's ability to prepare financially for his future to receiving financial assistance from family or from private and public pension plans.

Some presbyters are able to select the housing arrangements of their choice; others do not have the same opportunity or option. Now retired, this group of survey respondents could not afford their choice of housing in retirement if they had to depend solely on the retirement annuity provided by the diocesan pension plan. At least a quarter of the respondents did not have the option to choose a private residence for their retirement. They lacked the financial resources to do so. The evidence points to an inequality of opportunity based on the presbyter's inability to choose his housing in retirement.

For those who do not have an independent source of income, either from savings over a period of active ministry or from family (inheritance), the choice of housing is limited to acquiring accommodations with family, friends or in a parish rectory. The decree lays the obligation upon the diocese to provide housing and upon the bishop to see to that an incardinated presbyter has acquired decent housing. To acquire accommodations with family is discouraged unless the

presbyter is able to make a reasonable contribution to his own maintenance. This is of particular concern if the presbyter suffers from a debilitating illness. A retired presbyter should not be a financial burden to his family.

The law, the CCCB decree, and the juridical bond of incardination places the obligation upon the Christian faithful, primarily in the juridical person of the diocese/bishop, to see to the support of one of its presbyters both in active ministry, incapacitated, disabled or retired.

CONCLUSIONS

By the time of the Council of Trent, the notions of title had evolved and provided considerable security and support to a diocesan presbyter because the titles were proprietary in nature, subject to the feudal laws of property and tenure, and remained in force for the life of the presbyter. The ordinary titles were the title of benefice, patrimony, or pension. In particular, the law relative to the title of benefice defined the beneficiary's specific place of ministry and the nature of the support obtained from the *usufruct* of the property. The law protected the rights of the juridical person of the parish, its resources, and its beneficiary-administrator from undue interference other than as provided for by law.

The 1917 *Code* approved a non-proprietary title, "service to the diocese", that obliged the presbyter to serve the diocese in general, with the diocese standing surety, the bishop standing as guarantor, for the support of the presbyter for life. Usually, the diocesan bishop conferred an office upon a presbyter from which the presbyter derived his support. Rather than obtaining support from the *usufruct* of a titled property, either the diocese or the place of ministry provided a salary and/or other forms of material support. This became the usual title for ordination in United States, English Canada, and the Province of Ontario.

This change of the notion of title altered the essential elements of the contract that provided for the security of the presbyter. The rights and obligations associated with the ordinary proprietary titles fell under the laws of property; however, under the non-proprietary title, service to the diocese, the rights and obligations

associated with the title now fell under the law of contract for hire. They are two very different sources of law. Of concern here, is the notion of contract for hire that best suits the title “service to the diocese”.

Certain types of contracts for hire are important for the considerations of this dissertation. In the Roman contract for hire, *mandatum*, only one party makes an offer to provide service for free, i.e., without a right to compensation, and the petitioner is obliged to provide the service at the bequest of the patron. There are no contractual terms, or obligations, that specifically bind the patron to the petitioner except in specific instances when reimbursement is necessary.

In an ordinary contract for hire, implicit or explicit, rights and obligations exist for both parties to the agreement. Payment for service is an expected component of the contract. An employer contracts the labour of an employee; the employee provides the labour. In this form of law of contract, the rights and obligations regarding payment for service rendered exists in justice, that is, the payment must be in proportion to the amount of labour expended. Herein, the relationship between employer and employee becomes a matter of that kind of justice known as commutative justice.

Somewhere within these notions of contract for hire exists in the notion of “service to the church” in United States, English Canada and in the Province of Ontario. The question became: what form of contract for hire holds greatest sway in the USA and in the Canadian experience? In 1950, a parish in United States

expended only three percent of its income on salaries for its parish clergy.

Clearly, such a practice does not fall within the purview of commutative justice.

It is questionable whether or not such a practice would comply with the demands of distributive justice for an active presbyter. The only alternative suggests the possibility of the Roman oral contract known as *mandatum*. In this type of contract, a patron had no obligation to provide the client with a decent wage as a part of the contract but might include room and board and a small stipend to cover personal expenses. This minimalist approach was seen as something laudable in 1950 when some adopted elements of the benefice system existed (tenure/ right to Christmas and Easter collections) and retirement did not.

Up to Vatican II, this study indicates that for the most part, the churches of Ontario provided decent support to a presbyter in active ministry according to the economic standards of time and place. If a presbyter became ill, incapacitated or suffered from the frailties imposed by old age there is less certainty as to the provision of decent support. The title "service to the diocese" became the guarantor of a "generic" place in which to minister and to obtain support for the lifetime of the incardinated presbyter. At the same time, it greatly reduced the security of the presbyter and the rights associated with a placed to ministry and from which support might be derived. Much has changed with Vatican II, particularly as some of the selected documents became expressed in the 1983 *Code*, cc. 281 and 538, § 3.

After Vatican II and the promulgation of the 1983 *Code*, the Church made considerable efforts to adapt to the demands of the twentieth century, particularly in its approach to a marketplace economy. The Council and *Code* suppressed the very notion of "title", gave a new meaning to an ecclesiastical office (from static reality to dynamic function), attempted to separate support from the office, reaffirmed the Church's commitment to social justice and decent wages for those who labour, enhanced the notion of incardination as the primary source of a right to obtain support during active ministry and if ill, incapacitated or subject to the exigencies of old age. The presbyter's right to minister was not stated in the *Code*. Most significant of all: the law introduces the notion of retirement, without naming it, by requesting a pastor submit his resignation from office at age 75.

Such changes call for a reappraisal of the manner in which a presbyter obtains support. The relative documents and canons have been examined and indicate that a presbyter has the right to a decent wage, benefits and housing in return for being available and/or for providing the ministry assigned by the bishop according to c. 281, §1 and the demands of commutative justice. If resigned, ill, incapacitated, disabled or unassignable, the incardinated presbyter retains the right to support based on his dignity as a human person. The right stems from the demands of distributive justice, or, in the case of a disabled or retired presbyter, from commutative justice.

What constitutes support? Hannan describes the canonical notion of support as:

The canonical concept of the fitting support, *congrua sustentatio*, of the secular clergy means the measure of maintenance which provides a living proper to the clergy in consideration of their dignity and merits according to the economic standards of the locality. Such a fitting support includes, therefore, in addition to the essentials of adequate housing, food and clothing, a proper allowance for medical care, study, moderate recreation, donations to charitable causes, prudent provision for the future (unless an adequate pension system is in effect in the diocese), and support of the dependent members of one's family if such support is not available from other near-relatives.¹

Unlike before Vatican II, today the presbyter has an obligation to make adequate financial and housing preparation for his retirement similar to many of the Christian faithful. Furthermore, the canonical tradition expects him to contribute to the well-being of his fellow presbyters and to the support of his family, if necessary. Since resources available during the active working period of a person's life determine the quality of a person's life in retirement, adequate resources must be available. For this to occur, the churches must implement the criteria established by *PO*, no. 20 and c. 281, §1. This study sought to test the implementation and application of the law in Ontario regarding the provision of support to retired diocesan clergy. This study concludes that after Vatican II, according to the requirements of the relative documents of the Council, the canonical tradition, the exposition of the requirements called for in the pertinent canons of the 1983 *Code* and the CCCB decree, the surveys indicate that the implementation of canon law in Ontario regarding decent support for retired diocesan clergy is flawed.

¹ HANNAN, *The Canonical Concept of congrua sustentatio for the Secular Clergy*, p. 200.

Recommendations

Because the particular churches in Ontario are in the earliest stages of dealing with the issue of presbyteral retirement and the canonical rights to support and housing, the matter is urgent. The *Code* obliges the Christian faithful to see to it that support is decent and just.

The Formation of a National or Provincial Study

Insofar as provincial councils and diocesan synods are not available to provide advice on this matter, other venues must be found for the Christian faithful to fulfill their obligations in this regard. The entire notion of the support of a presbyter must be reconsidered in light of the entire criteria established by the *Code*. The *Code* provides for the possibility of a presbyter contributing to his own support in retirement.

It is recommended that the CCCB, or the OCCB, with the National Federation of Priests Councils initiate a study relative to the issues of providing decent support and housing to a presbyter in active ministry, incapacitated, unassignable, or retired, within the framework required by the canons of the 1983 *Code of Canon Law*.

The evaluation should be considered with the assistance of an independent body of professional laypersons conversant with issues relative to the sciences of human resources, business management, and financial planning. The *Code* itself can be effectively utilized since it provides many of the job descriptions

associated with the various ministerial offices, including the obligations of those tasked with supervisory roles. Such a study must include the evaluation of the diocese's current and future financial, benefit and housing status in relationship to a presbyter's support.

Though good will is unquestionably present among all parties in this issue of support, there are many different agendas. The notion of incardination suggests an implied contract exists between a diocese and a presbyter because of the rights and obligations associated with this juridical device. The lack of a written agreement tends to create uncertainty, confusion, and insecurity for presbyters in active ministry and in retirement. This is especially evident for retired presbyters who are most vulnerable to changes in episcopal or parochial leadership. Written contracts of employment would do much to clarify many issues and alleviate some of the concerns of diocesan presbyters.

The Establishment of a Diocesan Commission

Without a diocesan synod to provide input to a bishop on issues of presbyteral support, a bishop would benefit from the recommendations of a consultative body, independent from diocesan officials, who would provide annual recommendations concerning salary increases, cost of living allowances, housing allowances and the like. An independent body precludes the impression and possibility of a conflict of interest if everyone making recommendations on support issues is an employee of the diocese. An independent body would fulfil a

requirement of the *Code* when it calls on the Christian faithful, especially the laity, to “see to it” that the presbyter obtains decent support.

The Presbyter and His Support

If a presbyter is to retire, he must make provision for his own future by obtaining a decent wage and by his ability to make regular contributions to a registered pension plan or trust. If the diocese has established such a plan for the benefit of its incardinated clergy, a presbyter has a moral and a legal obligation to participate and contribute both for his own sake and for the common good of the presbyterate.

According to the social justice teachings of the Church, “the labourer is worthy of his wage”. The dignity associated with the presbyter as a human person, and the dignity associated with his “work” demands that he receive a decent wage in order to satisfy his present and future obligations. In justice, the relationship between the minister, the ministry, and the diocese indicates a proper contract for hire. In practice, the diocese acts as an employer; the presbyter functions as an employee according to all the relevant socio-economic and secular legal standards of description. This does not alter the fact that a presbyter is a professional person by definition.

Canon 281 makes the distinction between the two forms of justice. The contract is rooted in the notion of commutative justice that demands an equality of proportion between the “work” and the “wage”. This principle of proportionality

demands the inclusion of the various criteria established by the canon. The presbyter and his labour must be honoured with a decent wage as soon as possible.

The factor of equal treatment is a major consideration when the issue is the support of a presbyter in active ministry, but its meaning can be seriously misinterpreted. The *Code* already provides the basis for equality among presbyters, but only if the canons are considered and implemented in their entirety. To choose only one of the criteria defined in c. 281 is to do an injustice to the intent of the Council and the *Code*.

Equality of opportunity should also be available to a retired presbyter. This means that if the contributions to a diocesan and government registered pension plan are the same for all clergy, the annuity should be the same for all the clergy. If differences occur, differences should be reflected in the pension annuity.

The Issues of Pension Funds and Annuities

In order to be in conformity with the law, c. 1274, § 5, any diocesan pious foundation or trust that the bishop erects as a retirement fund should be registered with the proper federal government agency in order to be protected at secular law from litigation. To fail in this regard, leaves the diocesan retirement fund open to litigation.

Both bishops and presbyters must recognize that when a presbyter makes personal contributions to a pension fund, the pension annuities tends to function more as

deferred income than a simple contribution. When the bishop registers such a plan with the government, the beneficiary possesses a secular legal right to the fund's annuity. Ecclesiastical authority has no authority to deny, cease, or alter the terms of such an annuity once the beneficiary is formally retired and entitled to the annuity under ordinary circumstances. This was not the case under the canons of the 1917 *Code* and the title of ecclesiastical pension.

