


**THE IMPLEMENTATION OF UNIVERSAL LAW IN CANADA
IN THE MATTER OF DECENT SUPPORT FOR
ACTIVE DIOCESAN PRIESTS AND DIOCESAN PRIESTS IN RETIREMENT**

by
Robert M. KIFFMAN

A thesis submitted to the Faculty of Canon Law,
Saint Paul University, Ottawa, Canada, in partial
fulfillment of the requirements for the degree of
Master of Arts in Canon Law

 Ottawa, Canada
Saint Paul University
1996



National Library
of Canada

Acquisitions and
Bibliographic Services Branch

395 Wellington Street
Ottawa, Ontario
K1A 0N4

Bibliothèque nationale
du Canada

Direction des acquisitions et
des services bibliographiques

395, rue Wellington
Ottawa (Ontario)
K1A 0N4

Your file *Votre référence*

Our file *Notre référence*

The author has granted an irrevocable non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of his/her thesis by any means and in any form or format, making this thesis available to interested persons.

L'auteur a accordé une licence irrévocable et non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de sa thèse de quelque manière et sous quelque forme que ce soit pour mettre des exemplaires de cette thèse à la disposition des personnes intéressées.

The author retains ownership of the copyright in his/her thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without his/her permission.

L'auteur conserve la propriété du droit d'auteur qui protège sa thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

ISBN 0-612-16414-4

Canada



UNIVERSITÉ D'OTTAWA
UNIVERSITY OF OTTAWA

Abstract

With each passing day, more Roman Catholic clergy enter retirement. For the first time in the history and law of the Roman Catholic Church, the *Code of Canon Law*, 1983, introduces language common to the marketplace: remuneration; dedicated funding; the canonisation of civil law in the absence of ecclesiastical legislation; and, the notion of retirement. The pertinent canons in the matter of support for clergy are canons 538, §3; 281 and 1274. What impacts are such terms likely to have in the Roman churches in Canada?

The implementation and application of the universal law by the Canadian Conference of Catholic Bishops and particular churches will have a profound effect upon the quality of life for Roman priests in active ministry and priests in retirement in Canada. The obligation of the churches to provide decent support and residence is clear. However, what is the situation of a priest facing retirement today?

Chapter One provides the theological foundations and treats some of the canonical issues. Church documents, which provide the Church's teaching in the matter of social justice, establish the theological foundations of decent support and residence. The Christian virtue of justice applies in a context of commutative and distributive justice. Sacramental orders occasions participation in the official ministry of the Church, a share in the mission of the Church and the diocesan bishop, and integration into the sacerdotal college. The worker is worthy of his pay but support is also due should a priest be incapable of ministering.

Canonical issues revolve around the notion of incardination and the issue of support in the Codes of 1917 and 1983. *Presbyterorum ordinis* provides fundamental distinctions that the 1983 Code incorporates. The author explores canon 281 within the context of diocesan personnel classifications, ministry and appointments, sources and conditions of remuneration, classifications of incapacity, and retirement. The chapter concludes with some of the philosophical shifts that have occurred in our time and that the 1983 Code contains as interpreted by the author.

Chapter Two examines *Christus Dominus, Ecclesiae sanctae, I*, and its expression in canon 538, §3. The bishops' conference and diocesan bishops are to provide appropriate support to parish priests who retire. Bishops are to establish norms in this regard.

Chapter Three considers some of the financial elements involved in providing support and residence to retired or incapacitated clergy with particular focus on canon 1274. Diocesan funds are given definition, structure and establishment as canonical and civil institutes. Pension funds and trusts are discussed briefly in the context of civil law. If civil law constitutes such funds, they are not subject to civil liability actions. Deacons, as clerics, also receive support.

Chapter Four considers the application of universal law to norms established by the Canadian Conference of Catholic Bishops and other selected conferences. The author notes important differences and provides a critique.

Chapter Five examines briefly two Canadian diocesan pension plans and the concrete effect on Father Anypriest.

Table of Contents

	Page number
Table of Contents.....	ii
Introduction.....	vii
Abbreviations.....	ix

CHAPTER ONE

General Definitions, Theological Foundation and Canonical Issues

1.1 General Definition and Qualification of Terms	
1.1.1 General Definitions.....	01
1.1.2 Qualification of Terms.....	01
1.2 Theological Foundations	
1.2.1 Sacrament of Orders.....	03
1.2.2 Orders and Status.....	04
1.2.3 Orders and Sacerdotal College.....	05
1.2.4 Material Support of the Church and Clergy.....	06
1.2.5 Incapacity to Minister.....	06
1.2.6 Clergy Not Immune from Weakness and Sin.....	07
1.2.7 Notion of Justice.....	08
1.2.8 The Notions of Distributive and Commutative Justice.....	09
1.2.9 The Principle of Proportionality.....	11
1.3 Canonical Issues	
1.3.1 Incardination in General.....	12
1.3.2 Incardination in the 1917 Code of Canon Law.....	12
1.3.3 Support and Title in the 1917 Code of Canon Law.....	13
1.3.4 Incardination in the 1983 Code of Canon Law.....	17
1.3.5 Distinction of Support between 1917 Code and 1983 Code.....	19
1.3.6 Support and Remuneration.....	19
1.3.7 Remuneration Attached to Employment.....	20
1.3.8 Remuneration and Diocese as Corporation Sole in Civil Law.....	21
1.3.9 Remuneration and Contract.....	23
1.4 Remuneration and the 1983 Code of Canon Law, Canon 281, §1	
1.4.1 <i>Presbyterorum ordinis</i> and Clergy Remuneration.....	24
1.4.2 Remuneration and Code of Canon Law, 1983, Canon 281, §1.....	25
1.4.3 Cleric Dedicated to Ministry.....	25

1.4.4	Issue of Personnel.....	29
1.4.5	Ministry Redefined.....	29
1.4.6	Remuneration and Appointment to Office.....	30
1.4.7	Remuneration and Appointment by Assignment.....	32
1.4.8	Criteria Established for Remuneration, Canon 281.1.....	33
1.4.9	Remuneration According to Conditions and Responsibilities.....	33
1.4.10	Remuneration According to Conditions of Time and Place.....	35
1.4.11	Remuneration Based on Personal Needs & Required Services.....	35
1.4.12	Conclusion.....	36
1.5	Support and Incapacity in the the 1983 Code of Canon Law, Canon 281.2	
1.5.1	The Notion of Support and Incapacity in General.....	37
1.5.2	Support and Incapacity Due to Physical or Mental Illness.....	37
1.5.3	Support and Sanctions, Penalties.....	39
1.5.4	Support and the Unemployable/Unassignable.....	42
1.5.5	The Notion of Resignation.....	43
1.5.6	The Canonical Implications of Resignation.....	45
1.5.7	Conclusion.....	46
1.6	Philosophical Context in Interpretation of Language Used in the Code	
1.6.1	Implications of Language Used in the Code.....	46
1.6.2	Christian Socialism Founded in Distributive Justice.....	47
1.6.3	Economic Capitalism Founded in Commutative Justice.....	48
1.6.4	The Notion of Irremovable Pastor and the 1983 Code.....	49
1.6.5	Source for Sustenance and Remuneration.....	53
1.7	Concluding Observations on the 1983 Code of Canon Law, Canon 281.....	53

CHAPTER TWO

Universal Law Requirements in the Matter of Support for Resigned Priests

2.1	Two Vatican II Council Sources of Universal Law	
2.1.1	<i>Christus Dominus</i> and <i>Ecclesiae sanctae, I</i>	55
2.1.2	Four Concerns of the Documents.....	55
2.2	Implementation of <i>CD</i> and <i>ESI</i> in the 1983 Code of Canon Law, Canon 538	
2.2.1	The Law.....	55
2.2.2	Physical Location in the Code.....	56
2.2.3	Primary Function of Canon 538.....	56
2.2.4	Use of Latin <i>rogatur</i>	57

2.3 Bishops' Conference, Diocesan Bishop and Provision of 'Appropriate Support'	
2.3.1 Bishops' Conference and the Code of Canon Law, 1983.....	59
2.3.2 Diocesan Bishop and Parish Priest: Transfer of Obligation of Support.....	63
2.4 Conclusion.....	64

CHAPTER THREE

Financial Considerations in the Matter of Support

3.1 Acquisition, Purpose and Sources of Temporal Goods	
3.1.1 Right to Acquire Temporal Goods.....	66
3.1.2 Sources of Funding.....	66
3.2 Requirements and Division of Funding	
3.2.1 Norms of Bishops' Conferences.....	68
3.2.2 Implementation of <i>ESI</i> in Canon 1274.....	68
3.3 Contents of Canon 1274	
3.3.1 "Otherwise catered for" Defined.....	70
3.3.2 The Collection.....	71
3.3.3 Administration.....	71
3.4 Defining and Structuring the Diocesan Collection	
3.4.1 Diocesan Personnel Structure.....	72
3.4.2 Financial Institutes in General.....	73
3.4.3 Institute A.....	74
3.4.4 Institute B.....	75
3.4.5 Institute C.....	76
3.4.6 Protection from Civil Liability Actions.....	79
3.4.7 Age of Retirement According to Civil Legislation.....	80
3.4.8 Eligibility to Receive Support Income According to Defined Institutes.....	81
3.5 General Principles and Observations.....	84
3.6 The Question of Deacons.....	85
3.7 Conclusion.....	87

CHAPTER FOUR

The Application of Universal Law To the Establishment of Norms by Bishops' Conferences

4.1 Foundations.....	89
4.2 CANADIAN CONFERENCE OF CATHOLIC BISHOPS, <i>Official Document, no. 599.</i>	
4.2.1 The Decree.....	89
4.2.2 The Title and its Implications.....	90
4.2.3 Justice, Equity and Incapacity.....	91
4.2.4 Specific Retirement Plan.....	93
4.2.5 Incapacitated Clergy.....	94
4.2.6 The Principle of Adequacy.....	94
4.2.7 Intent of Two Funds.....	96
4.2.8 Accommodation.....	97
4.2.9 Cooperation Between the Churches.....	98
4.2.10 Professional and Administrative Competence.....	99
4.3 Decrees of Other National Conferences	
4.3.1 National Conferences Reviewed.....	100
4.3.2 Specific Differences in the Decrees.....	101
4.3.3 Serious Limitation in the Canadian Decree.....	104
4.4 Extra-ecclesiastical Factors in Consideration of Decent Support	
4.4.1 Government of Canada. Determination of Financially Deprived Persons.....	104
4.4.2 Accommodation Factors.....	105
4.5 Conclusion.....	107

CHAPTER FIVE

Application to a Particular Church and Case Situation

5.1 A Local Church - Registered Plan	
5.1.1 The Archdiocese of Ottawa.....	109
5.1.2 Canonical Conformity.....	109
5.1.3 Administration.....	110
5.1.4 Age of Retirement.....	110
5.1.5 Termination of Membership in Plan due to Laicization.....	110
5.1.6 Contributions.....	110
5.1.7 Current Full Retirement Benefit.....	111

5.2	Limitations of the Plan	
5.2.1	Unplanned Administrative Retirement.....	111
5.2.2	The Accommodation Allowance is Not Factored into Contributions and Benefits.....	112
5.3	A Local Church - "Arm's Length" Plan.	
5.3.1	The Diocese of Hamilton in Ontario.....	112
5.3.2	Canonical Conformity.....	113
5.3.3	Administration.....	113
5.3.4	Age of Retirement.....	114
5.3.5	Termination of Membership.....	114
5.3.6	Contributions.....	114
5.3.7	Death Benefit.....	115
5.3.8	Current Full Retirement Benefit.....	115
5.4	Limitations of the Plan	
5.4.1	Eligibility to Receive Pension.....	115
5.4.2	The Accommodation Allowance is Not Factored into Contributions and Benefits.....	116
5.5	A Case Scenario	
5.5.1	Father Anypriest.....	116
5.5.2	Father Anypriest's Prospects.....	118
5.5.3	Episcopal and Clerical Equity.....	120
	GENERAL CONCLUSIONS.....	121
	Appendices	
	A. Guidelines for the Retirement of Bishops (USA).....	124
	B. Responses to Questions on Accommodating Retiring & Senior Priests.....	125
	C. Suggested Criteria for the Establishment of Principles Applicable to Defining Decent Support for Retired Clergy.....	126
	D. The Cost of Decent Support and Housing.....	128
	E. Statistics Canada Low Income Cut-Offs (1986 Base) for 1994, 1995.....	131
	Bibliography.....	132

INTRODUCTION

The financial support for resigned parish secular priests was hardly a matter for concern prior to Vatican II. The general presumption was that the priest would simply "die with his boots on." Where a priest became incapacitated because of physical or mental illness, some financial arrangements were made at the discretion of the diocesan bishop. In the matter of a priest being returned to the lay state as a result of a voluntary request for laicization or as a result of penal trial and sanction, the matter was usually kept confidential and the determination of arrangements, financial or otherwise, are consequently difficult to determine.

Today, as greater numbers of priests face retirement and declining health in their senior years, the matter of support and residence becomes more critical.

The purpose of this study is:

- 1) to provide the theological and canonical foundations in the matter of support for diocesan clergy;
- 2) to examine and critique the application of universal law as interpreted by the Canadian Conference of Catholic Bishops and other selected national conference decrees;
- 3) to provide a short critique of the applicable canons and decree;
- 4) to examine and critique the application of universal and Bishops' Conference norms to two local churches;
- 5) to demonstrate by a hypothetical situation, a possible situation of a retired priest in a local situation with current financial and benefit resources.

The Second Vatican Council, various papal documents, the *Code of Canon Law*, particular law and the decrees of bishops' conferences make provision for the support of active clergy working in ministry and for the security of incapacitated and retired secular clergy. Of particular import in this question are cc. 281, 538 and 1274.

The question now becomes, from what vantage point can they be examined and how shall they be interpreted? Ladislav Örsy, in his article, "Models of Approaches to Canon Law and their Impact on Interpretation" provides a positive direction in two specific and appropriate ways. Law "is not a static measuring rod but a dynamic instrument to regulate the activities of a living community;" and second, "the world of law is not an isolated autonomous reality but organically integrated with the fields of other human activities."¹ He further suggests that our canonical inquiry be put in the context of a search for redemptive value in our interpretation of the canons.

¹ LADISLAV ÖRSY [=ÖRSY], "Models of Approaches to Canon Law and Their Impact on Interpretation," in *The Jurist*, 50 (1990), p. 96.

It has been suggested that a study should not be undertaken when one is passionately interested or involved. This is partially true. On the other hand, in the process of inquiring, one encounters facts and interprets language, magisterial teachings, historical perspectives, cultural dynamics out of which law flows, as well as, cross-cultural and cross-historical misinterpretation of words, concepts and values. Objective data enters the field of study; however, law must be interpreted in the context of the meaning of words and their cultural context as well.

Vatican II was a universal council. It was largely so because the commercial impact of media² around the world had already predisposed the bishops gathered in Rome to grasp the vision of the global village as exemplified in the community of churches³ of which they were the leaders. Furthermore, since the age of colonialism was past, the various churches spoke to the issues from their own historical and cultural perspectives which could be shockingly different from the monolithic, nineteenth century European based *Roma*.

In this study, I shall endeavour to seek the objective data; however, I can do no more than place the data within the interpretive context of my subjective and cultural experience and milieu. Essentially, I attempt to read the 'sign in the times'. This will be especially evident in that I interpret essential 'words' according to the definitions provided in the *Oxford Concise Dictionary*, apply them to North American contexts, and see where this leads. As the law is universal and particular, hopefully some truth will emerge.

Orsy quotes David Granfield who proposes a unique methodology in interpretation of law:

... let us focus on the inner experience of the subject who is involved in the event of discovering, accepting and observing the Law. This experience more than anything else will reveal the meaning of the law. Since this experience is available to anyone who has the capacity to reflect on his or her own inner world, and since the human spirit operates in every person in a similar manner, we may well come to the same discoveries, and find a meaning in the law that is common to us all.⁴

² Is it possible that there was one bishop present who had not seen a movie film from Hollywood or who had not watched a television set? As Marshall McLuhan said: "The medium is the message!"

³ JOHN A. ALESANDRO, "General Introduction," in JAMES A. CORIDEN, THOMAS J. GREEN and DONALD E. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary* [=Commentary], New York/Mahwah, Paulist Press, 1985, p. 7. Alesandro speaks of the "Principles of Revision" and no. 5 is particularly appropriate here.

⁴ ORSY, "Appendix," p. 98.

ABBREVIATIONS

AAS.....	Acta Apostolicae Sedis
Act.....	Act of Constitution
c.....	canon
cc.....	canons
CCCB.....	Canadian Conference of Catholic Bishops
CD.....	Christus Dominus
CIC.....	Codex Iuris Canonici
CLD.....	Canon Law Digest
CLSA.....	Canon Law Society of America
Co.....	Corinthians
CPP.....	Canada Pension Plan
ES.....	Ecclesiae Sanctae
GIS.....	Guaranteed Income Supplement
GS.....	Gaudium et spes
LG.....	Lumen gentium
Lk.....	Luke
LICO.....	Low Income Cut-Offs
Mt.....	Gospel of Matthew
NCCB.....	National Conference of Catholic Bishops (USA)
OAP.....	Old Age Pension
OD.....	Official Document
Plan.....	The Retirement Plan
PO.....	Presbyterorum ordinis
StatsCan.....	Statistics Canada

CHAPTER ONE

General Definitions, Theological Foundations and Canonical Issues

1.1 General Definitions and Qualification of Terms

1.1.1 General Definitions

Some of the terms and notions used throughout this paper require definition: retirement, support, remuneration, sustenance, incapacity, unemployed and unemployable. The *Concise Oxford Dictionary of Current English* defines 'retirement' in note 2 as: "cease from or give up office or profession or employment (esp. on completion of normal time of serving)."¹ 'Support' is defined in note 2 as: "enable to last out, keep from failing, give strength to, encourage" and note 4: "supply with necessities, provide for."² Remuneration is defined as: "pay for service rendered; provide recompense for (toil etc.)."³ Sustenance is defined as: "nourishing quality, subsistence" and sustentation is "support of life; maintenance;" also a fund "collected to support indigent clergy."⁴ Incapacity is defined as: "inability (*for* doing, *for* work, etc.); legal disqualification."⁵ Unemployed is defined as: "not in use; having no employment; temporarily out of work."⁶ Unemployable is defined as: "unfitted by character, age, etc., for paid employment."⁷ Unless otherwise determined, the meanings of these words are to be interpreted as stated in common English language usage.

1.1.2 Qualification of Terms

The term clergy, deacon, priest, presbyter and bishop refer to diocesan clergy unless otherwise noted in the Code of Canon Law.⁸ Clerics are ordained deacon, priest

¹ H.W. FOWLER and F.G. FOWLER (eds.), *The Concise Oxford Dictionary of Current English*, 7th ed., J.B. SYKES (ed.), Oxford, The Clarendon Press, 1984, p. 890.

² *Ibid.*, p. 1072.

³ *Ibid.*, p. 880.

⁴ *Ibid.*, p. 1165.

⁵ *Ibid.*, p. 505.

⁶ *Ibid.*, p. 1171.

⁷ *Ibid.*, p. 1171.

⁸ *Codex iuris canonici Ioannis Pauli, PP. II promulgatus*, Libreria editrice Vaticana, 1983, xxx, 317 p. E. CAPARROS, M. THÉRIAULT, J. THORN (eds.), *Code of Canon Law Annotated*. [= 83 CIC], Montreal,

and bishop. Deacons and priests are incardinated into a diocese, subject to a diocesan bishop of a particular church; and they are not members of an institute of consecrated life or society of apostolic life.⁹ Priest, which includes a bishop, is used in the paper to refer to a presbyter. The deacon is also a cleric and is included, but rarely mentioned, in the discussions of this paper. References to bishop apply to the diocesan bishop only unless otherwise indicated by context. The territorial area of the study is English Canada and United States unless otherwise noted.

The terms accommodation and residence are used interchangeably throughout; however, the terms are meant to include: equivalent of room and full board which is compared to a rental unit with associated costs such as rental fees, furniture and appliances, food, household effects, property and liability insurance, water, electricity, heat, collection of garbage fees, parking fees and other sundry expenses necessary for the maintenance of a decent life. These costs vary from place to place. Pension information, data and financial figures used are from the Archdiocese of Ottawa and the Diocese of Hamilton, Ontario, Canada.

It is recognised that retirement pensions are a complex subject and the author makes no claim to be an expert in the field of finance or pension legislation. The figures utilised are intended to demonstrate the concrete application of the principles described or inherent in the concepts being described. They are not intended to be compared to locations other than those areas or specific locations to which they are applied. The principles can be applied anywhere using a financial analysis of the area under consideration.

Wilson & Lafleur Limitée, 1993. Latin-English edition of the *Code of Canon Law* and English-language translation of the 5th Spanish-language edition of the commentary prepared under the responsibility of the Instituto Martin de Azpilcueta.

⁹ For purposes of this paper, clerics who are members of secular institutes may or may not be incardinated in a particular church depending upon the proper law of the institute (83 CIC, cc. 266, §3; 715); also, clerics belonging to societies of apostolic life may or may not be incardinated into a particular church depending upon the proper law of the society (83 CIC, cc. 266, §1; 736, §1; 738, §1). Arrangements regarding support and retirement of the cleric would be contingent upon where the cleric is incardinated. Such situations are beyond the scope of this paper except to say that the cleric is to receive decent support whether that be from the diocese, the institute or society of the cleric's incardination.

It is also noted that there is a considerable lack of data in the matter of how individual dioceses support their priests, whether retired or incapacitated. Some assumptions are consequently made in the use of figures and may not be entirely accurate; however, they are utilised more to make a point than for the value in themselves. Another presumption is that a considerable number of priests do not have extensive financial resources available outside of what they receive from salaries and benefits of the church of incardination in which they serve.

The Code or canons are referred to as 'universal law' throughout. The English translations of the *Codex iuris canonici* are from the *Code of Canon Law Annotated* [= Code, 83 CIC]. The use of the term *Annotated Code* refers to the commentary or Appendices in the *Code of Canon Law Annotated*. The Canon Law Society of America translation of the Code is used for purposes of comparison as noted.

Scripture quotations are from the Jerusalem Bible. Spelling follows the British form except where used in direct quotations.

1.2 Theological Foundations

1.2.1 Sacrament of Orders

Sacrament is understood to be a unique moment of encounter with Jesus Christ. The Church identifies seven sacraments which are expressed in symbols and ritual. *The New Dictionary of Theology* describes sacrament: "one of the seven central liturgical rites of the church through which participants experience the paschal mystery of Christ, are formed into the body of Christ and grow in the life of grace."¹⁰ One of the sacraments is the sacrament of 'orders'. *The New Dictionary of Theology* describes orders:

In Western Christianity, "orders" as a collective noun can mean the totality of public, recognised, full-time, permanent ministries within the Christian church. A particular "order" is one such individual ministry with certain rights, powers, responsibilities, ministerial area and identity.¹¹

¹⁰ JOSEPH A KOMONCHAK, M. COLLINS and D. A. LANE (eds.), *The New Dictionary of Theology*, Collegeville, The Liturgical Press, 1987, p. 910.

¹¹ *Ibid.*, p. 723b.

Both the tradition of the Church and the Second Council of the Vatican express the notion that the person experiencing the ‘seal of the Holy Spirit’ is marked with an indelible¹² ‘inner character.’ Three sacraments carry this ‘mark’ or ‘sealing of the Spirit’: baptism, confirmation and holy orders.¹³ The ‘seal’ of baptism constitutes and identifies a person as a child of God and member of the Church. Confirmation is the endowment of the gifts of the Spirit in order that the person so gifted can live prophetic Christian discipleship within the context of the vocation to which that person is called, particularly within the context of the priesthood of the faithful. Finally, the person called by vocation to God’s service, and whose call is accepted by ecclesiastical authority, is ordained and consequently, is specifically ‘marked’ for the public ministry of the church.¹⁴

1.2.2 Orders and Status.

Ordination effects the ‘status’ of a person both personally and juridically.¹⁵ By the act of ordination, the cleric has become a public figure.¹⁶ dedicated to the service of God and a particular church. The Church recognises that this Christian has been ‘anointed by the Spirit’; the presbyter is acknowledged and empowered (1) by the Church to offer public praise of God; (2) commissioned by Jesus Christ to minister and serve the people of God, by word and sacrament; (3) to act under the authority of the Apostles. By virtue of the sacrament, Christ, the Church and the ordained have entered into a unique, permanent, constitutive covenant relationship (*communio*) with one another. The order of presbyter, once received, can never be surrendered or destroyed.¹⁷

¹² JOHN R. WILLIS (ed.), *The Teachings of the Church Fathers*, no. 168, New York, Herder & Herder, 1966, p. 414; also see, 83 CIC, cc. 845, 879, 1008.

¹³ SECOND COUNCIL OF THE VATICAN, [= Vatican II or Council] “Dogmatic Constitution on the Church *Lumen gentium*,” [= LG], no. 10, 11, in AUSTIN FLANNERY (gen. ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, vol. 1, 2d printing [= FLANNERY], Collegeville, MN, The Liturgical Press, 1975, pp. 360-362. Also, Vatican II, *Presbyterorum ordinis*, [= PO] in FLANNERY, no. 2, p. 865; c.1008.

¹⁴ PO, in FLANNERY, no. 2, p. 865: “[...] to act in the person of Christ the head.”

¹⁵ 83 CIC, c. 207.

¹⁶ LG, *ibid*, no. 10, p. 361.

¹⁷ 83 CIC, c. 1008. The ‘character’ is described as something permanent. Canon 1338, §2 indicates that the power of orders cannot be removed even as a result of ecclesiastical penalty.

The juridical status of the person is altered by ordination. By virtue of ordination the person's status changes canonically from layperson to cleric,¹⁸ and the cleric is identified with a hierarchical church. "All priests share with the bishops the one identical priesthood and ministry of Christ. Consequently, the very unity of their consecration and mission requires their hierarchical union with the order of bishops."¹⁹ The presbyter is called to be a bishop's 'co-operator in serving a particular church'.²⁰ This bond to the particular church is the juridical notion of incardination.

1.2.3 Orders and Sacerdotal College.

Presbyters, in their own proper (*proprium*) degree and in the image of Christ,²¹ share in the three *munera* of the bishop.²² As co-operators of the bishop, the bishop with his presbyters forms a "unique sacerdotal college."²³ The presbyter, by ordination and incardination, does not minister solely as an individual²⁴ but rather as an integral part of a whole sacerdotal college whose mission and purpose is the ministry of Christ. Orders, by its very nature, is a call to worship and service. Consequently, a bishop should not ordain or incardinate without being capable of providing both ministry and support to the ordained and incardinated.²⁵ It is equally difficult to imagine a presbyter who would not want to minister and serve the Christian community that is the Church.

In summary, the presbyter is part of an integral whole; that is, a particular church²⁶ and sacerdotal college. Therefore, when one individual rejoices, sins or suffers, each individual bishop and presbyter is enhanced or diminished as part of that college; secondly, the sacrament of orders is not only a static juridical change of status, but an on-going encounter with Christ and the Church in which the presbyter participates both as an individual and member of a corporate entity. Both the people of God²⁷ and those called

¹⁸ 83 CIC, c. 207.

¹⁹ *PO*, in FLANNERY, no. 7, p. 877.

²⁰ 83 CIC, c. 368.

²¹ *LG*, in FLANNERY, no. 28, pp. 384-385.

²² *LG*, in FLANNERY, no. 20, p. 372. The bishop's three *munera* of governing, teaching and sanctifying.

²³ *LG*, in FLANNERY, no. 28, p. 385; *CD*, in FLANNERY, no. 28, p. 580.

²⁴ *PO*, in FLANNERY, no. 7, p. 878.

²⁵ 83 CIC, cc. 269, 1°; 1025, §2.

²⁶ 83 CIC, cc. 368; 369.

²⁷ The title of chapter two of *LG*, in FLANNERY, p. 359.

to orders inherently recognise the mystery, the dignity and grace that is Jesus the Priest continuing to serve God's people in and through sinful humans who are called to orders.

1.2.4 Material Support of the Church and Clergy

The mission of the Church is to 'proclaim the Good News of Jesus Christ.'²⁸ This the Church must do as a visible institution in society; consequently, material support is essential to implementing the mission of the Church as expressed in *LG*, no. 8: "Likewise the Church, though she needs human resources to carry out her mission, is not set up to seek earthly glory [...]"²⁹

Clergy are an essential component of this mission and they deserve to be supported as St. Paul says in 1 Corinthians:

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 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 gospel.³⁰

Therefore, failure of ecclesiastical authority³¹ and the Christian community³² to provide material support to clergy negatively impacts both upon the dignity of the person of the presbyter and upon the community he serves. Secondly, without proper material support, the mission entrusted to the Church by the Lord becomes hampered.

1.2.5 Incapacity to Minister

Clergy, like all human beings, are subject to the afflictions, infirmities and frailties of human existence. The Church remains solicitous of all peoples who find themselves without security of food, residence, employment and health benefits. John XXIII quotes Pius XI in *Pacem in terris*:

But first we must speak of man's rights. Man has the right to live. He has the right to bodily integrity and to the means necessary for the

²⁸ *LG*, in *FLANNERY*, no. 1, p. 350.

²⁹ *LG*, in *FLANNERY*, no. 8, p. 358.

³⁰ 1 Co. 9:10-14.

³¹ 83 CIC, c. 384.

³² 83 CIC, c. 222. Members of clergy and institutes of consecrated life and of societies of apostolic life are not excluded from this obligation.

proper development of life, particularly food, clothing, shelter, medical care, rest, and finally, the necessary social services. In consequence, he has the right to be looked after in the event of ill-health; disability stemming from his work; widowhood; old age, enforced unemployment; or whenever through no fault of his own he is deprived of the means of livelihood.³³

John Lynch recognises this concern of the contemporary Church as it is applied to clergy in the canons and which expresses the continuing tradition of the Church particularly reflected in *Pacem in terris* of John XXIII:

The 1983 Code (c.281, §2) takes special notice of health and retirement benefits. Clerics are to have enough to take care of their needs during periods of illness, incapacity and old age. The law is merely applying to the clergy a right which Pope John XXIII said belongs to every human being: "the right to security in case of sickness, inability to work, widowhood, old age, unemployment, or in any other case in which he is deprived of the means of subsistence through no fault of his own" (*Pacem in Terris 11*).³⁴

The Code, in c. 281, §2, makes provision for a cleric incapable of working: "Suitable provision is likewise to be made for such social welfare as they may need in infirmity, sickness or old age."

1.2.6 Clergy Not Immune from Weakness and Sin

Gaudium et spes, no. 13, describes the brokenness and woundedness of the human condition due to sin as it affects all humankind.³⁵ Clergy are not immune from weakness and sin. The Church reaches out in compassion and forgiveness especially to those brothers profoundly wounded by sin. The tradition of support for the priest and respect for the priesthood was even maintained in spite of the priest's demonstrated weakness and sinfulness. Note the decision by the Sacred Congregation for the Propagation of the Faith against the Bishop of Natchez, MI, in 1873, who was seeking to deprive a priest of

³³ JOHN XXIII, *Pacem in terris*, no. 11 quoting PIUS XI, Encyclical: *Divini Redemptoris*, no. 78, 1937, in MICHAEL WALSH and BRIAN DAVIES (eds.), *Proclaiming Justice & Peace*, Mystic, CT, Twenty Third Publications, 1991, p. 129.

³⁴ JOHN LYNCH, in *Commentary*, p. 218.

³⁵ VATICAN II, *Gaudium et spes* [=GS], in FLANNERY, no. 13, p. 914.

income because of offences which might even lead to his 'deposition from office'. The response of the Congregation said:

[...] a priest cannot be deprived of his means of support, unless after repeated warnings, he refuses to amend and demonstrates his contumacy. It was stated therein that grave offences committed by a priest, such as may even justify his deposition from office, did not warrant the bishop in refusing him support.³⁶

Even down to our own day, the Church and bishops continue to maintain the tradition of support for priests incapacitated, unable to work, retired. What is the basis of this continued support for clergy even when clerical misdeeds might result in the loss of clerical state? The long-standing tradition of respect for the sacrament of orders even when a priest may be dismissed from the clerical state continues in c. 1350, §2: "If a person is truly in need because he has been dismissed from the clerical state, the Ordinary is to provide in the best way possible."³⁷

1.2.7 The Notion of Justice³⁸

Material support is a matter of justice. Natural justice is generally described as 'to give to each one what is theirs.'³⁹ However, as a Christian virtue rather than solely a human virtue, there is the added element - love. Bernard Häring, in his discussion on the nature of justice, places the concept within the mystery of love. The eternal quest of a human person, that is, the *I*, is the opening of the self in love to the *Thou*. In this process does one discover the value in the *Thou*, and the *I*. Justice stands between the *I* and the *Thou* as that "which establishes the right order regarding the goods of the individual and the community."⁴⁰ Without the dimension of love, the *meaning* of justice can be severely restricted. Should God administer justice according to human terms, there simply would

³⁶ O'BRIEN, KENNETH R., *The Nature of Support of Diocesan Priests in the United States*, p. 16-17, quotes the Sacred Congregation for the Propagation of the Faith.

³⁷ 83 CIC, c. 1350, §2.

³⁸ GEOFFREY J. ROBINSON, "The Challenge of Justice," in *CSLA Proceedings 55* (1993), pp. 1-16. The article presents an excellent brief survey on the subject of justice. He especially seeks to develop a process in presenting questions which might clarify conflicting needs and rights in matters of social justice.

³⁹ ULPIANUS (d. 228 A.D.) quoted by GEOFFREY J. ROBINSON, "The Challenge of Justice" in *CSLA Proceedings 55* (1993), p. 2.

⁴⁰ BERNARD HÄRING, *The Law of Christ*, vol. 3 [=HÄRING], EDWIN G. KAISER, trans., Cork, Ireland, The Mercier Press, 1967, p. 23.

be no redemption for humanity. Jesus introduces an entirely new concept of justice.⁴¹ God's justice is demonstrated in his compassion and love as revealed in the saving action of Jesus.⁴² Therefore, the Christian views the world through eyes of faith and consequently, can only act out of the Christian *virtue* of justice.

The Christian enters into the realm of Christian justice with the deep personal acknowledgement, when confronting sin and its external manifestations: there but for the grace of God go I! It is in our self-recognition in the sight of God that we are able to judge others with the mercy of God.

The gift of compassionate judgement does not preclude making a judgement and taking action when the objective actions of another might cause harm either to the community or the individual himself. The actions of an individual may be condemned by an individual, society or the Church; the person may not, except by God. The objective actions of a person are clearly distinguished from the person needing mercy and support.

Consequently, two important distinctions in justice exist which are topical to the subject of this paper: distributive justice and commutative justice. The distinction is necessary to provide a redemptive 'value' framework of interpretation for the language of justice as it contained in the terminology of the Code.

