

**THE AGREEMENT FOR TEMPORARY SERVICE OF A DIOCESAN PRIEST
OUTSIDE HIS DIOCESE OF INCARDINATION ACCORDING TO CANON 271
OF THE 1983 CODE OF CANON LAW**

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ABSTRACT

Canon 271, §1 of the *CIC* calls for an agreement between the bishops *a quo* and *ad quem* for the temporary service of diocesan clerics outside their dioceses of incardination. The purpose of the agreement is to determine and safeguard the rights and duties of the priests and bishops involved. A 1980 document of the Congregation for the Clergy, *Postquam apostoli* provides some of the juridical elements that should constitute the content of such an agreement. This thesis is an in-depth study and investigation of the agreement with the aim of contributing additional canonical elements that need to be included in it to make it reflect the current situation faced by the priests and bishops involved. To provide the context under which the written agreement originated, the thesis, in its first chapter, traces the history of the law on the movement of clerics from one diocese to another beginning from the early church period up to the *CIC*. It examines the various juridic norms that existed before the *CIC* and observes that throughout its history, the Church has regulated the ministry and movement of clerics by formulating stringent laws that forbade clerics from moving unnecessarily. In the second chapter, the thesis examines the current law on the temporary service of diocesan clerics outside their dioceses of incardination as stipulated in *CIC*, c. 271. This analysis includes tracing the textual development of the canon and critical analysis of its components. Chapter three carefully discusses the canonical elements that need to be included in the written agreement, and investigates the contractual, binding and obligatory nature of the agreement. It concludes that the agreement (*conventio*), although not explicitly called a contract (*contractus*), binds the parties involved, and diocesan bishops are obligated to enter it when they welcome foreign clerics to minister in their dioceses. The fourth chapter is dedicated to the discussion of the drafting process and implementation of the agreement. It analyses eight sample agreements from selected dioceses in Canada, the United States of America and Uganda and highlights the need of drafting the agreement accurately in conformity with the provisions of *CIC*, c. 271 and the pertinent norms of *Postquam apostoli*. The analysis of the sample agreements further adds a practical dimension to the thesis and provides examples that other dioceses can use for drafting their own agreements.

TABLE OF CONTENTS

ACKNOWLEDGEMENTS	vii
ABBREVIATIONS	viii
GENERAL INTRODUCTION	1
1 THE LEGISLATION ON THE MOVEMENT OF CLERGY BEFORE THE 1983 CODE	8
1.1 From the First to Third Century	8
1.1.1 The New Testament and Itinerant Missionaries	9
1.1.2 The <i>Didache</i> and the Transition to Stable Church Leaders	13
1.1.3 Clement of Rome and Ignatius of Antioch on Stable Church Governance	15
1.2 Early Legislation on the Movement of Clergy (4th to 7th Century).....	18
1.2.1 The Council of Arles (A.D. 314).....	18
1.2.2 The First Council of Nicaea (A.D. 325)	20
1.2.3 Some Important Legislation between Nicaea and Chalcedon	23
1.2.4 The Council of Chalcedon (A.D. 451) and the Title of Ordination	25
1.2.5 The Contribution of Pope Gregory I.....	27
1.3 The Movement of Clergy from the Seventh to the Fourteenth Century ...	30
1.3.1 The Second Council of Nicaea (A.D. 787).....	31
1.3.2 The Introduction of the Benefice System	32
1.3.3 Popes Alexander III and Innocent III and the Title of Patrimony ..	33
1.4 The Council of Trent (1545-1563).....	35
1.5 The Period between Trent and <i>CIC/17</i>	38
1.5.1 The Title of Mission	39
1.5.2 Apostolic Constitution <i>Speculatores</i>	40
1.5.3 The Decree <i>A primis</i>	43
1.5.4 The Decree <i>Ethnografica studia</i>	44
1.6 The <i>CIC/17</i> and the Movement of Diocesan Priests	46
1.6.1 Canonical Attachment of a Cleric to a Definite Diocese	46
1.6.2 Initial Incardination to a Diocese	48
1.6.3 The Modes of Movement of Clergy in the <i>CIC/17</i>	49
1.6.3.1 Formal Incardination and Excardination	49
1.6.3.2 Virtual Incardination and Excardination	53
1.6.3.3 Temporary Movement [Canon 144]	55
1.6.4 Canonical Titles	56
1.7 Relevant Holy See Documents Issued between <i>CIC/17</i> and Vatican II ...	57
1.7.1 <i>Magni semper</i> (1918)	57
1.7.2 Apostolic Letter <i>Exsul Familia</i> (1952)	60
1.7.3 Encyclical Letter <i>Fidei donum</i>	62
1.8 Vatican Council II and the Distribution of Clergy	65
1.8.1 <i>Presbyterorum ordinis</i>	68
1.8.2 <i>Christus Dominus</i>	70
1.9 Relevant Holy See Documents Issued between Vatican II and <i>CIC</i>	72
1.9.1 Apostolic Letter <i>Ecclesiae sanctae I</i> [1966]	72

1.9.2	Directive Norms <i>Postquam apostoli</i> [1980]	75
1.10	Conclusion	86
2	INCARDINATION AND TEMPORARY SERVICE IN THE <i>CIC</i>	91
2.1	Canonical Structures with the Faculty to Incardinate	93
2.2	Initial Incardination	97
2.3	Procedures for Changing Incardination	101
2.3.1	Formal Procedures (Canons 267, 269 and 270)	101
2.3.1.1	Requirements for the Validity of the Formal Process	102
2.3.1.2	Requirement for Licit Incardination	104
2.3.1.3	Requirements for Licit Excardination	106
2.3.2	<i>Ipsa Iure Process</i> (Canon 268, §1)	108
2.3.2.1	Legitimate Movement	111
2.3.2.2	Five-Year Residence Period	112
2.3.2.3	Letters Written by the Cleric	113
2.3.2.4	No Opposition from the Bishops within Four Months ...	114
2.3.2.5	The Impact of C. 268, §1 on the Movement of Clergy ...	116
2.4	Competent Authority to Grant Incardination/Excardination	117
2.5	Temporary Service in Another Diocese (Canon 271)	119
2.5.1	Sources of Canon 271	120
2.5.2	The Textual Development of Canon 271	121
2.5.2.1	The 1966 <i>Coetus Studiorum De Sacra Hierarchia</i>	122
2.5.2.2	The 1971 <i>Coetus</i>	127
2.5.2.3	The 1977 Schema	127
2.5.2.4	The 1980 Schema	129
2.5.2.5	The 1982 Schema	131
2.5.3	Analysis of the Components of Canon 271	132
2.5.3.1	Permission to Move	133
2.5.3.2	Canonical Status of the Cleric in the two Dioceses	136
2.5.3.3	Termination of the Cleric's Temporary Service	137
2.5.3.3.1	Just Cause	138
2.5.3.3.2	Natural Equity	139
2.5.3.3.3	Obligation to Follow the Procedures in Canons 1740-1752	141
2.6	Conclusion	144
3.	LEGAL ASPECTS OF THE WRITTEN AGREEMENT	148
3.1	Roman Law Notion of an Agreement	149
3.1.1	Distinction between Agreement and Contract	149
3.1.2	Obligation as Contract	153
3.2	Civil Law Notion of a Contract	157
3.2.1	Elements of a Valid Contract	158
3.2.1.1	Consent of the Parties	159
3.2.1.2	Legal Capacity of the Parties	160
3.2.1.3	Subject Matter of the Contract	160
3.2.1.4	Legal Cause of the Contract	160
3.3	Common Law Notion of an Agreement.....	161

3.4 Kinds of Contracts	163
3.4.1 Unilateral and Bilateral Contracts	163
3.4.2 Written and Oral Contracts	164
3.4.3 Onerous and Gratuitous Contracts	165
3.5 Incorporation of Civil Law into Canon Law.....	166
3.6 The Written Agreement for Temporal Service	170
3.6.1 Contractual Nature of the Agreement	171
3.6.1.1 The Subject Matter	171
3.6.1.2 The Consent of the Parties	172
3.6.1.3 The Capacity of the Parties	173
3.6.1.4 The Legal Cause of the Parties	174
3.6.1.5 Why <i>Conventio Scripta</i> and not <i>Contractus</i> ?	175
3.6.2 Binding Nature of the Agreement.....	177
3.6.3 Obligatory Nature of the Agreement	178
3.6.4 Canonical Elements of the Agreement	180
3.6.4.1 Length of Time of Permission	181
3.6.4.2 Termination of the Agreement	183
3.6.4.3 Rights and Obligations of the Priest	185
3.6.4.3.1 Assignment to Diocesan Offices	185
3.6.4.3.2 Remuneration.....	186
3.6.4.3.3 Vacations	189
3.6.4.3.4 Ongoing Formation	190
3.6.4.3.5 Continence and Celibacy	193
3.6.4.3.6 Canonical Reverence and Obedience.....	196
3.6.4.3.7 Diocesan Particular Law	200
3.6.4.4 Obligations of Bishops <i>a quo</i> and <i>ad quem</i>	202
3.6.4.4.1 Grant of Permissions and Dispensations.....	203
3.6.4.4.1.1 Permission Granted Only by Bishop <i>a quo</i>	204
3.6.4.4.1.2 Permission Granted by Bishop <i>a quo</i> or <i>ad quem</i>	206
3.6.4.4.1.2.1 Involvement in Financial Activities	206
3.6.4.4.1.2.2 Involvement in Business or Trade	207
3.6.4.4.1.2.3 Permission to Publish Books	208
3.6.4.4.1.2.4 Issuance of a <i>Celebret</i>	210
3.6.4.5 Rights of Bishops <i>a quo</i> and <i>ad quem</i> over the Extern Priest in Penal Matters	211
3.7 Conclusion	215
4. THE DRAFTING AND IMPLEMENTATION OF THE AGREEMENT	219
4.1 Procedure for Drafting the Agreement	220
4.1.1 Preliminary Activities	220
4.1.2 Initial Communication	221
4.1.3 Statement of Suitability	223
4.1.4 The Writing of the Agreement	226
4.1.4.1 The Preamble	226
4.1.4.2 Concluding Formalities	227
4.2 Faculties for Ministry	229