The Issue of Housing

The issue of housing is critical and represents the source of the greatest degree of inequality among the retired presbyters, i.e., those who have the option of choice of housing and those who do not. Housing has been a longstanding and constitutive element of presbyteral support. The obligation to provide, or to see to the provision of housing rests with the diocese during active ministry, in illness, incapacity, old age, and in retirement. How this is accomplished must become the subject of serious discussion among interested parties.

Currently, presbyters have an advantage that is greatly underutilized but that might assist in their future planning for retirement. CCRA grants a housing deduction to clergy if they comply with the requirements of the law. The housing deduction can only work to the economic advantage of a presbyter if the cost or rent associated with his accommodation is in conformity with the standards of time and place. Artificially low cost housing rates imposed by a diocese acts to the detriment of a presbyter's economic security. In order to conform to the intent of the *Income Tax Act*, a diocese needs to establish housing costs for its clergy in

conformity with the economic standards of time, place, and the nature of the dwelling. In so doing, tax refunds can assist in the presbyter's ability to provide for his present financial needs and/or future support in retirement. This is one of the important differences in the socio-economic milieu before and after Vatican II.

Clarity on the issue of housing is particularly important for a retired presbyter occupying accommodations in a parish house. Written agreements should exist between the juridical person of a parish, represented by its pastor, and a retired presbyter seeking accommodation in the parish house. As with all contractual agreements involving institutions that are juridical persons, a new bishop or a new pastor are administrators, not owners of the property. Under normal circumstances, a bishop or a pastor are bound to the agreements made by a predecessor. The retired presbyter occupying accommodations in the parish house retains the rights and obligations established at the time of the contract.

Retirement Procedure

A diocese should establish clear policy and procedure for the retirement of its presbyters. Preparation for retirement should begin early, especially in financial planning for retirement. To this end, occasional talks at clergy gatherings might be helpful. Retired presbyters indicate that written agreements clearly stating their rights concerning an annuity, benefits and housing should be a part of the retirement process of a diocese.

Finally, when the *Code* and its canons pertinent to the support of the presbyter are implemented in full by the Christian faithful, the possibility of both decent support and housing will be most evident among the incardinated presbyters of a diocese, both in active ministry and in retirement.

Appendix A: Decrees of Plenary and Provincial Councils in Canada

Plenary Council of Quebec (1909)

Decree 627b. Illis in locis, ubi obligatio ad decimas vel ad certam pecuniae summam a fidelibus solvendam nec praestituta sit nec imponenda censeatur, Episcopus salarium a parrocho vel a missionis rectore ejusque adjutoribus percipiendum determinet, ex omnium ecclesiae proventuum massa seu cumulo assumendum.

Council of Toronto (1875)

Decree XVI. *De Honestâ Sustentatione Sacerdotum Infirmorum.*

Memores paternae illius Divi Pauli sententiae, “Qui altari deserviunt, cum altari participant,” desiderioque flagrantes ut illis prospiciatur, qui vocationi Divinae sancta voluntate obtemperantes, animarum salutem vitam voverint, cum jam senio confecti aut infirmitatibus prostrati ulteriori in vinea labori inhabiles inveniuntur, ad eripiendam etiam omnem rationabilem excusationem illis, qui praetextu senio providendi ac infirmitatibus, spiritu avaritiae ducti, fidelium scandalo et detrimento Ecclesiae pecunias accumulare satagunt, huius Con ilii Patres statuerunt, ut unusquisque hujusce provinciae Episcopus, quamprimum pecuniae cumulo creando provideat, qua senes et infirmi Sacerdotes decenti perquam mode, ali possint as sustentari. Fac est Episcopo pecuniae fundum creare vel ab ipsis Sacerdotibus vel ex redditibus Ecclesiarum. Administrationem hujus subventionis vel fundi Episcopus ipse cum sue Concilio Dioecetano habere debet. Ex eodem fundo etiam, Ordinarii iudicio, poterunt saltem aliquatenus sustentari illi etiam Sacerdotes, qui quidem sunt vel recenter fuerunt minus digni, sed de quibus spes effulgeat illos ad meliorem frugem esse reducendos.

Sperant, Patres Concilii, fore ut Sacerdotes obligationem fratribus subveniendi alte sentiant, memores semper aureae Divinae Magistri sententiae: “In hoc cognoscent omnes quia discipuli mei estis, si dilectionem habueritis ad invicem” (John J. Lynch, Abp, xiii, 35)

Appendix B: The Income Tax Act: Clergy Housing Deduction

(Original on File)

No: IT-141R

Date: May 4, 2000

SUBJECT: INCOME TAX ACT

Clergy Residence Deduction

REFERENCE: Paragraph 8(1)(c)

Application

This bulletin replaces and cancels Interpretation Bulletin IT-141, *Clergymen's Residence*, dated December 31, 1973.

[....]

§ 21. Where an employee is provided with free accommodation, the value of the benefit is included in income under section 6. If the requirements outlined above of the status test and the function test are both met, a deduction is permitted in respect of the value of the residence or other living accommodation. The value of the residence or living accommodation is the fair rental value of the residence or living accommodation. The deduction is limited under subparagraph 8(1)(c)(i) (See Appendix A) to the amount included in income as a benefit (p. 4).

IT-141R

Appendix A – Paragraph 8(1)(c) of the Act

Section 8: Deductions allowed

In computing a taxpayer's income for a taxation year from an office or employment, there may be deducted such of the following amounts as are wholly applicable to that source or such part to the following amounts as may reasonably be regarded as applicable thereto:

(c) **Clergyman's residence** – where the taxpayer is a member of the clergy [...] the value of the residence or other living accommodation occupied by the taxpayer in the course of or by virtue of the taxpayer's office or employment as such a member or minister in charge of or ministering to a diocese, parish [...], or so engaged in such administrative service, to the extent that that value is included in computing the taxpayer's income for the year by virtue of section 6, or rent paid by the taxpayer for a residence or other living accommodation rented and occupied by the taxpayer, or the fair rental value of a residence or other living accommodation owned and occupied by the taxpayer, during the year but not, in either case, exceeding the taxpayer's remuneration from the taxpayer's office or employment as described in subparagraph (i).

Appendix C, Annex 1: *Fullness in Christ* © Priests' Survey on Retirement

INSTRUCTIONS: The purpose of this questionnaire is to elicit information about a retired priest's views of his diocesan pre-retirement and retirement programs and policy, and his degree of satisfaction with his current living, ministry and financial situation.

A participant's identity is confidential. Participants are assigned a random number upon acceptance. Information obtained from an individual will not be identified with the individual. The results of the questionnaire will be generalized and statistics *compiled* for purposes of the dissertation. Please respond to all of the questions. Please write legibly where a written response is requested. Your assistance is greatly appreciated. [Anomalies in data occurred in tabulating results and are included by the use of closed brackets [...].] The results include 45/50 responses. [Completed survey has been edited for brevity.]

Section 1: Identifying information (Numbers 2-3 Confidential).

1. Respondent's ID # Father Anypriest in Ontario
2. Your current diocese of incardination.....
3. Your original diocese of incardination.....
4. What is your current age? 75.6 years
- 4a. How many years have you been ordained? 48
- 4b. At what age did you retire? 70 [No Answer provided - (2)]
- 4c. I have been retired for: 1. (27) five years or under. 2. (17) over six years. [No Answer - (1)]
5. I would rate my satisfaction with my life in retirement as (CHECK ONE):
 1. (22) very satisfied; 2. (9) moderately satisfied; 3. (9) satisfied;
 4. (1) dissatisfied; 5. (1) very dissatisfied. [No Answer - (3)].
6. My education qualifications include: [Some confusion seemed to exist around #1. Whether this referred to a high school or a post secondary school diploma. The intent was post-secondary school diploma.]
 - (22) an undergraduate diploma.
 - (17) an undergraduate degree: Major: Philosophy (8); Theology (1); Modern Languages; English
 - (3) more than one undergraduate degree: II Major: Literature; English
 - (10) a master's degree in Theology (5); Philosophy (2); Sociology; Psychology; Library Science; Pastoral.
 - (7) a doctoral degree in English Literature (2); Philosophy; Canon Law (2); Education.
 - (6) other qualifications: Teaching Certificate; High school Principle Certificate; Diploma in Logotherapy; Diploma in Catechetics; Navigator Certificate; Pilot's Licence. [No Answer - (5)]
7. My current health status is:
 1. (11) very good health for my age.
 2. (10) good health for my age.
 3. (3) average health for my age, occasional visits to doctor for non-recurring medical problem.
 4. (14) poor health, on prescribed medications for defined recurring medical problem.
 5. (3) very poor health, under continuing supervision of doctor (at least two visits per month required) plus medications.
 6. (4) a diagnosed medical disability.

[No Answer - (1)]

8. My current annual gross income from all sources is:

1. (0) under \$ 4,999.
2. (0) between \$5,000 and \$9,999
3. (3) between \$10,000 and \$14,999
4. (4) between \$15,000 and \$19,999
5. (9) between \$20,000 and \$24,999
6. (11) between \$25,000 and \$29,999
7. (11) between \$30,000 and \$39,000
8. (5) between \$40,000 and \$49,999
9. (0) over \$50,000

[No Answer - (2)]

9. My current total assets are:

1. () under \$10,000.
2. (4) between \$10,000 and \$20,000.
3. (3) between \$20,000 and \$30,000.
4. (5) between \$30,000 and \$50,000.
5. (4) between \$50,000 and \$75,000.
6. (8) between \$75,000 and \$100,000.
7. (8) between \$100,000 and \$225,000.
8. (4) over \$225,000

[No Answer - (9)]

10. During your active ministry, did you ever serve in your diocese as a participant on a retirement board, pension board, retirement study for the diocese, delegate/vicar for retired priests?

YES 1. (7) NO 2. (36) [No Answer - (2)]

11. Are you aware of any Institutes for Retirement Planning or organisations which provide information or counselling services which might prepare a priest for retirement?

YES 1. (3) NO 2. (41) [No Answer - (1)]

If YES: What Institute or organisation? Centre for Ministry Transition, Baldwin, MO; Seminars provided for teachers and other professionals through their associations, Corrections Canada.

12. Has your diocese provided any seminars or workshops on the subject of priestly retirement?

YES 1. (8) NO 2. (35) [No Answer - (2)]

If YES: Who provided the expertise for the workshop on retirement? Occasion to discuss some retirement issues occurred as part of diocesan seminar day or part of a pastoral seminar; one information session was provided by a local diocesan presbyter; some issues discussed included a CIBC financial advisor; health issues talk from member of Southdown Convalescence Institute; Physical Instruction instructor; qualified dietician.

13. Did you ever attend a workshop on retirement?

YES 1. (7) NO 2. (36) [No Answer - (2)]

If YES: What topics were presented or discussed? Explain. In general: readiness to retire; physical and mental health issues (5); financial resources (3); recreation. Specifically discussed were the following: Financial - GIC's, RSP's, annuities, etc; Health - diet, exercise, rest, annual medical check up; Retirement Policies and benefits; retirement interests and activities, Investment counsellor.

14. Does your diocese have information brochures/literature on clergy retirement?

YES 1. (3) NO 2. (37) [No Answer - (3); Don't Know - (2)]

15. Did you personally prepare for your retirement?

YES 1. (28) NO 2. (15) [No Answer - (2)]

If YES: How did you prepare for your retirement? I gave it a lot of thought; saved money over years with view to future need in retirement. When I saw what happened in the 70's to older priests, I decided to save as much as possible. I visited a lot of rectories and found they didn't want any "extras" for many reasons...made some arrangements with a priest who was then moved and I had to move...no one gave a

damn or so it seemed to me. Arranged to do volunteer work in return for residence.. didn't work out...no support...live in a small room in an institution. Getting information on diocesan retirement policy and diocesan retirement housing; rented a residence a year before I retired; updated my will; maintained interest in a cottage; sought advise; took a retirement course. Parents worried about "poor house" and saved – so did I. Examining residential options with priest friends prior to retirement. Saved money and invested it. I arranged for ministry at ... and occasional weekend ministry. I also had a program of spiritual reading.