1.2.8 The Notions of Distributive and Commutative Justice

In the strict sense, commutative justice is "particularly regulated by the private right of contract according to the principle of equality in give and take."⁴³ The implication is that the 'give and take' possesses an inherent equality; that is, an equal transfer or exchange of a 'value' from one to another. This value can be exchanged individual to individual, individual to group, group to individual and group to group. The value is determined to be equal by the participants to the contract and the value can be an exchange of goods, labour or service.

Distributive justice, as described by Häring, involves the relationship of the individual to the community. "End or object of the right is the private or particular good

⁴¹ Cf. Jn. 8:1-11; Mt. 5:1-12; and Mt. 25:31-46 are but a few examples.

⁴² Mt. 5:1-10; 25:31-46.

⁴³ HÄRING, p. 25.

of each individual member of the community. Responsible for its fulfilment is the community exercising justice through its official organs and representative."⁴⁴

The distinction is critical for it lays the fundamental foundation out of which the notions of support and remuneration will be understood in contemporary society, particularly as these concepts will be applied by that community which is the Church and as justice is demonstrated by the actions of a particular church or groups of churches.

The entire notion of the context of distributive justice is linked to the post-Apostolic period of the Church, when it essentially viewed itself as community. This community did not discount the value of commutative justice; however, it saw distributive justice as the 'enfleshment' of love as taught by Jesus.⁴⁵ The Christians saw community sharing (supporting) with the individual or family in need as an obligation in love and justice. Indeed, this perception of community was a distinguishing characteristic of the early Christians.

What then is the specific object of these two forms of justice? *The New Dictionary of Theology* describes justice in the following terms:

The two justices are named for the objects to which general justice impels us. Commutative justice is the justice that lies between individuals or groups. 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.⁴⁶

The object of commutative justice is based on an equal exchange of resources according to the contractual agreement between the parties involved; therefore, in our

⁴⁴ *Ibid.*, p. 26.

⁴⁵ Acts 2:42-47; 4:32-35.

⁴⁶ KOMONCHAK, *The New Dictionary of Theology*, p. 550-551.

contemporary order, the exchange of capital and labour provides the basis for the societal distribution of wealth as it becomes particularised in a member of the community.

The object of distributive justice is based on the provision of support because an individual is part of a whole. It is the notion of distributive justice that provides the basis of support to the individual even when that individual is incapable of providing labour due to economic or personal incapacity. It is founded in the very nature of being human and the dignity⁴⁷ associated with being a human person. Presbyters share this dignity as part of the human community; by membership in the body of Christ and the Church; and by constitutive incorporation by orders into the sacerdotal college of a particular church.

1.2.9 The Principle of Proportionality

Justice admits of the principle of 'proportionality'. To give each person their due is not intended to convey the notion that everyone receives the same absolutely. As Häring says:

The equality is rather an equality of proportion; that is to say; it must correspond to the dignity and power of each individual. Only in the instances in which one is exactly like another can there be a claim to equal right absolutely; insofar as one is different from another, there is the corresponding diversity also in the measure of rights and of the claim to rights.⁴⁸

Commutative justice is a justice based on absolute equality; that is, same pay for same work principle. The relative dimension of this equality will depend on the division of persons who may occupy the same or similar institutional status, number of years of service, a pension benefit established for all in the same classification, or a benefit established as equal for all retired clerics.

Distributive justice is a justice based on relative equality *in se*; that is, how the resources available are to be distributed and to whom. Who receives is contingent upon the condition and circumstances of the person requiring support.

⁴⁷ Cf. WALTER KASPER, "The Theological Foundations of Human Rights" in *The Jurist* 50 (1990):1, 148-166, discusses the notion of the foundations of human rights from perspectives of natural law and theology. This latter presents the origins of rights from creational, christological, pneumatological and ecclesiological perspectives.

⁴⁸ HÄRING, p. 24.

As described, the principle of proportionality demands a strict justice application in regard to commutative justice, but a relative justice in regard to distributive justice.

1.3 Canonical Issues

1.3.1 Incardination in General

Though the notion of incardination as the bonding or belonging to a particular church is of long standing tradition in the Church, it is a construct of the late nineteenth century: “Widespread use of the term *incardination* along with its correlative *excardination* began only in the latter part of the nineteenth century, when the Roman curia adopted it to signify the permanent attachment of a cleric to a new diocese after transfer from another.”⁴⁹ Today, incardination occurs two ways: as a result of ordination which, at the same time, incardines the cleric into a particular church; or, by transfer through the procedure of excardination-incardination.⁵⁰

1.3.2 Incardination in the 1917 Code of Canon Law

In the 1917 Code, incardination consisted of two elements: incardination *in se*; and secondly, the canonical title it supplied.⁵¹ Incardination *in se* refers particularly to the act of sacramental ordination which conferred “the power to sanctify the faithful by sacred rites”⁵² and provided the potential power to teach and govern the faithful.

Moreover, since the Council of Chalcedon, 451 AD, no one could be ordained absolutely and for service to the church-at-large or ‘in general’.

No one is to be promoted to the priesthood or diaconate or to any other ecclesiastical order, unless the one to be promoted is specially affiliated to a church of a city or village, or a martyr or monastery. In regard to those who have been ordained absolutely, the holy council decided that such ordination is invalid,⁵³ and that they can function nowhere to the disgrace of the one who ordained them.⁵⁴

⁴⁹ JAMES T. MCBRIDE, *Incardination and Excardination of Seculars: An Historical Synopsis and Commentary*, Canon Law Studies, no. 145, Washington, The Catholic University of America, 1941, p. 10.

⁵⁰ Cf. 83 CIC, cc. 267-271.

⁵¹ *Codex iuris canonici Benedicti Papae XV auctoritate promulgatus*, 1917 [=17 CIC], Westminster, Maryland, The Newman Press, 1964, c. 147.

⁵² BOUSCAREN, T. LINCOLN, ADAM C. ELLIS and FRANCIS N. KORTH, *Canon Law: A Text and Commentary*, 4th rev ed. [=BOUSCAREN], Milwaukee, Bruce Publishing Company, p. 98.

⁵³ Contemporary terminology is equivalent to “illicit.”

⁵⁴ “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.” *CONCILIUM CHALCEDONENSE - 451, VI* in *Conciliorum*

Chalcedon decreed that a cleric had to be ordained to a particular 'title'; that is, a village church, shrine, or monastery in order to be guaranteed a livelihood. Wandering clergy, unattached anywhere, were repugnant to the early Church Fathers who saw the dangers and abuses that so affected clergy without any visible means of support. This canon was confirmed by the Council of Trent in the twenty-third session, chapter xvi.⁵⁵

1.3.3 Support and Title in 1917 Code of Canon Law

Ordination also provided the vehicle whereby there existed the potential to exercise ecclesiastical power of governance (jurisdiction) in the Church. The actual exercise of jurisdiction required canonical mission. A specific canonical mission was determined by the ecclesiastical authority through the juridical act of incardination whereby one became canonically 'bonded'⁵⁶ to the service of a particular church and subject to a particular diocesan bishop.⁵⁷

Secondly, though incardination was effected by first tonsure,⁵⁸ there was no obligation upon the bishop to provide support except as might have been necessary in charity.⁵⁹ A title was needed prior to the act of ordination to subdeaconate⁶⁰ in order to provide the basis for material support; the canonical mission⁶¹ defined the ministry as determined by the bishop. Canon 979 describes it:

§1 For the secular clergy, the canonical title is the title of benefice; or if this be lacking, the title of patrimony or the title of a subsidy.

§2 This title ought to be truly secure for the life time of the ordained and truly sufficient to support him properly in his clerical order

oecumenicorum decreta. Edidit Centro di documentazione, Istituto per le scienze religiose, Bologna, curantibus JOSEPHO ALBERIGO [et al.] Consultante Huberto Jedin. Friburgi, Herder, 1962, p. 66. English translation from H.J. SCHROEDER, ed. and tr. *Disciplinary Decrees of the General Councils: Text, Translation, and Commentary.* St. Louis, Herder, 1937, p. 95.

⁵⁵ H. J. SCHROEDER (ed. and tr.), *Canons and Decrees of the Council of Trent*, Sess. XXIII, Chapter XVI, St. Louis, MO, Herder, 1941, p. 173.

⁵⁶ 17 CIC, c. 111

⁵⁷ 17 CIC, cc. 112; 114 for incardination and excardination.

⁵⁸ 17 CIC, c. 111, §2.

⁵⁹ *Ibid.*

⁶⁰ "Titulus canonicus, si agatur de ordinibus maioribus." 17 CIC, c. 974, §1, 7°.

⁶¹ "Canonical mission means either the conferring of an ecclesiastical office by a competent ecclesiastical superior according to law (c. 147) or the grant of jurisdiction in some other way." BOUSCAREN, p. 99.

according to norms established by the Ordinary with a view to the various needs and circumstances of time and place.⁶²

The canonical mission might require either the power of orders, the power of jurisdiction, or both. Power of orders is defined as the power to sanctify and was conferred upon deacon, priest and bishop; power of jurisdiction might be granted to any cleric according to the terms of the canonical mission. Though there were other types of benefices,⁶³ the classical ‘benefice’ was a parish which required both power of orders and power of jurisdiction for the full ‘care of souls’.⁶⁴

The title provided a source of income for the cleric⁶⁵ and took the form of the bestowal of a benefice,⁶⁶ state subsidy, or some other means by which the bishop determined that support was provided.⁶⁷ No one could be ordained without consideration of canonical title which provided for the support of the cleric. The legal effect of incardination for the diocesan bishop was that he was obligated to see to the *provision* of support for the clergy he ordained or incardinated.⁶⁸ The cleric had a right to be supported by the church and he had a legitimate claim in justice against the particular church of incardination.⁶⁹

The benefice was an important legal entity and was defined in the 1917 Code as: “a juridic entity perpetually constituted or erected by the competent ecclesiastical authority, consisting of a sacred office and the right to receive the income from the

⁶² 17 CIC, c. 979, §1: “Pro clericis saecularibus titulus canonicus est titulus beneficii, eoque sufficiente, patrimonii aut pensionis.” c. 797, §2: “Hic titulus debet esse et vere securus pro tota ordinati vita et vere sufficiens ad congruam eiusdem sustentationem, secundum normas ab Ordinariis pro diversis locorum et temporum necessitatibus et adiunctis dandas.”

⁶³ Offices that did not require power of orders, e.g., a cardinal possessing an ecclesiastical office in a Vatican Congregation that did not require ‘care of souls’ did not necessarily require ordination though he might possess a benefice which provided for his support.

⁶⁴ 17 CIC, c. 453.

⁶⁵ 17 CIC, c. 114.

⁶⁶ 17 CIC, c. 1409 ff.

⁶⁷ The cleric might be beneficiary of family patrimony or inheritance. The bishop’s obligation is to see that the cleric is properly provided for, he does not *have* to provide it himself.

⁶⁸ 17 CIC, c. 981, §2.

⁶⁹ 17 CIC, c. 122.

endowment connected with the office."⁷⁰ As a consequence, the endowment, the property or 'income' stemming from it, belonged to the juridical moral person, that is, the benefice itself. However, this juridical person is considered a minor⁷¹ in law. Lawful authority appointed an administrator to take care of the benefice which included property or endowment from which there flowed some 'income'. Further, the protection of the property of the benefice is guaranteed by the law in that an administrator could not alienate⁷² the property of the moral person without permission of competent authority.

The administrator held "title" to the benefice and was thereby *entitled* to receive goods produced or 'income' from the benefice as long as he held title and satisfied the obligations attached to the title.

Given this context, the exact nature of this "income stemming from" the benefice is difficult to perceive. Indeed, it is better expressed in the ancient notion of pension. John J. Myers notes in the *Commentary*: "Previous commentators have traced the origin of benefices to the pension granted Roman soldiers worthy of merit or to the Germanic feudal system of rewarding special service by granting a life-income."⁷³

There are a number of elements involved: first, there is no strict right to the pension in this context; second, it is a gratuitous gift provided by the donor as a reward; third, the obvious intention is to provide for the material support of those who performed some duty honourably over a period of time *past*; fourth, the benefice was real property, but usually, the beneficiary did not receive title or proper ownership of the property providing support; fifth, the material support is provided out of: (1) the real property residual products (grain, livestock, tenant rents); (2) a monetary stipend granted annually, or (3) an accrued interest on capital; and sixth, the key feature is that the material support was guaranteed for life.

⁷⁰ 17 CIC, c. 1409. "Beneficium ecclesiasticum est ens iuridicum a competente ecclesiastica auctoritate in perpetuum constitutum seu erectum, constans officio sacro et iure percipiendi reditus ex dote officio adnexos."

⁷¹ "All church property is held by moral persons in the Church and moral persons have the status of minors in church law. The administration of property of minors is subject to administration under special laws in every society." BOUSCAREN, p. 824.

⁷² Cf. BOUSCAREN describes those things which constitute alienation, p. 833.

⁷³ JOHN J. MYERS, in *Commentary*, p. 870.

Many of the above elements of benefice were adopted by the Church; however, the original purposes were somewhat shifted. The ecclesiastical benefice was not theoretically intended as a reward for past services (pension) but rather to ensure on-going ministry to the faithful. The guarantee of material support was intended to free the cleric from concerns about his material well-being in order that he could dedicate himself full-time to ministry.⁷⁴

The original notion of pension support deriving from benefice as reward for *prior* honourable service now shifts to the provision of material support when actual service of ministering is being provided and is to continue when that service may no longer be possible. In the latter situation, the benefice is now to provide continuing support (pension) as a reward for ministering over time: "According to c. 1429, §2, Ordinaries have power to impose pensions upon parochial benefices, only in favour of a departing pastor or vicar, and not exceeding one third of the revenues of the benefice."⁷⁵

It is notable that there does not appear to be a direct connection between the income derived from the benefice and services rendered by the possessor of the benefice which would be a strict interpretation of a remuneration relationship. Rather, support is due as a right, when title is received to the benefice. It is also the benefice that is expected to provide pension for the former possessor of the title, given that he remains in good standing with the Church.

In the English-speaking North American world, benefice, in its classical European connotation described above, was very rare. Practically all priests in North America did not possess a title *of* benefice; rather, they were ordained *with* the title of: "service to the diocese" or "service of the missions."⁷⁶ The parishes provided support to the clergy by their free-will offerings.

⁷⁴ 83 CIC, c. 286 continues this desire with prohibitions concerning clergy conducting business.

⁷⁵ BOUSCAREN, in *Canon Law Digest*, 2, Milwaukee, Bruce Publishing, p. 440.

⁷⁶ CONC. TRID., SESS. XXIII, "De Reformatione", cap. 16: "[...] no one hereafter can be ordained who is not attached to the church or pious place for whose necessity or benefit he is received." Translation from BOUSCAREN, p. 100. 17 CIC, 981 or 'service to the missions:' "[...] titulo missionis [...]."

Return to the lay state by a process of laicization or dismissal as a penalty removed the juridical status of incardination and subsequent power of governance;⁷⁷ however, the return to the lay state did not remove the sacrament or power of orders.⁷⁸

1.3.4 Incardination in the 1983 Code of Canon Law

The Code, promulgated by John Paul II in 1983, has eliminated the notion of 'title of ordination.'⁷⁹ Vatican II has called for the revision, and the eventual phasing out, of the benefice system⁸⁰ and the Code mentions it only in this context. Further, the Code does not use the term canonical mission. The Code did not remove the juridical fact of incardination nor its implications described above. Implicitly, the notion of title continues to exist in that no one is ordained for service to the church-at-large but ordained for a particular church or institute.⁸¹

The fact of ordination guarantees material support for the cleric as provided by a particular diocese; however, appointment or assignment to a specific ministry becomes the basis for the actual provision of material support. In North America, the right to support comes from an implicit title of 'service to the diocese' with specific service determined by appointment or assignment.

The diocesan bishop is the authority granting appointment or assignment. To give him more flexibility in managing his human resources, the status of irremovable pastor was eliminated by Vatican II, *Christus Dominus*, no. 32, and Paul VI, *Ecclesiae Sanctae*, I, 20 (1)⁸² and Bishops' Conferences were permitted to establish time limitations for the office of pastor.⁸³ With the removal of the canonical office of 'irremovable pastor' a significant shift occurred in the Code.

⁷⁷ 17 CIC, c. 2305, §1

⁷⁸ 17 CIC, cc. 211, §1; 822 delegates "de iure" jurisdiction to absolve in danger of death.

⁷⁹ The term "title of ordination" is not used in the 83 CIC but title continues to be used in other contexts; for example, as in c. 189, §4. Once an office attached to the title of a parish has been resigned and the resignation accepted, the resignation cannot be withdrawn. A cleric can *regain* office under another 'title'.

⁸⁰ VATICAN II, *Christus Dominus*, [=CD] in FLANNERY, no. 28, p. 581; and, PAUL VI, *Motu proprio, Ecclesia sanctae I*, [=ESI], in FLANNERY, no. 18, p. 602; and, *PO*, in FLANNERY, no. 20, p. 899. 83 CIC, c. 1274 provides for those regions where the benefice system continues to exist.

⁸¹ 83 CIC, cc. 269, 1°; 1025, §2

⁸² *CD*, in FLANNERY, no. 32, p. ; *ESI*, in FLANNERY, no. 20 (1), p.

⁸³ *CD*, in FLANNERY, no. 31, p. 583; CANADIAN CONFERENCE OF CATHOLIC BISHOPS [=CCCCB], *Official Document* [=OD] no. 599, 14-05-85; *Studia canonica*, [=SC] 19 (1985), p. 173; and in *Annotated*, p. 1321; 83 CIC c. 522. CCCB is one of Bishops' Conferences who established time terms for pastors.

The security of tenure and consequent material support based in a particular parish was virtually absolute in the 1917 Code tradition. Since the pastor was likely to serve a particular parish for his entire life, there developed in the pastor both a sense of ownership and personal identity with a particular parish. The often used expression – the priest married to the church – became actualised in the pastor married to a *particular* parish. The bonding was very deep spiritually, emotionally, mentally and even physically for the pastor. The response of the faithful to this reality and image was also very real.

Today, the symbol of pastor ‘married’ to his parish as bridegroom to bride is no longer relevant. The temporary nature of appointments cannot help but be interpreted both by pastors and people in a context of a “manager” mentality. A temporary pastor-people relationship that is functional in providing specific services, becomes essentially devoid of the possibilities of investing substantial energy toward stable relationship between the interested parties.

The mobility factor that is common to North American life, creates the illusion of impermanence in every sphere of human existence. Clergy also tend to be highly mobile. The very routine of pastoral appointments expresses mobility. A newly ordained presbyter usually serves as a parochial vicar⁸⁴ in large urban parishes. Next, he moves to a small rural parish. Then, depending on performance, he moves to pastorates of larger city parishes. This parallels the rise of a person up the corporate ladder of extra-ecclesiastical institutions.

Consistent with the notion of corporate institutional dynamics, the 1983 Code now uses the language of extra-ecclesiastical institutions in determination of status and remuneration. The general notion of support now falls into two categories: remuneration and benefit. Benefit, in its canonical context, refers to support in incapacity and retirement.⁸⁵

⁸⁴ 83 CIC, c. 548, §2.

⁸⁵ *CD*, in FLANNERY, no. 8, p. 596 says: “[...] provision of a proper living for all clerics who are, or have been, engaging in ministry [...]” Support is due when clergy: “[...] are engaging in ministry [...]” (remuneration); or, “[...] have been engaging [...]” (support in context of incapacity, retirement).

1.3.5 Distinction of Support between 1917 Code and 1983 Code

The 1983 Code's departure from the traditional perspective is demonstrated in the philosophical alteration of the *origins* of support. The CSLA commentary on c. 281 from the 1983 Code, indicates that the origin of support in the 1917 Code stemmed from the *status* of ordination by which one became a sacred minister and received title. Support was perceived within the context of distributive justice. In the 1983 Code, *remuneration* is now perceived within the context of commutative justice.⁸⁶ In view of c. 17,⁸⁷ which provides for interpretation of words in their proper meaning and context, what are the implications of using the term 'remuneration'?

1.3.6 Support and Remuneration

Since power of governance is attached to the provision of service, unless the power of governance is granted by the Code itself⁸⁸ and danger of simony⁸⁹ is removed, the normal manner of providing service is through the acquisition of an office or assignment.⁹⁰ One may also provide service by virtue of delegation or the possession of diocesan faculties.⁹¹ Diocesan faculties afford the *potential* opportunity to perform service usually on an *ad hoc* basis. In this latter case, a religious attached to a monastery may provide week-end service to a diocesan parish and received remuneration. His community receives the payment for the performance of this service which is on behalf of the diocese.

When service is provided, according to the Code, c. 281, §1, remuneration is an entitlement. Remuneration in common definition and usage of language is understood as pay for services rendered.⁹²

⁸⁶ 83 CIC, Commentary on c. 281, p. 234, gives a succinct exposition of the issue.

⁸⁷ 83 CIC, c. 17: "Leges ecclesiasticae intellegendae sunt secundum propriam verborum significationem in textu et contextu considratam; quae si dubia et obscura manserit, ad locos parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum." The Latin *proprius* is a technical term expressing the notion of clearly accepted definition of the term in the context of a given societal understanding; that is, an accredited dictionary's definition.

⁸⁸ 83 CIC, cc. 976; 1079; 1080.

⁸⁹ 83 CIC, cc. 149, §3; 848, 947; 973; 1380.

⁹⁰ 83 CIC, cc. 129-144, especially, 131, §1. Power of governance is associated with ecclesiastical office, delegation and habitual faculties.

⁹¹ 83 CIC, c. 131.

⁹² JOHN XXIII, *Pacem in terris*, AAS, 55 (1963) 257-304. English translation in Walsh, no. 20, p. 130. Remuneration is identified with commutative justice and in Pope John's statement, the worker is to receive

1.3.7 Remuneration Attached to Employment

The implication is that remuneration is *directly* connected to permanent employment or the causal providing of services. This may be full-time service by virtue of office or assignment; or, casual, *ad hoc* service, by virtue of delegation or diocesan faculties.

Financial stability is established by obtaining an office or assignment. Office or assignment may be for indeterminate or determinate periods of time. Indeterminate time means a term of office⁹³ or a length of service that is not specifically defined in universal or particular law (e.g. vicar general). A person possessing the office of pastor, though capable of transfer⁹⁴ at specified intervals, is expected to work in continuing series⁹⁵ while possessing the office until universal or particular law provides for his resignation or he submits his resignation.

Currently in universal law, a pastor is expected to tender his resignation after his seventy-fifth year and his resignation must be accepted for the obligations to cease.⁹⁶ A specific term of office is determined by universal or particular law itself, such as, the five year term for a member of a diocesan finance committee⁹⁷ or a judicial vicar.⁹⁸

As remuneration is connected to employment or provision of service on an *ad hoc* basis, it is possible to use the analogy stemming from commutative justice in that there exists the resemblance of roles and functions as between capital and labour, employer and employee, owner and worker. The 1983 Code adopts the language of the marketplace.

enough in wages to provide for himself and his family and that they have the capacity to live in a decent state based on human dignity.

⁹³ A diocesan bishop remains attached to a particular church unless office is lost according to law, cc. 184-196. Stability is assured to both office and the person occupying the office in order to provide continuing service to the people of God; however, its corresponding office, pastor, is subject to time limits in any one parish where it has been authorised by a conference of bishops.

⁹⁴ 83 CIC, c. 190.

⁹⁵ A pastor assigned to any number of different parishes, one after the other, according to time limitations imposed on a pastor for any one parish by decree of the Bishops' Conference.

⁹⁶ 83 CIC, cc. 538, §3; 189.

⁹⁷ 83 CIC, c. 492, §2.

⁹⁸ 83 CIC, c. 1422, §2 states that "judicial vicar, associate judicial vicars and other judges are appointed for a specified period of time." The Bishops' Conference establishes the term of office.

1.3.8 Remuneration and Diocese as Corporation Sole in Civil Law⁹⁹

The diocese exists in two jurisdictions: ecclesiastical and civil. As an ecclesiastical juridical public person,¹⁰⁰ the diocese is administered according to law¹⁰¹ through the office of bishop.¹⁰² The bishop is the sole legislator, sole executor and sole judge in the diocese. The diocese also exists in a civil pluralistic society. Leaving intact the ecclesiastical dimension, how is the issue of support perceived in a civil law?¹⁰³

In the context of the marketplace and civil law, the diocese in Canada and United States is normally constituted as a civilly constituted corporation. *Black's Law Dictionary* defines corporation as:

An artificial person or legal entity created by or under the authority of the laws of a state. An association of persons created by statute as a legal entity. The law treats the corporation itself as a person which can sue and be sued. The corporation is distinct from the individuals who comprise it.¹⁰⁴

Corporations that consist of one person only, and his successors, are “incorporated by law in order to give them some legal capacities and advantages, particularly perpetuity, which in their natural persons they could not have had.”¹⁰⁵

Ecclesiastical dioceses are constituted in civil law as ‘corporations sole’ and, as such, these corporations comply with civil law requirements in certain matters as defined in the Act of incorporation. Consequently, dioceses are also understood to be the legal civil entity: The Episcopal Corporation of the Roman Catholic Diocese of Somewhere in

⁹⁹ References to civil law refer to ‘common law’ legal systems and not the specific *Code of Civil Law* as practised in the Province of Quebec in Canada or the State of Louisiana in the United States. As a legal system *Civil Law* is not excluded since the Civil Law as practised in the locations noted, also possess legislation in this matter. In the Province of Quebec, canonically erected parishes *are* recognised by the Civil Law itself, as *civil* corporations. This paper presupposes that canonically erected parishes are *not* incorporated as a general rule in Canada or United States, excepting in Quebec and Louisiana.

¹⁰⁰ 83 CIC, cc. 114, §1; 116.

¹⁰¹ The *Code of Canon Law* and other decrees relevant to the office of diocesan bishop.

¹⁰² 83 CIC, cc. 369; 375.

¹⁰³ In viewing the subject from a civil perspective, the author utilises *Black's Law Dictionary* for legal terminology. Some parallels are drawn between the two legal systems.

¹⁰⁴ HENRY CAMPBELL BLACK, The Publishers Editorial Staff, co-authors JOSEPH R. NOLAN and JACQUELINE M. NOLAN-HALEY [et. al.], *Black's Law Dictionary* [=Black's], 6th ed., St. Paul, MN, West Publishing Co., 1990, p. 340a.

¹⁰⁵ *Ibid.*, p. 341a.

Someplace.¹⁰⁶ Therefore, do these corporations, directly or indirectly, become the legal employers for personnel employed in any capacity¹⁰⁷ by these corporations? Would diocesan parishes in English Canada be similar to corporate branch offices since parishes in English Canada do not normally possess their own civil corporation status?

The precise civil law relationship between the civil corporation and those who formally represent the diocese as clergy, and under what circumstances, is unclear.¹⁰⁸ Do clergy act as an agent of the corporation or as an employee of the corporation? In civil law terminology, *Black's* defines the two terms: agent and employee. An agent is defined: "A person authorized by another (principal) to act for or in place of him; one entrusted with another's business."¹⁰⁹ An employee is defined:

A person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.¹¹⁰

Though both definitions may apply to clergy, the former pertains more to an *external* relationship; that is, the agent acting on behalf of the corporation in provision of service to those not specifically identified with the official governance of the institution.¹¹¹ The employee relationship is an *internal contractual* relationship between the corporation and one engaged *by* the corporation to act on its behalf in an official capacity with those outside the corporation itself.¹¹²

¹⁰⁶ The actual form of the civil title of incorporation may vary according to the province or state, e.g., Roman Catholic Episcopal Corporation of the Diocese of Somewhere, or some other defined form for title.

¹⁰⁷ Clergy, contracted lay staff at diocesan or local church levels. A question continues to exist when a parish secretary, youth worker or caretaker is paid by a parish but is in a diocesan pension plan. Who is the actual employer?

¹⁰⁸ Rev. Francis Morrissey, OMI, JCD, indicates that for tax purposes, clergy are deemed to be self employed; however, this author maintains that clergy are defined as employees according to Revenue Canada definition. Tax law is quite different from the Labour Relations Act and the entire issue needs further study.

¹⁰⁹ *Black's*, p. 63.

¹¹⁰ *Ibid*, p. 525.

¹¹¹ Civil liability actions seeking recompense for clergy misconduct have deemed clergy to be agents of the corporation.

¹¹² The theological-canonical Roman Catholic Christian identity is not the point at issue in this context.

In this latter context, the diocesan corporation employs diocesan clergy.¹¹³ During periods of employment, one party (employee-deacon, presbyter) provides labour/service and the other party (employer- diocese) pays salary or, in lieu of salary, benefits, such as stipends, housing allowances, insurance, etc. This transfer of labour to another person or agency for pay and/or benefits implies an implicit or explicit¹¹⁴ contract between the parties concerned. It is mostly an *implicit* contract between bishop and diocesan clergy but an *explicit* contract between the bishop and a religious community who reside in the diocese, or who may have a priest serving the diocese or working in a parish church.

1.3.9 Remuneration and Contract

A contract is an “agreement between two or more persons which creates an obligation to do or not to do a particular thing.”¹¹⁵ Both contracting parties become subject of rights and duties. The employer contracting labour legitimately expects certain things to be done and even directs how they are to be done. Employers expect certain levels of competence, responsibility and accountability, and even integrity, loyalty and trust (though these are harder to quantify). The employee reasonably expects fair recompense, fair treatment, healthy working conditions, personal respect. Another reasonable expectation of both parties is ‘due process’ in the event of a dispute. What is fair to one is not necessarily fair to another.

Further, the less explicit the contract, the greater the potential for misinterpretation of rights, duties, and obligations. There is also a greater difficulty in establishing criteria for performance and accountability. An explicit contract affords greater protection of rights to both contracting parties and clarifies expectations.

It is entirely possible to make application of the principles of contract in regard to diocesan clergy without detriment to the authority of the diocesan bishop. In fact, given the context of contract in virtually every other civil institution or labour situation, the definitions and terms of employment provide great security for both management and

¹¹³ The source of remuneration may be from the diocese itself, or from another title.

¹¹⁴ 83 CIC, cc. 681 §2; 790, §1, 2°.

¹¹⁵ *Black's*, p. 322.

labour. This clarity contributes enormously to mutual respect, individual dignity and productivity.

The principle of contract as applied to a diocese and its clergy does not compromise either party. Ordination is one thing; canonical mission (employment) quite another. The former is a response to a sacred call of God; the latter, which involves governance and power, is often a discretionary management decision by competent authority¹¹⁶ leading to a particular employment or task.

The incumbent to an office or assignment is invested with the necessary authority and powers to complete the mission and task; however, the administrative parameters of this local authority are sanctioned and limited by law or by competent authority. There continues to exist wide discretionary authority which is certainly well served by constituted administrative procedure and process. Indeed, considerable provision is already made for administration in various canons, especially in Book Five of the Code.

1.4 Remuneration and the 1983 Code of Canon Law, Canon 281, §1

1.4.1 Presbyterorum ordinis and Clergy Remuneration

The canonical notion of remuneration and support is based on the conciliar decree *Presbyterorum ordinis*,¹¹⁷ 7 December 1965. The first part of the quote establishes the principle of remuneration and places remuneration within the context of the institutional organisation of full-time employees. The second part of the quote establishes principles upon which scales of remuneration are based. In a parallel fashion, this is akin to civil institutional management establishing wage and benefit structures for full-time employees.

Completely devoted as they are to the service of God in the fulfilment of the office entrusted to them, priests are entitled to receive a just remuneration. For "the laborer deserves his wages" (Lk. 10:7).¹¹⁸

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

¹¹⁶ The complexity of the issue of defining and structuring discretionary authority is explored by JOHN BEAL in *Confining and Structuring the Exercise of Administrative Discretion in the Particular Church*, Canon Law Studies, no. 515, The Catholic University of America, Washington, 1984.

¹¹⁷ *PO*, in FLANNERY, nos. 20; 21, pp. 898-899.

¹¹⁸ *PO*, in FLANNERY, no. 20, pp. 898-899.

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.¹¹⁹

1.4.2 Remuneration and the Code of Canon Law, Canon 281, §1

Canon 281,§1 reads as follows:

1. When clerics dedicate themselves to the ecclesiastical ministry they deserve a remuneration which is consistent with their condition in accord with the nature of their responsibilities and with the conditions of time and place; this remuneration should enable them to provide for the needs of their own life and for the equitable payment of those whose services they need.¹²⁰

1.4.3 Clerics Dedicated to Ministry

The outline of *PO* is readily detectable in c. 281. It should be noted there is a language shift from the document to c. 281, §1. The canon does not use the word "office" or "priest" but rather clerics and bases the remuneration on the principle, "When clerics dedicate themselves to the ecclesiastical ministry [...]."

The use of the phrase is significant. Gregory Ingels suggests that this phrase indicates a shift in perspective from the 1917 Code. Remuneration is now *not* connected to benefice per se and the support that flowed from provision of ministerial service within that context, but rather "[...] remuneration was now listed among those rights enjoyed by the clergy, a right which was to be merited "when clerics dedicate themselves to the ecclesiastical ministry" (c. 281, §1). Hence, in current law, Ingels maintains that a right to remuneration hinges primarily on a cleric's *dedication* to ministry [...]."¹²¹

According to Ingels' the notion of support, remuneration has shifted entirely from the objective *fact* of providing actual ministry within the context of a benefice and the support consequently being provided from that benefice, to the wider notion of the right to remuneration as stemming from the subjective *intention* of the cleric to provide

¹¹⁹ Ibid., p. 899.

¹²⁰ 83 CIC, c. 281, §1: "Clerici, cum ministerio ecclesiastico se dedicant, remunerationem merentur quae suae conditioni congruat, ratione habita tum ipsius muneris naturae, tum locorum temporumque condicionum, quaque ipsi possint necessitatibus vitae suae necnon aequae retributioni eorum, quorum servitio egent, providere."

¹²¹ GREGORY INGELS, "Canon 281: Obligation of Support to a Priest in Treatment," in *CLSA Advisory Opinions, 1984-1993*, pp. 63-64.

ministry. In Ingel's view of the 1917 Code, the bishop ordained a cleric for service to a particular benefice, office, or function *in se*, to which support was attached. It followed that the cleric was *per accidens* incardinated to a more *undefined* service to the particular church as well. Ingels now interprets that a cleric was simultaneously ordained to the 'service of the diocese', and he also received assignment or benefice. In other words, a priest was ordained *for* service to the diocese *and then* he was given an assignment by the bishop which provided the remuneration *because* he was working. In other words, the cleric was gainfully employed.