4.2.1	Faculties Granted by Law	230
4.2.2	Faculties Granted by Delegation.....	235
4.2.3	Faculties to Hear Confessions	237
4.2.4	Faculties Supplied by the Church	238
4.3	Analysis of Sample Written Agreements from Selected Dioceses	239
4.3.1	Methodology of the Comparative Analysis	240
4.3.2	Titles of the Agreements	241
4.3.3	Contracting Parties	243
4.3.4	Preamble and Preliminary Communication	247
4.3.5	Testimonial of Suitability	249
4.3.6	Length of Term, Amendment and Renewal	251
4.3.7	Termination of the Agreement	255
4.3.8	Remuneration and Other Benefits	259
4.3.9	Vacation	261
4.3.10	Pastoral Appointment	264
4.3.11	Possibility of Incardination	266
4.3.12	Ongoing Formation and Participation in Diocesan Events	268
4.3.13	Acculturation, Mentoring and Safe Environment Programs	269
4.4	Agreement for International Priest-Students	271
4.4.1	Field of Study	273
4.4.2	Parties to the Agreement and Financial Support	274
4.4.3	Assignment for Pastoral Work	275
4.4.4	Participation in the Life of the Presbyterate	276
4.4.5	Termination of the Agreement	277
4.4.6	Disciplinary Action for Disobeying Bishop’s Order	278
4.5	Conclusion	279
	GENERAL CONCLUSION	283
	APPENDIX I: Agreement of the Archdiocese US1	290
	APPENDIX II: Agreement of the Archdiocese US2	295
	APPENDIX III: Agreement of the Archdiocese US3	298
	APPENDIX IV: Agreement of the Archdiocese C1	300
	APPENDIX V: Agreement of the Archdiocese C2	302
	APPENDIX VI: Agreement of the Archdiocese C3	306
	APPENDIX VII: Agreement of the Diocese C4	308
	APPENDIX VIII: Agreement of the Archdiocese Ug1	310
	APPENDIX XI: Sample Agreement Template	312
	APPENDIX X: Testimonial of Suitability	316
	BIBLIOGRAPHY	317
	BIOGRAPHICAL NOTE	344

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ABBREVIATIONS

AAS	<i>Acta Apostolicae Sedis</i>
c.	canon
cc.	canons
CCEO	<i>Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus</i>
CCLA	E. CAPARROS et al. (eds.), <i>Code of Canon Law Annotated</i>
CD	SECOND VATICAN COUNCIL, Decree on the Pastoral Office of Bishops in the Church <i>Christus Dominus</i>
CDF	Congregation for the Doctrine of the Faith
cf.	confer
CIC/17	<i>Codex iuris canonici, Pii X Pontificis Maximi iussu digestus</i>
CIC	<i>Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus</i>
CLD	<i>Canon Law Digest</i>
CLSA	Canon Law Society of America
CLSA Comm1	J.A. CORIDEN, T.J. GREEN, and D.E. HEINTSCHEL (eds.), <i>The Code of Canon Law: A Text and Commentary</i>
CLSA Comm2	J.P. BEAL, J. A. CORIDEN, and T.J. GREEN (eds.), <i>New Commentary on the Code of Canon Law</i>
CLSAP	<i>Canon Law Society of America Proceedings</i>
CLSGBI Comm	G. SHEEHY et al. (eds.), <i>The Canon Law: Letter & Spirit</i>
Exegetical Comm	A. MARZOA, J. MIRAS, R. RODRÍGUEZ-OCAÑA (eds.) and E. CAPARROS (gen. ed. of English translation), <i>Exegetical Commentary on the Code of Canon Law</i>
ESI	PAUL VI, Apostolic Letter <i>motu proprio Ecclesiae sanctae I</i> , 6 August 1966

<i>FLANNERY I</i>	A. FLANNERY (gen. ed.), <i>Vatican Council II: The Conciliar and Post-Conciliar Documents</i> , vol. 1
<i>LG</i>	SECOND VATICAN COUNCIL, Dogmatic Constitution on the Church <i>Lumen gentium</i>
no.	number
nos.	numbers
PCLT	Pontifical Council for Legislative Texts
<i>PO</i>	SECOND VATICAN COUNCIL, Decree on the Ministry and Life of Priests <i>Presbyterorum ordinis</i>
USCCB	United States Conference of Catholic Bishops (since 1 July 2001)
vol.	volume
vols.	volumes

GENERAL INTRODUCTION

In his encyclical letter *Fidei donum* of 1957, Pope Pius XII invited the bishops of the world to share priests with dioceses that were experiencing a scarcity of priests.¹ The Pope foresaw that there would be a time when missionary institutes in Europe would not be able to send priests to mission countries. He also foresaw that the time would come when even countries with an abundance of native priestly and religious vocations at one time would experience a shortage of priests. Both predictions have now become realities.

In many parts of the world, the local clergy are too few to adequately minister to a large number of Catholics and Catholic institutions. Many dioceses are doing their best to foster local vocations, but the process is slow. The result is that there are now large numbers of priests moving from one diocese to another either permanently or temporarily while remaining incardinated in their home dioceses. On 27 May 2007, Pope Benedict XVI wrote a letter to the bishops, priests, consecrated persons and lay faithful of the Catholic Church in the People's Republic of China, in which he said the following:

Moreover, faced with problems that have emerged in various diocesan communities during recent years, I feel it incumbent upon me to recall the canonical norm according to which every cleric must be incardinated in a particular Church or an institute of consecrated life and must exercise his own ministry in communion with the diocesan Bishop. Only for good reasons may a cleric exercise his ministry in another diocese, but always with prior agreement of the two diocesan Bishops, that is, the Ordinary of the particular Church in which he is incardinated and the Ordinary of the particular Church for whose service he is destined.²

¹ PIUS XII, encyclical letter *Fidei donum*, 21 April 1957, in AAS, 49 (1957), 225-248, English translation in *The Pope Speaks*, 4 (1957-1958), 295-312 (= PIUS XII, *Fidei donum*).

² BENEDICT XVI, *Letter to the Bishops, Priests, Consecrated Persons and Lay Faithful of the Catholic Church in the People's Republic of China*, 27 May 2007, in AAS, 99 (2007), 553-581, English translation in http://w2.vatican.va/content/benedict_xvi/en/letters/2007/documents/hf_ben-xvi_let_20070, 28 June 2015.

It is clear that Pope Benedict XVI recognized the need for the temporary transfer of clerics, but he also emphasized the importance of the agreement between the two bishops so that there would be no acephalous clerics unaccountable to anyone.³ However, as Brendan Daley rightly points out, “Today there are examples of clergy working in dioceses where they are not incardinated, where there is no written agreement between the major superior or the diocesan bishop of the diocese where they are incardinated and the bishop of the diocese where they are now working.”⁴ What then is the canonical status of these priests? What exactly are the responsibilities of the bishop *a quo* and the bishop *ad quem* toward them?

Like any human migration, temporary movement of clerics gives rise to several questions. There is the issue of length of stay. Some priests may feel more comfortable in the host diocese and wish to stay longer. Do they not run the risk of an indefinite stay without changing incardination status? What about remuneration, health insurance, retirement plan, further education and ongoing priestly formation? Do they enjoy the same benefits as the priests incardinated into the diocese where they are ministering by an agreement? There are usually differences in culture, language and communication styles. Does the new diocese offer any program of enculturation?

In addition to the above, there is the question of appointment to and removal from offices in the host diocese. For example, if the cleric has been appointed as a parish priest (*parochus*) in the diocese *ad quem*, can he be removed from office by the bishop of the diocese or be recalled before his tenure of office expires without following the procedure

³ B. DALEY, “Incardination of Clergy: A Bond in the Interests of Everyone,” in *Canon Law Society of Great Britain and Ireland Newsletter*, 164 (2010), 97.

⁴ *Ibid.*, 96.

outlined in *CIC*, cc. 1740-1752? These and all other relevant issues should be explicitly addressed before a priest temporarily moves by means of an agreement between the two bishops as called for by *CIC*, c. 271, which reads as follows:

Canon 271 §1. Apart from the case of true necessity of his own particular church, a diocesan bishop is not to deny permission to clerics, whom he knows are prepared and considers suitable and who request it, to move to regions laboring under a grave lack of clergy where they will exercise the sacred ministry. He is also to make provision that the rights and duties of these clerics are determined through a written agreement with the diocesan bishop of the place they request.

§2. A diocesan bishop can grant permission for his clerics to move to another particular church for a predetermined time, which can even be renewed several times. Nevertheless, this is to be done so that these clerics remain incardinated in their own particular church and, when they return to it, possess all the rights which they would have had if they had been dedicated to the sacred ministry there.

§3. For a just cause the diocesan bishop can recall a cleric who has moved legitimately to another particular church while remaining incardinated in his own church provided that the agreements entered into with the other bishop and natural equity are observed; the diocesan bishop of the other particular church, after having observed these same conditions and for a just cause, likewise can deny the same cleric permission for further residence in his territory.⁵

The *CCEO* enacted a similar norm in three different canons as follows:

Canon 360 - §1. Through a written agreement between both eparchial bishops in which the rights and obligations of the cleric or bishops are established, a cleric can move into another eparchy for a determined period of time, even renewed many times, but he retains his original enrollment.

Canon 361 - A cleric, mostly for the evangelization of the whole Church, is not to be denied a transfer in enrollment or a move to another eparchy laboring under a severe lack of clergy, so long as he is prepared and suitable for carrying out the ministry there, unless there is a true need in his own eparchy or Church *sui iuris*.

⁵ “§1. Extra casum verae necessitatis Ecclesiae particularis propriae, Episcopus dioecesanus ne denegat licentiam transmigrandi clericis, quos paratos sciat atque aptos aestimet qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi; prospiciat vero ut per conventionem scriptam cum Episcopo dioecesano loci, quem petunt, iura et officia eorundem clericorum stabiliantur. §2. Episcopus dioecesanus licentiam ad aliam Ecclesiam particularem transmigrandi concedere potest suis clericis ad tempus praefinitum, etiam pluries renovandum, ita tamen ut iidem clerici propriae Ecclesiae particulari incardinati maneant, atque in eandem redeuntes omnibus gaudeant iuribus, quae haberent si in ea sacro ministerio addicti fuissent. §3. Clericus qui legitime in aliam Ecclesiam particularem transierit propriae Ecclesiae manens incardinatus, a proprio Episcopo dioecesano iusta de causa revocari potest, dummodo serventur conventiones cum altero Episcopo initae atque naturalis aequitas; pariter, iisdem condicionibus servatis, Episcopus dioecesanus alterius Ecclesiae particularis iusta de causa poterit eidem clerico licentiam ulterioris commorationis in suo territorio denegare” (*Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Libreria editrice Vaticana, 1989, c. 271 [= *CIC*], English translation *Code of Canon Law: Latin-English Edition, New English Translation*, prepared under the auspices of THE CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 1999). This translation will be used in all citations of the canons of the *CIC*.

Canon 362 - §1. For a just reason a cleric can be recalled from the other eparchy by his own eparchial bishop or returned by the hosting eparchial bishop observing the agreements made as well as equity.

§2. One legitimately returning to his own eparchy from another does so without prejudice to and having preserved all of the rights which he would have had if he had exercised the sacred ministry there.⁶

The focus of our project is a systematic analysis of the nature and contents of the agreement, as required by *CIC*, c. 271, §1, between the bishops *a quo* and *ad quem* for the temporary service of a diocesan priest outside his diocese of incardination. The principal question that needs to be answered in our study is: What are the essential elements that should be included in such an agreement? A 1980 document of the Congregation for the Clergy, *Postquam apostoli*,⁷ provides a list of some elements that should be included in the agreement, but it is not an exhaustive list. More items need to be added to make the agreement reflect the current situation faced by the priests involved. It is our hypothesis that an in-depth study of *CIC*, c. 271 will clearly justify the necessity and juridic significance of such an agreement.