16. Was your retirement:

1. (24) entirely voluntary.
2. (14) more involuntary than voluntary.
3. (4) involuntary [due to illness - (2)]

[No Answer - (3)]

17. Did you retire because of one of the following reasons (CHECK AS APPLICABLE):

1. (11) age *required* by diocesan policy.
2. (6) age *requested* by diocesan policy with other factors considered and accepted.
3. (0) age required by government controlled pension plan but continue full-time ministry and receive remuneration from active ministry.
4. (0) age determined by diocesan pension plan *without* other personal factors considered.
5. (1) age determined by diocesan pension plan *with* other personal factors considered.
6. (21) personal health factors permitted or called for retirement.
7. (7) preference to surrender administrative responsibility.
8. (5) other: specify. Voluntary with bishop's permission; no assignment (2); left to bishop to specify; change of situation.

Section II. Pre-Retirement Program for Diocesan Priests

18. Does your diocese have a pre-retirement program for priests?

YES 1. (0) NO 2. (44) [No Answer - (1)]

If the answer to #18 is YES, then answer the remaining questions in this section, if the answer to # 18 is NO, then move on to question #21.

19. Was your pre-retirement program conducted on:

- individual basis.....1. ()
- group basis.....2. ()
- oth individual and group basis.....3. ()

20. If you were to describe the pre-retirement program in your diocese, would you say it is:

Limited 1. () [explains pension program/benefits, timing options and living arrangements].

Comprehensive 2. () [attempts to go into depth, treats such topics as physical and mental health, optional ministerial roles in retirement, leisure activities and the legal aspects of retirement].

21. Do you feel that you were provided with enough information to answer your questions about your impending retirement?

YES 1. (23) NO 2. (18) [No Answer - (4)]

If NO: Why not? Edited comments include: a supportive brief talk with the ordinary, little else.

Retirement just follows 75 year pattern, otherwise always a surprise and no process. I was retired for 5 years before I was asked to do a seminar for the benefit of others. No explanations provided about changing RRSP to RRIF. There is no diocesan policy regarding information for retirement...I do not think there should be, we should be astute enough to manage our own affairs. Nothing discussed until I was already retired for 3 years. The attitude seems to be look after yourself...Personnel departments busy looking after active, current appointments. It was sudden, without consultation...political. I grew up in an era of housekeepers and cooks, before microwaves...I knew nothing about cooking...I would recommend a bachelor survival course for seminarians knowing what I know now.

Please check off as many of the following as apply to your pre-retirement, early (within six months) retirement process.

22. (8) I was given the opportunity to gradually shift from highly administrative roles to less administration and more involvement with individuals and groups.
23. (4) I was able to make a retreat as part of my retirement process.
24. (0) I was able to participate in a retirement workshop in the diocese or elsewhere.
- 25a. (1) I was able to take a sabbatical as part of my retirement process.
- 25b. (1) What was the length of your sabbatical? One year.
- 25c. (1) What did you find most beneficial about your sabbatical? The lack of stress.
- 25d. (1) What did you find most unsatisfactory about your sabbatical? I was required to have surgery that year.
26. Who assisted you to assess your financial assets and explore opportunities for availability of ministry in retirement (CHECK AS APPLICABLE)?
1. (39) I did it myself.
 2. (5) a diocesan priest friend.
 3. (1) a religious (priest, brother, sister) friend.
 4. (5) family member.
 5. (3) a lay person.
 6. (1) member(s) of the diocesan staff.
 7. (7) a professional; i.e., lawyer, accountant, etc.
 8. (0) a guidance counsellor.
 9. (3) other retired priests.
 10. (1) other: specify, personal.
- [No Answer - (3)]
27. Which three from question # 26 provided the greatest response to your needs in order of priority of assistance? [Numbers in (*) refer to numbers above in Q. 26, clear numbers refer to number of responses matching that number. 21 did not respond to any Question]
1. (1) - 11; (4) - 3; (7) - 3; (2) - 2; (3); (5); (9) - 1; (6); (8) - 0; [NA - 5].
 2. (2) - 5; (4) - 4; (7) - 4; (1) - 2; (3), (5), (9) - 1; (6), (8) - 0; [NA - 25].
 3. (9) - 3; (1), (5) - 2; (4), (7) - 1; (3), (6), (8) - 0; [NA - 31].

Section III. Retirement Program for Diocesan Priests

A. Policy

28. Does your diocese have a priest serving as a delegate/vicar for retired priests?
- YES 1. (17) NO 2. (27) [No Answer - (1)]
- If YES: Are you that person?
- YES 1. (2) NO 2. ()
- [There is no Q. 29]
30. Is this appointment full-time: 1. (1); part-time 2. (10); 3. (15) does not apply [No Answer - 19]
31. Does the diocesan bishop/delegate consult on clergy retirement policy?
- YES 1. (32) NO 2. (9) [No Answer - (4)]
- If YES: Does he consult *via* (CHECK AS APPLICABLE):
1. (10) Presbyteral Council.
 2. (6) College of Consultors.
 3. (15) Senate of Priests.
 4. (17) Diocesan Personnel Board.
 5. (6) delegate/vicar for retired priests.
 6. (4) individual retired priests.
 7. (16/32) combination, #'s 1, 2, 3, 4, Retirement Trust Board - 2.
32. Does your diocese have a definite retirement policy that is clearly stated and followed?
- YES 1. (25) NO 2. (17) [No Answer - (2); Don't Know - (1)]

33a. Would you rate your overall diocesan retirement policy as (CHECK ONE ONLY):

1. (3) Excellent; 2. (10) Good; 3. (7) Satisfactory; 4. (11) Unsatisfactory;
5. (8) Poor. [No Answer - (2); No Policy - (3)]

33b. Why? The edited responses include the following: everyone is very pleasant but once you are out of the loop, it is as if you have vanished. At 75, I think most priests are ready to retire. I am excluded, reject. Retirement age is definite...Places to live is so, so. Financial planning assistance is non-existent. Very generous pension...I think most priests wish to make their own arrangements. The only drawback is that retirement is subject to bishop – assumed to be age 75. Because the age 75 is the only criterion. Due to shortage of priests, each retirement is discussed and arranged by the bishop and the involved priest. Our pension fund ...is big enough to just meet our basic needs. Consideration is given for individual needs and desires re retirement. There is none!!! I felt I had no way of changing bishop's decision...I felt I was "de...(?)ed."...He was too busy with moves...usually very sympathetic...(bishop) to stressed out by a lot of problems. I should say satisfactory to me...I know there are priests who have had far less satisfactory experience in seeking living arrangements. You are left on your own...funds are provided only. Personal interest is lacking. I would have liked to be considered still a priest and not to be left isolated specially by your (...?). Because we are left free to continue to work as pastors in our parishes if we so wish. Because we receive an allowance that fills our requirements. (Our fund) is not a registered pension. No objective counsellor; tendency to be Lone Ranger...over expectations led to my sense of failure. The diocese ignore retired priests... they make a token response...there is no policy in effect...you are left totally on your own. Since it is unable to have enough serving priests, it simply follows the mandatory age rule!...Anything else seems to be because of a fuss, a problem such as health. You are left entirely on your own to make your own arrangements...not everyone is able to do that when you are 75 years of age and up till then have been provided with a diocesan residence...it causes lots of stress trying to decide where you will reside and how you will look after yourself especially if you are the dependent type. It depends on the will and whim of the Ordinary. (Bishop) consults with individual on personal basis...usually amenable to requests when policy does not apply. I feel supported yet not suffocated by rules. There is little talk about it...If you have problems you can consult personnel. Meets all my financial needs. I was not consulted – and ordered to retire...(?)-health, parish squabbling (?)....(?). We seem to be well looked after...If a retired priest gets really sick, i.e. requiring nursing care, if he can afford to pay (having family inheritance/his savings whatever) he pays. If not, the diocese covers his expenses....

In the following (numbers 34-41), choose only #1 OR #2, not both.

34a. Are you (34) 1. satisfied; or, (7) 2. dissatisfied with the financial support and benefits provided by the diocese? [No Answer - (4)]

34b. Why? Generally, positive comments refer to pensions being adequate particularly when living in a rectory and when coupled with Old Age Pension; living frugally there is enough, some concerns are expressed about lack of funds if one requires nursing care. Negative comments pertain to high cost of rent, not enough for emergency, satisfactory only for sick priests. One priest could not live in his diocese of incardination due to high rental and living costs.

35a. Are you (28) 1. satisfied; or, (14) 2. dissatisfied with the fraternal support provided by your brother priests? [No Answer - (3)]

35b. Why? Positive comments refer to participation in social gatherings, active priests maintain some connection through visits and phone calls, being asked to help out. Negative comments made are quite passionate and revealing: call when need help otherwise (active priests) too busy; no official support, depends on personal friends; they ignore retired priests; I rarely see any of them; little attention when you are over the hill; we are loners and not enough done to provide some visit with active priests; many forget you exist; there is no fraternal support.

36a. Are you (24) 1. satisfied; or, (9) 2. dissatisfied with the retirement age established by your diocese (ANSWER ONLY IF AGE IS ESTABLISHED)? [No Answer - (12)]

36b. Why? Edited comments include: age should not be the main reason, but efficiency. It seems 75 is the retirement age but many may run out of steam before that especially in large parishes with few or no help.

Priestly ministry is fulfilling and challenging and I was pleased to continue as long as I could physically and spiritually...but at 75 if you don't think you're old – most other people do. 75 is too late, after 65 priest should make decision; each case should be judged on his own; I feel 70 is a good time to retire especially in today's culture and falling practice marriage and other sacraments no longer a source of joy – to many confrontations. Shortage ...requires priests to continue as long as they can. Most corporations retire at 65 not 75. Prefer 60-65 with decreasing administrative responsibilities.

37a. Are you (34) 1. satisfied; or, (1) 2. dissatisfied with your diocesan policy regarding supplemental medical insurance (ANSWER ONLY IF PROVIDED)? [No Answer - (9); Not Applicable - (1)]

37b. Why? The general affirmative response indicates that the various plans satisfy the needs of the priests.

38a. Are you (30) 1. satisfied; or, (3) 2. dissatisfied with your diocesan policy regarding a dental health plan (ANSWER ONLY IF PROVIDED)? [No Answer - 9; Not Applicable - (3)]

38b. Why? Most satisfied. Dissatisfaction revolves around poor coverage, contributions too costly, or there is no plan.

39a. Are you (19) 1. satisfied; or, (17) 2. dissatisfied, with your diocesan policy regarding living arrangements for retired priests? [No answer - (9)]

39b. Why? Positive responses revolve around the freedom to choose and for those in rectories generally express satisfaction. The dissatisfied responses include the following: There are no living arrangements... You are on your own (7). There is no one place for priests. A few senior homes have openings, however, no residence for retired priests...you are entirely on your own. It can be very stressful and lonely, cooking and looking after yourself, especially if you have health problems or never had to look after yourself before. Nothing is clear about the time when someone can't live on their own anymore.

Pastors I approached in several places said "no way"...really old priests go to priest's residence...no one gives a damn or will help when you retire. Aside from a home for the aged, there is not a facility for a living arrangement which offers food services and laundry, etc. Rectors that have rooms are often not willing to accommodate; no one seems to know what pastors would like a retired priest to live in their (sic) rectory.

40a. Are you (22) 1. satisfied; or, (6) 2. dissatisfied, with your diocesan policy regarding room and board fees for retired priests living in parish rectories? [No Answer – 17]

40b. Why? The dissatisfied express the following: The "good guys" can make good deals with individual pastors; the "other guys" beg for mercy; residence pegged at \$500 and after all it is just if the pastor there wants to bother having your help; inevitably one living in a rectory is expected to help...I think in this case, he should receive remuneration if he is paying room and board; it's hard to get into a rectory. The satisfied expressed that in general there is satisfaction with living arrangements with special emphasis that there is a general feeling of fairness to what is being charged for room and board; pension allows money over after paying room and board; appreciate being able to help out.

41a. Are you (30) 1. satisfied; or, (18) 2. dissatisfied, with your diocesan policy regarding ministerial opportunities for retired clergy?