For Ingels, the 1983 Code would seem to reverse this process. The bishop, by fact of ordination stratifies five elements in this action:¹²² (1) as a result of ordination the bishop has accepted the cleric's *intention* to service of the diocese (since it is the bishop's right to assign the ministry and the cleric is not ordained *for* a permanently defined ministry or assignment at the time of ordination);¹²³ (2) the intention is actualised in the fact of ordination (objective and subjective elements are joined); (3) the ordination *effects* incardination into a particular church; (4) the bishop defines and provides a forum for work (ministry) and the priest works in that forum; (5) the actualised "intention" is presumed¹²⁴ to continue to exist unless revoked by the cleric himself, by the law,¹²⁵ or the fact of incardination is terminated by the bishop through an formal act (decree) after due process.¹²⁶

¹²² The use of the word "action" is deliberate. The intention to *receive* orders and the *act* of ordination itself is included in the word "action"; however, this action implies continuance in time and the intention perdures beyond the act of ordination itself.

¹²³ The generic 'service to the diocese' is the umbrella of support specified in actual appointment.

¹²⁴ 83 CIC, c. 78. Ordination is a privilege not a right; consequently, the fact of ordination continues to exist until the contrary fact can be proven in law (invalid ordination). Orders is a sacrament which also effects the ecclesiastical juridical act of incardination; therefore, the intention of incardination is also presumed to continue to exist until the opposite can be proven. The intention to orders cannot be revoked after the fact of ordination; however, the intention of incardination can be revoked by the cleric himself as in the case of excardination. The intention of serving a particular diocese is transferred to another.

¹²⁵ 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; however, the bishop could introduce the case (83 CIC, c. 1708).

¹²⁶ A declared sentence of the court in a penal matter (c. 1612) and its proper execution (cc. 1650; 1653) or by an administrative decree such as, invalidity of orders (c. 290, 1^o) or, rescript of laicization by the Holy See (c. 290, 3^o) and its execution.

Ingels now maintains that the burden to provide continuing remuneration from the diocese stems from the generic notion of the cleric's subjective intention of remaining dedicated to the service of that diocese. The actual provision of a specific employment is the right of the bishop; it is his decision, not the cleric's. Therefore, whether or not a specific employment is offered during the period of incardination does not change the obligation of the diocese to provide remuneration to the cleric as long as that cleric remains subjectively *dedicated* to ministry.

Is this, in fact, what the 1983 Code actually implies? Ingels would seem to confuse not only the proper meaning of the words, remuneration and support as they are defined in current English language, but also the intention of the words in context of the 1917 Code as distinguished from the 1983 Code. Neither the use of the word 'remuneration' nor the concept was actually part of the 1917 Code. Support was broadly interpreted as food, shelter and the provision of other necessities of life provided by a benefice in virtue of the title. It was assumed that the cleric would provide ministerial service.¹²⁷ However, the title was the basis of support and the remuneration was not directly connected to the ministry being performed by the cleric. Thus, in the absence of a benefice, the same type of support was provided as a consequence of patrimony, government subsidy and the like. Individual performance did not determine the support.

The actual level of support could vary widely within a given church. Further, the bishop was obliged to see that support was provided by some means even if the cleric had returned to the lay state;¹²⁸ the bishop was obligated to provide it himself if he personally engaged the services of the cleric. Basic support is: "to keep from failing; provision of necessities."¹²⁹

¹²⁷ There were absentee landlords as well as those who accumulated benefices. The obligations of parish residence and norms as to how long one may be absent from one's church or parish are indications that this was a historical problem. Current legislation continues to be sensitive to this possibility and continues the traditional response in cc. 395; 533.

¹²⁸ 17 CIC, cc. 2303, §2; 2304; 2305 refers to deposition from the clerical state. If the priest is indigent, the bishop should provide for him as best he can. If the deposed cleric continues to show no signs of amendment, the bishop could stop even the charitable subsidy.

¹²⁹ FOWLER, p. 1072.

A presbyter who voluntarily returns to the lay state would naturally be expected to provide for himself.¹³⁰ Should he fall on very difficult times or become destitute,¹³¹ the bishop, according to the financial resources of the diocese, is still able to provide a charitable subsidy in distributive justice and Christian charity. Why? Because the person continues to be a presbyter and a member of the *diocesan* sacerdotal college. Further, the conditions of service for a diocesan presbyter make him very vulnerable financially unless he has income from other sources.¹³²

The concept of justice appropriate to remuneration and support is commutative and distributive justice respectively. Commutative insofar as office or assignment provided remuneration in return for ministry provided; distributive, insofar as the bishop, according to his financial resources, would provide support in the absence of any other means for the cleric to support himself. This would account for both the obligation of the ministry to provide; as well as the bishop to provide if no other means of support were available to the cleric. It is in this latter type of context that the 1983 Code, cc. 281, §2; 1274, §2, and 1350, speaks of support and not in a specific context of remuneration as a component of commutative justice.

The 1983 Code becomes much more specific in that it separates the notion of support into two elements: (1) support as *genus*, and (2) remuneration as species of support. Not only are the definitions of the words different; but they possess a separate intention in the canons mentioned in this connection and described above. In the context

¹³⁰ The philosophical shift from the dignity (respect) of the person and order of priest within a diocesan sacerdotal college to economic capitalism is evident in a norm promulgated by the Archdiocese of St. Paul-Minnesota, 12 July 1976: "Financial Assistance to Priests on Leave of Absence" in *CLD*, 5, in ref. to 17 CIC, c. 143. The Archdiocese will "[...] authorize payment of the equivalent of two month's salary [...] will be honored only if the priest on leave has not found *other* [italics mine] employment. [...] hospitalization insurance will be continued by the Archdiocese for one month [...]. Rights are acquired in our priests' pension plan according to the number of years of service." Such norms are necessary both from a legal and financial perspective; however, the tone and terms of the policy are more suggestive of IBM corporate policy than a charitable caring statement to a brother of a Christian church who has made a different life-choice.

¹³¹ In such extenuating circumstances; e.g., alcoholism, a diocese might contract a room and make arrangements for a food allowance with a local restaurant. The brother priest should not be abandoned and the bishop himself or through another, both by his office and Christian charity, is obligated to provide spiritual assistance to the wounded brother and, as much as it is feasible, material support.

¹³² Low pay, accommodation and the obligations of charity do not normally allow for accumulation of wealth of diocesan priests in parish ministry.

of the 1983 Code, when clerics dedicate themselves to ecclesiastical ministry, they are capable of having their needs provided in two contexts: remuneration as already described and founded in commutative justice and, as support founded in distributive justice. This distinction becomes important when it becomes necessary to refer to the proportionality of the bishop's obligation to provide support in a context of a fully employed priest versus a priest who may be incapacitated, unassignable or returned to the lay state. It is also significant when placed within the context of retirement plans that are to be discussed later.

1.4.4 Issue of Personnel

The canon refers to clerics; consequently, the personnel basis has been enlarged to presumably include deacons¹³³ and even bishops¹³⁴ who are without ecclesiastical office. The canon also enlarges the organisational function not only to include those possessing "office" but also those who dedicate themselves to ministry in any manner but who may not possess an ecclesiastical office.

1.4.5 Ministry Redefined

The use of the term "ministry" is also significant and is understood in two contexts: theological and canonical. Theologically, ministry means that there is some rendering of aid or service to another.¹³⁵ This ministry is called forth from that discipleship conferred *by* Christ through the sacrament of baptism. It is the general responsibility of all the baptised to love and serve God as well as to love and serve the brothers and sisters,¹³⁶ proclaim the gospel and live Christian discipleship according to one's station in life. The ministry by baptismal conferral of the roles of king, priest and prophet becomes expressed in the three *munera* (functions) of governance, teaching and sanctifying.¹³⁷

¹³³ 83 CIC, 281, §3.

¹³⁴ Retired, auxiliary bishops receiving remuneration or support from the diocese.

¹³⁵ Mt. 22: 34-40. The call of Christian ministry and discipleship is rooted in Christ's command to love. This command may be fulfilled in a ministries of healing (health care), teaching and counselling, etc.

¹³⁶ Mt. 22:23-33; Lk. 20:27-40.

¹³⁷ Husbands are to minister to their wives and wives minister to their husbands; parents minister to their children (governance and teaching (c. 774, §2)). The vocational choice is one vital means of sanctification.

The Church further refines the notion of ‘ministry’ which must be distinguished from ‘apostolate’. Ecclesiastical authority canonically institutes certain ecclesiastical roles and functions as ministries erected in a stable manner for spiritual purposes. These ministries enable the Church to carry out its evangelising mission by authorising certain persons to provide designated service to the faithful. A person, cleric or lay, ordained or designated by ecclesiastical authority to perform service for the spiritual benefit of the people of God is thereby authorised to act in the name of the Church. Most notable of the instituted canonical ministries of divine origin are bishop, presbyter, deacon; ecclesiastical authority has also instituted the lay ministries of lector and acolyte.¹³⁸

An apostolate is an individual person’s or individual institution’s¹³⁹ *chosen* expression of gospel response to serve the people of God and the poor through the spiritual and corporal *works* of mercy. Though this is ministry in the theological sense, canonically, the apostolate, that is, the work itself is not per se instituted by ecclesiastical authority in a stable manner. However, a group who have chosen to form a community *in order to* perform a corporal or spiritual work of mercy may structure, organise and have itself canonically instituted in order to more effectively perform the work to which they feel called. The structure may involve offices as in the case of Societies of Apostolic Life.¹⁴⁰

Since the 1983 Code does not define but only describes ministry throughout the canons, some confusion continues to exist in the appropriate application of the words, ministry and apostolate. Suffice to say, this paper is concerned with ecclesiastical offices canonically instituted by competent authority in a stable manner for spiritual purposes.

1.4.6 Remuneration and Appointment to Office

The 1917 Code defined ‘office’ both in a broad and strict sense in c. 145:

¹³⁸ 83 CIC, c. 230, §1. Described as a stable ministry, the canon presumes the service provided to be voluntary without the *right* to “sustenance or remuneration.” Remuneration is not absolutely excluded as a possibility given the social justice issues involved if one were performing this service in the absence of clergy on more than an occasional basis. Also, training costs are an issue, if applicable, for lectors, travel costs for acolytes ministering extended territorial areas, etc.

¹³⁹ Institutes of consecrated life whose identifying feature is solemn vows may also perform apostolic works; such as teaching, nursing, contemplative prayer according to their charism. Societies of Apostolic Life exist as institutions identified with their particular apostolate (or work)

¹⁴⁰ 83 CIC, cc. 731-746.

§1. An ecclesiastical office in the broad sense is any function which is exercised for a legitimate purpose; in the strict sense, however, it is a function stably constituted by either divine or ecclesiastical ordinance to be conferred according to the norm of the sacred canons entailing at least some participation in ecclesiastical power of either orders or jurisdiction.¹⁴¹

By interpreting this canon in the strict sense, the 1917 Code makes provision for support of clergy since only clergy could possess ecclesiastical offices involving power of governance. The parish was the normal source of support income. Once the cleric received the title and, consequently, the benefice, the incumbent to the office could not be removed without due process *because* the source of his support was being attacked. The status of the irremovable pastor¹⁴² clearly exemplifies both the urgency the Church felt for providing stable spiritual care of the faithful, as well as, for eliminating the propensity of some to seek higher office for greater benefits because of the greater wealth of another benefice. The element of competition was minimised.

A notable change occurs in *PO*, no. 20, when in the context of calling for the abandonment or at least the serious reformation of the benefice system, the document now goes on to say: "This [ecclesiastical office] should in future be understood as any office conferred in a permanent fashion and to be exercised for a spiritual purpose."¹⁴³ The statement of definition calls for the re-interpretation of office in the strict sense and places the statement within the context of remuneration and financial support of *any person* possessing an ecclesiastical office. This restructured definition is now expressed in the 1983 Code in c. 145:

§1. An ecclesiastical office is any post which by divine or ecclesiastical disposition is established in a stable manner to further a spiritual purpose.

§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.¹⁴⁴

¹⁴¹ 17 CIC, c. 145.

¹⁴² 17 CIC, c. 454 defined the status of pastor as irremovable, removable and religious. Irremovable was not absolutely irremovable, the bishop could remove for just cause and by following proper procedure: cc. 2148-2156; and, 2157-2161 for moveable pastors.

¹⁴³ *PO*, in FLANNERY, no. 20, p. 899.

¹⁴⁴ 83 CIC, c. 145, §1. "Officium ecclesiasticum est quodlibet munus ordinatione sive divina sive ecclesiastica stabiliter constitutum in finem spiritualem exercendum. §2. Obligationes et iura singulis officiis

It should be noted that the canon redefines and extends the very notion of ecclesiastical office. Under the present discipline, an office is defined and established by proper ecclesiastical authority and is not necessarily attached to sacred orders and power of governance¹⁴⁵ as defined under the 1917 Code.

Today, an office is any stable function established by ecclesiastical authority for spiritual purposes by which the office itself provides legal status to the incumbent by virtue of appointment. Therefore, the ministry of catechist could now be determined to be an ecclesiastical office, if it were constituted in a stable manner by proper authority and if persons were mandated to this or various liturgical ministries¹⁴⁶ as are the ministries and functions of lector and acolyte. Further, the basis of remuneration contingent upon possession of an office is also broadened to include those not possessing full care of souls¹⁴⁷ but engaged in providing ministry by virtue of office on a full time basis.¹⁴⁸ The final authority formally institute ministries and to appoint to office in his diocese is the diocesan bishop.¹⁴⁹

1.4.7 Remuneration and Appointment by Assignment

When ecclesiastical authority provides an appointment to a person which confers a canonical status upon the *person* by virtue of the function to be performed, but which is not an office, the person possesses an assignment. The assignment becomes the basis for remuneration and will be contingent upon criteria established for the performance of this specifically non-ecclesiastical office function. A cleric assigned to teach in a school, but not as a chaplain, will be remunerated by virtue of his work as a teacher. This same person may be assigned to part-time ministry in a parish but not as a parochial vicar. From this parochial assignment he may or may not receive remuneration based upon the terms provided by the bishop or pastor. Assignment in this sense refers to the fact that

ecclesiasticis propria definiuntur sive ipso iure quo officium constituitur sive decreto auctoritatis competentis quo constituitur simul et confertur.”

¹⁴⁵ LG, in FLANNERY, no. 33, p. 391: “They [the laity] have, moreover, the capacity of being appointed by the hierarchy to some ecclesiastical offices with a view to a spiritual end.”

¹⁴⁶ 83 CIC, c. 230.

¹⁴⁷ 83 CIC, c. 150.

¹⁴⁸ 83 CIC, c. 231, §2.

¹⁴⁹ 83 CIC, c. 157.

'care of souls' is not the only criterion and source for remuneration, but rather is a remote cause of remuneration possibly due to orders, clerical status or specialised training.

1.4.8 Criteria Established for Remuneration, Canon 281, §1

Taken from *PO* described above, c. 281, §1 establishes a number of criteria in determining remuneration: the condition and nature of responsibilities, conditions of time and place; a person's remuneration should provide for the needs of their life and, also provide for the equitable payment of those whose services they need.

1.4.9 Remuneration According to Condition and Responsibilities

An institutional hierarchy of status and a scale of institutional value is indicated by the terms 'condition' and 'responsibilities'.¹⁵⁰ The organisational implication is that a bishop possesses greater institutional status than a deacon, a pastor more status than a parochial vicar, an episcopal vicar more status than a pastor. Consequently, status and responsibilities associated with the position held provide a basis for remuneration. Also, the number of years either in office or ordination (seniority) appears to be another criterion: twenty years service is more highly valued than two years of service.¹⁵¹ The greater the status, the greater the number of years of service, would seem to indicate a scale of remuneration. These elements parallel the notions of upward mobility and seniority in social institutions.

It should be noted that some offices and assignments require specialised training. The person possessing the office of judicial vicar or *officialis*, episcopal vicar for education, a theology professor or a high school teacher require more education and training than the present training required to fill the office of pastor.¹⁵² According to *PO* and the canon, it would seem that such persons mentioned above deserve a greater remuneration according to criteria established. Though other social institutions do comply with scales of remuneration based on skill *and experience*, it would appear in ecclesiastical practise that those who have obtained special skills through advanced

¹⁵⁰ The reference is related to power of governance and not responsibilities by virtue of ordination in se.

¹⁵¹ Diocesan pay scales are often based on years of ordination, for example, Hamilton, Toronto, *et al.*

¹⁵² This is not to suggest the office of pastor is institutionally inferior; however, in this context, what technical or advanced training is necessary to be designated competent to acquire or to continue to hold this important office in the Church? Prior to Vatican II, many young clergy were required to take clergy examinations prior to being named to a pastorate.

education in order to occupy certain ecclesiastical offices in a diocese, do not receive remuneration commensurate with their additional skills.

All non-ecclesiastical institutions provide opportunities for additional training for selected personnel and generally assume the costs associated with training and professional development. A contract is usually negotiated. The person receiving the training at the bequest and sponsorship of the institution agrees to use the newly acquired skills for a determined time within the sponsoring institution. Upon successful completion of training, the person is usually assigned greater responsibilities with increased remuneration.¹⁵³

The theory of *PO* is that those in the same classification of work should receive the same amount of remuneration. Thus, those who are pastors and who have served within defined time perimeters should receive the same remuneration. But, what is the basis of remuneration for those holding offices or assignments that have required specialised training; if one person occupies the offices of judicial vicar and pastor? The canons would seem to suggest that where diocesan resources permit, different pay scales or additional financial allowances might be in order especially when there are two different funding sources.¹⁵⁴

¹⁵³ Non-ecclesiastical institutions which possess a labour contract with their employees are generally not permitted to allow a person to possess more than one office simultaneously except in extraordinary situations. This is perceived as being dysfunctional for the institution as well as demoralising for an individual. What would be the effect on the institution if the finance officer and procurement officer were the same person? The clear distinction of role and function is necessary for the health of an organisation. Further, the demands on an individual occupying two highly demanding jobs, in time, inevitably leads to 'rust-out' or 'burn-out' and other dysfunctionality within the individual.

Institutions aware of organisational dynamics will, in such situations, re-structure their organisation both to protect the institution as well as to maintain the morale and health of individual office-holders and employees. This re-structuring can also lead to loss of positions and jobs.

In the face of declining manpower and few options, institutional churches continue to assign additional duties to a priest willing to accept them. Many do, but this practice can lead to higher rates of 'burn-out' and other health problems. A crisis approach to personnel management is both dysfunctional for the organisation, demoralising for church workers and tragic for leadership attempting to provide necessary services. It is evident today that serious re-structuring needs to be undertaken to rectify the problems associated with manpower shortages in the churches.

¹⁵⁴ A question can be raised in terms of commutative justice. A person possessing two offices with two different sources of funding might have remuneration split between the two funding sources. This would appear to be a more equitable solution rather than one party paying for full service and in fact only receiving part-time service. There is also the question of additional administrative costs assumed by one party or the other in terms of secretarial services and materials.

1.4.10 Remuneration According to Conditions of Time and Place

'Conditions of time and place' also indicate the awareness that economic and living conditions vary around the world and, indeed, even from diocese to diocese and within the same diocese. This is not only an objective economic reality but a subjective one for a diocese. The financial resources available to each diocese is different and the bishop can only operate within the financial constraints of his diocese. Therefore, the canon recommends that remuneration needs to be tied to local circumstances; it acknowledges implicitly that diocesan financial assets vary and the cost of living varies even from area to area in the same diocese or territorial region.

Dependent upon diocesan or parish resources, financial allowances could take into account distances and cost of living indexes between rural and urban areas; between a city parish two blocks from the chancery and an extensive territorial parish two hundred miles from the cathedral or chancery; between a presbyter living in a rectory at minimal housing costs to himself and a priest doing studies or teaching in a local school¹⁵⁵ living in a rental apartment.

1.4.11 Remuneration Based on Personal Needs and Required Services

The canon also acknowledges that remuneration must provide for the "needs of his own life" and based on the ability to provide for the "payment of services they need." In our local situation, of some importance is the fact that residence and the services that flow from residence, is included as part of the remuneration package of active clergy and generally provide both needs and services. This partially explains the artificially low salary scales of most dioceses. The implicit housing benefit generally accounts for the limited choice¹⁵⁶ of a non-married cleric in the matter.

The Code also makes part of the determination of the amount of remuneration such factors as the costs originating from the requirement to make a retreat,¹⁵⁷ the right to

¹⁵⁵ This presumes the priest-teacher is not receiving salary comparable to, but less than, his civil counterpart.

¹⁵⁶ 83 CIC, c. 533. The obligation of residency is interpreted rather strictly in North America though the canon says: 'prope ecclesiam' and not "in ecclesiam." Canadian interpretation and practice does allow for exceptions including during the period of building a new church and rectory.

¹⁵⁷ 83 CIC, c. 276, §2, 4°.

take a holiday,¹⁵⁸ the admonition to continue studies¹⁵⁹ and, there is an obligation to practise charity. There is also the historical custom of a priest's obligation to provide financial assistance and support to family when needed. It is also expected that the priest put something away for his later years.¹⁶⁰

In North America, this limits the concept of 'sufficient funds' to personal expenses since household and service expenses are paid by the parish. Consequently, the scope of the notion of 'sufficient funds' has consistently narrowed over the years. It is rare now that support to family or the obligation to support charities¹⁶¹ is adverted to.

Except in areas where the faithful are very poor and incapable of providing 'sufficient' funds for the maintenance of a pastor and the services he might require, a pastor is normally subsidised from diocesan or other sources.

In the Diocese of Perth, Australia, the diocesan statutes provide for a 'guaranteed minimum income' for parish priests. The more wealthy parishes are taxed to subsidise the poorer parishes.¹⁶² This is also generally true in the particular and local churches of Canada.

1.4.12 Conclusion

In conclusion, remuneration is the right of those legitimately appointed to office or specific assignment by proper ecclesiastical authority. Persons engaged in active ministry according to the terms defined in the 1983 Code, c. 281, §1, derive the right to remuneration from commutative justice.

¹⁵⁸ *PO*, in FLANNERY, no. 20, p. 899.

¹⁵⁹ 83 CIC, c. 279.

¹⁶⁰ JOHN B. HERSCH, *A Canonical Commentary on Selected Personnel Policies in the United States of America Regarding Decent Support of Diocesan Priests in Active Ministry*. [=HERSCH], Canon Law Studies, no. 544, Washington, DC, The Catholic University of America, 1994. Hersch establishes principles of remuneration on p. 233.

¹⁶¹ A pledge or commitment to a substantial donation to charity; i.e., 10% of income and not a donation of \$5.00 on occasion. This is not to say that many clergy are not generous, they are. However, when one considers 'proportions' able to be donated, clergy do not generally have a great deal to give to charity.

¹⁶² Information obtained from personal conversation with Rev. Brian Limbourn, Priest for the Diocese of Perth, Australia.

1.5 Support and Incapacity in the 1983 Code of Canon Law, Canon 281, §2

1.5.1 The Notion of Support and Incapacity in General.

It has been noted that support, defined in its generic sense, provides for a safety net of social services. Depending on the state of health or reason for support, social services include the provision of food, shelter, medical and dental insurance, financial resources for personal needs (clothing) and necessary services (retreat, transportation). The criterion of the level of support, contingent upon diocesan resources, is not intended to be bare sustenance but should be established at a level deemed to be appropriate to maintain a full human life according to both human dignity and the cleric's membership in the sacerdotal college of the diocese.

Incapacity is any situation in which a person is incapable of, or lacks gainful employment due to external economic conditions or condition of personality.¹⁶³ A person unable to work for whatever reason, receives no remuneration. There are various situations and conditions that contribute to the incapacity to generate an income.

1.5.2 Support and Incapacity Due to Physical or Mental Infirmary

Given what has been presented above, c. 281, §2 now turns attention to those who are not able to work for remuneration.

§2. Suitable provision is likewise to be made for such social welfare as they may need in infirmity, sickness or old age.¹⁶⁴

Remuneration in the structure is impossible due to inability to work because of "infirmity, sickness or old age." Normally, incapacity due to physical sickness or old age is clearly recognisable because it is readily visible in the physical deterioration or condition of the person. Clearly determined and diagnosed mental illnesses which require mandatory hospitalisation and continuing psychiatric treatment would be within the terms of this canon.¹⁶⁵

¹⁶³ For example, some ethnic communities or cultures do not adapt well to a structured forty hour work week which is a western European and North American industrial construct. Physical or mental impairment might also exclude a person from some or all gainful employment.

¹⁶⁴ 83 CIC, c. 281, §2: "Item providendum est ut gaudeant illa sociali adistentia, qua eorum necessitatibus, si infirmitate, invaliditate vel senectute laborent, apte prospiciatur."

¹⁶⁵ The Church's concern in this area is also evident in 83 CIC, c. 689, §3: "A religious who becomes insane during the period of temporary vows cannot be dismissed from the institute, even though unable to make a new profession."

Of particular importance for our time are the newly recognised illnesses associated with mental disorders such as, alcoholism and other addictions, extreme anxiety complexes, compulsive sexual disorders.¹⁶⁶ Often such disorders are treatable. However, since they also negatively impact on the institution and community, the disorder must be regarded, not only in the context of a mental disorder, but also as an institutional disciplinary matter which needs to be resolved by administrative authority.

Most often, sexual misconduct that demands legal action, ecclesiastical or civil, can be traced to mental disorders. William Woestman, referring to cc. 1041, 1° and 1044, §2, 2° has maintained the historical and legitimate requirement of strict interpretation when defining insanity or other psychic infirmities.¹⁶⁷

Strict interpretation is particularly relevant when it is a matter of removal or limitation of rights,¹⁶⁸ especially when those rights are given by the law itself. To celebrate the Eucharist¹⁶⁹ and preach the gospel are constitutive elements of the priesthood itself.¹⁷⁰ A bishop's action to extinguish these rights¹⁷¹ indicates grave reason and due process.¹⁷²

The Church is not immune from these same situations mentioned. Ecclesiastical authority must provide for good order in the institution. It must also provide for the well being of the faithful. The use of episcopal authority is necessary to provide the cleric with medical and/or disciplinary assistance as the case requires. The bishop must take into consideration medical opinion and/or judge the degree of moral culpability when a

¹⁶⁶ RICHARD J. FRANCES and SHELDON I. MILLER (eds.), *Clinical Textbook of Addictive Disorders*, New York, The Guilford Press, 1991, treats extensively addictions, particularly, the addiction to alcohol. AMERICAN PSYCHIATRIC ASSOCIATION, *Diagnostic and Statistical Manual of Mental Disorders*, 4th edition, Washington, DC., is an extensive psychiatric manual of mental disorders. Of the sexual disorders listed, pedophilia is defined on p. 527.

¹⁶⁷ WILLIAM H. WOESTMAN, Opinion, "Some Form of Insanity or other Psychic Infirmity," in *Roman Replies and CLSA Advisory Opinions 1995*, p. 80.

¹⁶⁸ 83 CIC, c. 18.

¹⁶⁹ 83 CIC, c. 904.

¹⁷⁰ 83 CIC, c. 757.

¹⁷¹ *ESI*, in FLANNERY, no. 20 (1): "The bishop may, [...] lawfully remove any parish priest from his parish [...] whenever his ministry [...] is rendered ineffective by reason of any of the causes recognized in law or for some other similar reason in the judgement of the bishop [...]" Also, 83 CIC, cc. 756, §2 and 835 demand the bishop function in a role of moderator of liturgy and he has administrative authority to discipline those not acting in conformity with liturgical law, causing scandal or disruption to a community.

¹⁷² 83 CIC, cc. 1740-1752 provide for removal process.

cleric is subject to what might be defined either as a medical psychic or mental disorder or misconduct. As mentioned earlier, clergy are not immune from sin.

If the bishop decides a medical condition exists, he must provide for the decent support of the individual suffering involved within the limits of the financial resources of the diocese and the competence of the individual¹⁷³ according to c. 281, §2 and distributive justice.

1.5.3 Support and Sanctions, Penalties

The Church's approach to imposing discipline upon those who violate the law is quite unique. It is one of the few legal systems which is sensitive both to the needs of the community as well as 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 penance.¹⁷⁴ The essential purpose of the medicinal penalty of sanction and/or penance is to reform the offender; expiatory penalties allow for restitution when damage has been done to the community, and to protect the community.

The bishop possesses the authority of legislator, executor and judge in his diocese. Consequently, he is responsible for the maintenance of order and discipline in his particular church.¹⁷⁵ He is provided the authority to act in c. 392 and the process by which this authority is exercised in Books VI (cc. 1311-1399) and VII (cc. 1400-1752).

Two canons are particularly important in the context of support when a cleric is subjected to extreme disciplinary action of the Church; they are cc. 195 and 1350. Canon 195¹⁷⁶ provides the diocesan bishop with the authority to remove someone from office by decree even though the livelihood of that same person depends on the office. The canon

¹⁷³ The cleric may be incompetent medically and therefore incapable of controlling his actions in specific areas of life or totally incapable of making rational decisions concerning his own welfare. He may also be partially competent in that when circumstances which might stimulate and activate the disorder are removed or he is in a controlled environment, he has the capacity to control the disorder. The bishop would be required to decide the extent of financial resources to be provided and the degree to which the cleric could personally control the financial resources provided by the diocese.

¹⁷⁴ 83 CIC, Book VI, especially c. 1311 which provides the competence to discipline. Also, WOESTMAN, "Restricting the Right to Celebrate Eucharist," in *Studia canonica* 29 (1995), pp. 155-178.

¹⁷⁵ 83 CIC, c. 391.

¹⁷⁶ 83 CIC, c. 195: "Si quis, non quidem ipso iure, sed per decretum auctoritatis competentis ab officio amoveatur quo eiusdem subsistentiae providetur, eadem auctoritas curet ut ipsius subsistentiae per congruum tempus prospiciatur, nisi aliter provisum sit."

uses the terminology that support is due “for an appropriate time [...] unless this has been provided for in some other way.”

It is difficult to determine the exact level of financial support to be provided in such a situation; however, the implication is that the matter is serious enough to warrant removal from office, either permanently or temporarily. The canon calls for a temporary provision of funds for one removed from his source of support. If the diocese requests or suggests treatment or retraining, who is expected to pay for it? Certainly, if the cleric does not possess the financial resources, distributive justice suggests the diocese¹⁷⁷ provide such treatment or training support as is necessary. During a period of treatment or re-training, the cleric’s needs and financial requirements would provide the financial basis of diocesan support within the constraints of the diocesan financial situation.

In the interpretation of “appropriate time,” two criteria are offered: the cleric is offered another office or assignment when the condition causing the removal no longer exists (a temporary condition). If a permanent condition exists, the bishop may have no alternative but to retire the cleric and provide support by means of an allowance or retirement pension until such a time as the cleric is capable of providing for himself.

The concern of the Church for the cleric and his material support is strengthened in c. 1350, even when penalties are imposed,

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

§2: If a person is truly in need because he has been dismissed from the clerical state, the Ordinary is to provide in the best way possible.¹⁷⁸

In light of our subject of support, a cleric removed from the exercise of ministry for the sake of the common good and welfare of the faithful by law¹⁷⁹ or by decree of a diocesan bishop, may continue to receive support. Canons 195 and 1350 demonstrate the

¹⁷⁷ The bishop must consider the financial resources of the diocese. The cleric, if he has creditors, must pay his debts to the extent possible. If no income is forthcoming, or too little, a removed or dismissed cleric’s lack of any income might impede treatment or job opportunities depending on his situation..

¹⁷⁸ 83 CIC, c. 1350, §1: “In poenis clerico irrogandis semper cavendum est, ne iis quae ad honestam sustentationem sunt necessaria ipse careat, nisi agatur de dimissione e statu clericali. §2: Dimisso autem e statu clericali, qui propter poenam vere indigeat, Ordinarius meliore quo fieri potest modo providere curet.”

¹⁷⁹ 83 CIC, cc. 1331-1333; 1339-1340; 1044.

Church's strongest affirmation of the dignity attached to sacred orders and the person.¹⁸⁰ The application of support in context of these canons applies support to an entirely different context than that of c. 281, §2; yet, this same canon supports the intention of cc. 195 and 1350. The Church, ever hopeful that the 'lost sheep' may return to the fold, is very reluctant to sever all relationship to the cleric. These canons attempt to keep the relationship alive through the offer of material support which expresses the Church's concern. The cleric may refuse the offer of assistance but, the particular church should not refuse to offer spiritual and financial support according to its means.

Two canons appear to deny support to a cleric when a penalty is declared or imposed. Canon 1331, §2, 5° says: "[the guilty party] cannot appropriate the revenues from any dignity, office, function or *pension* [italics mine] in the Church."¹⁸¹ Canon 1333, §4 says: "A suspension forbidding one to collect revenues, stipends, *pensions* [italics mine] or any other such things carries with it an obligation to make restitution for anything illegitimately collected even in good faith."¹⁸²

It might be rather difficult to deny a pension in the North American context. Pensions and their classifications are examined below. Suffice to say at this time that if an excommunicated or suspended cleric has contributed to a pension plan constituted in civil law, he has a strict right to full or partial pension benefits as determined by the regulations of the pension plan. The fact of excommunication or suspension might have no bearing on reception of benefits. Normally, if the cleric has contributed to the plan, he has a right to *some* benefit according to commutative justice.

If the pension is not a civilly constituted plan and the cleric has made no financial contribution to it, but rather the diocese provides a pension to senior clergy in view of cc. 2° 1, §2; 538, §3; and 1274, §2, the pension *could* be withdrawn. However, given what has been said about c. 1350, the free conferral of a diocesan pension is a means of showing the Church's on-going concern and hope for an offender's return to the fold.

¹⁸⁰ 83 CIC, c. 1008. Also, WOESTMAN, "Financial Support of Secular Clerics Guilty of Serious Offenses". Unpublished manuscript April, 1991.

¹⁸¹ 83 CIC, c. 1331, §2, 5°: "[...] fructus dignitatis, officii, muneris cuiuslibet, pensionis, quam quidem habeat in Ecclesia, non facit suos."

¹⁸² 83 CIC, c. 1333, §4: "Suspensio vetans fructus, stipendium, pensiones aliave eiusmodi percipere, obligationem secumfert restituendi quidquid illegitime, quamvis bona fide, perceptum sit."

The Church continues to recognise a priest's dignity both as human person and the dignity conferred upon him by ordination. The dignity of persons and orders perdures in spite of human weakness, mental disorder and even sinfulness. Secondly, distributive justice places a serious obligation on the bishop to provide support as best he can and according to the resources of the diocese, for a cleric subjected to the sanctions of the Church. The cleric has some claim to support according to the means available to a diocese by virtue of distributive justice. This is especially appropriate if he has contributed his service to the community and has now succumbed to human weakness and sin. A cleric may no longer be incardinated; however, he continues to be a member of the presbyterate and does not lose his right to human dignity. Should he be incapable of providing for himself, the Code would seem to indicate that the church of incardination continues to have some responsibility in the matter of providing support.