The study is divided into four chapters. The first chapter will explore the history of the law on the movement of clerics from one diocese to another beginning from the early church period to the period before the *CIC*. The purpose of this historical section of

⁶ “Canon 361 - Clerico praesertim evangelizationis causa universae Ecclesiae sollicito transitus vel transmigratio in aliam eparchiam gravi clericorum penuria laborantem, dummodo sit ad ministeria ibi peragenda paratus atque aptus, ne denegetur nisi ob veram necessitatem propriae eparchiae vel Ecclesiae sui iuris.” Canon 362, §1, “Iusta de causa, clericus ex transmigratioe revocari potest a proprio Episcopo eparchiali vel remitti ab Episcopo eparchiali hospite conventionibus initis necnon aequitate servatis. §2. Ex transmigratioe in propriam eparchiam legitime redeunti salva et tecta sint omnia iura, quae haberet, si in ea sacro ministerio addictus esset” (*Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus*, Libreria editrice Vaticana, 1995 [= *CCEO*], English translation *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, Canon Law Society of America, 2001). This translation will be used in all citations of the *CCEO*.

⁷ SACRED CONGREGATION FOR THE CLERGY, Directives for Collaboration among Local Churches and in Particular for a Better Distribution of the Clergy *Postquam apostoli*, 25 March 1980, in *AAS*, 72 (1980), 343-364, English translation in *CLD*, vol. 9, 760-787 (= SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*).

our study is to investigate how the Church dealt with the issues of shortages and movements of clerics over the past centuries from a canonical perspective. Various pieces of legislation regarding the movement of clergy during specific periods in the Church's history will be presented. These will include the early church councils, the Council of Trent, the *CIC/17*, the Second Vatican Council and the relevant documents issued by the Holy See between the Second Vatican Council and the promulgation of the *CIC*.

The object of the second chapter is a systematic analysis of the law on clerics' temporary service outside their dioceses of incardination as stipulated in *CIC*, c. 271. This norm was promulgated to allow clerics to temporarily move from one diocese to another for the purpose of offering sacred ministry in the host diocese without the intention of excardination and incardination. The analysis of the norm will involve tracing the sources and textual development of the canon as well as an examination of its three components. The purpose of the analysis is to determine the context under which the agreement between the bishop *a quo* and *ad quem* concerning the temporary transfer of a priest was placed in the section of the *CIC* dealing with incardination and excardination, although the agreement itself does not deal with any aspect of incardination or excardination. Before analyzing the norm of *CIC*, c. 271, we shall first examine the seven canons that contain various aspects of incardination and excardination in the *CIC* to point out how the legislator applies them to regulate the ministry and movements of clerics.

Chapter three will focus on the juridical elements and nature of the written agreement between the bishops *ad quem* and *a quo*. The content of this chapter will contribute to the core issue of our study, where the contractual, binding and obligatory

nature of the agreement will be investigated. Additionally, the chapter will present a detailed examination of the canonical elements that need to be included in the content of the agreement. Before dealing with these issues, the chapter will present the Roman, civil and common law foundations of agreements and contracts in order to point out how the difference in the meaning of these two terms affects our understanding of the written agreement. Furthermore, since the extern priest is a subject of two diocesan bishops, the areas where the bishop *ad quem* is responsible and the areas where the bishop *a quo* is responsible will be identified.

The final chapter will provide the practical aspects of drafting the written agreement. The chapter will be divided into four sections. The first section will deal with the procedure for drafting the agreement. In this section, we shall discuss the preliminary activities that need to occur before drafting the agreement, followed by the elements that need to be considered when writing the agreement. After the agreement has been written, the priest will report to the host diocese to begin his ministry there. He will need faculties to enable him to perform all his ministerial activities validly and licitly. Section two of the chapter will identify the faculties that the priest already possesses by the law itself and which he can exercise before receiving delegated faculties. The third section of the chapter will involve a comparative analysis of some existing agreements from selected dioceses in Canada, the United States of America and Uganda. This analysis will add a practical dimension to our study and will provide examples for designing more accurate templates of the agreement, which other dioceses can use as references. In the final section of the chapter, there will be a comparative analysis of the written agreement involving student priests.

Regarding methodology, the contents of this study will require the use of a multi-pronged approach depending on the nature of each chapter. Accordingly, a mixed method will be used in developing the four chapters. The content of the first chapter, being historical in nature, requires the use of the historical method. The following two chapters will deal with the actual legislation on the issue. Therefore, we will use the method of systematic analysis involving an in-depth study of the sources and development of the law on the matter under consideration. The discussion in the fourth chapter will provide a comparison between different samples of some existing agreements between bishops *a quo* and *ad quem*. This could be categorized as comparative method.

The scope of our study is both theoretical and practical in nature. On the one hand, it consists of an analysis of the juridical elements of the written agreement between the bishops *a quo* and *ad quem* and, on the other hand, it consists of some practical insights drawn from the analysis, which could be helpful to chancellors and other diocesan officials who are involved in drafting the agreement.

Our project will be limited to an analysis of *CIC*, c. 271. Although we will provide references to the canons of the *CCEO*, where necessary, the contents of this study will be limited to the legislation and current praxis of the Latin Church. Moreover, the canon to be discussed concerns the temporary movement of *clerics* from one diocese to another, but we will limit ourselves to the temporary movement of diocesan presbyters. The temporary movement of deacons and bishops will not be included in the scope of our study for, in practice, it is most rare for a deacon or bishop to seek the *licentia transmigrandi* of *CIC*, c. 271 due to their own circumstances (family, employment, ministry, etc.), which make such mobility difficult if not impossible.

1 THE MOVEMENT OF CLERGY BEFORE THE *CIC*

This chapter describes the history of the law on the movement of clerics from one diocese to another beginning from the early church period up to the *CIC*. The purpose of this chapter is to trace how the legislation regulating the movement of clerics from one diocese to another evolved over time. The questions that the chapter specifically intends to answer are: how was the movement of clerics dealt with over the centuries and what rules were in place at the different stages of church history that guided and regulated the movements of clergy? To answer these questions the chapter systematically examines the various juridic norms that existed before the *CIC* governing the movement of clerics from one diocese to another.

Tracing the history of the law on the movement of clerics will provide the context under which the agreement required by *CIC*, c. 271 for the temporary service of a diocesan cleric outside his diocese of incardination originated. Furthermore, it will provide the factors that motivated the legislator to formulate the law on the temporary service of a diocesan cleric in another diocese while maintaining incardination to his home diocese.

1.1 From the First to Third Century

During the first part of this early church period, ecclesiastical leaders were mainly itinerant evangelizers traveling from one community to another proclaiming the message of Jesus Christ, their Master. There were no specific norms in existence to regulate their movements from one place to another. This fact is evident in some of the New Testament books, as it will be seen in the section below. However, as the first century turned into the

second, church leadership gradually began to be more stable and structured as is evident in the *Didache* and the writings of St. Ignatius of Antioch.

1.1.1 The New Testament and Itinerant Missionaries

The movement of clergy from one local community to another is not something that is new to the Church. Since the time of Jesus, there has always been an insufficient number of human resources to carry out the Church's mission in the world.⁸ Jesus himself acknowledged this inadequacy when he sent out the seventy-two disciples to places he intended to visit.⁹ He told them, "The harvest is abundant, but the laborers are few; so, ask the master of the harvest to send out laborers for his harvest. Go on your way; behold I am sending you like lambs among wolves" (Lk 10:1-3).¹⁰ After his resurrection, Jesus commissioned the remaining eleven Apostles,¹¹ telling them, "Go, therefore, and make disciples of all nations, baptizing them in the name of the Father, and of the Son, and of the Holy Spirit, teaching them to observe all that I have commanded you" (Mt 28:19-20). In these two biblical texts, Jesus gives his disciples the mandate to travel to all nations and proclaim his message and teach people to obey what he has

⁸ See SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 11, 351, *CLD*, vol. 9, 768.

⁹ See *ibid.*

¹⁰ In this paper, all quotations from the Bible are taken from *The New American Bible: Catholic Study Bible*, second edition, New York, Oxford University Press, 2006, unless specified otherwise.

¹¹ The word *apostles* refers to a special group of Jesus' disciples that was selected and commissioned by Jesus himself to accompany him during his ministry and to eventually carry the news of the gospel to all nations. Their names are listed in Lk 6:14-16. However, the word *apostle* came to have a broader use in the years after the death and resurrection of Jesus. Paul refers to himself as an apostle (1 Cor. 9:1) who was untimely born (1 Cor. 15:7). The word was also used to refer to those who were commissioned by churches to do specific tasks as special envoys or spiritual ambassadors. For example, Paul and Barnabas are designated apostles in Acts 14:14. Andronicus and Junias are described by Paul as people "of note among the apostles" in Rom. 16:7. See J. MCRAY, *Paul: His Life and Teaching*, Grand Rapids, MI, Baker Academic, 2003, 375-376.

commanded. Apart from instructing them to travel with no money bags, sacks or sandals and to greet no one along the way (Lk 10:4-12), Jesus did not provide specific rules regulating the movement of the apostles.

As the apostles obeyed the command of their Master and started proclaiming the gospel, the number of believers also started to grow. Soon a severe persecution occurred against the Christian believers in Jerusalem. Many of the Christians were forced to flee to different places including Judea and Samaria (Acts 8: 1-3). As they fled from Jerusalem, they proclaimed the message of Jesus Christ to the Gentiles, and many people believed them and converted to Christianity. For example, Philip went to Samaria and preached and performed miracles in the name of Jesus Christ.¹² Some Samaritans believed the gospel and were baptized. When the apostles in Jerusalem heard that there were some converts in Samaria, they sent Peter and John to verify the surprising news that Samaria had accepted the word of God.¹³ This is significant for two reasons. Firstly, for the first time after Jesus' resurrection, some of his apostles were traveling outside Jerusalem to supervise the formation of new Christian communities. Secondly, the fact that the apostles in Jerusalem sent representatives to check on these developments shows that evangelization took place in Samaria without their authorization or supervision.¹⁴ This indicates that some rules concerning evangelization were beginning to emerge in the infant Church. For a follower of Jesus who was not an apostle to establish a new

¹² Philip was one of the seven men elected to assist the apostles with distributing food to the Greek speaking Jewish widows mentioned in Acts 6:1-7.

¹³ D.G. PETERSON, *The Acts of the Apostles*, Grand Rapids, MI, William B. Eerdmans Publishing Company, 2009, 285.

¹⁴ Ibid.

community in another place, he needed supervision or approval from the apostles in Jerusalem.