41b. Why? Most express satisfaction with arrangements and opportunities available usually through personal "contacts." Responses from the considerable number of dissatisfied include the following: I don't know if there is any formal policy...roster of retired priests available for weekends-vacations, etc; it's a matter of who you know and how "they" classify you and your potential; presently there is so much personal taste initiative creeping into the liturgy that a visiting priest is really confused; you are not accepted even occasionally in the parish you served for [many, many] years...you have to implore to return.

42a. Given the fraternal nature of the priesthood and providing that you have the financial means to do so, would you make a donation or bequest to a diocesan fund dedicated to the support of retired/incapacitated priests?

YES 1. (33) NO 2. (10) [No Answer – 2]

42b. If NO: Why not? I do not have sufficient income. I feel this is already achieved. Much better to assist a brother priest directly....Donations to the diocese have a way of getting redirected. Priest live too

high on the hog...priests who blow all they have shouldn't expect more support. I have family obligations and commitments (2).

B. Financial¹

43. Did you participate in your diocesan pension plan?
YES 1. (34) NO 2. (6) [No Answer – 5]
44. Did you make a financial contribution to the diocesan pension plan on a regular basis?
YES 1. (31) NO 2. (7) [No Answer – 3]
If NO: Why not? Seven respondents belong to a plan where the presbyter does not contribute.
Funded by parish assessment. [No Answer – 4].
- 45a. Do you receive a pension benefit from the diocesan pension plan?
YES 1. (41) NO 2. (1) [No Answer – 4]
- 45b. What is the current amount of your diocesan pension benefit? \$ 1156, \$ 13,872 annual gross.
- 46a. Are you eligible for, or receive a disability benefit from your diocesan pension plan?
YES 1. (4) NO 2. (28) [No Answer – 9; Don't know – 4]
- 46b. If YES: What is the amount of the benefit? \$ 1156 from 2 respondents only.
- 46c. Is the disability benefit greater than the retirement pension plan benefit?
YES 1. (0) NO 2. (32) [No Answer – 9; Don't know – 4]
- 47a. Do you receive financial income or benefits from (CHECK AS APPLICABLE):
(42) 1. Canada Pension Plan.
(42) 2. Old Age Security.
(1) 3. Old Age Pension Supplement.
(3) 4. Insurance annuity from your own funded insurance plan.
(28) 5. Dividends from investments you have made over the years.
(7) 6. Pension from former employer.
(5) 7. Inheritance beneficiary.
(1) 8. Financial assistance from family or friends.
(4) 9. Other: specify: small annuity; mutual fund, RRSP; War Pension, RIF.
- 47b. Do you own real estate? YES 1. (22) NO 2. (20) [No Answer – 3]
- 48a. Do you own/lease a car?
YES 1. (38) NO 2. (4) [No Answer – 3]
- 48b. If YES: What make and year is your car? 1992 Oldsmobile [from compiled averages of years provided and highest number associated with a particular make of car.]
- 49a. Do you require the use of public transportation, taxi, in order to get to appointments or commitments?
YES 1. (3) NO 2. (39) [No Answer – 3]
- 49b. Do you find any financial difficulty in obtaining this transportation?
YES 1. (1) NO 2. (39) [No Answer – 23]
50. Do you make regular payments on the following (CHECK AS APPLICABLE):
(25) 1. mortgage/rent/rectory room and board \$643.63 per month. [25 responses compiled result, No Answers – 20]
(3) 2. car payment/transportation @ \$ 335 per month [Car payments represent 3 respondents. Forty-two priests appear to have their car paid for in 1997. No Answer – 3]
(32) 3. automobile insurance @ \$.87.08 per month. [No Answer – 13]
(37) 4 telephone average is \$37, [No Answer – 8]

¹ Please note that these are compiled results and will not necessarily match as though these are the financial statements of one person. The figures highlight the discrepancies in income and expenditures.

- (22) 5. TV cable, "I don't have cable, but friends who do pay a minimum of \$25 amonth [No Answer - 23]
- () 6. Other: taxes, food, laundry, house repairs, cleaning \$6 a week [(?)] ; portable car phone, internet service; Visa, newspapers; satellite TV; utilities, home insurance, charities.
51. Under normal circumstances and with your current monthly income, are you able to pay your monthly bills on time without going short on one bill to pay another?
YES 1. (43) NO 2. (0) [No Answer - 2]
52. Do you have a cash reserve available for emergencies of more than \$1000.
YES 1. (42) NO 2. (1) [No Answer - 2]
53. Are you able to take a vacation if you desire?
YES 1. (39) NO 2. (4) [No Answer - 2]
If YES: What is the average amount you would budget? \$2095 [Total compiled from 28 responses. No Answer - 17]
54. Are you able to afford recreational and leisure activities; e.g. golf membership, subscription to the theatre/concert/sports events)?
YES 1. (30) NO 2. (11) [No Answer - 4]
If YES: What is the average amount you would budget for leisure activities? \$1268 annual or \$ 105.66 per mo. [16 responses]
55. If you had an opportunity to take a pre-retirement or retirement sabbatical, how was it financed:
(31) 1. did not take a sabbatical.
(2) 2. the diocese provided the funding.
(2) 3. I provided the funding.
(2) 4. funding was negotiated between myself and diocese.
[No Answer - 8]
56. Do you worry about your current financial situation?
YES 1. (3) NO 2. (39) [No Answer - 3]
57. Do you personally know any of your brother retired priests who may be financially deprived (e.g., difficulty paying rent, buying food or clothing)?
YES 1. (8) NO 2. (34) No Answer - 3]
If YES: Would you say this is because:
57a. (4) 1. poor money management.
57b. (3) 2. simply not enough income [No Answer - 1]
58. How do you rate the financial support that you receive from the diocesan pension plan (CHOOSE ONE ONLY)?
(16) 1. very satisfied; (22) 2. satisfied; (4) 3. dissatisfied; (0) 4. very dissatisfied [No Answer - 2; No support provided - 1]
59. How secure do you feel financially (CHOOSE ONE ONLY)?
(16) 1. very secure; (22) 2. moderately secure; (12) 3. secure; (1) 4. insecure; (1) 5. moderately insecure; (0) 6. very insecure [No Answer - 1]

C. Retirement Age

- 60a. Do you believe that there should be an arbitrary age for a priest to formally retire?
YES 1. (24) NO 2. (18) [No Answer - 3]
- 60b If YES: What age would you recommend? 70.3 years [20 responses compiled]
- 61a. Should the decision to retire be negotiated solely between the priest and his bishop/delegate at any age the priest feels ready or the need to retire?
YES 1. (36) NO 2. (7) [No Answer - 2]
- 61b. If NO: Why not? Priest shortages; not in best interest of church or laity; should have a doctor's recommendation; appeal mechanism needed; general policy good for the diocese, consultation with others.

D. Living Arrangements

Of the following living arrangements for retired priests, check as many as apply in your diocese:

- 62. (15) diocesan group residence provided for diocesan priests.
- 63. (27) home(s) for the elderly and/or infirm requiring short or long term care.
- 64. (3) residing in last parish assigned.
- 65. (31) residing in rectory of choice, if room is available.
- 66. (15) residing with family or friends.
- 67. (14) residing in another province or country.
- 68. (38) residing in one's own home or apartment.
- 69. (3) other: (specify) seniors lodge or apartment; home family owned.

Which of the above (#'s 62-69) available in your diocese, are the three (3) most common practiced in order of *your* preference?

- 70. 68 – (18); 65 – (10); 63 – (5); [No Answer – 5]
- 71. 65 – (11); 68 – (8); 63 – (7); [No Answer – 7]
- 72. 63 – (10); 63 – (10); 62 – (5); [No Answer – 12]
- 73. What is your personal choice [in order of preference]? 68; 65; 63.
- 74. What is your current living arrangement? 29 out of 39 are living their preference.
- 75. Do you have cooking and cleaning services available to you?
YES 1. (24) NO 2. (13) [No Answer – 8]
- 76. Do you feel free to entertain family/friends in your current place of residence?
YES 1. (37) NO 2. (6) [No Answer – 2]
- 77a. Do you feel you have enough private space available for your needs?
YES 1. (40) NO 2. (2) [No Answer – 3]
- 77b. Do you have your own washroom? YES 1. (43) NO 2. (0) [No Answer – 2]
- 77c. Is your dwelling in good repair? YES 1. (43) NO 2. (0) [No Answer – 2]
- 77d. It has been painted in the last five (5) years. YES 1. (39) NO 2. (4) [No Answer – 2]
- 77e. My furniture is less than ten (10) years old. YES 1. (24) NO 2. (18) [No Answer – 2]
- 77f. Maintenance provided in event of electrical/plumbing problem.
YES 1. (36) NO 2. (7) [No Answer – 2]
- 77g. I have the use of a garage. YES 1. (22)NO 2. (21) [No Answer – 2]
- 77h. There is a snow removal service. YES 1. (30) NO 2. (11) [No Answer – 2]
- 77i. I have my own telephone? YES 1. (38) NO 2. (5) [No Answer – 2]
- 77j. I have my own television set? YES 1. (43) NO 2. (0) [No Answer – 2]
- 78. Do you have or if you chose, is it possible to have a pet in your living space?
YES 1. (20) NO 2. (20) [No Answer – 5]
- 79. If you are already living in a rectory and a new pastor is assigned, do you need the incoming pastor's permission to remain in your living quarters? YES 1. (14) NO 2. (0) [No Answer – 31]

E. Ministerial Roles in Retirement

In which of the following options for continued involvement in the ministry are you currently engaged or have been involved since your retirement. (CHECK ALL WHICH APPLY)?

- 80. (0)...pastor *emeritus* (provides advice on pastoral/administrative matters as may be requested by younger/other pastors or clergy).
- 81. (9)...invited to sit on diocesan 'standing committees' or be involved in special projects.
- 82. (24)...part-time parish work.
- 83. (11)...chaplaincy positions.
- 84. (3)...retreat work.

85. (2)...counselling.
86. (1)...giving conferences.
87. (32)...offering Mass and hearing Confessions.
88. (4)...catechetics for young people (high-school/elementary).
89. (14)...visiting hospitals and the elderly.
90. (1)...writing and/or reviewing articles/periodicals/books.
91. (1)...consultant to non-ecclesial institutions (volunteer Heart Fund, etc.).
92. (5)...spiritual direction.
93. (3)...convert instruction/R.C.I.A.
94. (4)...other (specify): spiritual ministry (daily prayer-3 to 6 hours daily)/physical work to assist family; diocesan work without pay; severe hearing loss precludes ministerial involvement; I have been left to myself.

F. Miscellaneous

Which of the following communication contacts with your diocese have you experienced since your retirement (CHECK AS MANY AS APPLY)?

95. (7)...visit(s) by vicar or delegate for retired priests.
96. (32)...official diocesan communications.
97. (9)...special newsletter for retired priests.
98. (35)...formal invitations to special diocesan and or parish functions: e.g. ordinations, confirmations, Eucharistic Devotions, anniversaries.
99. (38)...invitations to clergy conferences and continuing education workshops.
100. (9)...periodical individual conferences/meetings with retired priests by the diocesan bishop or his delegate.
101. (2)...special periodic workshops or seminars for retired priests in the diocese or notice of workshops in another diocese.
102. (3)...represented retired priests on a consultative body to the bishop.
103. Does your name and address appear in either the diocesan directory or an annually updated register or listing of retired priests that is mailed to all priestsof the diocese? YES 1. (43) NO 2. (0)

[No Answer – 2]

104a. In which social activities do you engage (CHECK AS APPLICABLE):

- (3) 1. visits to 'open house' in rectories where this is weekly practice.
 - (12) 2. 'get-together' at least weekly with friend(s); i.e. cards, conversation.
 - (31) 3. dinner with friend(s) once or twice an month.
 - (5) 4. go to a movie with friend(s) once a month.
 - (13) 5. go to theater/music performance or sporting event occasionally.
 - (33) 6. I phone or receive phone calls on a regular basis.
 - (22) 7. diocesan or parish events as available.
 - (8) 8. other (specify): play golf with friends on a regular basis (4); internet, meet and chat with people on my mall walk (2); involved with senior's groups, Knights of Columbus; family (4), fishing
- 104b. How would you rate your current degree of social involvement with your brother priests over a one month period?