1.5.4 Support and the Unemployable/Unassignable

If the bishop does not provide the cleric with either an office or stable assignment which provides remuneration, the cleric is technically unemployed. Unemployed, in this context, indicates that circumstances external to the person of the cleric precludes employment. All the offices in the diocese are occupied; no other full-time position is available. It is reasonable to assume that such a situation would be temporary.¹⁸³

There is another situation whereby a cleric may be unemployable. If, in the discretionary judgement of the bishop, he cannot provide *any* permanent employment to the cleric, the cleric is unassignable. Unassignable indicates that some condition exists *in the person* of the cleric *in himself* which, in the judgement of the bishop, prevents the granting of an office or assignment. The bishop makes this determination for the well-being of the individual or the common good of the community.

The law prevents a cleric from engaging in business or occupations unbecoming to the clerical state.¹⁸⁴ Further, he requires the permission of competent authority to seek secular employment. Consequently, such a presbyter, unemployed in the technical sense,

¹⁸³ For those dioceses' that have ordained a considerable number of deacons, the question of unemployment could become a moral and even financial question.

¹⁸⁴ 83 CIC, cc. 285; 286; 1392.

or unassignable due to the condition of the person, and without the permission of the bishop to seek secular employment apart from the church, is without a means to obtain remunerative income from the church. The cleric would have no visible means of support. In distributive justice, a cleric, unemployed due to external circumstances of the place, has a legitimate right to support until such a time as he receives an office or assignment either in his diocese or in another diocese.

Distributive justice admits of proportionality based on resources available and the condition of one seeking support. A cleric, unassignable due to his condition, may have a proportional right to support. Such a right is conditional. It is based on the resources of the diocese and the condition of the cleric. A cleric who has not taken the opportunities available to change his condition if he is capable of doing so, proportionally decreases the right to support. A cleric who refuses an office or assignment without a good reason,¹⁸⁵ proportionally decreases the right to support. The bishop may restrict or limit support to encourage the cleric to accept employment or to correct inappropriate behavior. On the other hand, a cleric might refuse the financial offerings of the church or he may have independent sources of income. This would relieve the responsibility of the bishop to provide financial support.

In the above mentioned canons, the legislator has expressed his mind: whenever possible, the Church should not permit a cleric to be without support. The obligation of the bishop (and brother clergy) to provide spiritual support, fraternal charity and even financial assistance to a priest in difficulties does not cease, even if the cleric rejects the support and assistance at a given moment.¹⁸⁶

1.5.5 The Notion of Resignation

The notion of 'resignation' implies the cessation of providing labour on a continuing stable basis resulting in the loss of remuneration and incurring the condition of being 'unemployed'. Resignation is a technical process which involves both objective and subjective elements. In general, objective elements include a person of sound mind

¹⁸⁵ 83 CIC, c. 274, §2.

¹⁸⁶ Mt. 18: 12-14; Lk. 15: 4-7, are references to the "lost sheep" and Good Shepherd.

offering to terminate employment for a just cause¹⁸⁷ either orally or in writing to competent authority;¹⁸⁸ second, the acceptance or rejection by competent authority; third, the resignation must be freely offered. If there is an element of force or fear, it is not resignation per se,¹⁸⁹ but rather an invalid termination of employment by competent authority. Fourth, the competent authority must have a positive reason to accept the resignation.¹⁹⁰

In civil society, if the resignation is not immediately accepted, the employer will try to re-negotiate the employee's contract. The employee is valuable to the employer. On the other hand, the employer might accept the resignation based on the particular circumstances surrounding the reason(s) for the resignation.

There are subjective elements involved in resignation. Since a prominent element involved is the financial livelihood and security of the person resigning, a primary consideration is whether or not the employee's offer is freely given. If freely given, the implication is that the person resigning feels that sufficient financial security is present to provide a decent life under normal circumstances without the remuneration provided by the particular employment. Excluding health considerations, other reasons may prompt the decision. The choice to resign remains with the individual.

There are other elements. A person may resign out of the fear of being fired because of the attendant complications for future employment.¹⁹¹ A person might be forced into resigning when he is offered a 'buy-out' package by the employer. The refusal of the retirement package may eventually lead to the person's termination regardless.

A person may feel forced to continue working because of the fear of insufficient funds to live without the remuneration provided by the employment; whereas, the employer requests the resignation based on sound management decisions¹⁹² or the subjective incapacity¹⁹³ of the person to do the job.

¹⁸⁷ 83 CIC, c. 187.

¹⁸⁸ 83 CIC, c. 189, §1.

¹⁸⁹ 83 CIC, c. 188.

¹⁹⁰ 83 CIC, c. 189, §2.

¹⁹¹ A 'recommendation' or 'reference' may not be forthcoming or may be negative.

¹⁹² Institutional re-structuring eliminates the position.

¹⁹³ Incapacity to acquire new necessary skills, physical infirmity, chemical addictions are examples.

The term resignation is not used in c. 281, §1 or §2; however, resignation in the case of old age or illness is one of the voluntary procedures available by which an office may be vacated¹⁹⁴ or an assignment terminated. The condition of unemployment and loss of remuneration is effective upon the acceptance of resignation by competent authority.

1.5.6 The Canonical Implications of Resignation

There are three major canonical implications. First, resignation is connected to the non-possession of canonical office or stable assignment. Second, the cleric loses his source of remuneration. Third, there is the question of voluntary resignation or involuntary retirement which implies a question of retention or non-retention of diocesan faculties.

Involuntary retirement implies: (1) a discretionary action of the bishop whereby a cleric becomes 'unassignable' and consequently, incapable of working even if he wishes; and (2), the imposition of a penalty, a condition of which may be the removal of diocesan faculties and consequently, renders the cleric incapable of working in ministry on a stable basis. In such situations, a cleric may not minister except in those cases where jurisdiction originates in the order of presbyter and is granted by the Code itself. This usually implies an emergency situation (c. 976).

The cleric's obligation to labour on a stable basis has been removed by: (1) the ecclesiastical authority's act of the acceptance of resignation; (2) the cleric is deemed to be unassignable; and (3), a sentence of a court and judged or executed by the bishop. In the aforementioned situations, the cleric has ceased providing labour on a habitual basis and consequently, the strict right to remuneration in commutative justice, ceases.

That a priest's obligation to work has ceased does not preclude the possibility of his *voluntarily* performing ministry or other service. Providing that he has retained diocesan faculties, he may work on a part-time basis for remuneration if resigned or unassignable. However, this is voluntary and on an *ad hoc* basis. He receives

¹⁹⁴ 83 CIC, cc. 187-189.

remuneration based on either diocesan regulation or private arrangement between the parties involved.

1.5.7 Conclusion

Clergy who are incapable of providing ministry, voluntarily resigned, involuntarily unassignable, or returned to the lay state,¹⁹⁵ possess a qualitative right to support in distributive justice, subject to the relative conditions mentioned, and according to the 1983 Code, cc. 281, §2; 195 and 1350. Further, the basis for support rests upon the Church's mission to promote social justice and the dignity of each person; the Church's respect for sacred orders; and, the recognition of the priest's ontological unique participation in the priesthood of Christ and the sacerdotal community. Distributive justice and the principle of proportionality determine the level of support necessary or possible.

1.6 Philosophical Interpretation of Language Used in the 1983 Code

1.6.1 Implications of Language Used in the Code

How language is used and contextualized is particularly important in the interpretation of the philosophical and cultural assumptions underlying the communication. Purpose, values, intent and symbols are expressed in language and its multiplicity of literary forms. This is no less true in the documents of Vatican II and the Code.¹⁹⁶ Naturally, to codify the documents of the Council into law was a daunting task; nevertheless, one is able to detect certain shifts of language from the 1917 Code to the 1983 Code.

¹⁹⁵ RANDOLPH R. CALVO and NEVIN J. KLINGER (eds.), *Clergy Procedural Handbook*, Canon Law Society of America, Washington, DC, 1992, for "Document 12: Unofficial Translation of Rescript of Laicization, no. 4. a) "A dispensed priest by the fact of his dispensation loses the rights proper to the clerical state and his ecclesiastical dignities and offices [...]," p. 273. This sample document, translated from an original Latin rescript does not contain any reference to *absolute* termination of support other than that implied by the "[...] fact of his dispensation [he] loses the rights proper to the clerical state [...]." It is reasonable to presume that a dispensed priest would be gainfully employed and receiving income from a source other than the church of incardination. As long as this were true, he would need no support from that same church. However, though he may lose the rights of the *clerical state* he continues to be a priest and for reasons mentioned, even if in charity, some support should be offered.

¹⁹⁶ FRANCIS G. MORRISSEY, "Papal and Curial Pronouncements: Their Canonical Significance in the Light of the *Code of Canon Law*," 2d ed., Ottawa, St. Paul University, 1995, 46 p.

A number of shifts are obvious in the type of language used in the 1983 Code. The prominent use of the word 'remuneration' with its socio-cultural connection to economic institutions in society, is founded in commutative justice. This shift is a new direction from the 1917 Code. The *criteria* for remuneration identifies concepts and terms more relevant to the economic marketplace of capital and labour. This shift of language could have a powerful effect on the future administration of Christian social justice in the Church. As the churches accept more readily civil societies' basic principles of institutional organisation and management in the impending re-structuring of ecclesiastical institutions, will the redemptive value underlying decisions be based on commutative or distributive justice?

1.6.2 Christian Socialism¹⁹⁷ Founded in Distributive Justice

Historically, distributive justice, with its ethical roots grounded in the well-being of the community and society, provides the philosophical and political construction for Christian Socialism. Distributive justice, with its consciousness of the well-being of society, provides the philosophical and political construction known as Christian Socialism. There is an inter-relational basis for material support that has its source in: (1) the dignity of the human person; and, (2) the corporate (Mystical Body)¹⁹⁸ perception of (ecclesial) community. The societal presumption of distributive justice is operational both in terms of what one individual provides *for* the community by the fact of ontological and existential human existence, as well as, what one receives *from* the common good in these contexts.

The human community's acceptance of each person, even outside of the economic production criterion but not exclusive of it, enables the acceptance of the gift and dignity of each individual human *person*. Each human person must also seek to offer

¹⁹⁷ GS, in FLANNERY, no. 29, pp. 292-230, speaks of social justice as founded in the equality of all persons. This equality originates in the fact that all persons are created in the image and likeness of God, possess a common Father, possess the same destiny. Though possessing differences, "[E]xcessive economic and social disparity between individuals and peoples of the one human race is a source of scandal and militates against social justice, equity, human dignity as well as social and international peace." On the other hand, political socialism in the West has the potential of destroying the dignity of persons by removing personal responsibility to the point that the person *expects* governments to provide total support without the person making any attempt at contributing to the well-being of their community or society.

¹⁹⁸ 1 Co. 12: 12-30.

the totality of self to the service of that same community. As alluded to earlier, justice can exist only when the community realises that both the suffering and joys of one affect the entire community. Therefore, those displaced in the capitalist marketplace still possess the right to their dignity as human beings and a right to be supported by the community in which they live subject to the principle of proportionality and the condition of the person. To do otherwise is to revert to the barbarism of the nineteenth century.¹⁹⁹

1.6.3 Economic Capitalism Founded in Commutative Justice

Since language is a reflection of the culture out of which it comes, the 1983 Code provides another shift of 'principle' in the matter of work and remuneration in the Church. This is evident in that the Code identifies two major distinguishable groups of persons in the Church, cleric and layperson (including non-clerical religious), and connects this to a two-tier institutional class system for purposes of remuneration and benefit systems available or provided to these two groups respectively.²⁰⁰ The Code now uses marketplace terminology in the use of sociological institutional status, job classification and length of service as determining factors for grades of pay. Further, there now exist canonical requirements to provide: support benefits for resigned, incapacitated and elderly clergy; employment contracts for lay-workers; support, contracts and benefits are to be in conformity with the requirements of civil law as far as possible.

The 1983 Code makes provision for lay persons engaged in full time or part-time work for the Church. This is another evident shift in language and practice.²⁰¹ Remuneration is provided while providing labour and only during the period of actual work. However, only recently have pensions become an issue for lay-workers in the Church. The law provides for pensions for laypersons employed full-time by the Church;

¹⁹⁹ The Industrial Revolution and unbridled capitalism created the 'robber barons'. They viewed the worker as production 'tools' to generate capital and wealth for themselves and their investors. Injured employees, the families of a 'breadwinner' killed on the job, laid off workers received little or no financial support from employers. Unions and the Knights of Columbus started for these very reasons.

²⁰⁰ Generally, lay church workers receive less pay than their non-church counterparts and often more *in salary* than their clergy. Salary criterion alone is misleading when comparing salaries of church employees and clergy as will be seen later.

²⁰¹ 83 CIC, cc. 231, §2; 1274, §3. Cf. c. 1286 and 17 CIC, c. 1524.

and further, employment, benefits and pension are to be considered within the requirements of civil law according to c. 231, §2.

It is also interesting to compare the factor of 'mutual-support associations' which advocate for clergy and church lay-workers. The cleric, as a professional church worker, has long had a theologically and canonically supported corporate identity and clerical institutional associations²⁰² to provide support, advocacy, efforts at professional development and formal studies for projects of concern, as manifested in the Presbyteral Council,²⁰³ deaneries²⁰⁴ and various other clergy groupings. Only recently have Catholic pastoral workers, housekeepers, secretaries and caretakers begun to consider or form associations.²⁰⁵ As these groups assume their rightful place and responsibility in the churches, they are bound to have an important and positive impact on the institutional and management aspects of the churches.

1.6.4 The Notion of Irremovable Pastor and the 1983 Code

The historical canonical reality of the irremovable pastor originated in a twofold good for the Church: (1) stability and (2) decent support of the pastor. Stability and support were assured. A pastor could only be 'formally' removed from office were he declared guilty of a delict and subjected to canonical penal procedures in effect at the time. On the other hand, the bishop had no administrative procedure available for the removal of a pastor who simply became ineffective in ministry or disruptive to the community. Such a situation was resolved by the *de facto* removal effected at the discretionary command of the bishop without any procedure whatever.

In 1910, the Sacred Consistorial Congregation issued the decree *Maxima cura*.²⁰⁶ This decree provided an administrative procedure for the removal of pastors. As John Beal points out, the decree sought to achieve two purposes: (1) to remove pastors whose

²⁰² This might be perceived as analogous to serving the same function as a labour union.

²⁰³ 83 CIC, c. 495.

²⁰⁴ 83 CIC, c. 553; 555, §2.

²⁰⁵ 83 CIC, cc.215; 298; 299, §2. A private association in this context might be compared to a labour union protecting basic rights of workers, encouraging professional development, negotiating contracts, establishing grievance, conciliation and arbitration procedures and the like.

²⁰⁶ SACRA CONGREGATIO CONSISTORIALIS, Decree, *Maxima Cura*, 20 August 1910, in *AAS*, 2 (1910), p. 636.

ministry had become ineffective but who could not be removed *except* were he convicted of a delict; and (2) to extend some degree of stability to the office wherein some incumbents were simply removed by the will or command of the bishop without any due process whatsoever.²⁰⁷

The 1917 Code describes in cc. 183, §1 and 188 some of the causes for removal of a pastor. The administrative procedure for removal, incorporating the aforementioned decree, was carried into the Code in cc. 1732-1739. It should also be noted that the pastor had the right of recourse after being advised in writing that he was being removed (1917 CIC, c. 50; supplemented by parallel place in 1917 CIC, c. 190, §2).

The law now protected both parties. The bishop possessed an administrative tool to remove an ineffective or disruptive pastor with just cause and due process; the pastor could minister, assured that he would not be subject to an arbitrary action of removal by his bishop. With the office of pastor thus stabilised, the priest was normally present and served his community for life. He was afforded every opportunity to know and be known by his people. He was also guaranteed material support for life.

Ecclesiae sanctae I, no. 20, promulgated in 1966, ended the notion of irremovable pastors.²⁰⁸ The current Code encompasses this legislation. Though advocating stability in office for a pastor,²⁰⁹ the Code now permits conferences of bishops to set terms for this office. This is a dramatic change of law and policy.

In recent nineteenth century Western society, the leadership of major government and business institutions preferred to direct all resources solely according to the objectives and needs of the organisation. Often, this theoretical concept did not consider external market conditions or the needs of the employee. Known as the theory of 'management by objective', this theoretical interrelatedness of every segment of the structure supporting the institutional goals contributed greatly to institutional stability at a given moment. However, it had two major faults: (1) a lack of adaptability and flexibility, and (2) the failure to acknowledge that there is inherent in any structure

²⁰⁷ JOHN P. BEAL, *Confining and Structuring the Exercise of Administrative Discretion in the Particular Church*, p. 552.

²⁰⁸ *ESI*, no. 20 (1) in FLANNERY, p. 603.

²⁰⁹ 83 CIC, c. 522.

personalist elements which function for purposes independent of, or even contrary to, institutional goals. External forces act upon the institution to which the institution must adapt or die. Internal elements, which consist of personnel or employee groups, dilute or see different visions or goals for the institution. This requires organisational flexibility; otherwise, rigidity from within the institution may contribute to institutional death. To an institution functioning with this management style, adaptability and flexibility are dysfunctional. Contemporary sociology and many present institutions recognise that this nineteenth century management tool is itself dysfunctional and defective.²¹⁰

The recent clergy departures and shortages in the North American and Western European churches have seriously shaken the ability of the Church, as institution, to function with the interrelatedness of internal structures that proved to be so effective in the last century. Today, since Vatican II, Church leadership exists in a 'catch-22':

(1) demographical changes caused by increased population has called for diocesan parish re-structuring and establishment of new parishes. This has led to increased demand for service;

(2) increased participation of lay persons has greatly enhanced the numbers of groups and associations functioning and utilising parish resources, including clergy personnel;

(3) the re-design of parish plants to accommodate different groups has usually lead to increased numbers of people seeking the services of the clergy;

(4) the theological shift in the notion of Church from a monolithic entity to the Church as a group of churches, has pluralised and decentralised the Church. This has led to a re-identification of the nature of the Church. Decentralisation and a willingness to adapt to local demands tends to follow. Decentralisation and adaptation require greater numbers of personnel and subsidiarity;

(5) increasing number of clergy approach or enter the retirement zone;

²¹⁰ NICHOLAS ABERCROMBIE, STEPHEN HILL AND BRYAN S. TURNER. *Dictionary of Sociology*. 2d. edition, Harmondsworth, England, Penguin Books, 1988. Cf. Functionalism, p. 101; Dysfunctionalism, p. 81, Management, pp. 142-143.

(6) decreasing numbers of seminarians and younger clergy are available in proportion to the general population;

(7) many active clergy celebrate more Masses per week than ever before. This carries the danger of limiting the notion of priesthood 'solely' to the celebration of Mass and sacraments. This can lead to the notion of priesthood as function with the inherent danger of de-personalising of the clergy both in the public mind and in the clergy themselves. This is not likely to have a positive effect on recruiting.

(8) lay persons are gaining confidence and are realising their positive role in ministry and leadership in the churches. They are no longer 'filling-in' for Father, but they are recognising their right to active participation. This is likely to cause additional stress both to clergy and people as the actual 'management' of parishes also restructure.

All of this is occurring while current legislation and discipline in the Latin Church does not normally permit a priest to be a married person. This severely limits recruiting to single males. At the same time, church leadership is experiencing a greater demand for service with fewer clergy and more people in the pews.²¹¹ Parishes require clergy. Clergy attempt to provide pastoral care often to more than one parish. Multi-tasking is not uncommon as clergy take on more jobs. It appears that maximum mobility is a necessary criterion of personnel policy and management of clergy.

Such an approach may be a great short-term advantage for the institution but one wonders about the effects on the Church, on parish communities and the priest.²¹² Time and time again, the priest moves to a new parish. He severs all personal support systems provided him by a stable parish community. One might have cause to question how this affects the person of the priest, his spirituality, his health. Is he capable of investing a

²¹¹ RICHARD SCHOENHERR and LAWRENCE A YOUNG, *Full Pews and Empty Altars*. Milwaukee, Wisconsin, University of Wisconsin Press, 1993. A sociological study on this subject including demographic studies with the projected personnel situation of over 100 USA dioceses' from the 1960's into the next century.

²¹² NATIONAL FEDERATION OF PRIESTS' COUNCILS, Report: "Priestless Parishes: Priests' Perspective," in *Origins*, 21 (30 May 1991), pp. 42-53, provides some impact on clergy and effects on community.

strong psychological commitment to a series of parishes over the years? What is the psychological impact of this possible 'non-connectedness' in his senior years?²¹³

1.6.5 Source for Sustenance and Remuneration

James Donlon in his 1984 work, *The Human Rights of Priests to Equitable Sustenance and to Mobility*,²¹⁴ would maintain that remuneration and sustenance is intended to be put within the context of the social justice encyclicals of recent popes²¹⁵ and that the notions expressed in the encyclicals are included in the 1917 Code.²¹⁶ He maintains remuneration is a component of support due the clergy because of their status and dignity *as a person*.

This writer concurs that the encyclicals express remuneration in the context of justice and the dignity of human labour.²¹⁷ However, the 1917 Code's principle for *sustenance* [emphasis mine] originates in the dignity of ordination and title and not on the person per se. Further, the 1917 Code does not use the term remuneration nor does it establish criteria for its determination. Donlon would appear to interpret out of his personal socio-cultural milieu.

1.7 Concluding Observations on the 1983 Code of Canon Law, Canon 281

The principles and conclusions contained in c. 281 are as follows:

- 1) the canon describes remuneration in the context of commutative justice for priests engaged in active ministry and provides some objective criteria in the determination of conditions and scales of remuneration;

²¹³ To move, that is to change residence, is commonly recognized and experienced as a traumatizing event and experience, especially if one is forced by the employer or lack of employment. It becomes more difficult when an element of employee reluctance exists. Eventually, it is entirely possible that it becomes virtually impossible to invest emotional energy in people or projects when one recognizes the futility in terms of emotional return for the investment. One turns to primary support groups for support and stability in this context. What or who is the primary support group for a priest in later years?

²¹⁴ Cf. JAMES 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*. Canon Law Studies, no. 510. Washington, DC, The Catholic University of America, 1984.

²¹⁵ Cf. MICHAEL WALSH and BRIAN DAVIES., (eds.) *Proclaiming Justice and Peace: Papal Documents from Rerum Novarum through Centesimus Annus*. Mystic, CT, Twenty Third Publications, 1991, 522 pp.

²¹⁶ 17 CIC, c. 1524.

²¹⁷ JOHN PAUL II. Encyclical Letter, *Laborem exercens*. AAS 73 (1981) 577-647, English translation in WALSH, especially chapter II, paras. 4-10, pp. 357-367.

- 2) the canon provides for the requirement of support of clergy in the context of illness, incapacity, old age in the context of distributive justice;
- 3) the canon does not define what constitutes support for clergy who are ill; incapacitated, elderly or resigned;
- 4) the canon does not provide for priests who voluntarily resign for reasons other than health; or, those whom the bishop retires by administrative decree before the age of seventy-five;²¹⁸
- 5) the language used in the 1983 Code, c. 281, makes a dramatic departure from its 1917 predecessor in the very notion of support: philosophically; in language usage; and, in the presumptive values implied.

Chapter One provides theological and canonical principles, definitions and interpretations. How does universal law implement the principles, definitions and interpretations in the matter of retirement support for clergy? Canon 538 now becomes the subject of evaluation.

²¹⁸ The 1983 Code does mention 'provision' in other places (cc. 538,§3; 1746) but not in this canon.

CHAPTER TWO

Universal Law Requirements in the Matter of Support for Resigned Priests

2.1 Two Vatican II Council Sources of Universal Law

2.1.1 *Christus Dominus* and *Ecclesiae sanctae I*

Christus Dominus states that when parish priests are unable to perform their duties because of advanced years or for other grave reasons, they "are earnestly requested to tender their resignation spontaneously"²¹⁹ or when invited to do so by the bishop. The bishop is to make suitable provision for support of those who retire.

Ecclesia sanctae I, no 20, (3), determines the age of retirement and repeats that the bishop "shall make appropriate provision for the living and residence of those who resign."²²⁰

2.1.2 Four Concerns of the Documents

The document outlines four concerns of the Church: (a) effective ministry to the parishes; (b) the determination of criteria to identify when this ministry may be impaired by the "condition"²²¹ of the parish priest, (c) episcopal *responsibility* to provide suitably for retired priests; and, (d) appropriate *provision* be made for retired priests.

2.2 Implementation of *Christus Dominus* and *Ecclesiae sanctae I* in the 1983 Code of Canon Law, Canon 538.

2.2.1 The Law.

The universal law establishes the principle of support for retired parish priests in c. 538, §3. Loss of office by parish priests, both secular and religious, and the retirement of diocesan parish priests are the focus of canon 538 which states:

§1. A parish priest ceases to hold office by removal or transfer effected by the diocesan bishop in accordance with the law; by his personal resignation, for a just reason, which for validity requires that it be accepted by the diocesan Bishop; and by the lapse of time if, in

²¹⁹ (7), in FLANNERY, no. 31, p. 583.

²²⁰ *ES I*, in FLANNERY, no. 20 (3), p. 603.

²²¹ Generally to be interpreted as inefficiency, incapacity to minister, that is, non-functional ministry. In some cases the reasons might be obvious; in others, one might ask the criteria utilised to make such an evaluation and decision. This might be a reasonable question given our contemporary context.

accordance with the particular law mentioned in can. 522, he was appointed for a specified period of time.

§2. A parish priest who is a member of a religious institute or is incardinated in a society of apostolic life, is removed in accordance with can. 682 § 2.

§3. A parish priest who has completed his seventy fifth year of age is requested to offer his resignation from office to the diocesan Bishop who, after considering all the circumstances of person and place, is to decide whether to accept or defer it. Having taken account of the norms laid down by the Bishops' Conference, the diocesan Bishop must make provision for the appropriate maintenance and residence of the priest who has resigned.²²²

2.2.2 Physical Location in the Code

This canon, appearing as it does at the end of a section on parishes, parish priests and the internal administrative structuring of the parish and before defining the vacant parish (c. 539), emphasises the juridical entity of 'parish' and the necessity for stability in parish ministry as established and demonstrated by the office of pastor.

2.2.3 Primary Function of Canon 538

When one looks at the internal arrangement of the canon itself, it is readily apparent that the first priority of the law is to establish when and how the parish becomes vacant when there is an incumbent in office.

Elements of *CD*, no. 31,²²³ and *ESI*, no. 20 (1),²²⁴ clearly establish the limitations imposed on the stability of office by the law, episcopal authority or the individual himself. Paragraph 1 of the canon expresses these elements. The office becomes vacant by resignation (cc. 187-189), transfer (cc. 190; 191), removal (cc. 192-195 and 1740-1747), and privation (c. 195), as well as, by the expiration of the term limit on the office

²²² 83 CIC, 538, §1: "Parochus ab officio cessat amotione aut translatione ab Episcopo dioecesano ad normam iuris peracta, renuntiatione iusta de causa ab ipso parochus facta et, ut valeat, ab eodem Episcopo acceptata, necnon lapsu temporis si, iuxta iuris particularis de quo in can. 522 praescripta, ad tempus determinatum constitutus fuerit. §2. Parochus, qui est sodalis instituti religiosi aut in societate vitae apostolicae incardinatus, ad normam can. 682 §2 amovetur. §3. Parochus, expleto septuagesimo quinto aetatis anno, rogatur ut renuntiationem ab officio exhibeat Episcopo dioecesano, qui, omnibus personae et loci inspectis adiunctis, de eadem acceptanda aut differenda decernat; renuntiantis congruae sustentationi et habitationi ab Episcopo dioecesano providendum est, attentis normis ab Episcoporum conferentia statutis."

²²³ *CD*, in FLANNERY, no. 31, pp. 582, 583.

²²⁴ *ESI*, in FLANNERY, no. 20 (1), p. 603.

where this has been established by a decree of the bishops' conference and implemented by a local bishop.

The *parochus*, or pastor, possesses a stable office. Though the incumbent of this office is now 'removable', the parish is the *de facto* and *de iure*²²⁵ source of residence and remuneration for the person²²⁶ possessing the office.

This stated priority continues in §2 with the emphasis and use of the word *amovetur* concerning priests who are members of institutes of consecrated life or secular institutes (cc. 715, §1; 738, §3). The removal of a non-diocesan cleric from an office is simple to accomplish. Either the bishop or religious superior may effect the move by the simple notification of removal by one superior to the other. Neither party requires the consent of the other to effect the removal.

The priority of stability continues to be evident in §3. The person occupying the office could, colloquially, 'die with his boots on'; but should he still be in possession of an office on the completion of his seventy-fifth year, the law itself asks (*rogatur*,²²⁷) the parish priest to submit his resignation to the bishop. The bishop, after considering the needs of the diocese, decides whether or not to accept.

2.2.4 Use of the Latin *rogatur*

The Latin definition provides an interesting insight that can be interpreted as a remnant from the 1917 CIC, c. 979§2. *Rogatur*, from the verb, *rogare*, and in the passive voice, means: "to request or to solicit for favours."²²⁸ The 1983 Code appears to

²²⁵ 83 CIC, c. 533. The residence requirement for a pastor who is a priest.

²²⁶ 83 CIC, c. 517 could conceivably have a deacon or a lay-person exercising this 'office' or position in a qualified sense that is, to the extent which excludes 'full care of souls.' However, to be consistent with the principles being expressed, the occupant of the place is entitled to material support from the parish. An ordained priest functions as a moderator with "full care of souls." Cf. NATIONAL FEDERATION OF PRIESTS' COUNCILS, NFPC Report. "Priestless Parishes: Priests' Perspective," in *Origins*, 21(1991-1992), pp.42-53. Is the 'moderator' comparable to a regional manager receiving remuneration from a source other than the plant he serves or is he contract labour receiving some remuneration based on service provided and determined by the source of the contract (c. 517, §1) or a supervising priest (c. 517, §2)? Who pays the ecclesiastical moderator of several parishes? How does the moderator function in context of 'service to the diocese'? What criteria determine 'residence' *vis-à-vis* parish rectory? Does the notion of moderator broaden the residence requirements for pastors and associates (cc. 533; 550)?

²²⁷ DONALD P. SIMPSON, *Cassell's Latin Dictionary* [=Cassell's], New York, MacMillan Publishing Company, 1977, p. 525. The connotation expressed in the definition is to make a plea, a petition in the canonical sense.

²²⁸ *Ibid.* p. 525.

continue to remember the notion of irremovable pastors and the stability of the office which is implied. The implication is that, given the stability attributed to office, the law itself provides some vehicle for the parish priest to voluntarily resign when he reaches advanced age. In this, the law shows considerable respect for the priest himself.

There has been an unexpected consequence of this section of the canon. Some bishops have attempted to use this canon quite contrary to its intent. The intent, as mentioned, seeks to provide the senior priest with a vehicle of voluntary resignation; however, some bishops have interpreted §3 as providing justification for simply removing a parish priest at seventy-five years when he *has not* submitted his resignation. In fact, the bishop attempts to effect the removal from office without due process and this is contrary to the law. When a bishop has issued a decree of removal from office, some parish priests have made recourse to the Congregation for the Clergy. The Congregation has supported the petitions of these priests. Such decrees of removal are illegal without due process.

Such decisions by the Congregation have indicated that *age* alone is not a criterion upon which a bishop may demand a resignation.²²⁹ If the pastor does not voluntarily submit his resignation and the bishop desires to remove him, then the bishop will need to commence the process established in law for the removal of a pastor.²³⁰ The tradition of the 1917 Code continues both in theory and fact in the promotion of 'stability' for the office of parish priest; and a deep respect for the person of the priest.

When the pastor himself voluntarily requests retirement from office, the bishop has three months to accept.²³¹ The resignation is effective upon acceptance by the bishop. Administrative silence on the petition is interpreted to mean that the resignation is refused.²³²

²²⁹ JOHN HESCH, "The 1987 NCCB Norms for Priests and their Third Age," in *The Jurist*, 54 (1994), p. 393, quoted from JAMES H. PROVOST, "Recent Experiences of Administrative Recourse to the Apostolic See," in *The Jurist* 46 (1986), 147-148, in which Provost concludes, "The standard position of the Congregation for the Clergy is that policies which force retirement merely because of age are beyond the authority of the diocesan bishop to enact."

²³⁰ 83 CIC, cc. 1740-1747. Canon 1741 provides some reasonable grounds.

²³¹ 83 CIC, c. 189, §3.

²³² 83 CIC, cc. 57; 189, §3.

The canon considers:

- (1) the juridical person of the parish;
- (2) the stability of the office of parish priest;
- (3) the authority of the bishop as the effective cause of loss of office; and,
- (4) a vehicle whereby a parish priest may voluntarily submit his resignation after completing seventy-five years.

After these considerations, the canon now turns its attention to the pastor who voluntarily submits his resignation and the bishop has accepted it.

2.3 Bishops' Conference,²³³ Diocesan Bishop and Provision of 'Appropriate Support'

2.3.1 Bishops' Conference and the 1983 Code of Canon Law

In order that there might be no question that an individual bishop might interpret this latter section of canon 538, §3 solely as a moral obligation of charity and not a right (*ius*) stemming from justice and law, and in order to reiterate the bishop's responsibility to provide in some manner for the social welfare²³⁴ of his clergy according to the law; the Code goes on to express that the Conference of Bishops is required to establish norms to define "appropriate maintenance and residence" for the priest who has resigned from office.

That "[t]he bishop will make suitable provision for the support of those who retire"²³⁵ is expressly stated in *PO*, no. 21:

Moreover, in countries where social security has not yet been adequately organized for the benefit of clergy, episcopal conferences are to make provision, in harmony with ecclesiastical and civil law, for the setting up of diocesan organizations (even federated with one another), or organizations for different dioceses grouped together, or an association catering for the whole territory: the purpose of these being that under the supervision of the hierarchy satisfactory provision should be made both for the suitable insurance and what is called health

²³³ Cf. THOMAS J. REESE (ed.), *Episcopal Conferences: Historical, Canonical & Theological Studies*. Washington, DC: Georgetown University Press, 1990. One is able to detect the sense of collegiality and common concerns among bishops of particular churches from earliest times. However, one can also see the anxiety expressed by some bishops when they are called upon to act collegially when legislation is posited which might limit their own individual authority.

²³⁴ The principle and right to social welfare is provided in canon 281, §2. It is determined by the bishops' conference and applied by the diocesan bishop. The bishop himself does not necessarily provide the support, but he must see that provision is made according to 83 CIC, c. 384.

²³⁵ *CD*, in FLANNERY, no. 31, p. 583.

assistance, and for the proper support of priests who suffer from sickness, ill health or old age.²³⁶

Particularly important in the document is the seriousness with which the support of clergy is treated. The recognition of the vulnerability of clergy is clear. *PO* makes this requirement of support a collegial and collective responsibility of the bishops' conference. The conference is to ensure support even through their collective action if necessary, and individual dioceses are encouraged to function collectively should one diocese not possess the financial resources to provide such support. A very strong sense of collegiality is evident, yet the main point remains, the care and support of priests who might become inactive for one reason or another.