In addition to the above, other Jewish Christians fleeing the persecution in Jerusalem went as far as Antioch preaching the gospel of Jesus Christ (Acts 11:19-26). The people in Antioch heeded the message of the gospel and converted to Christianity in large numbers. Upon hearing the news of the large conversions in Antioch, the apostles in Jerusalem sent Barnabas to organize the converts. Here again, like in the case of Peter and John in Samaria, Barnabas was sent to Antioch as a delegate of the apostles to secure communion between the new Christian community and the mother Church in Jerusalem.¹⁵ This is further evidence that anyone who was not an apostle and wanted to establish a new Church in a different place needed supervision or approval from the apostles in Jerusalem.¹⁶

The community in Antioch continued to grow leading Barnabas to seek help from Saul of Tarsus. The two men remained in Antioch for one year and formed a Christian community, which was the first to be called a Church (*Ekklesia*).¹⁷ It was from this Church that Barnabas and Saul were sent out as missionaries to other places (Acts 13:2-3). They first traveled together and later parted ways when Paul was planning to begin his second journey. Paul would then be joined in his second and third missionary journeys by

¹⁵ J. DILLON, "Acts of the Apostles," in R.E. BROWN, J.F. FITZMYER and R. MURPHY, *The New Jerome Biblical Commentary*, Eaglewood Cliffs, NJ, Prentice-Hall, 1990, 739.

¹⁶ Nathan Mitchell points out that Jerusalem, which had become the mother of the Christian movement, enjoyed a certain authority over all other centers and its leaders, the "Twelve" and later James, the brother of the Lord (Acts 15), possessed a power of direction over the other disciples. See N. MITCHELL, *Mission and Ministry: History and Theology in the Sacrament of Order*, Wilmington, DE, Michael Glazier, Inc., 1982, 110 (= MITCHELL, *Mission and Ministry*).

¹⁷ J.A., MOHLER, *The Origin and Evolution of the Priesthood: A Return to Sources*, Staten Island, NY, Alba House, 1970, 18.

Silas, Timothy (Acts 16:1), Titus (2 Cor. 2:13), and Luke (Acts 16:10, Colossians 4:14). This portrays a clear picture of the itinerant nature of church leadership during the early first century. As Gerd Theissen has observed, church governance at this time was not “a well-organized body of co-workers hierarchically deputized to preach; but rather a loosely-knit band of wandering charismatics.”¹⁸

As the first century approached its midpoint, there began to be some gradual transition from church leaders who were entirely itinerant to those who were residents of local communities. This is evident from the missionary journeys of Paul and Barnabas. As they traveled throughout Palestine, they appointed presbyters¹⁹ to govern the local communities that they founded. In Acts 14: 23, Luke says that “They appointed presbyters for them in each Church and, with prayer and fasting, commended them to the Lord in whom they had put their faith.” Furthermore, Paul makes reference to Titus as the administrator of the Church in Crete and urges him to “set right what remains to be done and appoint elders in every town” (Titus 1:5). Similarly, Paul described Timothy as the administrator of the entire Ephesian community. Paul says to Timothy:

I repeat the request I made of you when I was on my way to Macedonia, that you stay in Ephesus to instruct certain people not to teach false doctrine or concern themselves with myths and endless genealogies, which promote speculation rather than the plan of God that is received by faith (I Timothy 1:3).

The above examples indicate that towards the end of the first century, although Paul and other apostles were still itinerant preachers, some stable residential ministry was beginning to emerge in local communities. They do not show a formally structured

¹⁸ G. THEISSEN, *Sociology of Early Palestinian Christianity*, Philadelphia, Fortress Press, 1978, 8.

¹⁹ The word “presbyter” is etymologically derived from the Greek word “presbyteros,” which originally meant “older man” or “elder.” In the New Testament, the word “presbyteros” is usually employed as a technical term for a church official or leader. See T.P. RAUSCH, *Priesthood Today: An Appraisal*, New York, Paulist Press, 1992, 34.

church governance as we have today, but they indicate its beginnings.²⁰ As Nathan Mitchell points out, by the end of the first century and the beginning of the second century, Christianity was well on its way toward becoming more stable.²¹

1.1.2 The *Didache* and the Transition to Stable Church Leaders

Besides the New Testament writings, evidence of a transition from itinerant preaching to a more stable residential ministry can also be found in the *Didache*. This is a brief collection of early Christian manuscripts bound together in a single volume that was used in instructing gentile converts for full participation in Christian assemblies.²² Its authorship is anonymous, and its date of composition is believed to be somewhere between 90 and 150 AD.²³ Although its place of publication is also still a subject of debate, the Greek manuscript of the work was discovered in the library of the Patriarch of Jerusalem at Constantinople in 1873 by Archbishop Philotheos Brynnios, Metropolitan of Nicomedia.²⁴ The work is relevant to our study because it reveals how Christians in the mid-first century saw themselves and lived their everyday lives.²⁵ Of particular interest to our work is chapter XI, verses 4 and 5 of the manuscript, which state:

4. Let every apostle who comes to you be welcomed as the Lord.

²⁰ M.W. O'CONNELL, *The Mobility of Secular Clerics and Incardination: Canon 268 § 1*, JCD diss., Rome, Edizioni Università della Santa Croce, 2002, 25 (= O'CONNELL, *The Mobility of Secular Clerics*).

²¹ MITCHELL, *Mission and Ministry*, 138.

²² A. MILAVEC, *The Didache: Text, Translation, Analysis and Commentary*, Collegeville, MN, Liturgical Press, 2003, ix (= MILAVEC, *The Didache*).

²³ J.A. DRAPER, "The *Didache* in Modern Research: An Overview," in J.A. DRAPER (ed.), *The Didache in Modern Research*, Leiden, The Netherlands, E.J. Brill, 1996, 10 (= DRAPPER, *The Didache in Modern Research*).

²⁴ *Ibid.*, 1.

²⁵ A. MILAVEC, *The Didache*, ix.

5. But he should not remain more than a day. If he must, he may stay one more day. But if he stays three days he is a false prophet.²⁶

In verse 4 cited above, the *Didache* reveals that there was a network of individual houses already in existence in the local communities to which the itinerant apostles²⁷ went to seek accommodation.²⁸ In addition to that, the *Didache* urges the local Christians to receive the apostle as the Lord (*Kyrios*), which implies that an apostle was understood to be an emissary of the Lord, who did not have a permanent residence and depended on the local Christians for support.²⁹ In verse 5, the *Didache* restricts the apostles to stay in one place for only one or two days, which is an indication that there might have been a frequent abuse of an evangelistic office for the purpose of gain.³⁰ So, in verses 4 and 5 of chapter XI, the *Didache* clearly corroborates what we had already seen in the New Testament, that by the mid-first century there were no fixed ministers in the local Church. Itinerant apostles, teachers, and prophets still held privileged positions in the church leadership.

²⁶ B.D., EHRMAN, (ed.), *The Apostolic Fathers: I Clement, II Clement, Ignatius, Polycarp, Didache*, Cambridge, MA, Harvard University Press, 2003, 435 (= EHRMAN, *The Apostolic Fathers*).

²⁷ The *Didache* does not define the word “apostle.” It is, however, used here in a wider sense to refer not only to the Twelve but also to those who had been commissioned as emissaries by the different churches. See P. SCHAFF, *The Oldest Church Manual Called the Teaching of the Twelve Apostles: ΔΙΑΧΗ ΤΩΝ ΔΩΔΕΚΑ ΑΠΟΣΤΟΛΩΝ: The Didachè and Kindred Documents in the Original with Translations and Discussion of Post-Apostolic Teaching, Baptism, Worship, and Discipline and with Illustrations and Facsimiles of the Jerusalem Manuscript*, Edinburgh, T. & T. Clark, 1885, 199 (= SCHAFF, *The Oldest Church Manual*).

²⁸ K. NIEDERWIMMER, “An Examination of the Development of Itinerant Radicalism in the Environment and Tradition of the *Didache*,” in DRAPER, *The Didache in Modern Research*, 328.

²⁹ *Ibid.*, 330.

³⁰ SCHAFF, *The Oldest Church Manual*, 200.

However, the same unnamed author of the *Didache* seems to have witnessed a change in his lifetime because, in verses 1 and 2 of chapter 15,³¹ he commands the communities to elect from among them candidates to assume the role of permanent ministers of the gospel.

1. And so, elect for yourselves bishops and deacons who are worthy of the Lord, gentle men who are not fond of money, who are true and approved. For these also conduct the ministry of the prophets and teachers among you.
2. And so, do not disregard them. For these are the ones who have found honor, along with prophets and teachers.³²

The bishops and deacons were not itinerant charismatics; they were members of the local community chosen for a particular function within the boundaries of the local community. In chapter 15, verses 1 and 2, the *Didache* describes a more developed institutional form of church governance.

The *Didache* is significant since it portrays a two-fold ministry in the early church period. First, it confirms that earlier in the first century, church ministers were mainly itinerant apostles, prophets and teachers continually moving from one community to another. Then towards the end of the first century, the *Didache* portrays a gradual transition that was taking place. As the number of itinerant ministers was declining, they were gradually replaced by elected local church leaders who were residents of the community.

1.1.3 Clement of Rome and Ignatius of Antioch on Stable Church Governance

Precise details about the life of Clement of Rome are not clear. He is believed to have been the third bishop of Rome after Peter. His own pontificate extended between

³¹ Chapter 15 is believed to be a later addition to the disciplinary part of the *Didache*. See A. DE HALLEUX, "Ministers in the *Didache*," in DRAPER, *The Didache in Modern Research*, 300.

³² EHRMAN, *The Apostolic Fathers*, 441.

A.D. 90 and 99.³³ During this period, Clement wrote his Letter to the Corinthians. The letter was written in response to a schism in the Church of Corinth, in which a group of lay persons had ousted some clerics from their positions.³⁴ In the letter, Clement alludes to a hierarchical structure of church governance that was already in existence at the time.

He writes as follows:

40. 5 For the high priest has been allotted his proper ministrations, and to the priests their proper place has been assigned, and on the Levites their own duties are laid. The lay man is bound by the lay ordinances.

41.1 Let us, brothers, each in his own order, strive to please God with a good conscience and with reverence, not transgressing the fixed rule of each one's own ministry.³⁵

Ignatius of Antioch was probably born around the year 50 A.D. and was the second successor of Peter as the bishop of Antioch.³⁶ Sentenced to die in Rome during the reign of Emperor Trajan (98-117), Ignatius wrote letters to the Christian communities of Ephesus, Magnesia, Tralles, Philadelphia and Smyrna. These letters were written during the first decade of the second century and therefore tell us something of the Church's life in Asia Minor during that period.³⁷ In those letters, St. Ignatius portrays a structured and hierarchical church government with the bishop as the resident president of the community. For example, in his letter to the Magnesians, Ignatius writes:

Since, then, I have been found worthy to see you through Damas, your bishop who is worthy of God, through your presbyters Bassus and Apollonius, and through my fellow

³³ F.X. GLIMM, J. M. F. MARIQUE and G.G. WALSH, (trans.), *The Apostolic Fathers*, vol. 1, Cima Publishing Co., Inc., NY, 1947, 3.

³⁴ *Ibid.*, 4.

³⁵ In MIGNE, *Patrologiae cursus completus, Series Graeca*, vol. 1, 290, English translation by F. X. GLIMM, J. M. F. MARIQUE and G. G. WALSH, (trans.), *The Apostolic Fathers*, vol. 1, 41.

³⁶ MOHLER, *The Origin and Evolution of the Priesthood*, 41.