- (0) 1. very active (over 15 events described in # 104a);
- (5) 2. moderately active (over 10 events described in # 104a);
- (10) 3. active (over 5 events described in # 104a);
- (16) 4. moderately inactive (under 5 events described in # 104a);
- (9) 5. my health does not permit much social involvement.

[No Answer – 5]

105a. Among your retired priest peers, how would you best describe *their* overall response to retirement?

Positive 1. (22)

Mixed 2. (16)

Negative 3. (1) [No Answer – 6]

105b. Why? Ended active ministry due to ill-health and unable to carry on (3); none I know are really satisfied; no longer able to cope with busy parish life; confusion on all sides between “being” and “doing” to peripheral feelings of poor self worth; without exception, they are glad to be retired...feeling of relief overall; glad to leave pressure of active administration (3); some grumble because they are unable to “blow” money as they used to...some feel should get more money because of our status; they feel neglected for the most part; I’m told some are not too happy with the pension but they lived pretty extravagantly and made little effort to save for the future; some feel lost without parish/people contacts, Sunday liturgy.

106a. Did you ever really expect to retire for reasons other than health?

YES 1. (19) NO 2. (21) [No Answer – 5]

[A direct quote will help to set the context: “Earlier on we were given the impression that you’d be active to the end [of your life] or that it was “worldly” worrying about money [for anything”].

106b. WHY? There comes a time to leave all “positions” (10); priesthood is a life term commitment (6); requirement of canon law (6); age (2); shortage of priests; possible health problems; to pursue personal development opportunities.

If a younger priest asked your advice to help him prepare for his future retirement, what three (3) suggestions would you offer?

107a. Suggestion 1: Prepare financially (16); expect and prepare for retirement with a positive attitude (4); consider “area” [location] of retirement seriously (4); cultivate activities that you can continue in retirement (3); prayer (3); develop friendship; keep you health; retire while you have your health (2); ask for sabbatical; keep active in ministry. [No Answer – 8]

107b. Suggestion 2: Prepare financially (12); keep social communication with family and friends (4); develop interests and hobbies; don’t kill yourself working; look for an apostolate that you can continue into retirement; stay away from smoking and drinking; read, read, read; do not hoard material things; develop your spiritual life through prayer and contact with a confessor; research you accommodation needs. [No Answer – 12]

107c. Suggestion 3: Consult and prepare (5); financial preparation (3); have saved a bankroll of \$100K at least; plan for and assist in parish ministry (3); maintain physical fitness lifestyle; old age creeps up, prepare with development interests now; keep in touch with family and friends; pray and don’t be anxious; live in a rectory; take time to consider your living arrangements; learn to do household chores-cooking, laundry and ironing; have a regular doctor, keep a positive attitude; expect to look after your own care...laity need to look after their church mortgage before your care; take recreation/days-off/ vacations with your priest friends; enjoy life now don’t wait for retirement. [No Answer – 15]

[Direct quote to close context: “I cannot envision a young priest asking advice from an older priest”].

108a. Do you feel that the virtue of poverty as expressed and practiced by a priest with a vow of poverty is different from the virtue of poverty as expressed and practiced by a diocesan priest?

YES 1. (24) NO 2. (14) [No Answer – 7]

108b. Why? Religious have community life for friendship, relaxation, meals, no grass cutting; diocesan priests don’t have any of these, especially community (14); no difference (8); I think religious have a more secure retirement and seem to be able to go away to study and travel more than a diocesan priest (2); religious more restricted in their options and have less anxiety for retirement or future care; I see more carelessness and spending and independence among the religious I know; the one’s with the vow often take advantage of the lay people by pleading poverty and “some” of them milk the laity for cars, tickets to sports events, etc....they know the best places to eat, latest stage shows and get it for nothing....use poverty like a credit card...we have to pay for everything as well as our retirement (2); because religious own

nothing; diocesan priests can own property; diocesan priest must practice greater sense of responsibility in order to provide for himself.

109a. Do you feel that an appointment as pastor to a specific parish should be regulated by a specific number of years and a maximum number of terms?

YES 1. (30) NO 2. (9) [No Answer – 6]

109b. Why? For the good of the people and priests, share good and bad priests (18); if well received, people get to depend on him...becomes a true father/grandfather to parishioners (jury is in and term experiment hasn't worked well on the whole)... (4); should depend on the bishop, individual circumstances (6); change becomes difficult if in one place too long (2).

110a. Do you feel that a retiring pastor should be named pastor *emeritus* in his last parish of appointment and continue to live in residence in the rectory of his last appointment providing space is available and the new pastor obtains the pastor's suite and office?

YES 1. (7) NO 2. (31) [No Answer – 7]

110b. WHY? No ball club can have two managers (18); had bad experiences (4); emeritus can continue spiritual ministry...leave up to the bishop (2); impractical (2); retiring priest has all those people as his friends...he must not however, interfere; will try to run parish.

111. Have you made arrangements in the following areas (CHECK AS APPLICABLE)?

- 1a. (40) I have made a Last Will and Testament.
- 1b. (29) A copy of my Will is 'on file' at the Diocesan Chancery.
2. (24) My chief executor is a member of my family/friend.
3. (20) My chief executor is a priest.
4. (34) I will be paying my own funeral expenses.
5. (11) I have planned my own funeral liturgy.

[No Answer – 5]

Section IV. Reflections Over My Years in Active Ministry

112. How would you generally rate your level of personal satisfaction with your active ministry over your years in the priesthood prior to retirement(CHECK ONE)?

- (28) very satisfactory 1.
- (9) moderately satisfactory 2.
- (1) satisfactory 3.
- (3) moderately unsatisfactory 4.
- (0) very unsatisfactory 5.

[No Answer – 4]

During your years of active ministry, which of the following offices did you hold; or, in which of the following ministries did you engage (CHECK AS APPLICABLE)?

113. (2) bishop.
114. (40) pastor.
115. (3) vicar general.
116. (4) episcopal vicar.
117. (0) judicial vicar.
118. (8) dean/vicar *forane*/zone chairman.
119. (4) chancellor.....
120. (5) tribunal staff.
121. (0) diocesan archivist.
122. (11) diocesan director of (e.g. Religious Ed., Social Justice, etc.).
123. (9) chaplain *employed by* (e.g. educational institution, hospital, prison, military service, etc.).
124. (15) chaplain *appointed to* (a school, hospital, a lay society, etc.).
125. (9) qualified teacher in an educational institution.
126. (1) counselling as a certified social worker, pastoral care.

127. (9) other (specify): Senate; school board trustee (2); lecturer; President of National or International organizations (3); mission or retreat preacher; bishop secretary, liturgical Master of Ceremonies.

How would you generally rate your level of personal satisfaction with the types of ministry in which you engaged (CHECK ONLY ONE):

- 128a. (28) very satisfactory 1.
 128b. (9) moderately satisfactory 2.
 128c. (1) satisfactory 3.
 128d. (3) moderately unsatisfactory 4.
 128e. (0) very unsatisfactory 5.

[No Answer – 4]

129a. Did you hold more than one ecclesiastical office or appointment *at any one time* during your years of active ministry? [The question intended to determine a number of issues from financial to the influence of multitasking on health – one priest suffered a nervous breakdown.] YES 1. (26) NO 2. (17) [No Answer – 2]

129b. If YES: How many? 2 to 5 at any one time.

129c. What were they? Combinations of pastor and diocesan offices or appointments (14); combination of diocesan office and external institutions (e.g. education/hospital chaplaincies) - (11); combination diocesan and national or international (Holy Childhood Association, Canadian Mission Society, etc.) – (3).

130. My income *from diocesan* remuneration, stole fees and stipends permitted me to put some money away for my retirement? YES 1. (28) NO 2. (13) [No Answer – 4; early days only got \$30-50a month]

131a. Usually, pastors receive additional compensation for administrative duties attached to the office of pastor. Would you be in favour of additional compensation for administrative duties attached to other ecclesiastical offices or appointments? YES 1. (12) NO 2. (25) [No Answer – 8]

131b. Why? Labourer worthy of his hire (6); we don't need it (3); all should receive the same regardless of appointment or their number, salary takes into account all work, equality (7); some have not same opportunity for stole fees; provides incentive; don't encourage ambition; bishop says "only salary;" serve God is motivation; priests overworked and underpaid; poverty of diocese. [No Answer – 7]

132. How would you rate the degree of personal "feedback" provided to you by your ecclesiastical superiors during your active ministry?

(3) 1. excellent; (20) 2. good; (9) 3. poor; (8) 4. none [No Answer – 5]

133. If evaluation criteria were clearly defined, would you be in favour of an annual review of a priest's ministry and administration by an ecclesiastical superior; e.g., pastor by bishop/episcopal vicar, associate by a pastor/episcopal vicar, etc.

(27) 1. YES (13) 2. NO [No Answer – 5]

Why? Provides opportunities to examine self and ministry (11); for accountability (6); no standards (4); bishop/priests too busy (2); would be working for a good report, not for God; not realistic or necessary; too businesslike.

Do you have any concluding observations, comments or suggestions regarding retirement?

Edited comments include: a retirement home should be available for elderly priests to be together, socialize, have balanced meals, have health and living conditions monitored....living alone makes it easy to neglect self, diet, health (4); love retirement (7); love priesthood, not office or appointments (3); enjoy being able to do what I didn't have time to do before (reading, etc.); Check Tim. 5:17-22 & 6:10-14 on presbyters; a lot of priests end up with the secretary or housekeeper for the care and companionship they would not have had had they lived alone....retired priests live in another world not by choice but by necessity....end up alone in many cases; negative connotation still attached....shortage makes bishops put the brakes on...and young pastors effectively "stall" using older priests effectively; some resentment from lay people to pay for priest retirement because of parish money spent foolishly in "sweeping broom" syndrome; remain active, mentally, physically and spiritual—keeps you young; should be more dialogue, seminars and advice available on various aspects of retirement (5); word "retirement" should be abolished,

priests resign from office but never from priestly work; few priest talk about finances but feel those who might do so do not have private source of income and could experience problems because before 15 years ago, it was nearly impossible to save when all you got was \$30-50 a month...I could not keep my home if I had to depend only on diocesan pension; remuneration from parish work is a big help (2); should be more concern for spiritual life of retirees; each diocese should have a well funded pension plan; retirement is no fun, life of a priest is no fun either; need presence of Christian community for the elderly and homebound....retired could help in this area if resources available; be prepared-financially, economically and psychologically.

The following does express the experience of many priests for at least some period of the ministry:

"In the 40's and 50's, after ordination we were on Mount Tabor for about 3 weeks, until we arrived at our first appointment – then we ascended Mount Calvary."

Appendix C, Annex 2: *Fullness in Christ* © Diocesan Survey on Retirement

[Edited and Adapted]

Instructions: The purpose of this questionnaire is to elicit information about current pre-retirement and retirement programs for diocesan priests in the Roman Catholic Dioceses of Ontario.

The identity of an individual diocese and participating retired diocesan clergy will be held in confidence. A random identity number will be assigned. Reference to particular plans/administrative policy/retired will be generalized and only compiled and averaged results will be a formal part of the thesis. [Anomalies in data occur in tabulating results and are included by use of []'s.]

Section I. Identifying Information (Numbers 1-6 Confidential).