The canon, §3, implements the concepts expressed above and expressly states that "the diocesan bishop must make provision (*providendum est*) for the appropriate maintenance and residence of the priest who has resigned." The canon itself goes further. It establishes residence as an integral component of support. The presumption and demand of residence attached to the notion of benefice in the 1917 Code becomes explicit in the 1983 Code.

With the European notion of benefice replaced in North America by incardination to the 'service to the diocese', what are the options available for residence? One appointed to the office of pastor would expect to occupy a residence provided by the parish. This is the official residence of the parish and this residence has been traditionally and implicitly understood to be the pastor's home.²³⁷ Where do other priests, not pastors, reside?

²³⁶ *PO*, in FLANNERY, no. 21, p. 900.

²³⁷ 83 CIC, c. 533 §1: "Parochus obligatione tenetur residendi in domo paroeciali prope ecclesiam [...]." Also, it is difficult to define the difference between a residence and a 'home'. For purposes of simple definition, an official residence is identified with the institution and an incumbent duly appointed to represent the institution. A residence that is a home refers to a person who feels a sense of belonging and who takes possession of space by arranging it to reflect his personality. A person feels a sense of ownership, a sense of permanence (even if temporary), that admits of personal privacy, intimacy and a welcoming atmosphere. A home is where the spirit is nourished and a person has a capacity to re-energise.

Universal law does not require a parochial vicar to reside in the same residence as the pastor, but the parochial vicar is “bound to reside in the parish.”²³⁸ The current practice in North America presumes that a parochial vicar will live in the parish house (*in domo paroeciali*) of the parish to which he is assigned. This has not been without its problems. If all living in the same house are compatible, normally there is no problem. If they are not compatible, there are problems. There is the issue of living and working in the same ‘space’ which often provides minimal privacy for the occupants. Perhaps even more important is how those in residence perceive the rectory: to what extent is it the official residence and home of the pastor, to what extent can a parochial vicar identify with this residence as his home? These questions raise a larger issue, to what extent can a diocesan priest be canonically bound by an *implied* ‘rule of common life’?²³⁹

It is in this area of residence and the notion of community life that provides one of the clearest distinction between secular and religious clergy. A religious may be bound by residence and community life (=common life) by the proper law of the institute.²⁴⁰ The religious has deliberately chosen common life as a specific component of the vocational choice. A secular priest does not choose common life as a specific component of his vocation. The physical reality in a given place may place a number of secular clergy in the same residence; however, it is doubtful that any secular priest would expect or demand, as a right, that residence and community life be a condition of his life or priestly ministry as defined by religious institutes. Indeed, the reverse is true. Most diocesan priests expect to live alone at some point. It should also be noted that not every *diocesan* priest is temperamentally suited to living a common life. Theoretically, the parish priest lives within his ‘community’ of the parish and in the fraternal ‘community’ of his brother diocesan clergy.

²³⁸ 83 CIC, c. 550 §1: “Vicarius paroecialis obligatione tenetur residendi in paroecia [...]” Strictly speaking, residence requirement pertains to a residence within the defined ‘territory’ of the constituted parish. A bishop may permit him to live elsewhere as long as the good of the parish does not suffer.

²³⁹ The intent of c. 550 would seem to imply the parochial vicar is in residence some place other than the official residence of the pastor (parish). The context of the canon would seem to imply that the local Ordinary is to encourage some ‘manner of common life in the parochial house’ when the parochial vicar is not in the same physical residence.

²⁴⁰ 83 CIC, cc. 607, §2; 731, §1.

It is important to realise when attempts are made to interpret the elements of residence and community in the Code, that the interpretation of this connection and its implications, can be very different and very dependent upon the view of the interpreters vocational specificity.

There are other serious factors to consider in the matter of residence. Historical circumstances, economical or pragmatical institutional considerations do not alter the fact that many diocesan clergy have not chosen to live 'common life'. They may comply with certain expected living conditions; but, at what cost to themselves and their ministry? Perhaps where problems exist, the diminishing numbers of clergy will resolve them.

This issue becomes important when clergy retire. Many older rectories that are not much larger than a normal house, now contain offices and meeting rooms. Often there is considerable activity at virtually all hours. Contemporary designs of rectories place offices and meeting rooms in a place removed and separate from the priest's living quarters, either another building entirely or in another part of the parish complex. This re-design of the parish plant itself, expresses the very real change that has taken place in the amount of activity that now surrounds many parishes. In older parishes, the clergy can be in a position of almost having 'no place to lay their heads'. Not all diocesan clergy, retired due to illness or age, would normally choose to live in residence surrounded by such activity. Also, there are now some clergy who are resigning their pastorates or refusing pastorates, simply because the volume of parish responsibility and activity are detrimentally affecting their health.

Recent experience has shown that there are clergy who, when they retire, retire not to rectories when even when a rectory is available, but rather will establish themselves in a private residence. Naturally, they possess the personal financial resources to do so. However, what of those who do not possess the personal financial resources to do so? Residence is a component of support even in retirement. The subject of residence options for clergy and its financing requires further consideration and study.

How does the current custom of residence apply to those clergy assigned to special ministries in the particular church or who provide service to outside agencies that

provide more substantial salaries? If a cleric works for the particular church in a non-parochial ministry, where is he to reside and how is he to live given the present salary scales of most dioceses? To what extent is it the obligation of a bishop to provide for the residence of clergy in the circumstances described above; for those requested to do studies by their bishop; for those who voluntarily wish to do studies or ministries which will benefit the Church even if not in the particular church of incardination? Though the parish is the normal place of residence for those working in a parish, there are other priests involved in non-parochial ministries. Clearly, some type of agreement is necessary to protect the rights and the determination of obligations of both parties.

Naturally, the entire subject of residence impinges upon the financial resources of the diocese, the parish that may accept a retired priest, and the financial resources of the priest himself.

The Code simply says that incardinated clergy have a right to residence. However, the Code provides very little direction in the definition or execution of this matter. Since residence conditions for clergy vary extensively around the world, the Code leaves it to the local bishops' conference to decide applicability within their conferences. How the Conference has decreed, or not decreed, is the subject of a later chapter.

2.3.2 Diocesan Bishop and Parish Priest: Transfer of Obligation to Support

This canon confirms the bishop's responsibility to provide for a parish priest who retires. The parish priest has a right to security provided by suitable support and residence when he retires.

The parish priest who has resigned is now a priest without an office and consequently, without the right to the parish residence and remuneration from the parish. When a parish priest resigns his office the law itself transfers the obligation of support and residence from the office of parish priest to the diocesan bishop. Technically, the parish priest has transferred, for purposes of support, from an office that proved his support, to the 'service to the diocese' that now assumes the obligation of support.. Canon 538, §3 assures decent support and some residence provision for a retired parish priest.. The law seeks to protect the cleric from poverty.

2.4 Conclusion

Thus far, parish priests who have voluntarily resigned their office and have had their resignation accepted have been the subject of the discussion. It is evident that resigned parish priests have a right (*ius*) to residence and appropriate support upon acceptance of their resignation as established by the law itself. The obligation of support transfers from the ecclesiastical office directly to the responsibility of the bishop.

All diocesan priests are ordained for a particular church and are incardinated 'to the service of the diocese'. Their support originates from two sources: the right to remuneration and residence stemming from the appointment to office or assignment; or, the right to support and residence stemming from 'service to the diocese'. Given that there is a just cause for the bishop to accept the resignation, the priest is no longer obliged to provide defined and stable service in commutative justice. The priest who retires returns to the 'service of the diocese' insofar as there is no defined stable employment. It now becomes the bishop's obligation to make provision in some manner for decent support and residence.

The priest may voluntarily provide 'service to the diocese' according to his abilities and his health status with the permission of the bishop and at the invitation of other clergy who may request his assistance and service.

The resigned priest is now the beneficiary of commutative justice. He has 'earned' his rest. He is also the beneficiary of distributive justice, since he must now rely on the community to provide that care of which he may now be incapable of providing for himself.²⁴¹

The notion of retirement is also a new direction from the 1917 Code where the obligation to serve was a *permanent* condition of ordination and a priest ministered as long as he was capable.²⁴² The permanence that was once an absolute obligation until death (as pastor) is now *relativized* by the canonical act causing the state of being juridically 'retired'.

²⁴¹ 1 Co. 9:24-27. The good fight has been fought, he is entitled to the rewards. This is a temporal interpretation rather than the spiritual reward of the 'blessed'.

²⁴² 17 CIC, c. 981, §1.

As mentioned, the bishop must accept the resignation for it to be effective. If the bishop has not accepted the resignation, technically, the priest continues to have the obligation to provide service in commutative justice. Neither is he 'retired' should he just decide to stop working. Rather, he is quite simply absent from his place of duty (c. 274, §2). The bishop has the right to terminate the priest's remuneration and remove him from residence. In commutative justice, the priest has failed to fulfill his contractual obligation and he loses the right to remuneration and residence. "No work, no pay" is the principle implied in the 1983 Code.

To what extent must a bishop provide support to a cleric unwilling to accept an office or assignment? This is difficult to determine. The context of Christian justice and the intent of law is to leave no priest in a destitute condition. A parallel situation exists in contemporary society where able-bodied persons refuse to accept employment for one reason or another and the State continues to offer support. One would wonder if, in principle, the Church could do less than the State in this matter; in practise, if a diocese with the financial resources, could do less than the State in this matter.

The Code leaves it to the Bishops' Conference to establish norms. The diocesan bishop is to implement universal and particular law in the matter of decent support and residence for retired and incapacitated clergy.

CHAPTER THREE

Financial Considerations in the Matter of Support

3.1 Acquisition, Purpose and Sources of Temporal Goods

3.1.1 Right to Acquire Temporal Goods

The Church has a right as a visible institution in society, both in justice and in law, to acquire and administer temporal goods for the service of the Church according to its mission²⁴³ and purposes.²⁴⁴

3.1.2 Sources for Funding.

There are a number of ways to acquire temporal goods. The major source of funding for the Church and churches is through the free will offerings and donations of the faithful. The faithful have an obligation in justice and law to provide for the material support of the churches.²⁴⁵ People make financial contributions for the purposes of worship, apostolic and charitable works and in order that *the ministers of the Church receive financial support.*

Another source of funding for a diocese, a juridical public person,²⁴⁶ is the right of the diocesan bishop²⁴⁷ to levy ordinary and extraordinary taxes²⁴⁸ on public juridical persons' subject to his authority.

Diocesan regulation or custom may provide for a levy or tax on offerings made on the occasion of the administration of the sacraments²⁴⁹ and sacramentals. Historically

²⁴³ Mt. 28:16-20.

²⁴⁴ 83 CIC, c. 1254.

²⁴⁵ 83 CIC, cc. 222, §1; 1260.

²⁴⁶ 83 CIC, cc. 113; 114; 116.

²⁴⁷ 83 CIC, cc. 118; 381.

²⁴⁸ 83 CIC, c. 1263.

²⁴⁹ 83 CIC, c. 952, establishes the most that may be 'asked' for mass stipends; however, more may be given and accepted. A bishop could determine other ecclesiastical services (stole fees, c. 1264, 2°). Sensitivity to ability to pay, either by the parties receiving service or the parish that might have to make up the shortfall, would necessarily be a factor of consideration.

and presently, provincial councils²⁵⁰ determine the amount charged for stole fees and Mass stipends

In the 1917 Code, stole fees belonged to the pastor. These fees were part of his income by right of title (17 CIC, c. 463, §1). Even if another cleric performed the service, unless there was an amount more than the obligatory amount or the donor's intention stated otherwise, the fee belonged to the pastor (17 CIC, c. 463, §3). These fees assisted him in paying for the services that he personally required, for example, a housekeeper. Consequently, stole fees provided at least some part of the income for the support of the pastor.

The 1983 Code determines that stole fees belong to the parish; however, the same exception exists regarding the intention of the donor and an offering above the determined fee (83 CIC, c. 531). It would appear that stole fees no longer constitute income for the support of the clergy, but rather, for the general support of the parish.²⁵¹ Nevertheless, the clergy indirectly receive the benefit since they both receive remuneration as well as room and board from this source.

The bishop could conceivably establish a tax on weddings, funerals or other service stole fees which are part of parish revenues. However, in practice, as stole fees constitute part of the revenue of a parish, the bishop receives his portion of these proceeds through the general tax assessment of parishes.

Mass stipends, both in the 1917 Code and the 1983 Code, do belong to the person celebrating the Mass for the particular intention of the donor. The 1983 Code, c. 946, specifically states that this stipend, now called an 'offering', is to "[...] support of its [Church] ministers and its activities."²⁵² Therefore, Mass stipends constitute a portion of

²⁵⁰ 83 CIC, 1264, §1, 2°

²⁵¹ This could constitute a serious financial loss to a priest unless there was an offset established in the diocesan scale and rate of remuneration. In many places this canon is ignored which can constitute a serious inequity between priests of the same diocese. One parish may provide thousands of dollars a year to the priest via a stole fees and another priest receives next to nothing because of the different demographics or nature of the parish. Canon 531 seeks to equalize remunerations and offerings from stole fees.

²⁵² 83 CIC, c. 946.

an income for the priest celebrant²⁵³ and, it is the intention of universal law that stipends, where they exist, continue to provide income for the celebrating priest.

Bequests, investments, proceeds from alienation of property, interest on funds and the like, also generate income for the churches.

3.2 Requirements and Division of Funding

3.2.1 Norms of Episcopal Conferences

Two sections of *Ecclesiae sanctae, I*, are particularly appropriate. One directs patriarchal synods and bishops' conferences to provide norms for the governing of support for clergy "[...] who are, or have been, engaged in ministering to the People of God."²⁵⁴ A second section directs that, where clergy support is the purpose of a collection, these funds are directed to a "special agency (*institutum*)"²⁵⁵ established for this purpose.

Three essential normative principles emerge from the *Motu proprio*: (1) bishops' conferences are to establish *norms*. (2) The bishop is to establish a special agency over which he exercises vigilance. The bishop is to administer the agency with the assistance of priests and competent persons. The exact nature of the bishop's role in the administration of the agency, other than vigilance, is left open to interpretation at the local level. The chief consideration is that the particular church establish a fund; the actual administration of the fund is discussed later. (3) Diocesan or federated 'institutes' under vigilance of the bishop are to make adequate provision for health insurance and for the maintenance of clergy who are sick or elderly.

3.2.2 Implementation of *Ecclesiae sanctae I* in Canon 1274

§1 In every diocese there is to be a special fund which collects offerings and temporal goods for the purpose of providing, in accordance with

²⁵³ Currently there is considerable debate surrounding the subject of stipends. Many feel that this practice smacks of simony (cc. 947; 1385) or that stipends are demeaning to a cleric insofar as this practise is something akin to a 'tip' either because the stipend is so low or it is a 'tip' to supplement artificially low wages. Nevertheless, stipends continue to constitute a large portion of a priest's income in many other parts of the world. An interesting question is why the practice of stole fees is more acceptable in the administration of some sacraments (announced masses, weddings and funerals) than others (baptism, confirmation, blessings, etc.). Local custom seems to prevail.

²⁵⁴ *ESI*, in FLANNERY, no 8, p. 596.

²⁵⁵ *Ibid.*

can. 281, for the support of the clergy who serve the diocese, unless they are otherwise catered for.

§2 Where there is as yet no properly organized system of social provision for the clergy, the Bishops' Conference is to see that a fund is established which will furnish adequate social security for them.

§3 To the extent that it is required, a common reserve is to be established in every diocese by which the Bishop is enabled to fulfill his obligations towards other persons who serve the Church and to meet various needs of the diocese; this can also be the means by which wealthier dioceses may help poorer ones.

§4 Depending on differing local circumstances, the purposes described in §2 and §3 might better be achieved by amalgamating various diocesan funds, or by cooperation between various dioceses, or even by setting up a suitable association for the, or indeed for the whole territory of the Bishops' Conference itself.

§5 If possible, these funds are to be established in such a manner that they will have standing also in the civil law.²⁵⁶

This canon provides two areas of insight into the mind of the legislator: (1) the Church clearly expresses its concern in the matter of clergy support; (2) the Church provides a series of broad principles that govern the various elements which contribute to this support. The Church demonstrates its moral support for clergy during and after their years of ministry in the mere scope of the canon. The Church is aware that it has the responsibility to see that clergy receive such support as is necessary for their well-being; it generally entrusts this responsibility of support to the leadership of the Church -- the bishops. The bishops therefore, both collectively and individually, are chiefly responsible to make certain that clergy receive the necessary support.

The canon not only expresses support but establishes the general principles that provide the basis for the material support of its clergy.

²⁵⁶ 83 CIC, c. 1274, §1. 'Habeatur in singulis dioecibus speciale institutum, quod bona vel oblationes colligat eum in finem ut sustentationi clericorum, qui in favorem dioecesis servitium praestant, ad normam can. 281 provideatur, nisi aliter eisdem provisum sit. §2. Ubi praevidentia socialis in favorem cleri nondum apte ordinata est, curet Episcoporum conferentia ut habeatur institutum, quo securitati sociali clericorum satis provideatur. §3. In singulis dioecibus constituatur, quatenus opus sit, massa communis qua valeant Episcopi obligationibus erga alias personas Ecclesiae deservientes satisfacere variisque dioecesis necessitatibus occurrere, quaque etiam dioeceses divitiores possint pauperioribus subvenire. §4. Pro diversis locorum adiunctis, fines de quibus in §2 et §3 aptius obtineri possunt per instituta dioecesana inter se foederata, vel per cooperationem aut etiam per convenientem consociationem pro variis dioecibus, immo et pro toto territorio ipsius Episcoporum conferentiae constitutam. §5. Haec instituta, si fieri possit, ita constituenda sunt, ut efficaciam quoque in iure civili obtineant.

3.3 Contents of Canon 1274

3.3.1 "Otherwise catered for" Defined

This statement is sensitive to two connected but separate contemporary realities: (1) the financial resources of the Church; and, (2) the concept of 'double-dipping'. The churches do not have unlimited financial resources; consequently, 'double-dipping' or receiving income from two different sources, one of which is a church, is not permitted.

Some clergy receive remuneration, disability or retirement income or pensions from sources *other than* the diocesan collection.²⁵⁷ This refers to clergy who, by special assignment, are, or have been, engaged in such ministries as teaching, hospital, school and prison chaplaincies. If a cleric is engaged in full-time ministry or occupational service²⁵⁸ by an agency other than the diocese and receiving remuneration²⁵⁹ from that agency, the cleric is not entitled to receive remuneration from the diocese during the period of employment. Should a cleric receive pension income from an agency other than a church, he is not necessarily entitled to receive financial support from the diocese. Should a cleric receive retirement or disability benefits from universally applied government assistance programs, he may not be eligible to receive financial support from the diocese. There are two exceptions to the above: (1) the remuneration from employment is not sufficient to provide decent support; (2) the retirement pension or disability benefits from an employer or government are insufficient to provide decent support.²⁶⁰ In such situations, the bishop would have an obligation to provide supplemental financial support according to the needs of the cleric and the resources of the diocese.

A special case occurs when a parish is not self-supporting, is a mission or a quasi-parish.²⁶¹ In this case, the diocesan fund would provide remuneration and

²⁵⁷ The 'diocesan collection' here refers simply to the financial resources of the diocese. The exception is a registered retirement plan which technically is not part of diocesan financial resources.

²⁵⁸ Occupational service: a teacher or social worker engaged by a non-ecclesiastical agency to provide service related to a profession other than ecclesiastical ministry.

²⁵⁹ This relates to the requirement of c. 281 §1.

²⁶⁰ This relates to the requirement of c. 281 §2.

²⁶¹ 83 CIC, c. 516.

benefits²⁶² to the appointed cleric as required in conformity with c. 281, §1 and the remuneration and benefits package of the diocese. The diocese would supply the difference between the contributions of the people and the diocesan policy in the matter.

The general principle states that when financial resources are available from sources other than a church, this is to be taken into account and it further eliminates the obligation of the diocese to provide support from diocesan resources. It does not preclude the requirement of the bishop to see that proper and decent provision is made for the support of the priest.

3.3.2 The Collection

The canon authorises that finances for clergy support may come as a result of normal collection processes, diocesan tax or special collections.²⁶³ Upon the cleric's lawful appointment, the provision for support becomes the responsibility either of the parish or those who administer special ministries. However, since support is a diocesan responsibility in general, the canon also provides for a special diocesan collection for this purpose. Some years ago, the bishops of the United States launched a national appeal to make provision for the many men and women in religious institutes whose retirement funds were grossly underfunded as a result of non-participation in government social security plans.

3.3.3 Administration

When a bishops' conference²⁶⁴ or an individual bishop²⁶⁵ authorises a special collection to provide for the support of the clergy, the canon is mindful of the intention of the donors and directs the funds to that purpose.²⁶⁶ The designated purpose of the collection limits a bishop's discretionary control by the law itself.²⁶⁷ The bishop must use the acquired funds for the support of clergy.

²⁶² Pension plan contributions, health plan contributions.

²⁶³ 83 CIC, c. 1263 in the matter of extraordinary tax.

²⁶⁴ 83 CIC, c. 1265, §2.

²⁶⁵ 83 CIC, c. 1266.

²⁶⁶ 83 CIC, c. 1266.

²⁶⁷ 83 CIC, c. 1267, §3.

The bishop administers general diocesan funds with the assistance of the diocesan consultors,²⁶⁸ a diocesan finance council and a diocesan financial officer.²⁶⁹ Normally, the duties of a financial officer²⁷⁰ would include: to establish budget requirements; to recommend episcopal taxation; to monitor income and expenditures; and, he would provide the bishop with current and annual financial statements. The budget requirements of the various institutes described below would control the disbursement of available funds. The bishop possesses considerable discretionary authority over the allocation and disbursement of general diocesan funds with one notable exception:²⁷¹ any special diocesan fund established for the purpose of clergy support.

Discretionary authority is even more limited in the case of formally constituted retirement plans which may be subject to civil legislation.

3.4 Defining and Structuring the Diocesan Collection

3.4.1 Diocesan Personnel Structure

In general, diocesan personnel are clergy incardinated in the diocese or persons, religious or lay, working in and for the diocese. Specifically, there are four classifications of personnel: first, the diocesan clergy staff, the bishop, his personal clergy staff,²⁷² chancery officials, diocesan department heads,²⁷³ tribunal staff and those clergy employed in special projects²⁷⁴ or doing studies; second, clergy personnel who are receiving employment remuneration and benefits from sources other than diocesan funds, that is, a parish priest or a priest working in school or other ministries which provide remuneration from non-diocesan sources; third, lay support, chancery and other

²⁶⁸ 83 CIC, c. 502.

²⁶⁹ 83 CIC, cc. 492-494.

²⁷⁰ 83 CIC, cc. 493; 1284.

²⁷¹ 83 CIC, c. 1267, §3. A general appeal designed for a specific purpose must be used for the purposes specified in the appeal (special collection). If an appeal is made for support of missions, then the offering must be dedicated to that purpose. The same is true if it is an appeal for the support of the clergy or religious.

²⁷² The bishop's secretary, spiritual director or confessor.

²⁷³ Department heads, cleric or lay, manage various components of diocesan ministry: education, social justice, social services, administration, etc. If they are vicar general, judicial vicar, episcopal vicars, they are to be presbyter or bishop (c. 478, §1). The judicial vicar may be the department head of the Diocesan Department of Justice; an Episcopal Vicar for Administration is also head of the Administration Department.

²⁷⁴ For example, this cleric could manage and support a Ministry to Priests' Program for the priests of the diocese.

departmental staff who have an entitlement to employment remuneration, benefits and pension according to §§ 3 and 5; fourth, physically or mentally disabled clergy, retired clergy and those who are incapable of working as defined above.

3.4.2 Financial Institutes in General

Ecclesia sanctae I and cc. 281 and 1274 establish three possible funds into which general diocesan revenue and special collection revenue may be directed. In the matter of the special collection, one fund is to be established with a dedicated purpose; that is, the retirement security for the incardinated clergy of the diocese.

The following identifies three types of funding possible:

- (1) a general diocesan operating fund or a common reserve fund which accounts for, among other things, remuneration and benefits for classification one and three above (cc. 1274, §1 and §3; 281, §1);
- (2) a second fund accounts for some type of general social assistance available for clergy (cc. 1274, §2; 281, §2);
- (3) a third fund specifically instituted to support clergy in retirement or who may be physically or mentally disabled according to the statutes. The source for funding could be a special collection or contributions made to it by the diocese, a parish or employer *and* by individual working clergy as active contributing participants. A clergy retirement pension plan is the primary purpose of this dedicated fund (cc. 1274, §1, §2, §5; 281; 538, §3).

In order to provide structure and fundamental organisation to these funds, it is necessary to institutionalise them in some manner. In ecclesiastical law, it is possible to institutionalise them by constituting them as public juridical persons.²⁷⁵ The bishop would determine which funds might require canonical status as public juridical persons. This canonical status confers public identity and provides for the internal and external governance of the public juridical person according to its statutes and the canons of the Code. In conformity with §5 of the canon, the use of funds are also governed by civil law

²⁷⁵ 83 CIC, cc. 114; 116; 117; 94.

when not in contradiction or violation of canon law.²⁷⁶ Civil law also has a legal device to create juridical persons or ‘institutes’.

Black’s Law Dictionary describes institute as “act of instituting;” also, “[...] the organisation which drafts and authors such authoritative principles; e.g. American Law Institute.”²⁷⁷ A more expanded definition follows:

A system or body of usages, laws, or regulations, of extensive and recurring operation, containing within itself an organism by which it effects its own independent action, continuance, and generally its own further development. Its object is to generate, effect, regulate, or sanction a succession of acts, transactions or productions of a peculiar kind or class.²⁷⁸

The funds are described as Institute A, Institute B and Institute C, for purposes of identity and clarification only. Their determination as formally instituted by either ecclesiastical decree, civil law, or both; or, not formally instituted in either category, will depend on the discretion of the ecclesiastical authority responsible for the administration of the funds unless the law provides otherwise.

There follows for purpose of exposition, a description of the classification of the institutes, with their inter-relationship; and, an application of the appropriate canons to each of them. The relevant canons are 281, 538, §3, 1274.

3.4.3 Institute A

The usage of the Latin verb *praestare* (c. 1274, §1 -- *praestant*) expresses the notion of “to stand surety for” or “a guarantee.”²⁷⁹ In this context, Institute A, created as a civil institute identified with the diocese, makes a claim from the general collections, taxes and acquired offerings, to satisfy the financial obligations and debts incurred by the diocese in the normal operating course of doing business as a corporation sole. Funds are normally allocated and distributed to the various accounts according to the terms set out in the diocesan budget. In commutative justice, at least a component of this institute

²⁷⁶ 83 CIC, c. 1254.

²⁷⁷ *Black’s*, p. 800a. Cf. 83 CIC, cc. 114; 116; 117; 94.

²⁷⁸ *Ibid.* p. 800b.

²⁷⁹ *Cassell’s*, p. 458.

provides salaries and employment benefits for classifications one and three mentioned in the canon above.

The bishop has discretionary authority over these general funds within the criteria he establishes with his college of consultors and finance department.

Canons 281, §1; 1274, §1, §3 and §5 apply to this institute.

3.4.4 Institute B

The bishop, with his college of consultors and finance department, determines the ecclesiastical and civil constitution, nature, purpose and funding of Institute B in conformity with the canonical applications inherent in cc. 281, §2 and 1274, §2. Institutes' A and C possess more clearly defined functions. The primary purpose of Institute B is to provide financial coverage for those situations not provided for in retirement plans or in the budget of general revenue expenses. This institute²⁸⁰ could be the source of funding for non-active, non-employed clergy or clergy requiring medical treatment outside that defined in other statutes. The source of funding may originate out of allocations from general revenues, bequests or donations. Distributive justice provides justification for the claim of recipients.

There are four additional considerations that may apply: first, the funds in this institute may or may not be constituted²⁸¹ a clergy support fund in civil or ecclesiastical law. If it is not constituted, it is not an institute either in ecclesiastical or civil law. Second, financial levels of the fund may be non-fixed and can fluctuate widely. This fund is a type of 'slush fund' available for emergency purposes and it becomes the source of funding when there are unexpected expenses of any nature not accounted for in another place. The expenditure of this fund is dependent upon the resources available. Third, the bishop possesses wide discretionary authority over funds not designated for specific purposes.²⁸² An ecclesiastical decree²⁸³ itself, provincial legislation and the

²⁸⁰ Later referred to as custodian of a 'special fund'.

²⁸¹ *Black's*, p. 311, defines 'constitution,' in a general sense as, "[...] any fundamental or important law or edict." Thus, a constitution is established by one possessing legislative power and lays the basic principles to which its internal life [the organization being instituted] is to be conformed, regulated, powers distributed, limited and exercised.

²⁸² 83 CIC, cc. 1257, §1; 1258; 1267, §3.

²⁸³ 83 CIC, cc. 29; 94; 95.

ecclesiastical and civil statutes governing a fund limits the discretionary authority of the bishop over such a constituted fund as shall be discussed later. A specific retirement fund constituted in civil law confines the discretionary authority of the bishop over the use of these funds.

Fourth, Council documents²⁸⁴ encourage the bishops to co-operate with one another in providing financial support to less fortunate dioceses, especially where clergy support and government social services or ecclesiastical retirement plans are lacking. The basis of support for Institute B originates in distributive justice and cc. 281, §2; 1274, §2; 195 and 1350.

3.4.5 Institute C

The bishop with his college of consultors and finance department establishes Institute C as a formally constituted retirement plan for the incardinated clergy of the diocese. Such a plan becomes an 'institute' only when competent authority constitutes it as such according to either canon law, civil law or both. The Code strongly recommends conformity to civil law in the matter of institutes established for specific purposes as noted in c. 1274, §5. Consequently, pension plans should conform to the requirements of civil law.

In the context of ecclesiastical law, competent authority establishes a juridical person by a formal decree.²⁸⁵ The statutes²⁸⁶ also require approval by competent authority.

In civil law, the law itself regulates the establishment of institutes including pension plans. According to the nature of its civil constitution, civil governments reserve the right to monitor and even intervene in such instituted plans should it deem necessary to do so for the protection of the participants of such a plan. Civil law does not recognise ecclesiastical institutes as legal civil entities unless they are somehow incorporated in civil law. Therefore, the following is an attempt to present the material according to the notions of civil incorporated institutes.

²⁸⁴ *IG*, in FLANNERY, nos. 3, 4, 13, p. 365ff; *CD*, in FLANNERY, no. 6, p. 567; *PO*, in FLANNERY, nos. 20, 21, pp. 898-900.

²⁸⁵ 83 CIC, c. 114.

²⁸⁶ 83 CIC, c. 94.

There are various types of pension institutes. A clear distinction exists between pension plans sponsored by governments²⁸⁷ and those established as private plans. In the latter, corporations or private enterprise establish retirement plans for their employees. *Black's* defines two main classifications: pension plans and pension trusts. The former is "a plan established and maintained by an employer primarily to provide systematically for the payment of definitely determinable benefits to his employees, or their beneficiaries, over a period of years (usually for life) after retirement."²⁸⁸ A pension trust is a "[t]ype of funded pension plan in which the employer transfers to trustees an amount sufficient to cover cost of pensions to employees who are the beneficiaries of the trust."²⁸⁹

A pension plan can be (a) formally registered with the government and thereby recognised in civil law as a public institute,²⁹⁰ subject to civil legislation in the matter of annual report submissions to Revenue Canada, insurance and tax exemptions;²⁹¹ (b) incorporated as a private entity in civil law as distinct from formally²⁹² registered with government, a type of 'trust fund' managed wholly by a third party removed from the bishop. The three parties are the participating members; the Board of Directors [=Board] or administrator; and, a third party who acts as a plan trustee or independent person who is not an actual member of the plan.

There are a number of third party options possible. The clergy, through its Board, own the plan²⁹³ entirely independent of the bishop; clergy may also administer and manage the plan with a third party broker or advisor.²⁹⁴ Technically, this is not a third

²⁸⁷ Canada, Revised Statutes of Canada, *Canada Pension Plan* [=CPP], vol 1, chapter C-8, Ottawa, Queen's Printer, 1985, is an example of a government legislated pension plan.

²⁸⁸ *Black's*, p. 1135.

²⁸⁹ *Ibid.*, p. 1135.

²⁹⁰ This is comparable to an ecclesiastical public juridical person.

²⁹¹ A Registered Retirement Saving Plan [=RRSP] which is by nature recognised by a government and granted certain tax exemptions.

²⁹² RRSP.

²⁹³ The participating members of the plan elect the Board of Directors. The Board acts as the agent of the institute and governs and administrates the institute according to the statutes of incorporation.

²⁹⁴ The participating members of the plan elect the Board of Directors. The Board governs the institute; however, the institute is managed by a "third party" (a bank, trust company, etc.) for a fee according to 'instructions' from the Board. In this case, the manager actually functions as an agent *for* the institute but is not a party to the institute.

party removed from directly interested parties. Second, the clergy, through the Board, may own the plan but engage the services of a manager (third party) to administer the plan. Third, the diocese may own the plan. The bishop acts as the administrator; but a professional management firm, competent in the field of pensions, manages the plan. The bishop, with the clergy may own the plan; nominated or elected clergy or a combination of both, may constitute the governing Board; a professional firm is engaged to manage the plan's assets. These various plans are now the subject of discussion.

In consultation with persons competent in the field, The Board establishes constitutions and statutes,²⁹⁵ establishes policy, regulations, ascertains funding sources and disbursements including, employer and employee contribution percentages, review procedures and monitoring of the fund. The Board is responsible to the membership according to the constitution and by-laws of the plan.

The retirement plan is registered or is not registered with a provincial government and Revenue Canada. If it is not registered but remains a private plan, the eligibility to receive funds under the terms of reference of the plan is contingent upon the discretionary authority of the bishop and/or the third party clergy board of directors or managers. The bishop must accept the resignation of a priest for the plan to be operative.

If the plan is registered, the constitution and statutes are established on the basis of civil government legislation. It is recognised in civil law as a registered plan, and the plan and its participants receive an exempt tax status with Revenue Canada. The plan is monitored by Revenue Canada and required to report certain information. Further, civil legislation demands the employer maintain the fund at a level which would provide benefits to participants enrolled at such a time as the plan might cease to exist. This plan is usually insured by private insurers.

The Act²⁹⁶ of constitution incorporates appropriate civil statutes into the plan which includes the eligibility and conditions necessary to receive funds. If the fund is a

²⁹⁵ *Black's*, p. 1410: Statute is "An act of the legislature declaring, commanding, or prohibiting something." It is a legislative particularised application to the constitution of an organisation.

²⁹⁶ The Act (of Constitution), either by ecclesiastical decree and/or Provincial registration.