³⁷ K.B. OSBORNE, *Priesthood: A History of Ordained Ministry in the Roman Catholic Church*, New York, Paulist Press, 1989, 97.

slave, the deacon Zoton-whom I hope to enjoy, for he is subject to the bishop as the grace of God, and to the presbyters as to the law of Jesus Christ.³⁸

In the above excerpt, we see that in Asia Minor during the time of Saint Ignatius, there was a clear structure of church administration. The bishop, who stood in place of God, was the supreme figure and administrator of the particular community. In second place behind the bishop was the presbyter and then third, the deacon. Both the presbyters and deacons were subjects of the bishop and were obligated to render the bishop due reverence.³⁹ Saint Ignatius makes the same point regarding the hierarchical structure of church administration in his letter to the Smyrnaeans, which reads, “You must all follow the bishop, as Jesus followed the Father, and follow the presbytery as you would the apostles; respect the deacons as you would the commandment of God.”⁴⁰

In Saint Ignatius’ letters, we see a Church organized under a tripartite hierarchy of government with a residential bishop as the supreme leader. The bishop is responsible for the administration of the particular community and supervises all the activities of the priests and deacons in that local community. The priests and deacons are bonded to the bishop as their head.

The first three centuries, can be described as the time of evangelization and expansion of the Church, as well as a time of persecution.⁴¹ Consequently, the early

³⁸ In J.P. MIGNE, *Patrologiae cursus completus, Series Graeca*, vol. 5 (1849), 758-759, English translation by EHRMAN, *The Apostolic Fathers*, 243-244.

³⁹ The theme of presbyters and deacons as subjects to the bishop is also repeated in Saint Ignatius’ letter to the Ephesians. In his letter to the Ephesians, no. 4, Ignatius writes, “For it is fitting for you to run together in harmony with the mind of the bishop, which is exactly what you are doing. For your presbytery, which is both worthy of the name and worthy of God, is attuned to the bishop as strings to the lyre.” See EHRMAN, *The Apostolic Fathers*, 223.

⁴⁰ In MIGNE, *Patrologiae cursus completus, Series Graeca*, vol. 5, 851, no. 8. English translation by H.W. Holmes, *The Apostolic Fathers: Greek Texts and English Translations*, Grand Rapids, MI, Baker Books, 1999, 189, no. 8.

⁴¹ O’CONNELL, *The Mobility of Secular Clerics*, 24.

Christian community was characterized by frequent displacements and travels by the apostles and their successors. Itinerant proclamation of the word of God was the main form of church apostolate. Although there were no formal rules regulating the movement of apostles, the activities of their collaborators required supervision or authorization by the apostles. As the first century ends and the second century begins, we begin to see some evidence of a gradual transition from roaming missionaries to a more residential church governance.

1.2 Early Legislation on the Movement of Clergy (4th to 7th Century)

From the beginning of the Church until the fourth century, there is no known legislation concerning the transfer or movement of clergy from one local community to another. It was simply by practice that a cleric was expected by the bishop and the community to remain attached perpetually to a local Church. However, beginning in the fourth century, the Church found it necessary to put down specific norms concerning the movement or transfer of clerics. Consequently, some councils were convoked and the issue of clergy movement became a subject of legislation in some of them. Some of these councils that were convoked between the fourth and seventh centuries are the Council of Arles, the First Council of Nicaea, the First and Third Councils of Carthage and the Council of Chalcedon. In addition to these councils, Pope Gregory I also made a significant contribution that would significantly affect the movement of clerics, as will be discussed below.

1.2.1 The Council of Arles (314 A.D.)

The First Council of Arles was convened at Arles in August 314 by Emperor Constantine I to deal primarily with the problem of the Donatists, a schismatic Christian

group in North Africa.⁴² Of the twenty-two canons that were passed at the Council, canon 2, which deals with the residence of the clergy, states that “Those who have been ordained ministers in certain places are to remain attached to those same places.”⁴³ The canon lays down the general rule that clerics are to remain permanently attached to the places (*loca*) for which they were ordained. The emphasis is put on the cleric’s relationship to the place for which he was ordained. Even though the canon does not attach a penalty for those who failed to observe this law, canon 21 of the same Council is more specific about what is to be done to the deacons and priests who transfer illicitly to another place or abandon their places of assignment.

It is decreed that priests and deacons who are accustomed to abandoning their own places for which they were ordained and transfer themselves to other places, it pleases that they perform their ministry in those places. But if, after they have deserted their own places, they intend to establish themselves in another, they are to be deposed.⁴⁴

In this canon, we find the first explicit legislation concerning the transfer of clerics from their places of ordination to another location. It reiterated very strongly the general principle that was stated in c. 2 and applied it specifically to priests and deacons, who were not to abandon their churches for which they were ordained. The canon explicitly

⁴² K.J. von HEFELE, *A History of the Councils of the Church from Original Documents*, vol. 1, Edinburgh, T. & T. Clark, 1896, 181 (= HEFELE, *A History of the Councils*).

⁴³ “De his qui in quibuscumque locis ordinati fuerint ministri, in ipsis locis perseverent” (COUNCIL OF ARLES, c. 2, in J. MANSI, *Sacrorum conciliorum nova et amplissima collection*, vol. 2, Paris, H. Welter, 1901-1927, 471 [= MANSI], English translation is adopted from J.M. O’DONNELL, *The Canons of the First Council of Arles, 314 A.D.*, Canon Law Studies, no. 127A, Washington DC, Catholic University of America Press, 1961, 151 [= O’DONNELL, *The Canons of the First Council of Arles*]). By using the phrase *ordinati fuerint ministri*, translated here as “those who have been ordained ministers,” the council fathers meant not only bishops, presbyters and deacons but also those in minor orders. See O’DONNELL, *The Canons of the First Council of Arles*, 151-152.

⁴⁴ “De presbyteris, aut diaconibus, qui solent dimittere loca sua in quibus ordinati sunt, et ad alia loca se transferunt, placuit ut eis locis ministrent, quibus praefixi sunt. Quod si relictis locis suis ad alium se locum transferre voluerint, deponantur” (COUNCIL OF ARLES, c. 21, in MANSI, vol. 2, 474, English translation is adopted from O’Donnell, *The Canons of the First Council of Arles*, 151).

forbade clerics from leaving their assigned places of ministry and moving to different areas, It also imposed a precise penalty of deposition for its violation.

From analyzing the contents of cc. 2 and 21, it is clear that the Council of Arles entirely forbade clerics from changing churches. Canon 16 (15) adds that “Concerning deacons who we have learned are conducting services in many places, be it resolved that this ought to happen as little as possible.”⁴⁵ The Council, therefore, bound clerics to the churches for which they were ordained and did not envisage any possibility of a cleric licitly transferring from one church to another. The emphasis is placed on the bond existing between the cleric and the place for which he was ordained.

1.2.2 The First Council of Nicaea (325 A.D.)

Eleven years after the Council of Arles, in the year 325 A.D., Emperor Constantine I convened what became the Church’s first Ecumenical Council. The bishops assembled at this Council felt the need to renew the Church’s law on the movement of clerics from one church to another.⁴⁶ The fifteenth canon of this Council stated the same general rule that had been decreed at the Council of Arles forbidding the transfer of clerics from one city to another. Canon 15 reads as follows:

On account of the great disturbance and the factions which are caused, it is decreed that the custom, if it is found to exist in some parts contrary to the canon, shall be totally suppressed, so that neither bishops nor presbyters nor deacons shall transfer from city to city. If after this decision of this holy and great synod anyone shall attempt such a thing, or shall lend himself to such a proceeding, the arrangement shall be totally annulled, and he shall be restored to the church of which he was ordained bishop or presbyter or deacon⁴⁷

⁴⁵ “De diaconibus quos cognovimus multis locis offerre, placuit minime fieri debere” (COUNCIL OF ARLES, c. 15, in MANSI, vol. 2, 473, English translation is adopted from O’DONNELL, *The Canons of the First Council of Arles*, 150).

⁴⁶ O’DONNELL, *The Canons of the First Council of Arles*, 174.

⁴⁷ “Propter multam perturbationem et seditiones quae fiunt placuit consuetudinem omnimodis amputari, quae praeter regulam in quibusdam partibus videtur admissa: ita ut de civitate ad civitatem non episcopus, non presbyter, non diaconus transferatur. Si quis vero post definitionem sancti et magni concilii tale quid agere temptaverit et se huiusmodi manciparit, hoc factum prorsus in irritum deducatur et

Those who violated this canon were urged to return to their first church, and if they refused to do so, the sixteenth canon imposed the penalty of excommunication. Canon 16 expresses this clearly:

Any presbyters or deacons or in general anyone enrolled in any rank of the clergy who depart from their church recklessly and without the fear of God before their eyes or in ignorance of the church's canon, ought not by any means to be received in another church, but all pressure must be applied to them to induce them to return to their own dioceses, or if they remain it is right that they should be excommunicated. But if anyone dares to steal away one who belongs to another and to ordain him in his church without the consent of the other's own bishop among whose clergy he was enrolled before he departed, the ordination is to be null.⁴⁸

Besides repeating the general rule that prohibits the transfer of clerics, this canon threatens with excommunication the offending clergy who refuse to return to their own dioceses. Additionally, the canon forbids any bishop from ordaining for his own diocese a candidate belonging to another diocese without the consent of the candidate's proper bishop. The most significant contribution that this canon made was the use of the phrase "without the consent of the other's own bishop." By using this phrase, the canon implied that, with the consent of one's proper bishop, the receiving bishop could ordain a candidate to the clerical state, if he judged it appropriate. Perhaps, without knowing it, the bishops of the Council, while still forbidding illicit transfers of the clergy, opened the door for a legitimate process of doing so.⁴⁹ This marked a significant departure from the

restituatur ecclesiae, cui fuit episcopus, presbyter aut diaconus ordinatus" (FIRST COUNCIL OF NICAEA, c. 15, in N.P. TANNER [ed.], *Decrees of the Ecumenical Councils*, vol. 1, *Nicaea I to Lateran V*, Washington, DC, Georgetown University Press, 1990, 13 [= TANNER, *Decrees of the Ecumenical Councils*, vol. I]).

⁴⁸ "Quicumque temere ac periculose neque timorem Dei prae oculis habentes nec agnoscentes ecclesiasticam regulam discedunt ab ecclesia presbyteri aut diaconi vel quicumque sub regula modis omnibus adprobantur, huiusmodi nequaquam debent in alia ecclesia recipi, sed omnem necessitatem convenit illis inferri, ut ad suas paroecias revertantur, aut si non fecerint oportet eos communione privari. Si quis autem ad alium pertinentem audacter invadere et in sua ecclesia ordinare praesumpserit non consentiente episcopo, a quo discessit is, qui regulae mancipatur: ordinatio talis irrita comprobetur" (FIRST COUNCIL OF NICAEA, c. 16, in TANNER, *Decrees of the Ecumenical Councils*, vol. I, 13-14).

⁴⁹ O'CONNELL, *The Mobility of Secular Clerics*, 33.

position held at the Council of Arles, which did not leave room for any possibility of clerics transferring from one church to another, even with the permission of their bishops.