1. Respondent: 6 out of 14 dioceses reporting, 1 exempt-no diocesan clergy
2. Arch/Diocese.....
3. N.A.
4. Respondent's Appointment(s) (e.g. Bishop, Chancellor, Vicar or Delegate for Personnel, Retirement Board).....
5. Address.....
6. Telephone # ()
- 7a. Does your diocese have a priest serving as a delegate or vicar for retired priests?
YES 1. (1) NO 2. (5)
If YES: Are you that person?
YES 1. () NO 2. (1)
If NO: Please provide name, address and phone number for delegate.
- 7b. Is this appointment full time: 1. () ; part time: 2. (2). [No answer - (4)]
- 7c. Does consultation by the diocesan bishop on clergy personnel policy, active and retired occur *via*: 1. Presbyteral Council (4); 2. College of Consulters () ; 3. Senate of Priests () ; 4. Diocesan Personnel Board (5); 5. None () 6. combination (3) ; 7. specify combination ...1 & 4; [Advisory Board of Pension Retirement Fund - (1)]
- 7d. Is clergy representation elected to the consultative body?
YES 1. (3) NO 2. (2) ELECTED & APPOINTED 3. (3)
- 7e. Are Representatives elected by: Age Group 1.(3) Years of Ordination 2. (1) [Neither - (2)]
8. What is the normative duration for elected positions? Compiled average is 2.7 yrs.
- 9a. Are you aware of any National Institutes on Planning for Pre-retirement and Retirement of Catholic clergy? YES 1. () NO 2. (5) [No answer - (1)]
- 9b. What Institute or who was (were) the resource person (s) providing this information or service..[No answer - (6)]
10. Have you or has anyone representing your diocese attended any workshops on the subject of retirement of clergy? YES 1. (2) NO 2. (3) [No answer - (1)]
11. Do you have policy or resource material available from the Institute or retirement workshop resource personnel on the subject of clergy pre-retirement or retirement? YES 1. (2) NO 2. (3) [No answer - (1)]
- 11a. Do you have policy or resource material available to your diocesan clergy on the subject of clergy pre-retirement or retirement? YES 1. (2) NO 2. (4)

12. Were the recommendations offered at the Institute or by resource persons incorporated into your present Diocesan Retirement Policy for priests?

- Very Little 1. ()
 Somewhat 2. (1) [No answer - (3)]
 In Large Part 3. ()
 Do Not Know 4. (2)

(Responses to questions 13-16 will only be compiled and/or averaged)

13. Total number of diocesan priests in your diocese is: 141
 14. Total number of retired diocesan priests from your diocese is: 30
 15. Total number of diocesan priests living in retirement *outside* your diocese is: 4
 16. Total number of diocesan priests living in retirement *in* the diocese is: 26

Section II: Pre-Retirement Program for Diocesan Priests

17. Does your diocese have a pre-retirement program for priests?

YES 1. (1) NO 2. (5)

(If the answer to #17 is YES, then answer the remaining questions in this section, if the answer to #17 is NO, then move on to question # 31)

18. Is the pre-retirement program conducted on:

- individual basis 1. ()
 group basis 2. (1)
 both individual and group basis 3. ()

19. If you were to describe the pre-retirement program in your diocese, would you say it is:

Limited 1. () (explains the pension program and other benefits, the retirement timing options, and living arrangements.)

Comprehensive 2. (1) (attempts to go into depth, and treats such topics as physical and mental health, optional ministerial roles in retirement, leisure activities and the legal aspects of retirement.)

20-23. (Combined answers)

Briefly describe your diocesan pre-retirement program (e.g., age at which it is available to priests, subject matter presented and/or discussed, etc.). Pension Board deals with pension benefits; Priests Personnel assists with living arrangements; Ministry to Priests provides for seminars, support groups and retreats.

24. As part of your diocesan pre-retirement program is there any co-ordination of efforts between diocesan departments or offices? (e.g., Joint program planning between Personnel Board, Senate of Priests, Office of Continuing Education, and Priests' Retirement Board.)

YES 1. (1) NO 2. () If YES: See. #'s 20-23.

Please check off as many of the following as apply to your diocese.

25. (1) Our program includes a gradual shifting of roles in the parish ministry as a man approaches retirement (e.g., less administration and more involvement with individuals and groups), [if requested by an individual]

26. (1) We make use of retreats and workshops as part of our program.

27a. (1) Our program allows for a sabbatical leave giving the priest an opportunity for developing new interests and allowing more time for reading, writing, reflection or prayer.

27b. To what extent is the type and location of the sabbatical a choice of the individual priest? (e.g. professional religious institution; secular institution; Canada; USA)

- Entirely the choice of the individual 1. ()
 The choice of the diocese/Personnel Board, *et. al.* 2. ()
 Negotiated between individual and diocese 3. (1)

27c. What is the normal length of the sabbatical?

- Three months 1. ()
 Six months 2. (1)
 One year 3. ()
 Other 4. () Explain.....

28. (0) As part of our program we make use of career consultation or guidance services to help the priest assess his assets and options in retirement. Dependent upon the individual's health, other priestly roles or ministries are considered.

29. (1) Our program includes seminars for priests periodically throughout his years of priestly service on the ageing process.

30. (0) Other elements of pre-retirement program, please describe. [No response]

31. If you do not currently have a pre-retirement program for priests, do you have a plan and projection to implement such a program?

YES 1. (2) NO 2. (3) [No Answer - (1)] If YES: Then briefly describe the program and when you plan to implement it: Discussion stage - (1); Intend to gather just before 65, then just before retirement to advise on finances, health care, etc. (1).

32. In the seminary locations of your seminarians, does the seminary education include concepts concerning the ageing process and retirement of priests especially in view priesthood as a second career for some more senior men?

YES 1. () NO 2. (3) [No answer - (3)]

Section III. Retirement Program for Diocesan Priests

A. Policy

33a. Does your diocese have a definite retirement policy that is clearly stated and followed?

YES 1. (6) NO 2. ()

If YES: Did the priests of the diocese or their representatives participate in the formulation of this policy?

YES 1. (6) NO 2. ()

33b. Does your diocese encourage active and retired clergy to be supportive to their brothers by financial contribution to the pension plan through personal donation and bequests over and above any required contribution?

YES 1. (6) NO 2. ()

33c. Does your diocesan retirement policy include clergy who may be physically/mentally incapable of ministry but not at retirement age?

YES 1. (6) NO 2. ()

33d. Does your diocesan retirement policy include clergy who may be unassignable due to a condition of the person (e.g., convicted of a criminal offence, questionable theology, incapacity to administer people or property, etc.)?

YES 1. (3) NO 2. (3)

33e. Does your diocesan policy include provision for a priest placed on administrative leave or who is seeking laicisation?

YES 1. (1) NO 2. (5)

33f. Does your diocese have a definite policy that provides options for residence of retiring clergy?

YES 1. (5) NO 2. (1)

33g. Does your diocese have a definite policy regarding living arrangements in diocesan rectories for retired clergy?

YES 1. (4) NO 2. (2)

If YES, briefly explain: Set amount for room and board; diocesan retirement suites available; retiree applied individually or through Personnel Board; details left to pastor.

33h. Does your diocese have a definite policy regarding admittance to the diocesan pension plan for non-incardinated diocesan clergy?

YES 1. (5) NO 2. () [No answer - (1)]

33i. Does your diocesan policy clearly specify who is responsible for the funeral expenses of a deceased diocesan priest?

YES 1. (3) NO 2. (3)

If NO: What is the current practice of your diocese? Paid by priest's estate. One "No" cited that in one case where the priest had no assets, the bishop paid.

33j. In formulating your pension plan, which of the following did you consult (CHECK AS APPLICABLE)?

1. (3) other dioceses.
2. (5) diocesan clergy
3. (2) insurance company. (1) bank/trust company
5. (5) member(s) of legal profession.
6. (2) consulting firm
7. (3) chartered accountant firm
8. (1) individual chartered accountant.
9. () other: specify

B. Financial

34a. Does your diocese have a canonically constituted pension fund for retired priests?

YES 1. (3) NO 2. (2) [No answer - (1)]

34b. If YES: Is the pension fund constituted in secular law?

YES 2. (2) NO 2. (4)

34c. Does your diocesan pension fund include a disability component?

YES 1. (5) NO 2 (1)

If NO: How is provision made? Separate insurance policy.

34d. At what age does your diocesan policy request a priest to retire? Compiled average is 74.

34e. Does your diocesan pension fund include clergy who may be unassignable due to a condition of the person; i.e., inability to administer people or property; questionable theology; convicted of a criminal offence, addictions, etc.)?

YES 1. (3) NO 2 (3)

If NO: Is provision made? How and for how long? Responses as follows: (1) pension is payable when bishop accepts resignation "from duty;" (2) worked out on an "ad hoc" basis with diocesan administration; (3) provision made from diocesan operating fund until death.

34f. Does your diocesan pension fund include provision for a priest placed on administrative leave or who is seeking laicisation?

YES 1. (1) NO 2. (5) If YES: Explain. [No explanation given.]

34g. In determining the monthly retirement allowance, is the Canadian Pension Plan and/or other government financial assistance programs a determining factor in establishing the amount of the pension?

YES 1. (1) NO 2. (5) If YES: What criteria does the diocesan plan use to determine the amount of the pension? ["Yes" response] standard based on costs associated with subsidized diocesan retirement home for priests; ["No" response - (1) response indicated that retirement allowance was geared to current costs of parish room and board plus expenses associated with ordinary apartment living.

34h. Is your diocesan retirement fund a:

- | | |
|--|----------|
| Registered Retirement Saving Plan registered with the government | 1 (1) |
| Retirement Trust Fund managed by a Third Party (e.g. Bank, Trust Company) | 2. (0) |
| Retirement Trust Fund managed by Diocesan Clergy | 3. (1) |
| Private Retirement Trust managed by the Diocese | 4. (1) |

- Retirement Fund financed and managed by the Diocese 5. (3)
 Other 6. (1)
 [Explain. Retirement fund is split between 1. and 3.]
- 34i. Is your diocesan pension plan (CHECK AS APPLICABLE):
 obligatory for incardinated clergy 1. (4)
 voluntary for incardinated clergy 2. (2)
 non-incardinated clergy may participate 3. (2)
- 34j. In the event that a priest may withdraw from the diocesan plan, is your diocesan pension plan established to provide for (CHECK AS APPLICABLE):
 1. (1) a cash settlement.
 2. (1) a pro-rated pension amount based on years of service.
 3. (1) contributions are 'locked-in' until eligible for retirement.
 4. (3) transfer 'in whole or part' to another pension plan.
 [No refund - (1)]
- 35a. If the monthly pension allowance varies according to living arrangements or for other reasons and circumstances, explain. Not applicable - (2); No response - (4)
- 35b. The financial benefits of rectory living (room & board) for an active priest often do not reflect the real costs to a parish. The priest is often charged less than the real value. In your diocesan calculation of pension contributions and benefits, are residence and living costs *outside* of a rectory taken into consideration as a factor of pension calculation?
 YES 1. (2) NO 2. (4)
 If YES: What criterion is used to determine the amount? See Q. 34g.
- 35c. Does diocesan policy establish a room and board fee for retired priests living in a rectory?
 YES 1. (4) NO 2. (2)
- 35d. What is the fee for retired a priest living in a diocesan rectory? \$ 362.50 [compiled result based on the actual figures \$200; \$400; \$600; \$250. Not included is Not applicable - (1); No answer - (1)]
- 35e. Does your diocese make provision for clergy who may require full-time nursing care, the costs of which exceed retirement benefits?
 YES 1. (4) NO 2. (1) [No answer - (1)]
- 35f. What is the basic retirement allowance/benefit in the diocese? \$ 1182; \$14,184 gross annual.
- 35g. Is there a mechanism in the plan to provide for periodic adjustment of benefits?
 YES 1. (6) NO 2. (0)
 If YES: Explain. Annual review - (5); Two year interval review - (1)
- 35h. What other benefits are provided to retired priests (i.e., Blue Cross, Green Shield, Dental Plan, Continuing Education Allowance, Retreat Allowance, etc.) Please list: Medical/Health - (5); Dental - (3); Retreat Allowance - (1); Education Allowance - (2); Out of Country insurance - (1); No answer - (2).
- 35i. How is the pre-retirement/retirement sabbatical financed, if applicable?
 By the diocese 1. (1)
 By the priest 2. (0)
 Negotiation between the priest and diocese 3. (1)
 Not applicable 4. (2)
 [No answer - (2)]
- The priest retirement pension fund receives funds from the following sources: (CHECK ALL WHICH APPLY)
36. (4) each priest contributes to the fund.
 37. (6) the parish or institution to which the priest is assigned contributes to the pension fund.
 38. (1) there is an annual/periodical diocesan collection in all the parishes for the pension fund.
 39. () non-contributory by diocesan priest, funded entirely by the diocese.
 40a. () other, explain
 40b. In the event the retirement Plan dissolves, are any assets of the fund:

1. () divided among the participants.
 2. () returned to the diocese by the constitution statute.
 3. () shared by diocese and participants.
 4. (3) belong to the diocese.
- [Other: RRSP; No answer - (2)]

C. Retirement Age

Priests' retirement from *full-time* work in your diocese is:

- 41a. (2) mandatory at a certain age by diocesan policy; specify age 75
- 41b. (1) mandatory by government pension regulation; specify age, 65 (RRSP).
- 42-43 (3) possible at a given age (e.g., 65), specify age 70; and,
mandatory at age 75 with other factors considered.
44. (1) determined individually for each priest.