Registered Retirement Saving Plan [=RRSP], it must conform to civil law. Therefore, the constitution of the plan could not contain any terms that would be contradictory to civil legislation. The participant contributor *owns* the plan and he receives the benefits as a civil right according to the terms and at the age determined by civil law. In such a situation, and if a participating member complied with the requirements of civil law, he would be eligible to receive benefits regardless of his specific canonical status with the diocese.²⁹⁷

If the pension is not a registered fund, the participants may or may not own the fund. The constitution of the pension fund would determine the eligibility and conditions for receiving benefits and the age at which a person is eligible.

Commutative justice demands that when the participants in a pension plan have, in some way, partially paid for their retirement they possess a right to benefits. This type of retirement pension is an extension to the notion of deferred remuneration in this context. Canons 281, §1 and 1274, §1; §5 apply to this fund.

3.4.6 Protection of Plan from Civil Liability Actions

One of the greatest advantages of a registered plan is that it is protected from attack by civil litigation unless the plan itself is the subject of the suit. Such a plan is constituted according to the norms of civil legislation and stands independently of the corporation sole of the diocese. The participants own the plan and they benefit from the deferment of personal income taxes²⁹⁸ until they begin to receive benefits. The plan is not technically part of diocesan assets and the constitution of the plan itself may limit the bishop's authority over it.

A private diocesan plan held in trust by a third party²⁹⁹ or an "arm's length"³⁰⁰ plan would also involve compliance with some civil legislation in the matter; however,

²⁹⁷ An excommunicated or suspended priest would be entitled to the benefits under this plan according to civil legislation.

²⁹⁸ The contribution by the contributor is tax deductible with allowable limits.

²⁹⁹ *Black's*, p. 1135: "Pension Trust: An employe.-sponsored plan in which the employer transfers to trustees an amount sufficient to cover cost of pensions to employees who are the beneficiaries of the trust." The Board may consist of the bishop, delegated priests, and possibly a delegate of the 'third party'. This third party is a disinterested party to agreements constituted in the Act of incorporation but may possess some legal rights in relation to it. The 'third party' normally is a commercial bank, investment or insurance

the benefit is that these assets do not constitute assets of the corporation sole and would have protection from civil liability suits. Nevertheless, the diocesan bishop continues to have some direct control over this type of plan since it is not as rigidly controlled by civil legislation as are registered retirement plans.

An ecclesiastically constituted³⁰¹ plan under the total jurisdiction of the bishop, even though dedicated to a retirement fund, depending on its constitution might continue to be part of the assets of the corporation sole that is, the diocese. Anyone might attack a diocese in a civil liability suit. The assets of a pension plan, if identified with the diocese, might also be subject to attack. Such an unprotected retirement plan, though complying with the intent of providing support, creates a problem in light c. 1274, especially §5. The canonisation of civil law is to protect the assets of a plan designated for clergy support in retirement. To leave a retirement plan open to civil litigation would be very dangerous to the security of the diocesan clergy.

3.4.7 Age of Retirement according to Civil Legislation

Registered Retirement Saving Plans governed by civil legislation require retirement and start paying benefits at age 65.³⁰² In general, the legislation surrounding pension plans is structured to allow for retirement based on age and years of service; therefore, retirement age can be as early as 50 and as late as 65 depending on the structure and organisation of the plan.³⁰³

This creates an interesting conundrum when canon law suggests a retirement age of 75. Registered pension plans require payment of benefit at age 65; however, a person cannot legally be paying into a pension plan by payroll deduction (a legal requirement while employed) and receiving it at the same time.

firm with expertise in the matter of retirement investment funds. They are certified by government and pension assets are protected to various financial levels of liability.

³⁰⁰ Ibid, p. 109: An 'arm's length transaction' is described as "a transaction negotiated by unrelated parties, each acting in his or her own self interest. A transaction in good faith in the ordinary course of business by parties with independent interests."

³⁰¹ The plan is established by episcopal decree and is governed by a constitution and statutes, by-laws, etc.

³⁰² CPP, no. 44. (1).

³⁰³ Ibid, no. 49. (b), p. 48.

The Episcopal Vicar for Temporal Administration, of the Archdiocese of Ottawa, Reverend Patrick Powers, has devised a masterful and legal solution to the problem. At age 65, the priest begins to collect retirement benefits from the plan and he no longer contributes to the pension plan as required by civil law. Since the priest is not canonically retired, he continues to work in ministry and receive the remuneration due. However, now the bishop's discretionary fund described as Institute B above, receives the employer and employee contributions that originally went to the diocesan registered plan. This legal solution provides additional income to the Archdiocesan discretionary fund that often provides for unexpected situations in the context³⁰⁴ of cc. 281, §2 and 1274, §2. Some members may not be ineligible to access the benefits of the formal plan due to extenuating circumstances not provided for in the plan statutes.

This has the additional benefit of allowing a civilly retired but ecclesiastically working priest to provide assistance to his brother priests.

3.4.8 Eligibility to Receive Support Income According to Defined Institutes

Those clerics employed in full time ministry have a right, from both commutative justice and the law, to remuneration according to cc. 281, §1 and 1274, §1. This diocesan obligation is satisfied in the diocesan Institute A described above; or, the person receives remuneration from his place of employment (a parish, a chaplaincy).

Second, in the absence of Institute C, in commutative justice and in these same canons, the Code provides for those priests who have formally resigned their offices according to c. 583, §3. By extension, other diocesan office-holders fulfilling the same criteria are eligible for support; for example, a parochial vicar, chancellor, judicial vicar and other staff positions occupied by clerics. Since this would be a matter of strict justice, in principle, decent support (including residence), equal to all, would be owed to retired incardinated clergy. This support is not discretionary. It must be of major priority in the budgeting forecast and fiscal distribution of funds of Institute A.

Institute B, in distributive justice, is to fulfill diocesan obligations according to cc. 281, §2 and 1274, §2 when and if necessary and according to financial resources

³⁰⁴ For clergy requiring psychological treatment and/or possible legal assistance; or, who otherwise do not comply with the retirement requirements of the registered plan at a given moment.

available. Also included in this Institute are all those clergy defined in Chapter One, 1.5, of this paper. Any cleric, who for any reason might not be eligible to receive pension income permanently or temporarily from a constituted plan, would be eligible to receive support from the resources of this institute.

It is also from this plan with its discretionary assets that bishops might make contributions to less fortunate churches for support of clergy, active, incapacitated or retired (c. 1274, §4).

Institute C, a clergy pension plan constituted according to civil law and its regulation, has the obligation in commutative justice to provide benefits to participants according to cc. 281, §1; 538, §3, 1274, §2, §3,³⁰⁵ and §5. This plan is governed according to civil legislation encompassed in the pension plan constitution and statutes.

In reference to c. 1274, §3, a separate pension plan would appear to be called for in regard to full-time lay employees of the churches. In this regard, the CLSA English translation of the Code uses the English word, 'pension'; the *Annotated Code* translation, is 'social security.' These terms are open to very different interpretations. The North American connotation of pension implies pension benefits deriving from contributions to a employer-sponsored pension plan to which employee contributions have been made by employees during periods of employment. The government pays 'social security' as a benefit to those who have reached retirement age and who have contributed to government sponsored plans during their working life (CPP). This is independent of those who contribute to a pension plan during their period of employment to a fund *other than* government sponsored plans (RRSP). In such a situation, in commutative justice, the person is eligible to receive both employer pensions plus government social security.

Social security may also be understood as a situation in which a person has made no financial contribution to a retirement plan of any type. Technically, the person would not be eligible, strictly speaking, to receive any benefits. However, within a context of distributive justice, governments still provide support to persons with disabilities or

³⁰⁵ 83 CIC, c. 231, §2. CLSA uses "pension", p. 78; *Annotated Code* uses "social security", p. 202.

without sources of income (welfare, mother's allowance, Guaranteed Income Supplement).

The *Annotated Code* commentary would appear to take a very strict but theologically unjustifiable position: that "merely professional or technical nature [...] salaried workers"³⁰⁶ do not fall under the canon in regard to pensions. It would be a correct view if it might be equated to providing service on the basis of contract, such as an architect engaged to provide plans for a church, a company engaged to provide specific professional advice to a church, etc. Can the same be said of salaried full-time or part-time persons who work for the church on more than an "*ad hoc*" basis (secretaries, maintenance personnel, etc.) or for persons who offer professional services on more than an *ad hoc* basis? This latter might include those auditors, catechists, parish bookkeepers, individuals or teams who provide preparation for sacramental ministry, counsellors, etc.

At this time, many of the churches' recognise their obligations in this matter and are attempting to conform diocesan policy to the social justice doctrine of the Church. Naturally, it is a very complicated issue and includes the very real problems of financing. The churches do not fail to recognise that full-time employees indeed do have a fundamental right to 'social security benefits' according to the employment contract;³⁰⁷ however, the financial situation of the diocese determines the extent to which a diocese is able to conform the ideal to the real. Further, such employment contracts, both for full-time and part-time employees must conform at least to the minimum requirements of the *Labour Relations Act*.

Normally, employees' engaged in full-time employment are participants in the CPP and they receive benefits upon disability or retirement according to their contributions. Distributive justice and the social doctrine of the Church strongly suggest

³⁰⁶ 83 CIC, c. 231, §2, *Annotated Code* commentary on c. 231, §2, p. 202.

³⁰⁷ Such as health and dental insurance as well as, liability insurance if required by the nature of the work being done for or on behalf of, the church.

that lay employees' should also receive a pension from the church upon disability or retirement.³⁰⁸ Here also, the churches are sensitive to the issue.

The pension plan for lay full-time employees of a diocese is not the diocesan pension plan for clergy support, but a different fund. Insofar as the employees pay into their pension fund, they possess the right to acquire the benefit when it is due. Unlike diocesan clergy plans,³⁰⁹ the pension benefits are due to the lay-person irrespective of whether or not the person receives pension benefits or income from other sources. Other sources include government pensions for seniors or an annuity from a prior employer. RRSP's follow the prescriptions of civil law in constitution and statutes.³¹⁰

3.5 General Principles and Observations

First, on the basis of distributive justice, the dignity of persons, incardination and sacerdotal collegiality, clergy are to receive decent support and residence where sufficient sources of independent income are absent and where government social financial assistance programs are lacking or insufficient. Where an individual has insufficient income, the diocesan support fund (Institute B) may supplement to the extent necessary and within the financial resources of the diocese.

Second, do current pension plans actually provide decent support and residence? Is it possible that the income generated by current diocesan pension benefits and government pensions are inadequate. It might be necessary on an *ad hoc* basis, to provide additional funding as supplemental income to comply with the requirements of decent support. This supplemental income is available through Institute B. The requirement to provide supplemental income beyond the diocesan pension and government benefits would be a good indication that the diocesan pension plan is inadequate.³¹¹

³⁰⁸ The doctrinal foundations exist in the Church's social encyclicals and are the basis for the formulation and interpretation of canon law in this matter.

³⁰⁹ 'Arm's length' and 'Third Party trusts' could, by statute, determine diocesan benefits based on and including sources of income received from outside sources to arrive at a allowable benefit. Registered plans do not allow of this possibility.

³¹⁰ As is the Diocese of Hamilton, Ontario, pension plan for lay employees.

³¹¹ A question arises in the matter of second career vocations to the priesthood. A man ordained at sixty may be receiving benefits from an RRSP from a former employer or from a self-directed RRSP. In such a situation, when he retires from active priestly ministry, he may require supplemental income from Institute B

Third, the Code requires “decent support and accommodation.” Insofar as the Code provides no specific guidance in this area, the bishops’ conference is to establish norms that determine just what decent support and accommodations really mean in the local situation.

Fourth, support does refer to income sufficient to provide for personal needs: residence, health insurance, vacation, retreat, participation in diocesan and personal spiritual and professional development, transportation expense supplements as required, plus an ability to contribute to charities. These are some factors involved in determining ‘decent support’.

Fifth, of some importance is the ability of a priest to practice charity. Therefore, a priest, depending on his individual financial situation, should be able to contribute to Institute B in fraternal charity, to his family in need, or to other charities.

A priest cannot legally contribute more than allowed as determined by salary if the diocesan plan is a RRSP; however, as a recipient of a RRSP pension, he could donate according to his means to the support of others.³¹² As a member of another type of diocesan pension plan and, depending on personal financial resources, he may contribute more than the amount determined as a contribution by the diocesan plan. If he receives pension income from other than diocesan sources, but has also contributed to the diocesan plan, he has a right in commutative justice, to receive the benefits of the diocesan pension plan of whatever type. However, again, depending of his needs, he too could voluntarily contribute to Institute B.

3.6 The Question of Deacons

Notably absent, except in c. 281, §3, is any reference of support to deacons. The Code uses the criterion of clerics and incardination as a basis for decent support. The Church ordains married or celibate men to the diaconate for the service of the Church. They work for the church part-time or full-time. When employed by the church, they have a right to remuneration according to cc. 281, §1 and 1274, §1.

if he is unable to participate in the clergy pension plan of the diocese. The statutes of the clergy plan would have to be consulted.

³¹² *PO*, in *FLANNERY*, no. 17, pp. 894-895; and, no. 22, pp. 899-900.

Deacons, no less human than other clerics, are also subject to the limitations imposed by age, illness and the like. For a married deacon, the impact of economic adversity caused by unemployment or illness can be profoundly disturbing, if not devastating, when he has family responsibilities.³¹³

James H. Provost expresses his views on the matter. According to Provost, since a married cleric is not part of our recent tradition, unless a diocesan statute or custom provides for such a contingency, we are to turn to “laws passed in similar circumstances” (c. 19); hence, he turns to the law passed for married clergy in the Eastern Churches.

Canon 390 of that Code deals with the sustenance and remuneration of clergy, celibate and married. In regard to married clergy, they have the right to suitable sustenance for themselves and their families, unless this is otherwise sufficiently provided for (c. 390 §1), and that there be provided both for themselves and their families “suitable pension funds, social security as well as health benefits” (c. 390 §2).³¹⁴

Provost argues that a married deacon has a right to decent support for himself and his family should he lose his civil employment and his reduced economic circumstances create financial need. It is well to note that as a cleric incardinated into the diocese, regardless of any agreements entered into prior to ordination, he possesses the rights of a cleric. An individual may suspend the *use* of a personal right, but he may not personally obliterate or surrender a right granted by universal law itself. Consequently, this right to support becomes activated if he is unemployed for any reason, or receives no pension from his place of civil employment. A deacon who has no means to provide material support for himself or his family due to lack of pension or as a result of illness or some other incapacity, has a right to decent support for himself and his family according to cc. 281, §2 and 1274, §2.

Craig A. Cox expresses the following regarding remuneration of unmarried permanent deacons: “Therefore, an unmarried deacon (whether never married or

³¹³ The right to residence is not yet applied to deacons except for those deacons making application for order of presbyter.

³¹⁴ JAMES H. PROVOST, Opinion, “Canon 281. Support of unemployed permanent deacon,” in *Roman Replies and CLSA Advisory Opinions*, 1995, pp. 43-45; and, *Codex canonum ecclesiarum orientalium auctoritate IOANNIS PAULI PP. II promulgatus. Typis polyglottis Vaticanis, 1990. Code of Canons of the Eastern Churches*, Latin-English version prepared by CANON LAW SOCIETY OF AMERICA, trans, Washington, DC, Canon Law Society of America, 1990, c. 390.

widowed) who is dedicated to ecclesiastical ministry has a right on the basis of c. 281, §1 to appropriate remuneration.³¹⁵ Cox also argues that c. 281, §3 pertains to married deacons by way of an exception; therefore, a celibate deacon would thereby come under the provisions of c. 281, §1 and §2. Therefore, if a celibate deacon loses his civil occupation, the bishop³¹⁶ should employ him if possible, so that he receives remuneration from that employment (c. 281, §1; 1274, §1; commutative justice). If the bishop cannot employ him, the deacon is eligible for support under the circumstances described in cc. 281, §2 and 1274, §2. The deacon has a right to decent support in distributive justice and because of his incardination into the diocese.

3.7 Conclusion

The Church sees the support (financial and right of residence) of the clergy during and after full-time service to the diocese to be a grave matter and a serious responsibility of the bishops.³¹⁷ The law itself demands the establishment of a special fund³¹⁸ to cover the contingencies of c. 281 if there is no other provision. So serious is this matter that the law demands the bishops' conferences to "see that an adequate fund is established which will furnish adequate social security [...]"³¹⁹ and indeed, the law allows for inter-diocesan sharing or amalgamation of resources for this purpose.³²⁰ Though the law does not require particular churches to assist one another in providing this support, the canon provides a strong incentive. It would suggest at least a moral duty to assist one another when necessary and possible (§4).

The Code leaves it to the bishops' conferences and particular law to establish norms for the appropriate support and residence of retired and incapacitated clergy within the defined categories,.

³¹⁵ CRAIG A. COX, Opinion, "Canon 281§3. Remuneration of unmarried permanent deacons," in *Roman Replies and C.I.S.A. Advisory Opinions, 1995*, pp.45-47.

³¹⁶ 83 CIC, c. 1025, §2. The bishop cannot ordain unless he believes the ordinand is useful to the ministry of the particular church. The particular church ordains and incardines the ordinand for 'service to the diocese'. For it to be otherwise would constitute 'absolute ordination' which is illicit.

³¹⁷ 83 CIC, c. 1350, expresses the an extreme degree of episcopal responsibility in that the bishop must, as best as possible, make material provision even for a cleric dismissed from the clerical state.

³¹⁸ 83 CIC, c. 1274, §1.

³¹⁹ 83 CIC, c. 1274, §3.

³²⁰ 83 CIC, c. 1274, §4.

What norms have been established by the Canadian Conference of Catholic Bishops (CCCBC) and other bishops' conferences?

CHAPTER FOUR

The Application of Universal Law to the Establishment of Norms by Bishops' Conferences

4.1 Foundations

The foundational elements discussed in the matter of clergy support include: the theological and canonical foundations; the principles established and mandated in various canons; and, some direction in regard to financial considerations.

The 1983 Code of Canon Law has legislated in the matter. However, the legislator is also aware of the complexities of the issue. The universal Church rich with a multiplicity of cultures but with a vast diversity of economic conditions applies the notion of support only in the broadest of terms. Universal law directs the concrete implementation to the particular churches and has left it to bishops' conferences to establish particular norms.

It is now necessary to examine the implementation of the universal law by selected bishops' conferences. Of particular interest is the implementation of universal law by the Canadian Conference of Catholic Bishops. The selected decrees are the similar and different. Where they differ, the author makes observations and draws some conclusions.

4.2 Canadian Conference of Catholic Bishops, *Official Document, no. 599*

4.2.1 The Decree

Canon 538, §3 is applied by the Canadian Conference of Catholic Bishops in decree no. 31 which reads as follows:

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 diocesan bishop shall see to it that a specific and funded plan is established to provide adequate support and accommodation for all retired priests incardinated in his diocese; available Government pension

programs, public pension plans and other social benefit programs shall be taken into account;

2. Each diocesan bishop shall also see to it that priests incardinated in the diocese who become incapacitated before the regular retirement age, will receive sufficient assistance to provide for adequate support and accommodation, 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 field.³²¹

4.2.2 The Title and Its Implications

The title of the decree itself is of considerable importance. Though the Code provides for the resignation of an office,³²² it does not use the word 'retired'. The title of the decree uses the word 'retired.' Though a person might surrender an office, the former Code did not envisage the contemporary notion of retirement.

The usage of the term 'retired' is an application *to* universal law *of* the cultural context in which the decree is written. *Freedom Fifty-Five* is an expression with which we are all familiar; contemporary language uses the term *Third Age* career planning; the expectation is rare indeed, that one would spend a life-time working at one occupation, much less working to seventy-five years of age.

The Code recommendation for the age at which one might request retirement strikes a very odd chord in our North American and Canadian context. Given the contemporary experience of ageing clergy, the prospect of labouring to the age of seventy-five at full-time ministry with its awesome multitudinous responsibilities poses quite a challenge for most.

The bishops have recognised a reality of our time and culture. Indeed, if one is a participant of a company registered retirement plan, it is technically illegal to work full-time to age seventy-five. The canon is in conflict with civil law in the matter of the age of retirement for participants in an institutionally sponsored RRSP; however, not necessarily with other types of retirement plans noted above. While the Church requests the pastor

³²¹ Ibid, pp. 1321-1322.

³²² 83 CIC, cc. 187-189.

to resign at seventy-five, it does not mandate that retirement *cannot* occur before seventy-five. The Archdiocese of Ottawa pension plan notes a further advantage of this early retirement age of sixty-five.

The title of the decree speaks of 'retired priests' and not just retired 'pastors' as expressed in the canon. Hence, the scope of eligibility for support becomes greatly extended. This has two implications. First, the title of the decree addresses the eligibility for support to all priests, whether voluntarily or involuntarily resigned (c. 538, §3). The preamble would seem to confirm this as a direct intent of the decree when it relates c. 385, §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).

4.2.3 Justice, Equity and Incapacity

The preamble to the decree uses the term 'equity'. Equity is that element of justice that provides for situations not defined strictly in law and provides for the extension beyond the letter of the law. Equity, according to *The HarperCollins Encyclopedia of Catholicism* is:

...an act of justice whereby, for the sake of the common good and the good of individuals, the intention of a law in a given instance is recognised as a higher norm of moral reasoning and interpretation than the letter of the law [...] [equity] means that a law need not be obeyed when its observance would be detrimental to the common good or the good of individuals. Its use does not imply that the law itself is invalid or that it can be disregarded at will. [...] [equity] is a principle of moral reasoning that is only applicable in specific instances under circumstances of necessity or urgency. [It] is opposed to legalism, which makes the observance of the letter of the law always primary, even over the demands of justice.³²³

Equity reaches into the very spirit and heart of Christian love. Equity is the application of love to the Christian virtue of justice and justice is the foundation and root of charity.

In a context of incapacity, distributive justice provides a basis for a broad application of the law. Any cleric incapable of ministry may fall within the definition of incapacity. Episcopal discretion or an individual cleric's decision accepted by the bishop

³²³ RICHARD P. MCBRIEN, (gen. ed.), *The HarperCollins Encyclopedia of Catholicism*, San Francisco, HarperCollins Publishers, 1995, p. 471.

may cause the cessation of work or incapacity. The decree infers that a cleric could be eligible for support and accommodation before the normal time of retirement, subject to the condition "taking into account any social programs to which they may be entitled."³²⁴

The decree is also sensitive to the needs of both the Church and the individual. In justice, church leadership is responsible for the financial well-being of the institution. It can only provide in a spirit of equity according to its financial means and necessity. Therefore, churches provides on the basis of need rather than a determined amount. If a priest has retirement income from another source, justice and equity would demand that this resource comprise part of a benefit package. The intent of the decree indicates that a diocesan pension benefit take into account income annuity from a former non-ecclesiastical employer, government pension plans or senior citizen allowances.

Under this title, accommodation is another very serious consideration and will be the subject of greater discussion later. Suffice to say at this time that most retirement plans are insufficient to provide for accommodation apart from a rectory situation. A priest's financial situation³²⁵ or the resources of the diocese may limit the option of accommodations available. Furthermore, these pension plans are often inadequate when elderly priests require constant nursing care or suffer from severe physical or mental disability³²⁶ that require institutional care.

The costs of ageing and illness are everyone's concern yet the decree speaks very little to this issue other than placing the issue within the "principles of natural justice and equity." Governments and private institutions experience the effects of the high cost of pensions and costs associated with an ageing population. It is no different in the churches. The decree indicates the commitment of the bishops to plan and provide the support necessary within the resources of the diocese. Pension plans need long term

³²⁴ *OD, no. 599*, para. 2, in *Annotated Code*, p. 1322.

³²⁵ The financial resources include CPP and Guaranteed Income Supplement.

³²⁶ The situation has occurred wherein there is an implicit expectation that family, even aging parents, might be expected to provide physical care for a son or brother with incapacitating or debilitating diseases. This is not the intention of the Code. Even if parents/family want or are willing to provide care, the Ordinary would be required to consider, not only what is best for the priest, but also the well-being of the priest's parents and/or other immediate family. Under current law, it is the bishop of incardination who is ultimately responsible for the well-being of the priest, not the priest's family.

planning and continuing evaluation especially as greater numbers of clergy enter the retirement zone.³²⁷ Every diocese will confront this growing issue in a very concrete fashion in the not-too-distant future.

4.2.4 Specific Retirement Plan

The decree itself, in §1, refers to the establishment of a 'specific and funded plan' in each diocese to 'provide adequate support and accommodation for all retired priests incardinated in his diocese'. The plan is under the vigilance of the diocesan bishop. It appears the decree calls for at least two funds: one, a specific retirement fund; the other, a 'special' fund for those incapacitated before the regular retirement age. The bishops' commentary on the decree also observes this.³²⁸

A specific retirement fund is certainly the intent of the decree in paragraph one. As mentioned above, this fund might sponsor either an RRSP or, at least, a retirement fund held "in trust," to comply with the decree.³²⁹ A serious responsibility rests on those who determine that such a fund, in fact, satisfies the financial demands of the documents, canons and the decree as it pertains to both financial support and housing.

The context of § 1 of the decree would imply its applicability only within the context of c. 538, §3. Therefore, the reference is to clergy who resign their ecclesiastical office or similar assigned function. Such priests, if they have paid into a registered, in trust or "arm's length" fund, are eligible to access the retirement pension plan according to the statutes of the plan. This would appear to be the normative interpretation of the aforementioned paragraph and it is consistent with the principles of (commutative) justice.

³²⁷ One priest suggests the possibility of retired or disabled clergy taking advantage of government welfare. In urgent necessity this might be required. The serious implications involved go beyond this paper; however, five factors come to mind. First, it implies a failure in both institutional leadership and the responsiveness of the laity; second, co-operation between the churches is ignored; third, the effect upon the morale of diocesan clergy would be completely devastating; fourth, seminarians would likely become non-existent; fifth, diocesan clergy would likely find that they have a vocation to the consecrated life of religious.

³²⁸ *Studia canonica*, 22 (1988), p. 481.

³²⁹ This is Institute C.

4.2.5 Incapacitated Clergy

Paragraph 2 of this decree refers to all priests incardinated in the diocese ‘who become incapacitated before the regular retirement age’. The decree does not define ‘incapacity’ as such; however, as it refers to c. 281, §2, it implies those who can no longer function actively “due to infirmity, sickness or old age.”³³⁰

This section needs interpretation in light of cc. 1274, §2 and 1350. This would indicate a broader interpretation than specifically mentioned in c. 281, §2. Certainly, the documents and other canons described above, as well as the notion of support due to incapacity, would support a broad interpretation. Consequently, this section includes all clergy incardinated and defined in Chapter One, 1.5.

It is topical that this paragraph should refer to “social assistance programs.” Currently such government assisted programs are undergoing restructuring and are being severely curtailed. In effect, this means that to comply with the canons and decree, the diocesan bishop may have to increase discretionary funds allocated to Institute B.

4.2.6 The Principle of Adequacy

The principle of adequacy, the nature of retirement and the disability funds are the subject of this section. The reference, “administration and verification of the adequacy of these retirement and disability funds,” indicates the Conference’s sensitivity in two ways:

- (1) that administration includes management and protection of the assets of the fund by competent persons in the field;
- (2) that adequacy recognises the relative nature of the fund being contingent upon such objective factors as:
 - (a) the resources available to the diocese,
 - (b) the number of participants,
 - (c) the cost of living adjustments that might be necessary to provide support to recipients of the various funds.

³³⁰ 83 CIC, c. 281, §2.

The statement, "The administration and verification of the adequacy of these *retirement and disability funds* [...]"³³¹ could certainly imply two funds, retirement and disability. On the other hand, the two elements could be one fund depending on the constitution of the plan. Private pension funds usually allow for both retirement benefits as well as disability. However, some pension plans are very restrictive when a person seeks benefits under the classification of disability. The term disability in 'registered' plans requires a medical certification and is usually limited to physical and specific mental disability. Registered plans are much more restrictive in this area.

The bishop has the ultimate responsibility to maintain the adequacy of the defined funds; however, truly competent people may provide necessary expertise and advice. Given the complex issues that have been discussed thus far, a danger exists. Competent layperson persons might only use the information of salary and number of clergy as criteria to determine the adequacy of the plan. Diocesan records might provide this basic information.

Since clergy are not normally competent in the field of pension fiscal planning, the information provided might not be sufficient to provide accurately for the ultimate purposes and consequent funding needs of any plan. The development of any plan is contingent upon goals, actual circumstances and reliable data. Professional agencies generally work with data provided and develop plans out of that data. If a vital piece of information is missing, this can have a very negative impact on the effectiveness of the plan.

Universal and particular law both specify accommodation as one of the components of a retirement package. Yet, the cost of accommodation is not factored into the cost of either the plan, the contributions necessary to sustain the plan or the retirement benefit. Pension plans do not generally account for accommodation *as part of* a retirement package. In such a case, failing to account for accommodation and only using the figures provided, the plan could make the benefits appear to be sufficient. In

³³¹ *OD, no. 599, § 3, in Annotated Code, p. 1322. Italics are the authors.*

fact, given the current costs of accommodations and institutional care, most plans are more apt to be very inadequate.

4.2.7 Intent of Two Funds

The fundamental intent of two funds is to provide support in the context of commutative and distributive justice. Commutative justice connotes a strict right with a serious corresponding obligation. Distributive justice also connotes a right with a corresponding obligation; however, commutative justice is a proportionally³³² higher right and higher obligation than a right rooted in distributive justice. The decree supports this assessment by placing these funds in the context of natural justice.

Therefore, the *retirement* fund is a specific retirement plan and defined within the parameters described above. It is a reflection of commutative justice. The constitution, statutes and policy of a plan should clearly define eligibility requirements for benefits as well as the benefits themselves. Institute C encompasses the true nature of a retirement fund.

To allow for greater flexibility and discretion in applying a *disability* fund, the guidelines or policy statements pertaining to eligibility and benefits should permit a broader and more circumstantial interpretation.³³³ A bishop might more freely utilise discretionary judgement in the matter of interpreting and expanding eligibility because of the very nature of this fund. It is to provide for exceptional circumstances or conditions and may include those who, without other financial resources, are incapable of obtaining benefits from a registered plan.

The nature of this fund admits of many possibilities. It could range from a commercial sickness or accident insurance plan to a discretionary fund established by the bishop for those who retire before their technical time of retirement because of a disability or incapacity.. Institute B encompasses the nature of this type of fund. It is a concrete expression of distributive justice.

³³² HARING. *The Law of Christ*, vol. 3, p. 24.

³³³ Except in the case of registered plans discussed later.

4.2.8 Accommodation

The decree includes accommodation as an element of support. However, there is no comment concerning the nature of the accommodation or its possible sources of funding. The diocese must provide support and accommodation to the bishops appointed to the service of a particular church by the Roman Pontiff. The support and accommodation is due both during their period of active ministry and when they retire.³³⁴ In the case of bishops in Canada and the United States, the retiring bishop vacates the official residence of the diocesan bishop and makes other provisions for accommodation. In United States, the retired bishop receives accommodation support from his former diocese according to Appendix A. In Canada, the former Archbishop of Kingston, Ontario, retired to a condominium purchased in a different city but within the diocese.

Is it reasonable to expect a retired pastor to continue to reside in the official residence of his former parish as pastor *emeritus*?³³⁵ What might be the feelings of the new pastor in this regard? What if an incoming pastor prefers the former pastor vacate the rectory; or, perhaps one new pastor permits a former pastor to stay and the next pastor does not? What if the retired priest should like to live 'on his own' and not in a rectory? *The Guidelines for the Retirement of Bishops* in United States, though an experimental and unofficial policy paper, along with the current practice of retiring bishops, are concrete expressions of the *implementation* of cc. 281, 385, §3 and 1274. Could c. 19 and Appendix A analogously apply to clergy accommodation and benefits in a proportional manner?

In 1993, the Diocese of Hamilton, Ontario, surveyed the diocesan priests of the diocese on the issue of retirement residence. The questionnaire asked: "Would you be willing to have a retired priest live with you in your present rectory; if you were in another rectory; if yes, what provisos would apply?"³³⁶ The following data³³⁷ indicates the response:

³³⁴ 83 CIC, c. 402.

³³⁵ 83 CIC, c. 402, by extension applicable to pastors, resigned and living in their former parish.

³³⁶ *Ibid*, p. 1

³³⁷ EARL TALBOT, Presbyteral Council, Subcommittee Chairman on the Continuing Formation of Priests, *Letter*, 23 September 1993, backside of p. 1. Percentage figures are the authors and are applied from

There are a total of 122 parishes, 37 of which are contracted to religious. The total number of parishes occupied by diocesan priests is 85. There are 128 active diocesan priests. There was a 38% return rate; presumably 62% did not reply. In their present situation, 55% of the respondents would agree to take a retired priest; 41% would not; 4% did not answer the question. In response to the question about accepting a retired priest in a different rectory, the responses were: 24% agreed; 2% said possibly and 12 % did not respond. The provisions and conditions named by respondents in accepting a retired priest are listed in Appendix B.

It is clear that the decree includes accommodation as part of the retirement package; however, that the authorities have neglected to establish principles or criteria in this matter is a serious shortcoming of the decree. In the local church, benefits can only be relevant in terms of decent support when the application to housing *is included* and related to 'real cost of living' in the local area.

It is worth bearing in mind that many celibate clergy have had little personal experience with the real cost of living without the resources of a rectory available. Many clergy involved in parochial ministry have spent most of their lives in a furnished rectory in which many services are provided at minimal or no cost to themselves. It is also a common experience for people to be quite capable of easily spending someone else's money, whereas they would find it much more difficult to spend their own. These two factors, though personal in nature to the priest himself, nevertheless require the cleric to make some major re-adjustments in retirement.

It would now appear to be the sole responsibility of the diocesan bishop to establish guidelines in the matter of accommodation. On the other hand, it is not uncommon that priests who retire with independent sources of income, purchase or rent their retirement residence. What happens when a priest does not have such sources?

4.2.9 Co-operation between the Local Churches

In a commentary on the decree makes the point that provision is made by c. 1274 for the possibility of a number of dioceses working together to set up joint retirement and

numerical scores in the aforementioned letter. A presumption exists in that it is assumed all diocesan priests were provided with the survey.

disability programs: however, this is not mentioned in the decree. The decree and commentary emphasises each diocesan bishop's responsibility in setting up the special fund.³³⁸

Granted that each diocesan bishop has the ultimate responsibility in this area, it would seem that the decree expresses a total lack of a sense of episcopal collegiality in the matter of support to less fortunate dioceses and their clergy. The vital spirit of collegiality within a conference of bishops might have been enhanced³³⁹ had at least a principle of collegial support been noted. Joint programming in this area might have been at least suggested, and perhaps even a commitment made to this end, as recommended by Church documents³⁴⁰ and universal law.³⁴¹ As it is, the allowance for great discrepancy in financial resources in the matter of support for retired and disabled clergy can exist between the local churches of Canada, east, central, west, and north. Indeed, it could exist even within the same regional conference.