Although c. 16 of the First Council of Nicaea allowed a bishop of one diocese to receive a cleric from another diocese with the consent of his proper bishop, it did not say whether this consent was to be given orally or in writing. However, the bishops of the First Council of Nicaea seemed to have published examples of the letters that were supposed to be used for the legal transfers of clerics from one diocese to another.⁵⁰ These letters are not found among the twenty canons produced by the Council, but they are incorporated in the *Decree of Gratian*,⁵¹ as a model for later centuries. To avoid any possibility of fraud, the bishops devised a way of indicating the genuineness of these letters. It consisted of a series of Greek alphabetical characters incorporated within the document, each of which had a special significance. One of the characters represented the name of the bishop to whom the letters were addressed, another the city where he resided and another the bishop issuing the letter. It is evident from this that these letters were issued to a specific bishop to prevent wandering clerics. The letters were known as

⁵⁰ J.T. MCBRIDE, *Incardination and Excardination of Seculars: An Historical Synopsis and Commentary*, Canon Law Studies, no. 145, Washington, DC, The Catholic University of America, 1941, 156 (= MCBRIDE, *Incardination and Excardination of Seculars*).

⁵¹ “Sanctissimo in Christo fratri summa dulcedine karitatis amplectendo A., illius civitatis episcopo, Y., illius ecclesiae presul, perpetuae beatitudinis optat in Christo salutem. Ω. Y. A. Ω. De cetero noverit sancta fraternitas vestra, quod iste clericus, Hermannus nomine, nostra in parochia instructus ac detonsus, parvitatem nostram rogavit, quatinus illi commendaticias litteras conscriberemus, quibus vestrae celsitudini commendatus sub tuitione vestri regiminis degere posset; cuius voluntanti consentientes secundum canonicam auctoritatem litteras ei dimmissorias dedimus, per quas et ipsi concedimus, ut sub vestro magisterio divinae servituti insistens suae deserviat utilitati, et vobis licentiam tribuimus, ut, si dignum eum iudicaveritis, ad sacro ordines promoveatis. Commendatum ergo eum curae vestrae suscipite, et nostris ex partibus absolutum in vestrarum ovium numero custodite. Quas litteras, ut vigore veritatis firmatae indubitanter a vobis suscipiantur, litteris grecis, ut canonica docet auctoritas, confirmare satagemus. Sancta Trinitas vestram beatitudinem ad regimen sanctae suae ecclesiae perpetualiter bene valere concedat, Ἀμήν” (D. 73, c. 2, in MCBRIDE, *Incardination and Excardination of Seculars*, 156, footnote 170).

litterae dimissoriae or in English “dimissorial letters”⁵² because through them the first bishop handed over the cleric perpetually to the second bishop, who acquired the cleric as his own. By means of the letters, the second bishop was authorized to confer all future orders on the cleric if he judged it proper.

Therefore, the Council of Nicaea, in strong language, confirmed the general rule that forbade illicit transfers of clerics, while at the same time created a leeway for a legal process of the transfer of clerics. With the consent of their proper bishops, clerics could be allowed to move and serve in the diocese of another bishop.

1.2.3 Some Important Legislation between First Nicaea and Chalcedon

Although clerics were generally forbidden from moving from one place to another, the legislation in existence up to this point allowed them to legally transfer with the consent of their bishops. To make such a transfer, the First Council of Carthage held in 348 A.D. categorically stated in c. 5 that an extern cleric needed letters from his bishop. The same Council in the same canon added that if a bishop of a different diocese needed an extern cleric, he could ask the cleric’s bishop, who was to release him.⁵³ This canon did two things: firstly, it specifically mandated a written permission as a condition

⁵² Joseph Quinn points out that “In the legislation of these early councils, as a general rule, it was not expressly stated that this *licentia, consensus, conscientia* (and other terms used to express the same idea) had to be manifested in writing. It is believed by many, however, that writing was the ordinary means employed in the expressing of this consent” See (J. J. QUINN, *Documents Required for the Reception of Orders: A Historical Synopsis and Commentary*, Canon Law Studies, no. 266, Washington, DC, The Catholic University of America Press, 1948, 6 [= QUINN, *Documents Required for the Reception of Orders*]).

⁵³ “Privatus episcopus Begeselitanus dixit, Suggesto sanctiati vestrae, ut statuatis, non debere clericum alienum ab aliquo suscipi sine litteris episcopi sui, neque apud se detinere: sed nec laicum usurpare sibi de plebe aliena, ut eum ordinet sine conscientia eius episcopi, de cuius plebe est. Gratus episcopus dixit: Haec observantia pacem custodit: nam et memini sanctissimo concilio Sardicensi similiter statutum, ut nemo alterius plebis hominem sibi usurpet: sed si forte erit necessarius ordinationi, ut de vicino homo sit necessarius, petat a collega suo, et concessum habeat” (FIRST COUNCIL OF CARTHAGE, c. 5, in MANSI, vol. 3, 155).

for an extern cleric to be accepted in another diocese. Secondly, it considered the need of the Church and usefulness of the cleric as reasons for the transfer of clerics.⁵⁴

In 397 A.D., a third Council was held at Carthage, which issued two canons that touched on the movement of clerics. Canon 21 prohibited the retention or promotion of a cleric from another diocese without the permission of his bishop.⁵⁵ In c. 45 of the same Council, Bishop Aurelius defended the need for clergy to move from dioceses with an abundant number of clergy to dioceses that were short of clerics.⁵⁶

Phrasing its norm positively, the Fourth Council of Carthage held in 398 A.D. also made a law that allowed bishops to grant clerics permission to transfer to other churches. It states in its 27th canon that “Priests of lower grade or other clerics may transfer to other churches with the permission of their bishops.”⁵⁷

The legislation after the Council of Arles clearly made an impact on the movement of clerics. They permitted the movement of clerics to other dioceses, but only with the consent of their own bishops. The only way such a legal transfer could take place was by means of letters from the proper bishop to the receiving bishop. Moreover,

⁵⁴ M.J. MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry: A Comparison between CIC 17 and CIC 83*, JCD diss., Rome, Editrice Pontificia Università Gregoriana, 2002, 16 (= MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*).

⁵⁵ “Ut clericum alienum, nisi concedente eius episcopo, nemo audeat vel retinere vel promovere in ecclesia sibi credita; clericorum autem nomen etiam lectores et psalmistae et ostiarii retinent” (THIRD COUNCIL OF CARTHAGE, c. 21, in H. T. BRUNS, *Canones Apostolorum et Consiliorum*, vol. 1, Berlin, Typis et Sumptibus, G. Reimeni, 1839, 126 [= BRUNS, *Canones Apostolorum et Consiliorum*]).

⁵⁶ “... Aurelius episcopus dixit: Sane, quomodo tu ecclesiae alteri subveneries, persuadebitur illi qui plures habet clericos, ut unum tibi ordinandum largiatur” (ibid., c. 45, in BRUNS, vol. 1, 132).

⁵⁷ “... inferioris vero gradus sacerdotes vel alii clerici concessione suorum episcoporum possunt ad alias ecclesias transmigrare” (FOURTH COUNCIL OF CARTHAGE, c. 27, in BRUNS, vol. 1, 144, English translation is taken from O’DONNELL, *The Canons of the First Council of Arles*, 177).

among the reasons for permitting the transfer of clerics was the abundance of clergy in one Church and the need of clerics in another.

1.2.4 The Council of Chalcedon [451] and the Title of Ordination

One would have expected that all the laws that had been put in place to regulate the transfer of clerics would have resolved the issue of wandering clerics once and for all. Instead, the problem was getting worse. Some bishops had started ordaining men without considering their need and usefulness to the Church.⁵⁸ These ordinations were known as “absolute ordinations” or ordinations where a cleric did not have a title (*titulus*), that is, a particular place of service where the cleric was attached at the moment of ordination.

The term *titulus* derives from a Roman custom of indicating the owner or builder of a house by putting an inscription or title (*titulus*) over the doorway.⁵⁹ When such a private house was converted to a church, it retained, at first, the name of the owner as a suitable designation. Afterward, it would be given a saint’s or martyr’s name as its proper designation. Priests and deacons ordained for such churches were said to have titles, and those without titles were called wandering or acephalous clerics (*clerici vagi* or *clerici acephali*). This practice of designation soon spread elsewhere, so that every man, as soon as he was ordained, had to be given a title, by which was meant a church or religious place which needed his ministry.⁶⁰ By virtue of their titles, clerics had the obligation to serve that specific church and a right to have some of the church’s revenues for their

⁵⁸ R.H. KEELER, *The Pastoral Office of Priests and Its Relationship to Canonical Institute of Incardination*, JCD diss., Ottawa, Saint Paul University, 2007, 126 (= KEELER, *The Pastoral Office of Priests*).

⁵⁹ J.E. LYNCH, “Historical Notes: The Clergy and the Diocese,” in R. CALVO and N. J. KLINGER, (eds.), *Clergy Procedural Handbook*, Washington, DC, Canon Law Society of America, 1992, 11.

⁶⁰ MCBRIDE, *Incardination and Excardination of Seculars*, 65.

sustenance. The title, therefore, came to be considered as a security given to a clergyman to ensure his honorable maintenance. A title was, therefore, needed for every order from subdiaconate onward.⁶¹ However, in the fifth century, some bishops began conferring “absolute” ordinations, or ordinations without a title, that is, ordaining clerics who were not attached to any specific church.⁶² This practice increased the number of *clerici vagi*. The Council of Chalcedon strongly condemned this practice when it decreed in its sixth canon that:

No one, whether presbyter or deacon or anyone else at all who belongs to the ecclesiastical order, is to be ordained without a title unless the one ordained is specifically assigned to a city or village church or a martyr’s shrine or a monastery. The sacred synod has decreed that the ordination of those ordained without a title is null and that they cannot operate anywhere, because of the presumption of the one who ordained them.⁶³

This canon influenced the transfers of clerics because it limited and confined their ministry for life to one individual church or position. They were to reside and work in one specific place, where they would carry out their ministries and receive adequate

⁶¹ C.A. BACHOFEN, *A Commentary on the New Code of Canon Law*, vol. 4, sixth rev. ed., St. Louis, MO, B. Herder Book CO., 1925, 465 (= BACHOFEN, *A Commentary on the New Code of Canon Law*).

⁶² MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 18.