D. Living Arrangements

Of the following living arrangements for retired priests, check as many as apply in your diocese:

- 45a. (2) diocesan group residence for retired priests.
- 45b. (1) diocese owns apartments/private dwellings and rents to priest.
46. (3) home(s) for the elderly and/or infirm requiring short or long term care.
47. (0) residing in last parish assigned.
48. (5) residing in rectory of choice, if room is available.
49. (3) residing with family or friends.
50. (3) residing in another province or country.
51. (5) residing in one's own home or apartment.
52. (1) other, specify. Suites available in diocesan-owned property (e.g., cathedral rectory, etc.)

Which of the above (# 44-52) are the three (3) most common practices in your diocese?

53. Nos. 48 & 51.
54. Nos. 46, 49, 50.
55. No. 45.

E. Ministerial Roles in Retirement

In your diocese, which of the following options for continued involvement in the ministry are available to the retired priest? (CHECK ALL WHICH APPLY)

- 56a. (1) pastor *emeritus* (e.g. provides advice on ministry/administration to younger pastors or clergy as required).
- 56b. (3) depending on experience and expertise, retired clergy are asked to sit on diocesan 'standing committees' or special projects.
57. (6) part-time parish work.
58. (3) chaplaincy positions.
59. (1) retreat work.
60. (1) counselling.
61. (2) giving conferences.
62. (6) offering Mass and hearing Confession.
63. (1) catechetics for young people (highschool/elementary).
64. (4) visiting hospitals and the elderly.
65. (1) writing and reviewing.

66. (1) consultant to non-ecclesial institutions (e.g. volunteer work with Heart Fund or other community based organisations).
 67. (3) spiritual direction.
 68. (1) convert instructions/R.C.I.A.
 69. () other, specify.....

F. Miscellaneous

Does your diocese maintain regular contact with retired priests by: (CHECK AS MANY AS APPLY).

70. (2) visits by Vicar or Delegate for retired priests.
 71. (6) official diocesan communications.
 72. (0) special newsletter for retired priests.
 73. (4) formal invitations to special diocesan and/or parish functions (e.g., ordinations, confirmations, Eucharistic Devotions, ordination anniversaries).
 74. (6) invitations to clergy conferences and continuing education workshops.
 75. (2) periodic individual conferences with retired priests by the bishop's delegate, or the bishop himself.
 76. (0) special periodic workshops or seminars for retired priests.
 77. (4) representation of retired priests on a consultative body to bishop.
 78. Does your diocese have an official, annually updated register or listing of the names and addresses of retired priests that is mailed to all priests of the diocese?

YES 1. (4) NO 2. (1) [No answer - (1)]

79. Have there been any research studies conducted in your diocese regarding the activities, needs and attitudes of retired priests?

YES 1. (2) NO 2. (4)

If YES: Briefly describe the nature of the studies and findings: A "needs" assessment regarding residence requirements - (1); no answer - (1).

- 80a. Which of the following categories best describes the overall response of the priests in your diocese to the concept of retirement?

Positive.....1. (2)
 mixed.....2. (3) [No answer - (1)]
 negative3. ()

- 80b. Is it an experience in your diocese that pastors, before the age of retirement, seek to resign their parishes but wish to continue pastoral ministry without the administrative responsibilities associated with the office of pastor?

YES 1. (4) NO 2. (2)

If YES: Is this because of any of the following reasons (CHOOSE TWO):

- 80c. (4) specific health reasons.
 80d. (4) feel overburdened with administrative responsibility.
 80e. (0) leadership style (i.e., parish consultation not a comfortable personal style, etc.).
 80f. (1) other ..no explanation.
 81. Do you have any additional comments or suggestions regarding clergy retirement? 1. Plan designed to provide frugal comfort. 2. Diocese encourages retiree to minister to small country parishes. 3. Requirement to balance need to secure plan from civil liability and maintain control over assets and dispersals at the same time.

Section IV. Some Diocesan Policy Regarding Active Priests

The retirement benefits from a priest's pension plan are often based on earnings and/or contributions during active ministry. A picture of remuneration practices in the dioceses of Ontario would be very helpful.

Individual diocesan information will be kept confidential. Only an averaged *compiled* result will be used or defined based on majority practice where applicable.

82. Does your diocese offer remuneration based on:
- years of service 1. (1)
 - years of ordination 2. (1) [Same for all - (3)]
 - type of ministry 3. (1)
- 83a. What time periods are utilised by your diocese to advance to the next group remuneration level?
- five (5) year 1. (1)
 - annual 2. (1) [No answer - (2)]
 - other 3. (1), specify. From associate to pastor
- 83b. Is there an annual adjustment of remuneration?
- YES 1. (6) NO 2. (0)
- 83c. Is the adjustment based on the 'rate of inflation'?
- YES 1. (5) NO 2. (1)
- If NO: What is it based on? Raising ceiling over next few years to a previously established amount.
- 84a. Please provide the highest amount and lowest amount on your remuneration scale for active priests (excluding car allowance, if applicable):
- lowest remuneration 1. () \$ 1409 compiled monthly average
 - highest remuneration 2. () \$ 1423 compiled monthly average
- [mean compiled average \$1416 or \$ 16,992 gross annual income]
- 84b. What is the amount allocated to car allowance? \$ 397* () complied average 1. (3) 2. None
- [*This question may have been somewhat misunderstood by the respondents. With a change in tax legislation years ago, a car allowance was no longer a tax-free deduction but had to be included in taxable income. Some dioceses simply added the car allowance to salary income. The compiled amount noted in this question is presumed to be a car allowance over and above salary. It is presumed that the individual complies with the requirements to make a tax claim and a tax deduction as allowed under the current *Income Tax Act*.]
- 85a. Do pastors in your diocese receive additional compensation, over and above their remuneration, for parochial administrative duties?
- YES 1. (2) NO 2. (4)
- 85b. Does your diocesan policy provide additional compensation for provision of *diocesan* administrative duties/services which are in addition to his primary office/ministry in any of the following: [CHECK THOSE APPLICABLE]
- 1. (1) pastors \$.....40..... per month.
 - 2. () vicar(s) general \$..... per month.
 - 3. () episcopal vicars \$..... per month.
 - 4. () vicars *forane* \$..... per month.
 - 5. () judicial vicar/tribunal \$..... per month.
 - 6. () Directors of RE, Social Justice, *et. al.* \$..... per month.
7. (1) other, specify. Mileage is paid for services provided outside of the diocese.
\$..... per month.
86. Canada Custom and Revenue Agency no longer permits a tax free allowance for clergy room and board. What is the amount established by your diocese as the room and board fee for a priest living in a rectory:
- () 1. assigned to the parish \$ 109 per month compiled average.
 - () 2. *working for* the diocese but not assigned to the parish \$ 247 per month compiled average.
 - () 3. *not working for* the diocese or parish but living in a parish (e.g., hospital or prison ministry, etc.), \$ 225 per month compiled average (2 responses).
87. Is it the policy of your diocese that "stole fees" [CHECK AS APPLICABLE]:

1. (1) go entirely to the parish account.
 2. (1) are retained by the celebrant.
 3. (2) are split between celebrant and parish account.
 4. (1) go to a visiting priest in its entirety.
 5. () are split between visiting priest and parish account.
 6. () goes to celebrant if intention of donor is clear.
88. Is it the policy of your diocese that Mass stipends [CHECK AS APPLICABLE]
1. (3) go to the celebrant.
 2. (4) are split between celebrant and parish account.
 3. () go to the parish account.

[One respondent indicates that unannounced mass stipends go the celebrant; announced mass stipends are split.]

Do you have any further comments or suggestions? No comments or suggestions were provided.

NB: If your diocese has any of the following available, please enclose a copy with this survey. What you have available would be of great assistance.

- a) A brochure describing your pre-retirement program (if available).
- b) The administrative statement of your retirement policy.
- c) A copy of your actual pension plan Constitution and By-Laws.

A copy of the summary observations and conclusions of any study, seminars, or workshops conducted in your diocese on the subject of clergy retirement.

Appendix C, Annex 3: Inactive Priests' Survey²

(Please Do Not Use Personal Names)

Current province of domicile:

Are you currently employed or retired? [R. Ret'd; Ret'd; Employed; Employed; Disabled; NA.]

Diocese of Incardination: (N.B. Will be deleted if published).

Six responses were received: 5 from former diocesan priests; one religious. All participants' responses follow. [No Answer [=NA], Not Applicable [=N/A]]

Was your departure amicable or acrimonious with ecclesiastical authorities? [(Response [=R] with date of departure) Amicable (4)-1974,1980, 1970, 1995; amicable but strained (1)-1976; very serious acrimony (1)-1969.]

How would you rate support provided by your confreres? [R. silent except for about 5; very little; little, 2 priests keep in touch; mixed, some were supportive and some were threatened; tops; no support.]

2.a. What year did you depart active ministry? [R. 1980; 1970; 1995;1976;1974; 1969.]

2.b. For how many years did you provide active ministry? [R. 26; 20; 20; 10; 8; 4.]

3.a. Did you obtain laicization? [R. No; Yes; No; Yes; Yes; No.]

3.b. Is it in process? [R. No; Done; No; Done; Done; No.]

3.c. Were you advised by any ecclesiastical official of your diocese to NOT apply for it? [R. No; NA; Yes; No; No, but I was told to get out of province; No.]

By whom (ecclesiastical office, not name)? [R. No-(5); Yes, (1),Chancellor.]

4.a. Did you participate in a formal diocesan pension plan? [R. No; Yes; Yes; No, was none; Yes; N/A.]

4.b. Did you actively make financial contributions to the pension plan? [R. No; Yes; Yes; NA; Yes; N/A.]

4.c. Can you estimate your financial contributions with a reasonable degree of accuracy? [R. NA; NA; No; NA; \$ 843; N/A.]

4.d. If you are aware of the current pension for retired clergy of your diocese of incardination, what is it per month [in 1998]? [R. \$ 800 + R&B; NA; Don't know; Don't know; don't know; N/A, (excluding any government pensions).]

4.e. Are you currently receiving any pension from your diocese of incardination? [R. No; No; No; No; No; No.]

4.f. Did you receive any "lump-sum" payment upon departure? What was the amount and for what was it? [R. No, \$0; Yes, \$3500; No, \$0; No, \$0; No, \$0; N/A.]

4.g. Did you receive any "lump-sum" settlement from your diocesan pension plan? What was the amount? [R. No, \$0; No, \$0; No, will receive a pension for my 20 years service at 65; No, \$0; Yes, \$843. N/A.]

5. How would you rate your current financial situation? Rating: 1. Poor - need public assistance; support from family; 2. Adequate - I can pay my bills and pay a minimum of income tax; 3. Better than adequate - I can afford a holiday and/or membership in a club (golf, curling, athletic, et. al.); 4. Excellent - I have no problems or financial concerns. [R. 3; 3; 4; 3; 4; 3.]

6.a. What is the population of your city of residence? [R. 750K³+; 100K; 1M; 1M; 800K; 300K.]

6.b. What is the average income of your city per person? [R. NA; \$32K; NA; \$30K; NA; \$50K.]