A possible practical consideration and benefit of a national or civil provincial program might be that by combining resources, a greater volume of eligible funds would exist for investment purposes. This would likely produce greater stability and financial return to the benefit of all the churches. On the other hand, such a plan might also be very complicated to establish especially the issue of liability.

4.2.10 Professional and Administrative Competence

The administration of retirement and disability funds is to be entrusted to persons who are recognised as competent.³⁴² Although the nature of competence is not defined, the implication is that at least one member of the board would have a professional status in finance or retirement fund planning and management.

³³⁸ *OD no. 599*, in *Studia canonica*, 22 (1988), pp. 478-481.

³³⁹ A financial commitment truly expresses a personal commitment to an ideal or cause. It actualizes and manifests the 'spoken word' of support.

³⁴⁰ *CD*, in FLANNERY, no. 6, p. 566. Also, *ES I*, in FLANNERY, no. 5, p. 595.

³⁴¹ 83 CIC, c. 1274, §4.

³⁴² *OD, no. 599*, § 3, in *Annotated Code*, p. 1322.

This would be particularly important in the case of a privately administered, non-public and unregistered fund,³⁴³ as well as a retirement fund held “in trust” or at “arm’s length,” whose governing board might consist of only clergy with a third party trust advisor or broker, or without a third party at all.

As well meaning as priests may be, pensions are an extremely complicated and technical field. Unless a priest is certified by a civilian professional association in a financial or retirement field, it is not advisable that he should attempt to manage the retirement plan of a diocese. Further, the decree does not mention the nature of specific qualifications for competence. The decree does not set out a period for review, criteria for determination of adequacy of the fund itself or adequacy of individual benefits; nor does it demand a procedure for verification or resolution of disputes.

Mismanagement (or at least, limited effectiveness) is a real possibility, given the complexity of civil legislation, taxation and market conditions. Ignorance, though inculpable, may prove disastrous to the financial well-being of the plan as well as to its participants.³⁴⁴

A civilly registered retirement plan is governed by civil legislation; it is usually managed by a professional firm with expertise in this field.

4.3 Decrees of Other National Conferences

4.3.1 National Conferences Reviewed

The *Annotated Code* provides an Appendix³⁴⁵ which contains the decrees of various nations, some of which have promulgated decrees in the matter of cc. 385 and 281. *Canon Law Digest* [= *CLD*] also records particular legislation in this matter. The decrees of the following Episcopal Conferences were reviewed with a view to determining marked differences from the Canadian decree, and also to determine where

³⁴³ Unregistered means the fund is not constituted and acknowledged as existing as such by a civil government agency and consequently, the plan is not subject to civil legislative norms in regard to constitution, statutes, policy, administration of funds, verification or monitoring of funds. Neither are personal contributions to such a plan tax deductible.

³⁴⁴ This is not to say that a priest is completely unskilled in the matter, he might be very competent. For the reasons cited, one might question the advisability of an untrained priest directly managing such plans in light of cc. 276; 278, §1; 285; 286. Nothing would prevent him from monitoring the plan, that is, supervising; but ‘hands-on’ administration and control is quite another matter.

³⁴⁵ 83 CIC, *Annotated Code*, Appendix III, pp. 1343-1434.

there has been amplification and interpretation of the universal law. Those nations reviewed are: Australia, Canada, England and Wales, France, The Gambia, Liberia, Sierra Leone, India, Ireland, Nigeria, Papua New Guinea & Solomon Islands, The Philippines, Scotland and the United States of America (= USA).

Those who have legislated on the matter are: Canada, England and Wales, France, Gambia, Liberia, Sierra Leone, Ireland, Nigeria, Philippines, Scotland. United States has not legislated on the matter by way of a decree; however, it has offered policy guidelines.

4.3.2 Specific Differences in the Decrees

That which is strictly in conformity with the Code and that which the various conferences have in common is not noted. Unique characteristics of the various decrees and those points which the Canadian decree does not mention are referred to below by the respective bishops' conference:

a) England and Wales specifically define that a National Committee for Sick and Retired Priests advise bishops annually concerning recommended minimum levels of benefits.³⁴⁶

b) The Gambia, Liberia and Sierra Leone decree requires that the priest is to obtain the approval of the diocesan bishop for his place of residence and that the benefit is to be at least equal to that of an active priest;³⁴⁷

c) Ireland formulates the decree under c. 281;³⁴⁸

d) Nigeria specifies a determined proportional contribution from the diocese and clergy to a insurance plan at the diocesan level; the Presbyteral Council is to work out the plan; a special house shall be designated for the retirees; and of special note, "special care should be taken that retired priests should not retire to their relations."³⁴⁹ Should he retire to relatives, spiritual assistance is required to be provided. Further, priests are to

³⁴⁶ Ibid, p. 1336.

³⁴⁷ Ibid, p. 1346.

³⁴⁸ Ibid, p. 1358.

³⁴⁹ Ibid, pp. 1375-1376. The writer is uncertain as to the reason for this specific recommendation other than the possibility that undue hardship might result for the family.

“act maturely and look ahead.” It is stated and recommended that clergy make a Last Will and Testament.³⁵⁰

e) The Philippines decree that the diocesan curia shall administer the funds which will include provisions for burial.³⁵¹

f) France has both a local plan and a National Guarantee Fund established by the Conference for the purpose of assisting those dioceses incapable of providing the minimum benefit determined annually by the Conference. A calculation of what constitutes a ‘minimum retirement income’ is provided. There are three classifications of housing. Also, if a priest has worked in various dioceses, his diocese of incardination requests from them a proportional amount of contribution to provide support based on the number of years of service provided to another diocese. Formal age of retirement is sixty-five.³⁵²

g) The retirement guideline, *Norms for Priests and Their Third Age* [=Norms], issued by the National Conference of Catholic Bishops³⁵³ in United States, is the most pastoral and comprehensive document sighted. It indicates a remarkable sensitivity to the implications of retirement. It is well known that not only retirement itself, but the very prospect of retirement is a daunting prospect for many. This conference is very aware that Roman Catholic clergy, many of whom might be classified as workaholics, can fear the prospect of retirement, not only from a financial point of view but also psychological.³⁵⁴

The *Norms* recognise that terminating employment at a given moment without any preparation can be disastrous for the well-being of the person of the priest; hence, it

³⁵⁰ Ibid, pp. 1375-1376.

³⁵¹ Ibid, p.1397.

³⁵² BISHOPS' CONFERENCE OF FRANCE, Particular Legislation: “Canon 538. Sustenance for Retired Clergy,” in *C.I.D.*, 11, p. 81.

³⁵³ 83 CIC, *Annotated Code*, Appendix III, entitled, *Norms for Priests and Their Third Age*, pp. 1417-1419.

³⁵⁴ USA BISHOPS' COMMITTEE ON PRIESTLY LIFE AND MINISTRY, *Fullness in Christ: A Report on a Study of Clergy Retirement* (Washington: USCC, 1979). Also, HELEN MORRISON, *The Third Age: Retirement Concepts for Clergy and Religious* (Cincinnati: NACPA, [=National Association of Church Personnel Administrators] 1986). The introduction to the norms states that retirement from a diocesan appointment does not imply an end to ministry; hence the term “third age” is used instead of “retirement,” in *The Jurist*, 54 (1994), pp. 387-408.

acknowledges that a 'process of discernment' is necessary before the actual submission of a resignation or determination of incapacity to minister. It recommends that a retirement committee assist a priest in this discernment and, further, that the bishop develop retirement programs in this area.

Of particular note are the following recommendations:

- 1) an 'index' of retired priests in which the retired priest defines areas in which he would prefer to continue to minister on an *ad hoc* basis. This diocesan index is available to all responsible for any type of ministry; and,
- 2) a diocesan advocate for the retired who addresses the concerns of the retired to proper authority;
- 3) housing options and individual choice are encouraged;
- 4) programs promoted and which pertain to all aspects of development for active priests should be extended to retired priests according to their desire to participate;
- 5) norms should be established in the matter of priests physically or emotionally in need of special care;
- 6) dioceses should develop long-range, financially independent and professionally developed retirement plans; and, priests are to be aware of the stewardship of their own funds. Also, the clergy are reminded of their duty to make a last will and they should also be mindful of the local church when preparing their last will;
- 7) diocesan bishops are reminded of their pastoral responsibilities in the matter of senior priests of the diocese; and,
- 8) dioceses should be aware of extra-diocesan financial and support resources available in the area of retirement.

The norms and recommendations of this decree are remarkably different from the Canadian decree in virtually every respect of their underlying philosophy, spirituality, norms and recommendations. However, the *Norms* are not a decree but more in the nature of guidelines for diocesan bishops of United States.

4.3.3 Serious Limitation in the Canadian Decree

Though recognising the difficulties in establishing defined principles in the matter of retirement and disability support when there are so many variables, three problems emerge: (1) without objective criteria, the support provided to the retired may be actually deficient; (2) without principles the institute responsible is unable to determine and forecast requirements with which to approach the bishop, the membership, and, if necessary, the local church,³⁵⁵ and (3) to function on an *ad hoc* basis with regard to a *disability fund* endangers those most vulnerable who have a right in distributive justice to decent support and residence according to cc. 281, §2, 538, §3 and 1274, §2.

Given many clergy's positive attitude toward the virtue of poverty and the profound respect they may have for their bishop, it is not inconceivable that, though the bishop may make serious and even personal inquiries, a retired or incapacitated priest may not be very willing to reveal his true living situation. This priest may very well put himself, his health, or the economic security of his family members or friends, at risk.³⁵⁶

Other business and government institutions are required to deal with many variables in the determination of pension plans, yet they devise retirement plans and pensions according to defined criteria and make adjustments as necessary. Some fundamental criteria that might be used to determine decent support for clergy are contained in Appendix C.

4.4 Extra-ecclesiastical Factors in Consideration of Decent Support

4.4.1 Government of Canada. Determination of Financially Deprived Persons

The National Council of Welfare, in conjunction with Statistics Canada [=StatsCan] and the Household Surveys Division Income, Expenditures and Housing Data section, have determined a formula³⁵⁷ whereby they are able to determine the

³⁵⁵ The local church is the primary 'provider' of funds; however, the bishop allocates those same funds to the various institutes. He is an employer contributor in the case of pension funds.

³⁵⁶ HANNAN, p. 202: "There has been a tendency to overlook, [...] the priest's duty of supporting or of helping to support dependent near-relatives; the duty of a priest in such circumstances naturally involves a right to receive enough income to enable him to discharge that duty." Aside from this duty, he should be capable of at least paying his own way should he choose to live with relatives after retirement. Already mentioned is the case of a priest with disabilities being cared for by relatives.

³⁵⁷ Government of Canada. Statistics Canada [=StatsCan], Catalogue No. 13-551, pp. 7-10, describes the procedure for determination of low income cut-offs [LICO's].

financial point below which a person is classified as economically deprived. A sample of nine million households in various demographical areas determine normative income standards for money spent on shelter, food and clothing. From this is determined "The Statistics Canada Low Income Cut-Offs (1986 Base) for 1994 [=LICO]." StatsCan has determined that, in 1994, a normative percentage of income spent on shelter, food and clothing in most households was 34.7%.

However, StatsCan has also determined that some households spend a greater amount for these necessities. The actual cost of living for this group is consequently higher. In order to account for the difference in the costs of living between the two primary groups, StatsCan adds 20 percentage points in order to balance, compensate and determine the actual amount at which a household is deemed to be financially deprived.

In 1994, the average household spent 34.7% of income on shelter, food and clothing; however, there were also those who actually spent 54.4% of their income on the same necessities. To cite an example, a two bedroom apartment renting for \$600 costs the same for the two groups. However, one household spends 34.7% of income, the other, 54.7% of income. The difference is contingent upon their respective incomes.

4.4.2 Accommodation Factors

Two factors come into play when residence is considered: (1) normally 30%³⁵⁸ of a person's salary is expended on a residence, either rental or home ownership; (2) in the case of home ownership, equity³⁵⁹ builds (or declines) and this acts as a security factor for senior years. Both of these natural rights (just salary³⁶⁰ and right of ownership³⁶¹) are not possible for Roman Catholic diocesan priests due to the conditions of employment. A priest's remuneration income normally precludes the possibility of either renting or

³⁵⁸ GOVERNMENT OF CANADA, StatsCan, "LICO, 1994." Author has rounded off all following percentage figures unless specifically noted.

³⁵⁹ Not to be confused with equity mentioned above. Equity in this context refers to financial assets attached to a real property (real estate, etc.) dependent upon local market values.

³⁶⁰ Objectively, a just wage commensurate with employment position and which would include the ability to maintain one's self (and family) and the ability to maintain a residence.

³⁶¹ This is not to say that priests 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 gross annual income of most Roman Catholic clergy?

owning during the period of active ministry (employment) and present retirement benefits would appear to preclude the same in retirement.

A further consequence of artificially low salaries coupled with the housing allowance is even more damaging. Government and business regulated retirement plan benefits are based on employee and employer contributions plus accrued investment income. These contributions are a percentage of salary; the benefits are proportional to individual earnings and corporate contributions.

Let us construct a hypothetical situation to show the real cost of the long-term impact of artificially reduced salaries on retirement benefits. The figures used are arbitrarily chosen: a man earns \$35,000 gross annual income and his pension contribution is 5%. During his productive employment years, he had \$875 a month dedicated to rent or the purchase of property.

If he works for twenty-five years, he has contributed \$43,750.³⁶² If his employer's share is calculated at 11% over the same period and under the same contributing facts, the employer contribution to his pension is \$96,250. The retiring employee has a theoretical gross equity of \$140,000.

If his benefit rate of return is calculated at 40% of his annual salary³⁶³ he will have an annual gross income of \$14,000 from the plan. Presuming that his Canadian Pension Plan³⁶⁴ [=CPP] pays a return of \$600 a month and Old Age Pension [=OAP] pays \$400 a month, he would have a gross annual income of \$26,000. The gross monthly income is \$2166. He can afford accommodations³⁶⁵ costing \$ 649 a month. If he has been financially prudent, he owns his own home and his accommodation costs will not totally absorb his monthly amount allocated for this purpose.

³⁶² Not included in figures are the compounded interest and a share in group investment income.

³⁶³ Some plans return 40% of salary if the employee has completed the full period of employment in order to obtain retirement benefits.

³⁶⁴ Department of Human Resources, Canada Pension Plan Division, advises current full benefit at age 65 for both full retirement benefit and/or disability pension is \$713.19. The rate of benefit is tied to contributions and will therefore vary from person to person. The maximum Old Age Pension [=OAP] is currently \$395.75 and is obtainable only at age 65. The Guaranteed Income Supplement [=GIS] maximum available to a person with little or no income, is currently \$469.13. The GIS is also tied to retirement income and Cost of Living Index released by the Government Finance Department quarterly.

³⁶⁵ Accommodations include associated costs such as, rent, hydro, water, phone, parking and the like.

On the other hand, a priest with an annual gross salary of \$12,000 contributes, over the same period and conditions, \$15,000. The employer contributes \$33,000 for a total of \$48,000. The priest has a defined rate of 40% of salary. His return is \$4800 gross annual income; the gross monthly income would be \$400. If he is eligible for CPP and OAP in the amount of \$600 and \$400 respectively a month, his gross monthly income is \$1400. His allocation for shelter, food and clothing will be \$420 a month. He can budget \$420 a month; however, where will he will find shelter,³⁶⁶ food and clothing for this amount in Canada?

4.5 Conclusion

Based on the decree, every incardinated cleric has a right to 'adequate support and accommodation' upon retirement or incapacity. This right, however, is not absolute but proportional in the matter of the two funds. Secondly, the *actual* support is relative and it is also based on the priest's eligibility to obtain supplemental sources of retirement income from other sources (government, private [patrimony] and other social benefits). Should a priest incardinated into a diocese *not* be eligible for such government benefits, the bishop retains primary responsibility for *total* support.³⁶⁷

The most serious shortcoming of the decree is that it does not elaborate on the principles to be applied to residence for incapacitated or retired clergy. Decent support cannot be adequately calculated without this factor. The Canadian decree is not alone in this regard. Of the decrees available from other countries, only the French decree and American guidelines have at least indicated possible housing options in this regard but without any reference as to how this is to be financially determined or managed.

In the current situation, the purpose and intent of any pension plan is determined by the diocese. If a diocese intends to provide decent support and housing to its retired priests, it needs to determine (1) what constitutes decent support and housing *outside of* a church/rectory situation in the local area; (2) what is the *actual* cost to a parish to provide the priest with his current standard of living, salary *and* housing; and, (3) various

³⁶⁶ Not without government subsidization.

³⁶⁷ An immigrant priest might not be eligible for pension or health benefits if he has made no contributions during his working career according to civil law.

housing options need to be developed including such options as independent living in commercial rental units, health care facilities or a senior citizen residence. If housing costs are not incorporated into diocesan pension plans, the plans can be seriously inadequate.

Two actual diocesan retirement benefit amounts are available (1995): one diocesan retirement benefit is \$1100; the other is \$ 734.³⁶⁸ If we presuppose that two retiree priests are eligible for CPP and OAP benefits in the approximate gross amount of \$600 and \$400 a month, their monthly gross incomes are \$2100 and \$1734 respectively. Their accommodation cost, food and clothing limits are \$630 and \$520 per month. For one calculation of the 'cost' of clergy housing see Appendix D.

With the exception of the American guideline, which is both pastoral and practical, almost all the decrees are purely functional in that they simply reiterate the canons in varying degrees. The only practical application of the decree is its specific reference to defined and special funds. There is no indication that a theological or pastoral basis motivates the decree. One has difficulty determining the actual 'redemptive value' presumed to underlie the decree.

Though both the documents and the Code recommend co-operation among the churches, both nationally and internationally, to support priests in less fortunate places or countries, the decree does not mention it. The issue of general liability remains;³⁶⁹ however, with proper advice from competent insurers, the issue could be resolved.

Without evidence to the contrary, the Canadian bishops appear to apply both commutative, distributive justice and equity in cases cited above and when, for whatever reason, a priest ceases to function before actual retirement age.

The decree itself is quite limited in its attempt to apply and interpret universal law and apply appropriate norms in the national, cultural and economic context of Canada.

³⁶⁸ Current pension benefits for Diocese of Hamilton (1994) and Archdiocese of Ottawa (1995) respectively. Further elaboration of implications are expressed in Chapter Five.

³⁶⁹ Liability refers to civil actions which cross provincial or federal jurisdictions.

CHAPTER FIVE

Application by Two Local Churches and a Case Scenario

5.1 A Local Church

5.1.1 The Archdiocese of Ottawa

The Retirement Pension Plan for Priests of the Archdiocese of Ottawa (=Plan) is a plan constituted by diocesan decree³⁷⁰ and under civil law.³⁷¹ It is a retirement plan registered with the Pension Commission of Ontario and subject to the regulations of the Pensions Benefit Act (Ontario) and the Income Tax Act (Canada).

5.1.2 Canonical Conformity

The constitution and statutes of the Plan conform to the requirements established both in universal law (cc. 538, §3; 281, §1 and §2; 1274, §1, §2, and §5) and by the norms of the Canadian Conference of Catholic Bishops (*OD*, no. 599) in the matter of retirement and medical disability.

The eligibility statutes conform to the canonical status of incardination.³⁷² There is provision made for medical disability,³⁷³ subject to medical verification. When a person is rendered incapable of working temporarily, he receives pay benefits from *The Saint Joseph Ecclesiastical Society* and is able to continue his payment of his contribution. Should he be classified permanently disabled, he is eligible to receive benefits from the Plan. The categories of a person's classification are quite extensive and account for most eventualities regarding eligibility, withdrawal from the Plan, deferred payment of benefits and pro-rated percentages for early retirement.

³⁷⁰ *Retirement Pension Plan for Priests of the Roman Catholic Archdiocese of Ottawa*. Amended and Restated as of January 1, 1992. Patrick Powers, Episcopal Vicar for Administration. Ottawa: Roman Catholic Episcopal Corporation of Ottawa, 1993, 34 pp. (=the Plan). Prior to 1 January 1974, the plan was known as the *St. Joseph Ecclesiastical Society of the Diocese of Ottawa* which continues to exist within parameters of Institute B. These two plans are separate entities.

³⁷¹ GOVERNMENT OF CANADA, Revenue Canada, No. 32891.

³⁷² The Plan, no. 3.02, p. 6.

³⁷³ *Ibid*, nos. 10.01-10.03, p. 23.

5.1.3 Administration

The administration of the Plan conforms to the intent and content of universal and conference norms and directives. This Plan also conforms to the administrative requirements of civil law. Administrative costs associated with the Plan, both from government agencies and the manager of the Plan, are borne by the Plan itself.

5.1.4 Age of Retirement

The Plan does not conform in the canonical matter of age (c. 538, §3) of retirement. Nothing in the Code or *OD, no. 599*, prevents formal resignation prior to age seventy-five. The Ottawa Plan conforms to civil legislation in this matter. A participant in the Plan is eligible and begins to collect pension benefits at age sixty-five.³⁷⁴ The member's contributions cease. This is not to say that the member is canonically resigned or retired. He is not, unless his resignation has been accepted by the bishop. The financial consideration of this situation has been mentioned above.

The Plan further provides for earlier retirement³⁷⁵ under varied defined circumstances with variations of benefits according to the conditions of retirement.

5.1.5 Termination of Membership in Plan due to Laicization

Should an incardinated priest be laicized,³⁷⁶ with the execution of the decree, membership in the Plan is terminated. However, according to the Plan, the accrued value would be transferred to another plan and/or applied to purchase a life annuity. If the man has under ten years service, the norm would be to return his contributions. The departing member has a choice of options and he decides the best option for his own circumstances.

5.1.6 Contributions

A professional actuarial firm has been engaged to determine, evaluate, and monitor funding of the Plan at regulated intervals according to standard evaluation procedures recognised in the field. Thus, the firm must understand the purpose and intention of the Plan, as well possess the pertinent data. This is critically important so

³⁷⁴ Ibid, no. 5.01, p. 10.

³⁷⁵ Ibid, nos. 5.02, 5.03, p. 10.

³⁷⁶ Laicization at his own request or as a result of sanction.

that the firm can devise and implement a plan which meets those ends. The actuarial firm establishes contribution ratios and benefits based on the information provided. The firm provides the Diocese with reports on its current financial status.

The Plan also provides a supplemental health and dental insurance plan as well as a death benefit to the member's estate.

5.1.7 Present Full Retirement Benefit

At the time of writing, this Plan remits a gross³⁷⁷ benefit of seven hundred and thirty-four dollars (\$ 734) monthly.

5.2 Limitations of the Current Plan

5.2.1 Unplanned Administrative Retirement

Unplanned administrative retirement means any condition which precipitates a priest's retirement: (1) when no medical certificate is possible; (2) when a person may be convicted of a crime³⁷⁸ followed by ecclesiastical administrative action or civil action which prevents a person from working, receiving remuneration and making the necessary contribution to a pension plan; or (3) when laicization occurs as a result of ecclesiastical penalty.

The requirement for a medical certificate creates its own problem in regard to this Plan's access to disability benefits. A priest may require medical treatment but refuses to acknowledge that there is a problem. He further believes that his personal privacy has been compromised by a bishop who has invited him to receive treatment. The administrative and ministerial problem, as discerned by the bishop, is severe enough to warrant the unplanned retirement of the priest yet the priest is unprepared to resign formally. Though the bishop can effect such an action after due process, the Plan cannot cope with such a situation either in the context of early retirement or disability due to the lack of a medical certificate.

Neither can the Plan account for the case of a clergyman convicted of a civil and/or ecclesiastical crime. Depending on the nature of the crime and the civil penalty imposed and/or on release from incarceration, the bishop might decide that for the good

³⁷⁷ The gross amount is used in all figures and refers to a pre-tax dollar.

³⁷⁸ Ecclesiastical sentence or civil conviction.

of the community, this priest should not continue in ministry either temporarily or permanently.

Should the priest voluntarily resign, the Plan would provide some benefit. However, should he not wish to resign and continues his contributions, he could conceivably continue in the Plan as long as contributions continued to be paid by the employer and employee. Here is a “catch-22”!

Under the Plan, the priest would have to be technically ‘fired’ after ecclesiastical due process (decree of laicization) and after conforming to civil requirements before the diocese (the employer) could legally stop its portion of the contribution. Should the bishop ‘fire’ the priest after due canonical process and in conformity to civil legislation, the bishop is still responsible, to a proportional degree in distributive justice, to provide support. However, the Plan cannot provide support for living, accommodations, retraining or treatment under such circumstances. Funding for this would have to come from something similar to Institute B described above.

5.2.2 The Accommodation Allowance is Not Factored into Contributions and Benefits

The factor of residence is clearly mentioned in the aforementioned documents, Code and decree yet no mention is made of this in the Plan.³⁷⁹ This is perfectly understandable since residence is not a specific component of most secular retirement plans. Civilian occupation pay scales normally enable the employed to make such provision for themselves. This clearly is not the case with most diocesan clergy.

5.3 A Local Church - “Arm’s Length” Plan

5.3.1 The Diocese of Hamilton in Ontario

The Episcopal Corporation of the Diocese of Hamilton in Ontario, Canada [Diocese], has a diocesan-constituted pension plan: *Diocesan Clergy Retirement Pension Plan* [=Plan]. The constitution, statutes and by-laws govern policy, administration, finance, membership, eligibility, disbursement of benefits, annual meeting and review of the fund. The Plan is governed by the Constitution as administered and interpreted by an

³⁷⁹ The Archdiocese has a residence available for retired priests who wish to reside there.

Administrative Committee. The Plan is at "arm's length"³⁸⁰ from the Diocese. Neither the Diocese nor the bishop is liable beyond the contribution specified in the Constitution.

In terms of language, this Plan does not accept the contemporary definitions of terms such as "employee" or "benefit." The concepts of support, remuneration, incapacity and benefit are all inclusive; therefore, Institutes B and C would appear to be combined into one fund.

5.3.2 Canonical Conformity

The constitution and statutes of the Plan conform to the requirements established in universal law (cc. 538, §3; 281, §1 and §2; 1274, §1 and §2), and the norms of the Canadian Conference of Catholic Bishops (*OD*, no. 599) in the matter of retirement and disability pensions.

The Plan conforms to civil law requirements in the matter of an "arm's length" relationship between the Corporation and the Plan. Therefore, the assets of the Plan are protected from civil litigation against the Corporation sole; the assets technically belong to the participants in the Plan. Should the Plan cease to exist, any assets revert to the Episcopal Corporation and are directed to the bishop for the maintenance and support of disabled or retired clergy of the diocese.

The eligibility statutes conform to the canonical status of incardination.

5.3.3 Administration

The Administrative Committee consists of the Bishop of Hamilton or his nominee and the Auxiliary Bishop, four elected priest members and one priest from the retirees.³⁸¹ The Secretary-Treasurer formally administers the Plan. A brokerage firm is engaged for purposes of formal business transactions, but does not take an active part in the administration of the Plan. The administration of the Plan conforms to the intent and content of universal and Conference norms and directives. Since the Plan is administered by clergy members of the Board, there are minimal administrative costs associated with the Plan.

³⁸⁰ *Black's*, p. 109.

³⁸¹ *Diocesan Clergy Retirement Plan*, "Constitution," rev. ed., Section 6.1, April 30, 1987 (since amended).

5.3.4 Age of Retirement

The Plan does not account for a distinction between formally retired or incapacitated priests. Either one is retired or not. Admission to the benefits of the Plan is determined by the bishop in both cases cited. Therefore, the age of retirement conforms to universal law in principle; however, retirement may occur: (1) at any time prior to or after that specified in universal law; (2) at any time at the discretion of the bishop himself; (3) at the recommendation of the Personnel Board subject to the approval of the bishop; (4) when the member himself may request to retire; or (5) on the occasion of disability or incapacity of the member at the discretion of the bishop.

5.3.5 Termination of Membership

If a member terminates, the Committee establishes a lump sum settlement. If a person is in arrears with his personal contribution for one full "Plan" year, he is entitled to no benefits from the Plan, according to sect. 2.5.2.

5.3.6 Contributions

A component of the plan is the determination of sources of funding to support the fund. The sources are determined by the constitution and statutes which normally call for parish and individual contributions by means of a determined formula that is adjusted each year. Currently the priest employee contribution is based on a flat fee independent of salary. The contribution is currently \$292 annual. The parish contribution is assessed at 1.7% of the ordinary revenue of the parish. This figure is calculated on the parish revenues as determined by the parish financial statement of the previous year. The parish contribution is the same regardless of the number of priests on staff.

The Committee also determines the annual contribution of any member engaged in an extraordinary assignment. This recent amendment (27 April 1990) has adjusted what formerly existed, that was a 5% annual contribution of salary by every member in the Plan. This created some difficulties. The difference in salaries between a priest in

parish ministry and another ministering in another institution could be very great, yet 5% was the expected contribution.³⁸²

Supplemental health and dental benefits are provided by the Plan to retired priests.

5.3.7 Death Benefit

The Plan pays a death benefit to the estate of the deceased in order to assist in payment of funeral expenses. If the priest dies intestate, the same is paid to the bishop to assist in the funeral expenses.

5.3.8 Current Full Retirement Benefit

Currently, this Plan remits a gross benefit of twelve hundred and nine-five (\$1295) dollars monthly. It is adjusted annually. Normally, all retired clergy, whatever the reason for retirement, receive the same basic benefit. This may be supplemented as required according to circumstances and at the discretion of the bishop.³⁸³

5.4 Limitations of the Current Plan

5.4.1 Eligibility to Receive Pension

It is difficult to determine whether or not there is a right (*ius*) on the part of the priest to receive the pension given that it is a Committee decision with the approval of the bishop. Unlike the Ottawa Plan, which clearly begins to pay benefits at a defined age, no age of retirement is specified other than what is stated in universal law.

The priest may apply for disability or retirement benefits presumably at any time; the Committee decides the merit of the case and, with the approval of the bishop, the Plan pays or does not pay the benefits. The priest has the right to appeal to a Board of Appeal if he feels unfairly treated. The Constitution itself binds the Committee to the decision of the Appeal Board.

No distinctions between support due to incapacity and support as a retirement benefit are made. Consequently, there appears to be no distinction between the relative

³⁸² A priest in parish residence earning \$7200 could expect to pay \$360. A priest earning \$40,000 gross, could expect to pay \$2000. If the Plan is unregistered, one cannot take advantage of the tax deduction (RRSP).

³⁸³ As might occur when personal retirement income from all sources does not meet the financial costs associated with full-time nursing care in a recognized nursing care facility.

obligation imposed by commutative and distributive justice; the principle of proportionality does not seem to apply in terms of the priority of obligation of the Plan to provide benefits should the Plan find itself in financial difficulties. The Plan certainly functions in terms of equity for all since all are treated in the same manner.

It appears as though it is the judgement of the Committee, using competent medical opinion(s), to determine when a person is incapacitated or disabled before retirement. Section 2.3.1, also refers to “[S]afeguarding the varied nature of disabilities and other special circumstances, the monthly benefit [...] shall be determined by the Committee with the approval of the Ordinary.”³⁸⁴ The Plan allows for great latitude in interpretation of disability; it is open to covering virtually any eventuality.

A third part of this section allows the member to apply to the Committee for disability pension. If there is a disagreement between the member and the Committee either in the acceptance of the request for disability or in the matter of the amount of a disability pension, the member “has the right to appeal to the Board of Appeal.”³⁸⁵

The eligibility to receive a pension is contingent upon the discretion and approval of the Committee with the approval of the bishop.

5.4.2 The Accommodation Allowance is Not Factored into Contributions and Benefits

As with the Ottawa Plan, the accommodation factor is not mentioned in the Plan. The diocese does provide the possibility of residing at a retirement residence apartment or full care facilities owned and managed by a religious community in the diocese. Any discrepancy in funding between the retirement pension benefit and the cost of residence or full health care service is made up by the diocese. Otherwise, clergy are expected to make their own arrangements, normally for rectory accommodation, in consultation with the bishop.

5.5 A Case Scenario

5.5.1 Father Anypriest

Father Anypriest is about to retire and is now looking at what his financial and living situation is to be in a couple of months. In what follows, it is presumed that the

³⁸⁴ THE PLAN, “Constitution,” section 2.3.1, p. 3.

³⁸⁵ Ibid, section 2.3.2, p. 4.

retiring priest does not possess independent sources of income other than what is described as benefits from a diocesan retirement plan and government provided pensions and benefits. With the exception of StatsCan figures, base figures are arbitrarily chosen.

Present StatsCan income Cut-Offs³⁸⁶ define the poverty level base line at a gross annual income of \$13,841 for one person in a city of 100,000 to 499,000, as per Appendix E. According to the criteria established above, a person would have \$346 monthly, available for shelter, food and clothing.

A local case scenario follows. Prior to his retirement, the clerical remuneration scale by years of ordination is \$ 1534,³⁸⁷ an annual gross income of \$18,408. The real cost of accommodation to a parish is not necessarily calculated; rather, a figure is arbitrarily chosen to comply with Revenue Canada regulations. To a working priest the difference between real cost and estimated cost is a reduced non-taxable benefit.³⁸⁸ This is generally perceived by clergy as a tax-free allowance (though it technically is not), or simply part of the pay package. It is also possible that the estimated costs to a parish *are* identified; the priest pays room and board fees that are actually *in line* with real costs.

Revenue Canada has determined room and board is a taxable benefit. Clergy are permitted to deduct residence costs on one hand but must declare the costs as a benefit on the other. Currently, in our situation Father Anypriest is charged \$125 per month for room and board. A realistic, but relative,³⁸⁹ cost of room and board is contained in Appendix D.

That the cost of accommodation is not often considered by clergy is noted by Hannan, when in the conclusion of his dissertation on the subject of *congrua sustentatio* for diocesan clergy, he observes: "In some dioceses there has also been a tendency to

³⁸⁶ Presented as Appendix E. Figures are from 1995.

³⁸⁷ This figure excludes stipends, stole fees, any honoraria and nominal bonuses.

³⁸⁸ Non-taxable benefit: Revenue Canada does not tax the income or value of this commodity or service; however, in this context it is comparable to a situation where tax is due but is not paid by legislative 'exception.' As a consequence, the consumer continues to possess that which should have been paid; therefore, it is added value to his financial status. Clergy accommodation is a taxable benefit but the difference between real value of the benefit and actual cost to the renter amounts to added value to the priest's financial status. Those engaged in ministry may use residence costs as tax deductions.

³⁸⁹ Actual costs vary widely demographically and even in different locations in the same general area. Currently, monthly room and board fees vary widely from diocese to diocese; e.g., \$125 in one place, \$750 in another.

disregard the duty to provide the fitting support owed to a priest engaged in graduate study in response to the command of his ordinary."³⁹⁰

It is quite possible that this benefit is so taken for granted by active clergy that it is not averted to at all -- it is just there! Nor would it seem that many clergy are even aware of the real costs associated with accommodations. Perhaps, only when it is absent as part of the remunerative package provided by a diocese, might it occur to a priest. Such might occur when a priest is working, acquiring additional training or education or retired. In such a situation, to be required to pay the costs of accommodation out of a diocesan salary or retirement benefits without a housing allowance, casts a new light on the subject of housing, retirement and remuneration.