⁶³ “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 ordinatur, decrevit sancta synodus, irritam esse huiusce modi manus inpositionem, et nusquam posse ministrare, ad ordinantis iniuriam” (COUNCIL OF CHALCEDON, c. 6, in TANNER, *Decrees of the Ecumenical Councils*, vol. I, 90). See also MANSI, vol. 7, 362. It is important to note here that in its fifth and twentieth canons, the Council of Chalcedon restated and approved the general norm that had been enacted by the previous Councils forbidding clerics from moving from city to city. Canon 5 states, “De his, qui transmigrant de civitate in civitatem episcopis aut clericis, placuit ut canones, qui de hac re a sanctis patribus statuti sunt, habeant propriam firmitatem,” in TANNER, *Decrees of the Ecumenical Councils*, vol. I, 90. See also MANSI, vol. 7, 362. Canon 20 stipulates, “Clericos in ecclesia ministrantes, sicut iam constituimus, in alterius civitatis ecclesia statutos fieri non licere, sed contentos esse in quibus ab initio ministrare meruerunt, exceptis illis qui proprias amittentes provincias ex necessitate ad aliam ecclesiam transierunt. Si quis autem episcopus post hanc definitionem susceperit clericum ad alium episcopum pertinentem, placuit et susceptum et suscipientem communionem privari, donec is qui migraverat clericus ad propriam fuerit regressus ecclesiam,” in TANNER, *Decrees of the Ecumenical Councils*, vol. I, 96. See also MANSI, vol. 7, 366.

sustenance from the income of the church.⁶⁴ The canon threatens the penalty of declaring null or invalid the ordination of those who violated the precepts. According to Schroeder, the invalidity of ordination here does not mean that the orders received were null and void but that the cleric has been suspended from the exercise of the orders received.⁶⁵

Therefore, like the Councils before it, the Council of Chalcedon forbade illicit transfers of clergy while at the same time left open the possibility of allowing clerics to transfer to another diocese but only if they had been displaced from their own country and forced to move to another country. Besides that, the Council strictly prohibited absolute ordinations and threatened severe penalties for the offenders.

1.2.5 The Contribution of Pope Gregory I

Although up to this point, the movement of clergy from one diocese to another was forbidden, under certain conditions and with the consent of their proper bishops and the bishops of the host dioceses, clerics could be allowed to transfer from one diocese to another. There are records in the writings of Pope Gregory I, who was a pope from 590 to 604 A.D., which indicate that clerics were actually being transferred from one diocese to another. This is evident in the excerpt from one of his epistles.

The care of a pastoral office requires us to appoint their own bishops to establish churches deprived of them, who should govern the Lord's flock with pastoral concern. For that reason, we have thought it necessary to appoint you, John, bishop of the city of Alessio captured by the enemy, as cardinal priest in the church of Squillace, so that you both carry out the care of souls once you accept it, by looking forward to the coming judgement, and although you have been out of your church by the enemy threat, you should govern another church which is without a pastor. But do so in such a way that your city happens to be freed from the enemy and restored to its former state, with the Lord's protection, you should return to the church in which you were first consecrated. If, however, the above-

⁶⁴ MULLANEY, *Incardination of Secular Clerics*, 18.

⁶⁵ H.J. SCHROEDER, *Disciplinary Decrees of the General Councils: Text, Translation, and Commentary*, St. Louis, MO, B. Herder Book Co., 1937, 96 (= SCHROEDER, *Disciplinary Decrees*).

mentioned city is oppressed by the continuous calamity of captivity, you should remain permanently in this church in which you have also been incardinated by us.⁶⁶

In the above excerpt, Pope Gregory I was appointing Bishop John of the city of Alessio as a cardinal priest of the Church in Squillace.⁶⁷ The Pope in this letter introduced a new term of incardination.⁶⁸ He did not use the noun *incardinatio* but the verb *incardinare* (“in hac in qua a nobis incardinatus es, debes Ecclesia permanere”). His use of the term, referred to the act of appointing a *cardinal* priest, not the institute of incardination, as it later existed in the law.

The word “incardination” is derived from the Latin word *cardo*, which means a hinge or a point-like device used for attaching an object to another. For example, a door was said to be “cardinated” if it had hinges which could be used to attach it in a fixed manner to a wall. If such a door was actually attached permanently to a wall, then it was said to be “incardinated” to that wall.⁶⁹ Therefore, to incardinate meant to attach an object permanently to another object by the use of a hinge or a *cardo*. The point at which the hinges touched the objects was known as a cardinal point or a principal point.

⁶⁶ “Pastoralis officii cura nos admonet destitutis Ecclesiis proprios constituere sacerdotes, qui gregem dominicum debeant pastorali sollicitudine gubernare. Propterea te Joannem ab hostibus captivatae Lissitanae civitatis episcopum in Squillacina Ecclesia cardinalem necesse duximus constituere sacerdotem, ut susceptam semel animarum curam intuitu futurae retributionis impleas. Et licet a tua ecclesia sis hoste imminente depulsus, aliam quae a pastore vacat Ecclesiam debes gubernare; ita tamen ut si civitatem illam ab hostibus liberam effici et, Domino protegente, ad priorem statum contigerit revocari, ad eam in qua prius ordinatus es Ecclesiam revertaris. Sin autem praedicta civitas continua captivitatis calamitate premitur, in hac in qua a nobis incardinatus es, debes Ecclesia permanere” (GREGORII MAGNI, Liber II, Epistula 37, in J.P. MIGNE, *Patrologiae cursus completus, Series Latina*, 77 [1849], 575, English translation in R.C. MARTYN, *The Letters of Gregory the Great*, vol. 1: Books 1-4, Pontifical Institute of Mediaeval Studies, Toronto, Ontario, 2004, 212 [= MARTYN, *The Letters of Gregory*]).

⁶⁷ Squillace (Squillacium then) was an ancient town of Calabria (home of the Bruttii), where John was in charge (August 598), but not thereafter. Alessio (Lissus), an Illyrian city at the mouth of the Adriatic, near Durazzo, had been taken by the Slavs, who were threatening the Balkans, in the West especially. See MARTYN, *The Letters of Gregory*, vol. 1, 212, footnotes 74 and 75.

⁶⁸ Various other excerpts from Pope Gregory I’s epistles in which he uses the word “incardination” can be found in MCBRIDE, *Incardination and Excardination of Seculars*, 7-8.

⁶⁹ MCBRIDE, *Incardination and Excardination of Seculars*, 1.

The adjective “cardinal” quickly became synonymous with chief or principal. In church circles, it started to be used to describe a principal or prominent cleric.⁷⁰ For example, by the fourth century, churches in Rome were referred to as *tituli* (titles) and were placed under priests. If it was necessary that more than one priest was assigned to a title, then the chief priest in charge of the administration of that church was called a cardinal priest (*presbyterus cardinalis*).⁷¹ In a similar way, Pope Clement I (88-97 A.D.) divided Rome into seven regions, which were placed under the care of deacons.⁷² By the Pontificate of Pope Gregory I, the number of regions had increased to eighteen.⁷³ The deacons were in charge of the social services for the regions of Rome.⁷⁴ If it became necessary due to the growing number of Christians to assign more than one deacon to a region, the first or principal one in each section was called a cardinal deacon (*diaconus cardinalis*).⁷⁵ Along this same line, Rome was surrounded by seven dioceses.⁷⁶ The

⁷⁰ Ibid., 5.

⁷¹ In the period before the 8th century, a cardinal priest meant the senior or principal priest, who was in charge of the administration of a given church in Rome. He would have other priests, who were not cardinal priests, working under him and his specific roles would be supervising the ecclesiastical disciplines of that church. See J. B. SÄGMÜLLER, “Cardinal,” in C. G. HERMBERMANN et al. (eds.), *The Catholic Encyclopedia*, vol. III, New York, Robert Appleton Company, 1908, 333 (= SÄGMÜLLER, “Cardinal,” in *The Catholic Encyclopedia*).

⁷² L. DUCHESNE, (ed.), *Le Liber Pontificalis: Texte, Introduction et Commentaire*, vol. 1, Paris, E. De Boccard, Paris, 1955, 123.

⁷³ SÄGMÜLLER, “Cardinal,” in *The Catholic Encyclopedia*, 334.

⁷⁴ T.J. REESE, *Inside the Vatican: The Politics and Organizations of the Catholic Church*, Massachusetts, Harvard University Press, 1996, 66.

⁷⁵ MCBRIDE, *Incardination and Excardination of Seculars*, 6.

⁷⁶ The seven dioceses, also called suburbicarian dioceses, were and still are: Ostia, Albano, Porto-Santa Rufina, Palestrina, Sabina-Poggio Mirteto, Frascati, and Veletri. Cardinal bishops were diocesan bishops of these dioceses but also had roles to play in the Roman Curia. See K. MÖRSDORF, “Cardinal,” in K. RAHNER, *Sacramentum Mundi: An Encyclopedia of Theology*, vol. I, New York, Herder and Herder, 1968, 259-262. In 1962, Pope John XXIII turned cardinal bishops into titular bishops with no powers of governance over the dioceses. See JOHN XXIII, Apostolic Letter *motu proprio Suburbicarii sedibus*, 11 April 1962, in AAS, 54 (1962), 253-256.

bishops of these dioceses were often assigned to represent the pope at liturgical functions in the neighboring dioceses and basilicas and were given the name cardinal bishops (*episcopi cardinales*).⁷⁷ If a bishop, priest or deacon was transferred from one place to another in the capacity of a principal cleric, then he was said to have been incardinated to the place.

Pope Gregory I's contribution is that he seems to have been the first person to use the verb "to incardinate" to refer to the act of *transferring* a bishop, priest or deacon to a church or diocese different from his native church, but always in the capacity of a cardinal cleric.⁷⁸ The term incardination was used in this sense up to the eighteenth century. It was in the nineteenth century that the term incardination and along with its correlative excardination gained widespread use.⁷⁹

The period between the fourth and sixth centuries saw the convocation of a number of Councils, which put in place explicit legislation regulating the movement of the clergy. Legitimate transfers of the clergy were allowed but only with permission from their bishops, granted in the form of dimissorial letters. There also had to be a reason for the transfer, which was either the need of the Church and the usefulness of the cleric or a city being attacked and overtaken by enemies.

1.3 The Movement of Clergy from the Seventh to the Fourteenth Century

The previous centuries had produced a solid body of law that had been drawn up about the movement of the clergy. However, despite all the canons regulating the

⁷⁷ SÄGMÜLLER, "Cardinal," in *The Catholic Encyclopedia*, 335.

⁷⁸ MCBRIDE, *Incardination and Excardination of Seculars*, 9.

⁷⁹ *Ibid.*, 11.

movement of clerics, the problems concerning *clerici vagi* continued to exist. This is evident from the fact that in some of the Councils that were convoked between the seventh to fourteenth centuries, the issue of the movement of clerics was still a topic of deliberation. These councils include the Second Council of Nicaea and the Fourth Lateran Council. In addition, Popes Innocent III, Boniface VIII, and Clement IV also issued decrees that significantly influenced the canons concerning the movement of the clergy.

1.3.1 The Second Council of Nicaea (A.D. 787)

In the year 787 A.D. a second Council was convoked at Nicaea, in present day Turkey, with the main purpose of addressing the issue of the use and veneration of icons. Twenty-two canons were drawn up during this Council, which is also known as the Seventh Ecumenical Council. This Council did not introduce any new legislation regarding the movement of clerics. In its tenth and fifteenth canons, the Council simply upheld and tightened the existing law that attached clerics to an individual church and only permitted a cleric to move from one diocese to another with the permission of both his own bishop and the receiving bishop.⁸⁰

⁸⁰ “Quoniam quidam clericorum parvipendentes canonicam constitutionem, relinquunt parochiam propriam, et ad alias parochias convolant, et maxime in hac Deo servanda regia urbe sese apud principes locant, in eorum oratoriis missas facientes: hos absque proprio episcopo et Constantinopolitano antistite non licet suscipere in qualibet domo vel ecclesia: quod si hoc facerit, et ita perseveraverit, deponatur” (SECOND COUNCIL OF NICAEA, c. 10, in TANNER, *Decrees of the Ecumenical Councils*, vol. I, 146). See also MANSI, vol. 13, 429. Canon 15 says, “Clericus ab instanti tempore non connumeretur in duabus ecclesiis. Negotiationis enim est hoc et turpis commodi proprium, et ab ecclesiastica consuetudine penitus alienum. Adivimus enim ex ipsa dominica voce: Quia nemo potest duobus dominis servire, aut enim unum odio habebit, et alterum diligit: aut unum sustinebit et alterum contemnet. Unusquisque ergo secundum apostolicam vocem, in quo vocatus est, in hoc debet manere,” in TANNER, *Decrees of the Ecumenical Councils*, vol. I, 150. See also MANSI, vol. 13, 433.