² KIFFMAN, "Inactive Priests Survey," in E. KUTAMA, "A Survey and Commentary from Saskatchewan," in Corpus Canada, *The Journal*, vol. 3., no. 2, March-April (2000), Vancouver, BC, Xristos Community Society, p. 8. Spacing for responses have been deleted.

³ K=1000

6.c. In your estimation, what is the cost of "middle-class" housing per annum? \$500K (to buy); \$15K; \$14K (rent); \$10.5K; \$8.5K; \$12.8K.]

6.d. How much would you need per month to live a comfortable lifestyle in your retirement? (As a single person?) [R. NA; NA; NA; \$3K; \$3K (As a married person?) [R. \$2.5K; \$3K; \$3.K; 3.5K.;\$3.K; \$55K/12=\$4.6K.]

Having lived the life of an active presbyter in ministry:

7.a. Do you agree or disagree that presbyters should be paid according to comparable salary scales of their secular peers? Why? [R. No, unmarried or married should not live expensively. Yes, freedom. Somewhat comparable with no benefits; subtracting housing and other living expenses, they are, for the most part, paid a comparable salary. But many have little financial security if they choose to leave the ministry.

Agree. Agree. Comparable to the ministers of other congregations, the council of churches in an area could be responsible to keep track of the remuneration which is paid in that area.

7.b. Do you agree or disagree that presbyters should be obligated to reside in parish rectories as provided? Why? No. [R. Disagree, rectory living is insane, too close to work, forced co-habitation; Disagree, NA; NO, this is not a universal practice. At best, pastors should have the option. I never felt comfortable with rectory living because there was a lack of privacy and a sense of my own space, I was always confused and felt guilty administering parish funds for personal use; NA, for the most part, it is beneficial to the parish and to the priest. However, the benefits entirely evaporate on departure. It also acts as an institutional control mechanism over the clergy; Disagree, lack of choice; Disagree, should be free to live where they choose.]

7.c. If living in a rectory, should a presbyter pay the "going-rate" on the street for comparable accommodations and services? Why? [R. NA, this would call for a major overhaul of priestly life; Yes, live like the people; Yes, it is a lesson in reality (that is what parishioners do), and in learning to help [?] budgets; Yes, the current system is equivalent to a luxurious set of "perks" that are available as long as the good will of the bishop prevails. Learning personal financial responsibility is better; Yes, salaried as all others; [Yes,] the provision for housing should be included in the compensation of the priest. The priest should be expected to live like everyone else, and that includes the cost or rent and meals. [...] The more the priest is confronted with the realities that face everyone else in the world, the more aware they will be of how people in general have to cope.]

Other observations or comments: [R. NA, NA, NA, At the time I worked as a priest, we had no retirement pension in the diocese that I was aware of. However, as a young priest, I was naïve regarding the financial needs of seniors and did not reflect on the topic. In hindsight, I would say that today, had I contributed to a diocesan pension, it would be very helpful. Today I am 60 and look at the significance of a pension very differently than I did in my 20's and 30's. In earlier generations, there was not retirement. It was just assumed that everyone would work until they died; The worker deserves his pay (1 Tim. 5:18; My added comment would be to plunge the minister back into the world in which he functions, and remove the "other worldly" treatment which is accorded to the priest.]

Please return completed questionnaire to: Rev. R.M. Kiffman, M.A., J.C.L , 249 Main Street, Ottawa, Ontario, K1S 1C5

Appendix C, Annex 4: Questionnaire responses to Active Clergy on Retiring & Senior Priests in an Ontario Diocese, 1993.

{NB: Brackets indicate editorial additions or to provide context.}

Forty-nine (49) responses [out of a possible 128 active diocesan clergy occupying 85 parishes, for a return rate of 38%, ed.]

1. Would you be willing to have a retired priest live with you in your present rectory? Yes - 27. No - 20. No reply - 2.

2. Would you be willing to have a retired priest live with you if you were in a different rectory (say a larger one)? Yes - 12. No - no answer. Possibly - 1. [Nothing prevents an incoming pastor to request a retired priest in residence to find other accommodations.]

3. If answer to either of these questions is yes, please include any provisos, reservations, expectations, anticipations, or suggestions for staying at your house?

[The list:] non smoker, no pets, some availability to exercise priesthood, have a housekeeper five days a week, invited to pray with team staff, pay for and have own phone line, follow rectory schedule for meals and not on a stringent diet, reasonable health and not need nursing care, periodic homily sharing, no substance abuse, clear agreement before starting, accept pastor's authority, not on a stringent diet, number of visitors, set own schedule of parish involvement, compatible temperament not be the interfering type, no pastor or assistant who [formerly] served in the parish where I serve [as pastor] at the same time, rent is something that needs clarification [since] \$200 per month payment is unfair especially to those [pastors] who try and upgrade housekeeper services for retired priests, [religious receive support] from their own particular religious order, many stairs (up) to the bedrooms [is negative factor], if there were three Sunday liturgies the retired priest to take one as often as possible, be able to come and go as they pleased, respect the fact that they are "retired."

4. Other comments.

-believe in priests retiring into rectory situations if they are comfortable, retired priests need space other than a rectory, leave the process to individual cases instead of formalizing or get a group of retirees and those who have opened rectories to them to discuss the matter.

[The comments highlight some fears and preoccupations of those who might consider accepting a retired priest into their rectories. Ed.]

Appendix D: Letter of Permission to use *Fullness in Christ*© from
United States Catholic Conference

(Original on File)

Office for Publishing and Promotion Services
United States Catholic Conference
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Appendix E: Statistical Data--Roman Catholic Churches in the Province of Ontario

(Source: Canadian Catholic Church Directory
CCCB, Human Resources in the Catholic Church in Canada, 1988)

English Section.....	2001 ⁴	1996	1988 (20.2%)	1996/Deacons/88
Hamilton, Diocese of.....	137	150	139	2
Kingston, Archdiocese of.....	77	69	76	3
London, Diocese of.....	211	242	236	0
Pembroke, Diocese of.....	72	77	80	9
Peterborough, Diocese of.....	108	116	87	5
St Catherine's, Diocese of.....	63	64	58	0
Sault Ste-Marie, Diocese of.....	103	107	117	112
Thunder Bay, Diocese of.....	32	27	30	0
Toronto, Archdiocese of.....	397 ⁵	346	246	101

French Section

Alexandria, Diocese of.....	41	45	43	13
Hurst, Diocese of.....	31	38	36	3
Moosonee, * Diocese of.....	Priest's are Religious			1
Ottawa, Archdiocese of.....	155	151	150	39
Timmins, Diocese of.....	26	28	35	8
CLERGY TOTALS.....	<u>1453</u>	<u>1460</u>	<u>1333</u>	<u>296</u>

Future Diocesan Priests (Ontario) - 1988: 183

Number of Retired Priests in Canada in 1988: 1395.

Number of Retired Priests in Ontario in 1988: 224.

Diocesan Priests by Age (Ontario) - 1988

(Source: CCCB, Human Resources in the Catholic Church in Canada)

Under 30.....	30-39	40-49	50-54	55-59	60-64	65/over
44 presbyters.....	183	265	125	196	151	370

In 1998, 370 priests retired. In 2008, 151 priests will retire. In 2018, 196 priests will retire.

In Ontario, in addition to those already retired or inactive, (1996 figures) by 2008, 521 priests (39.43%) will be retired. By 2018, 717 priests (53.75%) in Canada will be retirement.

⁴ CCCB, Communications Services, G. Pascal, 20 Nov. 2001.

⁵ Increases are due primarily to overseas recruiting.

Appendix F: Weekly Wages-USA-1999

All Americans	\$549.
Butchers.....	\$400.
Dietitians	\$577.
Social Workers	\$601.
Electricians	\$645.
Clergy	\$657.
Special Ed Teachers	\$677.
Lawyers	\$1168.

Source: US. Bureau of Labor Statistics (all wages are median figures for 1999), in "What People Earn," in *Parade Magazine*, in *St. Petersburg Times*, 27 February 2000, p. 4.

"Last year, for the first time since 1975, every region of the country enjoyed meaningful income increases. Median earnings (half were higher, half lower) rose 4% to \$548 a week or \$ 28,548 a year. (Women earned \$473 a week, while men earned \$618 a week.) Source: US. Bureau of Labor Statistics, in "What People Earn," in *Parade Magazine*, in *St. Petersburg Times*, 27 February 2000, p. 4.

University Degree salaries:

Supervisor, Social Services	\$32K
Political Consultant	\$125K
Architect	\$90K
Healthcare consultant	\$62K
FBI Cybercop	\$85K
Cultural Anthropologist.....	\$60K
Psychologist.....	\$60K
Molecular Biologist.....	\$28K
High School Teacher	\$33K
Zoo Curator	\$50K
Lt Col US Air Force	\$75K
Chiropractic Physician.....	\$125K
Engineer	\$47K
Architect.....	\$60K
Paleontologist.....	\$35K
Accountant.....	\$26K
University President	\$325K
Technology Teacher.....	\$30K
Librarian.....	\$40K
College Football Coach.....	\$194K

Out of 136 professions and occupations. Noted are those requiring an undergraduate university degree. *Parade Magazine*, pp. 1-12. The separation of Church and State in the United States allows a very broad definition as to who is a clergyperson. It appears that a "clergyperson" does not appear to be a profession that requires an academic degree.

Appendix G: National Council of Welfare -- FACT SHEET: POVERTY LINES

(Originals on File)

STATISTICS CANADA LOW INCOME CUT-OFFS FOR 1998

Family Size	Cities of 500K+	100K-499999	30K-99999	Less than 30K	Rural Areas
1	16 472	14 468	14 134	12 885	11 213
2	22 327	19 613	19 158	17 463	15 202
3	28 380	24 930	24 352	22 198	19 321

STATISTICS CANADA LOW INCOME CUT-OFFS FOR 2000

Family Size	Cities of 500K+	100K-499999	30K-99999	Less than 30K	Rural Areas
1	17 068	14 992	14 645	13 351	1x xxx*
2	23 135	20 322	19 852	18 095	15 xxx
3	29 408	25 832	25 234	23 001	2x xxx

NB: K=1000. *Printout failed to read figures.

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BIOGRAPHICAL NOTE

Robert M. Kiffman was born in Kitchener, Ontario, Canada, the son of Bob and Millie Kiffman. He attended St. Jerome's and Resurrection Colleges, Kitchener, Ontario, and completed theology studies at St. Augustine's Seminary, Toronto, Ontario. Ordained a Roman Catholic priest for the Diocese of Hamilton, Ontario, in 1969, he ministered in various parishes and chaplaincies in Hamilton and Brantford, before joining the military chaplaincy.

He ministered to military personnel during sea, land and air operations from British Columbia to Newfoundland, from Bermuda, South Korea and Japan to a United Nations tour in Cyprus. He was pastor to military families in Holberg, BC, Toronto and Kingston, Ontario. During this period he was elected Chairman of the Military Ordinariate Presbyteral Council. He retired from the Chaplaincy Corps in 1990 as the Command Chaplain, Maritime Command.

Latin America and its peoples continue to hold an interest for him. After retiring from the military, he traveled in Central America and traveled the Pan-American Highway from Acapulco, Mexico, to San José, Costa Rica. After returning to Canada, he conducted individual and parish retreats and was a guest preacher in various parishes throughout the diocese.

In 1993, he returned to parish ministry in Hamilton and in 1994, the Bishop of Hamilton, the Most Reverend A.F. Tonnos, DD, offered him the opportunity to do graduate studies in canon law. After a year at Catholic University of America, Washington, DC, he returned to Canada and completed a Master of Arts (CL) degree and a Licentiate in Canon Law at the University of Ottawa/Saint Paul University, Ottawa, Canada. In 2004, he obtained his Doctor of Philosophy (CL) and his Doctor of Canon Law degrees from the University of Ottawa/Saint Paul University.

He identifies with the prophetic model of the Church and the incarnational school of theology. Vatican II created the beginnings of a new Church for a new millennium. Periods of change, always difficult, calls for an active ministry of justice available to the Church and the people of God.

His current range of interests includes motorcycling, sailing, camping and fishing. Current affairs, politics, Spanish, reading, music and opera continue to occupy his interests.