5.5.2 Father Anypriest's Prospects

The decree has been applied in the following manner including base line pension income and accommodation options. The diocesan retirement benefit is established at \$734 a month. Added to this benefit is the CPP (1993) and OAP payment of \$600 and \$400 a month respectively. This provides a gross income of \$1,734 a month. The annual gross income is \$20,808.³⁹¹ Out of this gross amount Father Anypriest is expected to be financially self-sufficient. After taxes, normally 30% of income is dedicated to food, shelter and clothing. Father Anypriest will try to find a furnished apartment, provide himself with food and cloth himself for \$624 a month. This would be difficult.³⁹²

StatsCan recognises financially deprived people spend a higher percentage of their income to provide themselves with basics than those who possess incomes above the poverty 'Cut-Offs'. The government recognises that it is difficult to find shelter, feed and cloth yourself on \$624 a month. StatsCan determines that 50% of income would be required to have the necessities. Therefore, Father Anypriest is spending \$10,404 annually or \$867 a month for these necessities. He has \$867 a month for non-fixed expenditures and discretionary spending.

³⁹⁰ HANNAN, p. 202.

³⁹¹ These figures do not include Canadian Pension Plan or other government subsidies for which a priest might or might not be eligible. Presently, CPP pays approximately \$713.19/mo. to a person 65 and over.

³⁹² He might find a furnished room in a downtown hotel for approximately \$50-75 a week.

The notion of decent support and housing as contained in universal and particular law would, as a minimum, presuppose at least support and housing comparable to a working priest living in a rectory situation in a given diocese. However, in the Ottawa area, a reasonable two bedroom unfurnished apartment is at least \$750 (x12=\$9,000). Utilities, if not included in rent, can add another \$700-\$1,000 to annual expenses. If Father Anypriest owns a car and he is making payments, he can expect annual cost of transportation to be approximately \$4,600. His annual phone bill is approximately \$200; cable, \$240; household insurance, \$125. His annual expenditure is approximately \$14,865. His annual income is \$20,808 and he has \$5943 available for discretionary spending.

The following are possible options in terms of accommodations:

- 1) paying residence fees at a retirement home contracted by oneself or the diocese. Continuous care may also be available at higher costs;
- 2) find residence in a rectory and pay room and board. Fees may be established by diocesan policy or determined by mutual agreement between pastor and priest. Conditions of residence are established between the retired priest and pastor of the parish.
- 3) the diocese or pension board may contract commercial bulk rental housing at a lower rate which is passed on to retired clergy;
- 4) seek residence in a commercial rental apartment;
- 5) purchase a residence.

If he has no other source of income, is incapable of finding a parish residence which will accept him,³⁹³ does not want to live in a retirement home,³⁹⁴ there is no bulk housing, he attempts to make his own living arrangements. In a United States study of clergy retirement sponsored by the National Conference of Catholic Bishops, the

³⁹³ National Conference Of Catholic Bishops, The Bishops' Committee on Priestly Life and Ministry, *Fullness in Christ: A Report on a Study of Clergy Retirement*, [=NCCB, *Fullness in Christ*] Washington, DC, Publications Office, United States Catholic Conference, 1979, p. 6, indicates that "Several dioceses commented that the retired priest could reside in a rectory of his choice but *not* in the parish of his last assignment."

³⁹⁴ The extent to which this is reasonable will depend upon the financial resources of the diocese, pension plans and personal income available.

evidence suggests that “[A]mong retired priests, the most frequently available and most popular choice is their own home or apartment.”³⁹⁵ Such a priest must find accommodation³⁹⁶ within his budget and pay all associated expenses. Under the conditions described above, he must provide himself with shelter, food and clothing for \$867 per month.

A retired priest attempting to live with a gross income of \$20,808 in Ottawa under these circumstances would find it difficult to make ends meet. One would also have to question the financial possibility of making a retreat, taking a holiday, or incurring the expenses associated with participation in diocesan programs for professional development. Father Anypriest might well be eligible for provincial or municipal subsidisation; that is, subsidised low cost housing and possibly other provincial benefits over and above GIS and OAP.

5.5.3 Episcopal and Clerical Equity

The matter of justice and moral equity refers to both a diocesan bishop and a retired priest. If the bishop has the duty and obligation to make provision for equitable support for all retired clergy incardinated in the diocese, so also does a priest have a corresponding obligation to the diocese and his brother priests in distributive justice.

A retiring priest must be sensitive to the needs of his brother priests and the financial resources of the diocese in this matter. If he has sufficient or substantial financial assets from independent sources, though he may possess the right to retirement benefit income, he could voluntarily return it or contribute the income for the support of a diocesan pension plan. Also, depending on the Plan, he could accept a smaller amount.³⁹⁷ Distributive justice might even demand that a priest with considerable wealth³⁹⁸ contribute to a plan, if unregistered, or contribute to the ‘special fund’ (Institute B described above) for the support of the diocesan clergy.

³⁹⁵ NCCB, *Fullness in Christ*, p. 6.

³⁹⁶ It must be noted that this priest has been living in a fully furnished accommodation. It is unlikely that he has furniture or appliances. It is likely that he would be looking for a furnished apartment which increases the cost of renting.

³⁹⁷ This is not possible with a registered pension plan; however, individuals could contribute some of this benefit into Institute B. A diocesan-operated plan would allow for this practice.

³⁹⁸ *PO*, in FLANNERY, no. 17, pp. 894-895

GENERAL CONCLUSIONS

Originating in the virtue of justice, clerics receive remuneration for service based in commutative justice; distributive justice provides the basis of support for clergy incapacitated or retired. The principles of equity and proportionality apply in the context of the community of a particular church and the diocesan sacerdotal college. An individual cleric has some responsibility in a like manner to the particular church and the diocesan sacerdotal college.

The 1983 Code indicates a shift in philosophical principles on the nature of support as opposed to the 1917 Code. Most notable in the use of such language as remuneration, incapacity and benefits for clerics (and lay-persons), job classifications, fixed terms of employment and the establishment of pension funds; the 1983 Code has adopted principles and terminology of the North American marketplace. This could have a profound impact on how the churches conduct their internal affairs in regard to clergy support in the future.

The universal law of the Church legislated the requirement for decent support and accommodation for active, incapacitated and retired incardinated clergy of a diocese. The bishop has the ultimate responsibility to see that decent support is provided by instituting particular funds dedicated to such a purpose. The law instructs bishops' conferences to establish norms in regard to the support of clergy.

The Canadian Conference of Catholic Bishops' decree makes a first attempt at providing an equitable solution to the question of remuneration, retirement and support for incapacitated and disabled clergy, mainly by reiterating the appropriate canons. The major contribution of this document is that it defines a right to disability or retirement income and/or benefits in the particular churches of a national conference. It further specifies the requirement of accommodation for all clergy incardinated in a diocese while employed, retired or incapacitated. At least two funds would appear to be called for by the decree in order to assist the bishop in providing retirement and disability support benefits to clergy.

However, the scope of the decree is too broad. It neither provides any general principles to determine what constitutes equitable and reasonable income, nor does it define accommodation and possible options in this regard. Granted, local church implementation of such principles would be relative; application in the local situation would be contingent upon retirement plan resources and the cost of living indices in the local situation.

Under present conditions of remuneration and retirement, one essential fact remains consistent: pension funds are but a *tool* to assist the diocesan bishop in fulfilling his obligation to provide decent support and accommodation for his clergy during their working life and in retirement. Pension plans do not supplant responsibilities on either side. Bishops and priests, both part of the same sacerdotal college, are mutually responsible for one another. However, the greater moral and financial onus to provide or to see to the provision of all clergy remains with the bishop, given the limited financial resources available to a priest to provide for himself during periods of incapacity or retirement.

A major thrust of Church documents and the Code seeks to promote the co-operation between the churches and churches supporting one another. The decree takes no cognisance of the possibility of sharing resources in this matter; in fact, the decree emphasises individual episcopal and diocesan control over the issue. As such, it fails to account for needs of less financially fortunate churches even within the same national conference. The local churches of the Canadian Conference might appear, from the decree itself, to accept no responsibility to provide assistance to the less fortunate churches within the Conference itself, or churches of developing nations.

There are two important considerations that provide some explanation for the Canadian Bishop's failure to act co-operatively at this time. First, the law does not require the bishop's conference to legislate in the matter of co-operation. The Code states the principles and the lack of legislation does not exclude the possibility of co-operation between the churches in this regard. Second, recent civil liability actions have seriously endangered the financial resources of various dioceses as a result of sexual abuse cases.

Pension funds, which might be national in character, would require great expertise to protect especially in the present climate.

The implementation of the universal law and the decree is left to each particular church. Given such a situation, retirement and disability plans vary from diocese to diocese.³⁹⁹ Without obtaining pension plan information from every diocese, it becomes difficult to evaluate just how the universal law and decree is actually being implemented in the local churches with exception to the two mentioned.

It appears that the Conference took no cognisance of the relationship between the 'spirit' and 'letter' of the documents of Vatican II and the Code. The decree of the Canadian Conference speaks solely out of the 'letter' of the Code. Regrettably, the point at issue is not placed in any pastoral context. This absence severely limits the ability to read the intention of the legislator as well as to apply interpretation in particular situations. The most obvious example of this is demonstrated in regard to 'co-operation between the churches.' From the decree, it would appear that there is none.

Given the current situation of increasing numbers of ageing and retiring diocesan clergy and of their need for support, the case scenario demonstrates that the present financial benefits for retired clergy and the limited availability of housing options, indicates that the degree of *security* for incapacitated and retired clergy would not appear to be objectively very secure. For a diocese to provide decent support and accommodation to retired and incapacitated clergy, a diocese would be required to restructure its retirement plan by including the accommodation component or by making some other financial provision.

The objective issues of decreasing numbers of clergy providing service, the increasing age of clergy entering the retirement zone, retirement of clergy and their adequate support pose a problem that is not going to go away. Theoretically, the immediate prognosis does not appear to bode well for the future.

³⁹⁹ Cf. HERSCIL, *A Canonical Commentary on Selected Personnel Policies in the United States of America Regarding Decent Support of Diocesan Priests in Active Ministry*. His commentary on Priests in their "third age" points to impending financial and social problems.

Guidelines for the Retirement of Bishops
[United States Catholic Bishops]

At the November, 1990, plenary meeting of the National Conference of Catholic Bishops, the following guidelines were passed by the Assembly on a voice vote.

1. Beginning July 1, 1991, the stipend recommended for bishops in retirement will be a minimum of \$1,100 per month, to be adjusted periodically as the level or retirement support for the priests of the diocese is adjusted.
2. In addition to the monthly stipend, it is also recommended that in fraternal charity each diocese also provide the following:

Additional Basic Benefits

- i. appropriate housing and board
- ii. health and welfare benefits including major medical
- iii. an office with secretarial assistance commensurate with the retired bishop's needs

Additional Benefits

- i. transportation including an automobile for personal use
- ii. travel expenses (i.e., transportation, lodging, food, etc.) to allow the retired bishop to attend:
 - a. provincial meetings and workshops
 - b. regional meetings, workshops and retreats
 - c. meetings of the NCCB/USCC
 - d. ad limina visits to the Holy See.

Housing

It is further recommended that the official residence by the diocese is for the use of the diocesan bishop.

The National Conference of Catholic Bishops will review these guidelines again in 1995 to ascertain their continuing validity. The Assembly of Bishops meeting in November of 1990 recognized the obligation in fraternal charity which each diocesan bishop has to care for his predecessors and his retired assistant bishops.

Responses to Questions on Retiring & Senior Priests¹

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.
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.

1. [...] are editorial facts and additions to document.
2. The comments highlight some fears and preoccupation's of those who might consider accepting a retired priest into their rectory.
3. There is nothing to suggest that a new pastor might not ask the retired priest to find other accommodations.

¹ Survey results from a questionnaire sent to the diocesan clergy by Rev. E. Talbot, Presbyteral Council subcommittee (chairman) on the Continuing Formation of Priests, Diocese of Hamilton, 23 September 1993.

**Suggested Criteria for the Establishment of Principles
Applicable to Defining Decent Support for Retired Clergy**

In order to provide for equity in the matter of defining decent support for clergy who are resigned from office and therefore technically retired, for clergy who may become incapacitated or disabled prior to the normal time of retirement for whatever reason, it becomes necessary to establish some criteria which form the basis of establishing a financial base line for retirement or disability income. Secondly, the fact of accommodation must be factored into the equation for decent support.

The following criteria are suggested to determine equitable support.

1. What is the determined "poverty level gross annual income" for the population as determined by StatsCan, Household Surveys Division, Expenditures and Housing Data, Low Income Cut-Off's, for the current year? (Appendix E)?
2. Not including accommodation, what is the retired or disabled priest's gross income provided by the diocesan retirement plan, government social assistance, disability allowance, Canada Pension Plan, GIC, OAP?
3. Is the accommodation allowance equivalent to the comparable costs of maintaining a working priest in a rectory; or, is the 'rent' paid by a working priest in a rectory comparable to cost of equivalent commercial rental units?
4. Other Factors: What accommodation options are available? Is room and board available in a rectory: what is the cost and what are the conditions of residence? Does the diocese provide a retirement residence?

The retiring priest is worthy of respect and his wishes should be respected. What is the preference expressed by the retiring priest? What is the state of health of the individual? Is full-time or part-time nursing care a requirement or might it shortly become so? Is what the retiree asking suitable in the particular situation?

4. Assuming that rectory accommodation is not suitable or acceptable, what kind of accommodation allowance should be provided? The accommodation allowance should

be relative to the equivalent costs for comparable housing in the region and outside of a rectory situation. Naturally this does not imply a six-bedroom house; however, a two bedroom apartment, condo or house, would easily compare to similar space and quality of life.

Rectories are fully furnished including appliances, refrigerator, stove, dishware, cooking utensils, etc. A house or apartment is extremely expensive to furnish. As most rental units have a refrigerator and stove, it is possible to furnish a residence if financial resources are available. The alternative is to rent a fully furnished apartment which is more expensive, if even available.

A sample of comparable housing costs is provided in Appendix D. Since accommodation is an entitlement of retirement, the provision for residence outside of a rectory changes the source of funding from the responsibility of the parish to the individual himself. In a rectory, normally the retired priest pays a room and board fee and he is supported out of the resources of the parish.

If the priest is not living in a rectory, there are four possible sources of income to provide the ability to live in a decent manner: (1) the diocesan pension fund through a pension benefit; (2) a housing allowance provided by the diocese; (3) public housing; and (4), individual private income.

Pensions are taxable and care must be exercised in reading figures, gross amounts described can be misleading in terms of actual net incomes available especially when considering minimum income levels where 50 % of income is spent on food, shelter and clothing.

The question of personal privacy becomes an issue if a bishop or diocesan pension board demands to know all sources of income that might be available to a priest from personal sources. Does such a board have the right to make such a request? Particular law or guidelines would be necessary to protect the privacy rights of an individual and the rights of those responsible for the administration of retirement or disability funds.

The Cost of Decent Support and Housing

There follows the actual and estimated (housing) gross dollar remuneration of a priest living in a southern Ontario city (pop. 100K-300K) parish rectory with salary, allowances, room and board. Figures represent pre-tax dollars except room and board deduction permitted by Revenue Canada (1993). Figures translate the *monthly* costs associated with parish living, benefits and allowances and assign equivalent 'street value' for similar accommodation & living expenses in the area (1993). Other persons "living-in" have been factored out of the accommodation figures. The figures represent one person.

Accommodations: Room & Board

Room and Board, furnished quarters-(equivalent).....	\$ 1,000 ¹
Household Goods (food, cleaning/hygiene materials, soap, etc.).....	\$ 200
Newspapers (2).....	\$ 29
Cleaning service* (non-live in, \$10. @ 4 hrs/per wk).....	\$ 160
Cooking Service (non-live in, incl. shopping; 5 days/6 hrs/day @\$10; 4 wks)...	\$ 1,200
Laundry Service** (no personal dry cleaning).....	\$ 86
Cable Service.....	\$ 29
Telephone Service (Basic, personal).....	\$ 20
Subtotals-Housing.....	\$ 2,724
Room & Board Deduction..(tax purposes-taxable allowance).....	(\$ -35)
Total - Housing (Room & Board)..Item A.....	<u>\$ 2,689</u>

* Most large rectory's would require a minimum 8 hrs per week. Figures quoted based on 900-1300 square feet of space. Newspaper figures, 6 Sep 93, indicate \$50/55 per 3 hrs for commercial cleaning services.

** Commercial 'wash & fold' @ \$1.25 per pound @ 20 lbs, week average=\$25./load.

Automobile, Health, Pension, Education/Retreat Benefits & Allowances

Non-Taxable [=NT] Allowances

Automobile.....	\$ 500
Health & Dental (pro-rated 12 month, parish contribution).....	\$ 130
Subtotal-Non-Taxable Allowances per month..Item B.....	<u>\$ 630</u>

Non-Taxable Allowances (Annual)

Retreat.....	\$ 250
Seminar.....	<u>\$ 400</u>

¹ This figure represents the lowest estimated rental cost for similar accommodation.

Subtotal-NT Allowances..(annual)..Item C..... \$ 650

Taxable Income

Salary..... \$ 689
 Stipends..... \$ 160
 Honorarium (Weddings/Funerals/Baptism,(estimate one month))..... \$ 100

Income-Taxable...Item D..... \$ 889
 Annual Bonus (taxable)....Item E..... \$ 200

Income Value: (Real & Tax-Free)

Total Monthly Income: Items A + B + D = \$4,208

Annual Income (Item A+B+D x12): \$50,496

Add: Non-taxable allowances: Item C: \$ 650

Annual Bonus (annual): Item E..... \$ 200

Grand Total Gross Income: \$51,346*

Grand Total Gross Income (monthly):..... \$ 4,279*

* Figures have been rounded off.

Extended Value of Untaxed Dollar²

There are two ways of looking at this element; firstly, a single person with income of \$51,346 and minimum deductions, would pay approximately \$14,875³ in taxes leaving a net income of \$36,471 (1993).

Secondly, the "underground economy" is a reaction of tax-payers to the high tax rates of Canada. When income is not recorded as taxable income; and consequently, tax is not paid for whatever reason, the actual personal income value is thus increased.

The non-taxed portion of the total \$51,346, which is \$33,748⁴ (tax based on \$34,000), amounts to \$9,124. Therefore, increase the value of income of \$51,346 by the estimated value of annual non-taxed dollars at: \$ 9,124.

² The figures are not precisely accurate. They are accurate in a general way; and, they are utilized to demonstrate the principles involved in incorporating non-taxable benefits in order to calculate and provide a \$ value to the remuneration package.

³ According to Revenue Canada, the tax paid on \$50K is \$14,875. (Federal & Province of Ontario). Figure taken from ARTHUR ANDERSON, "Preparing Your Income Tax Returns", 1995.

⁴ Item A (Housing) x 12 + NT allowances; that is, Items, B, C, and E=\$33,748.

The total gross equivalent dollar value of a priest under situation described, in 1993, could be interpreted as a remuneration package equivalent to \$ 56,472.

Nota Bene:

There will be variations of figures in determining individual and rectory costs depending on location and priest's room and board costs. Custom will also determine 'personal costs' associated with rectory living; that is, who pays for particular services for personal use (newspapers, cable, etc.), the priest or the parish.

The following have *not* been factored into the equation: the pastor's administrative benefits, size and location of rectory, insurances (property & effects), actual costs of utilities. Property taxes and maintenance of property would be responsibility of property owner (parish).

STATISTICS CANADA'S LOW INCOME CUT-OFFS (1986 BASE) FOR 1994					
Family Size	Community Size				
	Cities of 500,000+	100,000-499,999	30,000-99,999	Less than 30,000	Rural Areas
1	15,479	13,596	13,282	12,108	10,538
2	20,981	18,430	18,004	16,411	14,286
3	26,670	23,426	22,884	20,860	18,157
4	30,708	26,969	26,348	24,019	20,905
5	33,550	29,467	28,787	26,242	22,841
6	36,419	31,983	31,246	28,483	24,792
7+	39,169	34,403	33,609	30,638	26,666

NATIONAL COUNCIL OF WELFARE ESTIMATES OF STATISTICS CANADA'S LOW INCOME CUT-OFFS (1986 BASE) FOR 1995*					
Family Size	Community Size				
	Cities of 500,000+	100,000-499,999	30,000-99,999	Less than 30,000	Rural Areas
1	15,758	13,841	13,521	12,326	10,728
2	21,359	18,762	18,328	16,706	14,543
3	27,150	23,848	23,296	21,235	18,484
4	31,261	27,454	26,822	24,451	21,281
5	34,154	29,997	29,305	26,714	23,252
6	37,075	32,559	31,808	28,996	25,238
7+	39,874	35,022	34,214	31,189	27,146

* based on inflation of 1.8 percent as forecast in the 1995 budget speech

BIBLIOGRAPHY

SOURCES

Acta Apostolicae Sedis (AAS), Città del Vaticano, Typis polyglottis Vaticanis, 1909-

American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Washington, DC, American Psychiatric Association, 1994, xxvii, 886 p.

ARCHDIOCESE OF OTTAWA, *Retirement Pension Plan for Priests of the Roman Catholic Archdiocese of Ottawa*, Ottawa, The Episcopal Vicar for Administration, 1993, 34 p.

BISHOPS' CONFERENCE OF ENGLAND AND WALES, Particular Legislation: "Sustenance for Retired Clergy: Canon 538," in *Canon Law Digest*, 11 (1983-1985), p. 81.

BISHOPS' CONFERENCE OF FRANCE, Particular Legislation: "Sustenance for Retired Clergy: Canon 538," in *Canon Law Digest*, 11 (1983-1985), pp. 81-82.

BISHOPS' CONFERENCE OF SPAIN, Particular Legislation: "Clergy Sustenance. Canon 1274," in *Canon Law Digest*, 11 (1983-1985), pp. 302-303.

CANADA, Statistics Canada, *Statistics Canada's Low Income Cut-Offs (1986 Base) for 1994*, from The National Council of Welfare, "Poverty Profile Report-1993." Amended (Spring), 1995.

_____, Household Surveys Division Income, Expenditures and Housing Data. *Low Income Cut-Offs [=LICO's] (Cat. 13.551)*, from Survey of Consumer Finances, 10 November 1995.

_____, *Canada Pensions Act*, (Amended 1987), Ottawa, Dept. of Human Resources, Section 46. "Operations Manual" used for calculation purposes and is not generally available to the public without authorisation under Freedom of Information Act. It is released to certain certified non-government institutions.

_____, *Old Age Pension Act*, (Statutes, 1952).

CANADIAN CONFERENCE OF CATHOLIC BISHOPS. *Official document, no. 599*, 28-06-1988 in "Complementary Norms to the Code Promulgated by English-Language Conferences of Bishops," in *Code of Canon Law Annotated*. Appendix III, Montreal, Wilson & Lafleur Limitée, 1993, pp. 1313-1332.

- Codex iuris canonici Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritatae promulgatus*, Westminster, MD, The Newman Press, 1964, lii, 920 p.
- Codex canonum Ecclesiarum orientalium auctoritate Ioannis Pauli PP. II promulgatus*, Typis Polyglottis Vaticanis, 1990. Latin-English version: *Code of Canons of the Eastern Churches*, translation prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1990, xlvii, 785 p.
- Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus*, Libreria editrice Vaticana, 1983, xxx, 317p. British Commonwealth version of English-language translation: *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, 1630 p.
- Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus*, Libreria editrice Vaticana, 1983, xxx, 317 p. American version of English-language translation: *Code of Canon Law*, Latin-English edition, translation prepared under the auspices of THE CANON LAW SOCIETY OF AMERICA. Washington, DC, Canon Law Society of America, 1983, xlii, 668 p.
- Conciliarum oecumenicorum decreta*, edidit Centro di documentazione, Istituto per le scienze religiose, Bologna, curantibus JOSEPH ALBERIGO [*et al.*], consultante Huberto Jedin, Friburgi, Herder, 1962, xxiv, 792 p.
- DIOCESE OF HAMILTON, The Administrative Committee, Diocese of Hamilton, Ontario, *Diocesan Clergy Retirement Pension Plan*, revised April 30, 1987 (amended April 27, 1990). 28 p.
- The Jerusalem Bible*, ALEXANDER JONES, (ed.), Garden City, New York, Doubleday & Company, 1966, xiv, 2020 p.
- JOHN XXIII, Encyclical *Mater et magistra*, 15 May 1961, in *AAS*, 53 (1961), pp. 401-464, in MICHAEL WALSH and BRIAN DAVIES, (eds.) *Proclaiming Justice & Peace*, rev. ed., [=WALSH] pp. 84-124. Mystic, CT, Twenty-Third Publications, 1991, vi, 522 p.
- _____, Encyclical *Pacem in terris*, 11 April 1963, in *AAS*, 55 (1963), pp. 257-304, in WALSH, pp. 128-156.
- JOHN PAUL II, Encyclical *Laborem exercens*, 15 May 1981, in *AAS*, 73 (1981) pp. 577-647, in Walsh, II, nos. 4-10, pp. 354-391.

- MERCER, WILLIAM M., LIMITED, *Retirement Pension Plan for Priests of the Roman Catholic Archdiocese of Ottawa*, "Report on the actuarial valuation for funding purposes as of January 1, 1995," Ottawa, William M. Mercer Limited, 1995, iv, 38 p.
- NATIONAL CONFERENCE OF CATHOLIC BISHOPS, 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, 92 p.
- , *Guidelines for the Retirement of Bishops*, Washington, DC, November 1990.
- PAUL VI, Motu proprio *Ecclesiae sanctae* 1, 6 August 1966, in *AAS*, 58 (1966), pp. 757-787. English translation in A. FLANNERY, (ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents* (=FLANNERY), rev. ed., vol. 1, Collegeville, MN, The Liturgical Press, 1975, pp. 591-610.
- SACRED CONGREGATION OF THE COUNCIL, "Resignation of a Parish: Life Pension to Resigning Pastor," 11 November 1922, in *AAS*, 15 (1922); English translation in *Canon Law Digest*, 1 (1917-1933), pp. 838-839.
- SACRED CONGREGATION FOR THE DOCTRINE OF THE FAITH, "Specimen of Rescript of Laicization," Private, in *Canon Law Digest*, 9 (1978-1981), p. 100, no. 4a.
- SCHROEDER, HENRY JOSEPH (ed. and tr.), *Canons and Decrees of the Council of Trent*. Original text with English translation. St. Louis, MO, Herder Books, 1941, xxxiii, 608 p.
- _____, *Disciplinary Decrees of the General Councils*. St. Louis, MO: Herder Books, 1937, viii, 669 p.
- SECOND COUNCIL OF THE VATICAN, Dogmatic Constitution on the Church *Lumen gentium*, 21 November 1964 in *AAS*, 57 (1965), pp. 1-67; English translation in FLANNERY, vol. 1, pp. 350-423.
- _____, Pastoral Constitution on the Church in the Modern World *Gaudium et spes*, 7 December 1965 in *AAS*, 58 (1966), pp. 1025-1120; English translation in FLANNERY, vol. 1, pp. 903-1014.
- _____, Decree on the Ministry and Life of Priests *Presbyterorum ordinis*, 7 December 1965 in *AAS*, 58, (1966), pp. 991-1024; English translation in FLANNERY, vol. 1, pp. 863-902.

- _____. Decree on the Pastoral Office of Bishops in the Church (*Christus Dominus*, 28 October 1965 in *AAS*, 58 (1966), pp. 673-701; English translation in FLANNERY, vol. 1, pp. 564-590.
- SYNOD OF BISHOPS. *The Ministerial Priesthood*, 15 November 1971, English translation in *The Pope Speaks*, 16 (1971), 340-343, in *Canon Law Digest*, 7 (1968-1972), pp. 342-365.
- TRIBUNAL OF THE ROMAN ROTA, *coram* PARRILLO, 18 December 1928, no. 56, in *Sacrae Romanae Rotae Decisiones*, 20 (1928), pp. 492-498. English translation in *Canon Law Digest*, 2 (1933-1942), pp. 439-440.
- WALSH, MICHAEL and BRIAN DAVIES (eds.), *Proclaiming Justice and Peace: Papal Documents from "Rerum novarum" through "Centesimus annus."* rev. ed., Mystic, CT, Twenty Third Publications, 1991, vi, 522 p.
- WILLIS, JOHN R. (ed.), *The Teachings of the Church Fathers*. New York, Herder & Herder, 1966, 537 p.

BOOKS

- BEAL, JOHN P., *Confining and Structuring the Exercise of Administrative Discretion in the Particular Church: A Study of the Adaptability of Certain Principles of American Administrative Law to the Exercise of Administrative Discretion by Diocesan Bishops*. Canon Law Studies, no. 515, Washington, DC, The Catholic University of America, 1984, ix, 665 p.
- BOUSCAREN, T. LINCOLN, ADAM C. ELLIS and FRANCIS N. KORTH (eds.), *Canon Law: A Text and Commentary*, 4th rev. ed., Milwaukee, WI, Bruce Publishing Company, 1963, xvi, 1011 p.
- CALVO, RANDOLPH R. and NEVIN J. KLINGER (eds.), *Clergy Procedural Handbook*, Washington, DC, Canon Law Society of America, 1992, vii, 283 p.
- CORIDEN, JAMES A., THOMAS J. GREEN and DONALD E. HEITSCHEL (eds.), *Code of Canon Law: A Text and Commentary*, New York, Mahwah, Paulist Press, 1983, xxxiv, 1097 p.
- DONLON, JAMES I. *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*. Canon Law Studies, no. 510. Washington, DC, The Catholic University of America, 1984, ix, 297 p.

- HANNAN, PHILIP M., *The Canonical Concept of "Congrua Sustentatio" for the Secular Clergy*, Canon Law Studies, no. 302, Washington, DC, The Catholic University of America, 1950, xii, 237 p.
- HARING, BERNARD. *The Law of Christ*, vol. 3, EDWIN G. KAISER, trans., Cork, Ireland, The Mercier Press, 1967, xxiv, 735 p.
- HESCH, JOHN, *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, no. 544. Washington, DC, The Catholic University of America, 1994, v, 318 p.
- MORRISEY, FRANCIS G., *Papal and Curial Pronouncements: Their Canonical Significance in the Light of the Code of Canon Law*, 2d ed., revised and updated by MICHEL THÉRIAULT, Ottawa, Faculty of Canon Law, 1995, 46 p.
- O'BRIEN, KENNETH R., *The Nature of Support of Diocesan Priests in the United States. A Historical Synopsis and Commentary*, Canon Law Studies no. 286, Washington, DC, The Catholic University of America, 1949, xiv, 162 p.
- SCHOENHER, RICHARD A., *Full Pews and Empty Altars: A Demographics of the Priest Shortage in United States Catholic Dioceses*, Wisconsin, University of Wisconsin Press, 1993, xxii, 437 p.

ARTICLES & PARTS OF BOOKS

- ALESANDRO, JOHN A., "General Introduction," in JAMES A. CORIDEN, THOMAS J. GREEN and DONALD E. HEITSCHL, (eds.), *Code of Canon Law: A Text and Commentary*, New York, Mahwah, Paulist Press, 1983, p. 7.
- COX, CRAIG A., "Canon 281, §3: Remuneration of Unmarried Permanent Deacons," in *Roman Replies and CLSA Advisory Opinions 1995*, p. 47.
- DALEY, BRIAN E. "Structures of Charity: Bishops' Gatherings and the See of Rome in the Early Church," in THOMAS J. REESE (ed.), *Episcopal Conferences: Historical, Canonical & Theological Studies*, Washington, DC, Georgetown University Press, 1989, pp. 25-58.
- EUART, SHARON A. "Complementary Norms Implementing the 1983 Code of Canon Law by the National Conference of Catholic Bishops," in *The Jurist*, 53 (1993), pp. 396-434.

- GREEN, THOMAS J. "The Normative Role of Episcopal Conferences in the 1983 Code," in THOMAS J. REESE (ed.) *Episcopal Conferences: Historical, Canonical and Theological Studies*, Washington, DC, Georgetown University Press, 1989, pp. 137-175.
- HESCH, JOHN. "The 1987 NCCB Norms for Priests and their Third Age," in *The Jurist*, 54 (1994), pp. 387-408.
- INGELS, GREGORY, "Canon 281: Obligation of Support to a Priest in Treatment," in *Canon Law Society of America: Advisory Opinions, 1984-1993*, pp. 63-65.
- KASPER, WALTER. "The Theological Foundations of Human Rights," in *The Jurist*, 50 (1990), pp. 148-166.
- MCINTYRE, JOHN P., "Optional Priestly Celibacy," in *Studia canonica* 29 (1995), pp. 103-153.
- MORRISEY, FRANCIS G., "The Pastoral and Juridical Dimensions of Dismissal from the Clerical State and Other Penalties for Acts of Sexual Misconduct," in *The Canon Law Society of America Proceedings*, 53 (1991), pp. 221-239.
- NATIONAL FEDERATION OF PRIESTS' COUNCILS, "Priestless Parishes: Priest's Perspective," in *Origins*, 21 (1991-1992), pp. 42-53.
- ÖRSY, LADISLAS, "Models of Approaches to Canon Law and Their Impact on Interpretation," in *The Jurist*, 50 (1990), pp. 83-101.
- PROVOST, JAMES H., "Canon 281. Obligation to Support a Priest in Treatment - Another Opinion," in *Canon Law Society of America: Advisory Opinions, 1984-1993*, pp. 66-67.
- _____, "Canon 281. Support of Unemployed Permanent Deacon," in *Roman Replies and CLSA Advisory Opinions 1995*, p. 45.
- ROBINSON, GEOFFREY J. "The Challenge of Justice," in *Canon Law Society of America Proceedings* 55 (1993), pp. 1-16.
- WOESTMAN, WILLIAM, "Financial Support of Secular Clerics Guilty of Serious Offences, 15 April 1991, unpublished manuscript.
- _____, "Restricting the Right to Celebrate the Eucharist," in *Studia canonica*, 29 (1995), pp. 155-178.

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 College, 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 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 Roman Catholic Chaplaincy Corps in 1990 as the Command Chaplain, Maritime Command.

Latin America and its peoples continues to hold an interest for him. After retiring from the military, he spent three months travelling in Central America and drove 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, 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 in Canon Law degree at Saint Paul University, in Ottawa, Canada. He intends to pursue a doctorate degree in canon law.

He identifies with the prophetic model of the Church and the incarnational school of theology. Vatican II has created the beginnings of a new Church. Periods of change, always difficult, calls for an active ministry of justice available to the Church and the people of God.

His wide range of interests have included motorcycling across North America, sailing, skiing, camping and fishing; an avid interest in current affairs, politics, nature, reading, psychology, classical music and opera remains constant.