1.3.2 The Introduction of the Benefice System

In an attempt to remedy the practice of clerics serving in more than one church simultaneously, churches which were unable to sustain their clerics by their resources started setting aside portions of their church land to be used to support their clerics. All the income received from those pieces of land was allotted to provide adequate sustenance to individual clerics in exchange for their pastoral work.⁸¹ Such a piece of land was known as *precarium*, and individual clerics had the right to receive income from the land for as long they lived. When the cleric died, the land reverted to the common fund of church property, and could not be used to support another cleric unless designated anew for this purpose by a formal act of an ecclesiastical authority.⁸²

By the eleventh century, the practice of a cleric possessing a *precarium* had slowly vanished. When a cleric died, the land he was using as his source of sustenance was not returned to the common fund of the church as was done formerly. Instead, it was declared vacant, and the revenue received from it was established as a distinct and perpetual foundation for the support of one cleric. This became known as *beneficia*.⁸³ From this time onward, a candidate needed to have a benefice to ensure his sustenance before he could be ordained a cleric.⁸⁴ Previously, a *titulus* or a specific church was the cleric's

⁸¹ MCBRIDE, *Incardination and Excardination of Seculars*, 74.

⁸² J.T. TAUNTON, "Benefice," in C. G. HERBERMANN et al. (eds.), *The Catholic Encyclopedia: An International Work of Reference on the Constitution, Doctrine, and History of the Catholic Church*, vol. II, New York, Robert Appleton Company, 1922, 474 (= TAUNTON, "Benefice").

⁸³ In a broader sense, a benefice came to be understood as either a certain property designated for the support of the church ministers, or a spiritual office or function such as the care of souls. However, in a strict sense, a benefice signified the right given permanently by the Church to a cleric to receive ecclesiastical revenues on account of the performance of some spiritual service. See TAUNTON, "Benefice," 473.

⁸⁴ MCBRIDE, *Incardination and Excardination of Seculars*, 29-30.

guarantee of livelihood. Now that the benefice had become that guarantee, it inherited the designation of *the title*. Consequently, a *title* came to mean, for both diocesan and religious clerics, the source of sustenance rather than the place of employment.⁸⁵

The relevance of the benefice system to this study is that it limited the legitimate transfers of clergy and at the same time increased illegitimate movements of acephalous clerics. Since clerics were committed to a particular place where they could receive benefices, they could not transfer easily from one diocese to another. Additionally, some bishops could not accept clerics from other dioceses because they did not have vacant benefices for them. Furthermore, the bishops who did not have enough benefices for every cleric were impelled to start carrying out absolute ordinations or ordaining men to the clerical state without having any vacant benefices to confer upon them. As a result, there was a big increase in the number of *clerici acephali* and consequently an escalation in illegal movements of clerics.⁸⁶

1.3.3 Popes Alexander III and Innocent III and the Title of Patrimony

The number of clerics ordained without benefices continued to rise so much that in March of 1179, the Third Lateran Council presided over by Pope Alexander III found it necessary to make a pronouncement on it. Canon 5 of the Council is worth quoting:

If a bishop ordains someone as deacon or priest without a definite title from which he may draw the necessities of life, let the bishop provide him with what he needs until he shall assign him the suitable wages for clerical service in some church, unless it happens that the person ordained is in such a position that he can find the support of life from his own family inheritance.⁸⁷

⁸⁵ Ibid., 30.

⁸⁶ MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 21-22.

⁸⁷ “Episcopus si aliquem sine certo titulo, de quo necessaria vitae percipiat, in diaconum vel presbyterum ordinauerit, tamdiu necessaria ei subministret, donec in aliqua ei ecclesia convenientia stipendia militatae clericalis assignet; nisi forte talis qui ordinatur exstiterit, qui de sua vel paterna hereditate

While this canon is a repetition of c. 6 of the Council of Chalcedon, by promulgating it, Pope Alexander III intended to threaten with a penalty any bishop who performed absolute ordination. However, the addition of the word *nisi* (unless) to the canon prevented it from achieving its desired effect.⁸⁸ The canon was broadly interpreted to mean that if a candidate for ordination had his own finances, he was legally qualified to be ordained a cleric. Probably without intending it, Alexander III implicitly introduced a new title under which someone could be ordained a cleric, that is, the title of patrimony.⁸⁹ However, it was not until twenty-nine years later, in 1208, that the title of patrimony was officially implemented by Pope Innocent III. He permitted the ordination of rich candidates to Holy Orders without a title and, in doing so, he officially created the title of patrimony (*titulus patrimonii*).⁹⁰

The title of patrimony was very harmful to the Church because it made having wealth synonymous with having a vocation to the clerical life. Candidates who were rich enough to support themselves could easily be ordained to the sacred orders. There were candidates who, through this title of patrimony, were ordained for their own personal interests, and not for those of the Church.⁹¹

The contributions of Popes Alexander III and Innocent III towards the ministry and movement of clerics were mostly negative. The needs of the Church and the

subsidium vitae possit habere” (THIRD LATERAN COUNCIL, c. 5, in TANNER, *Decrees of the Ecumenical Councils*, vol. I, 214). See also MANSI, vol. 22, 220.

⁸⁸ MCBRIDE, *Incardination and Excardination of Seculars*, 132.

⁸⁹ *Ibid.*, 75-76.

⁹⁰ *Ibid.*, 132.

⁹¹ MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 23.

usefulness of the candidate were not being considered as reasons for the reception of Holy Orders. The bond that existed between the cleric and his local bishop, and between the cleric and his local Church, were completely ignored by the title of patrimony.⁹² Also, the clerics who were ordained because they had their own wealth were not bound to serve any definite church or place, as were those who had residential benefices as their title. Since they were not considered to be under the jurisdiction and vigilance of any bishop, they had unlimited freedom to move from one place to another giving rise to many scandals like living life of idleness and only focusing on acquisition of wealth.⁹³ Despite its adverse effects on the life of the Church, the title of patrimony lingered on until the sixteenth century when the bishops at the Council of Trent felt the need to rectify it.

1.4 The Council of Trent (1545-1563)

The Council of Trent, a counter-reformation Council, attempted to make broad reforms in ecclesiastical discipline. Some of those reforms significantly affected the movement of the clergy. One such reform was aimed at completely eliminating *clerici vagi*. The Council attempted to do this in several ways.

First and foremost, the Council limited the use of the title of patrimony as a condition for the ordination of a candidate to the clerical state and gave priority to the title of benefice. Some of the bishops who were participating in the Council suggested that the title of patrimony be abolished altogether so that they would revert to the earlier legislation promulgated in c. 6 of the Council of Chalcedon.⁹⁴ Bishops from poor

⁹² Ibid.

⁹³ MCBRIDE, *Incardination and Excardination of Seculars*, 133.

⁹⁴ See footnote 63 on page 26.

dioceses objected to this proposal on the grounds that, since they did not have enough church funds in the form of benefices, their Christian faithful would be deprived of priests. So, the bishops agreed on a compromise position of retaining the title of patrimony but restricted how it was granted to the clergy.⁹⁵ Canon 16 of session 23 stipulated that candidates, who were seeking ordination based on the title of patrimony, could only be ordained if the bishop judged that they would be necessary and useful for his diocese. It further stated that someone could not be ordained a cleric unless he was assigned and obligated to reside in a church or religious place for which he was being ordained. The same canon prescribed a penalty for a cleric who left his place of ministry without the consent of his bishop. He was to be suspended from the exercise of sacred orders.⁹⁶

In order to save the Church from the disgrace of clerics roaming around begging or getting involved in some secular trade, c. 2 of session 21 forbade the ordination of a candidate until it was proven that he possessed a church benefice. He was not to be ordained even if he was suitable in character, education, and age unless there was concrete evidence that there were enough resources to support him. The candidates who possessed patrimony would only be ordained if the bishop judged that, apart from having

⁹⁵ F.X. WENZ, P. VIDAL and F. AQUIRRE (eds.), *Ius canonicum*, vol. II, Romae, apud aedes Universitas Gregoriana, 1938, 70.

⁹⁶ “No one should be ordained unless his bishop judges that he will be useful or necessary for his churches. Hence the holy council, following the example of the sixth canon of the Council of Chalcedon, decrees that no one is to be ordained henceforth without being assigned to the church or place of piety for the needs and advantage of which he was being advanced, and where he may fulfill his functions and not wander about in a homeless fashion. And if he deserts that post without the bishop’s consent, he is to be banned from sacred ministry. And furthermore, no wandering cleric is to be allowed by any bishop to celebrate the liturgy and administer the sacraments without commendatory letters from his own bishop” (COUNCIL OF TRENT, session 23, c. 16, in TANNER, *Decrees of the Ecumenical Councils*, vol. 2, 749-750).

sufficient wealth to support themselves, they were also needed to offer service to the Church.⁹⁷

Another way the council attempted to eliminate acephalous clerics was by requiring foreign priests to have commendatory letters (*litterae commendatitiae*) from their bishops before they could celebrate liturgy and administer sacraments in another diocese.⁹⁸ A bishop had the right to deny a priest this letter under three conditions: firstly, if he needed the service of the cleric in his diocese; secondly, if the cleric's reason for departure was unjust and unreasonable; and thirdly, if the bishop himself was willing to support the cleric out of an assured church fund.⁹⁹

Furthermore, the Council imposed upon diocesan bishops the obligation of erecting a seminary or a special institution devoted to the formation of candidates for the local secular clergy.¹⁰⁰ It was the responsibility of the bishop to set up a seminary administrative fund for the maintenance of the seminary and the welfare of poor seminarians. Richer seminarians were expected to sustain themselves from their own resources. The boys admitted to these seminaries were required to be at least twelve years

⁹⁷ "It is not fitting that those enlisted for the service of God should bring disgrace on their order by begging or plying some mean trade, but it is public knowledge that many are admitted to holy orders with hardly any process of selection, who pretend by various tricks and deceits that they possess a church benefice or have sufficient means of their own. Hence the holy council lays down that in the future no secular clerk should be advanced to holy orders, however suitable he may otherwise be in character, learning and age, until it first legally established that he has unchallenged tenure of a church benefice sufficient for respectable living" (Ibid., session 21, c. 2, in TANNER, *Decrees of the Ecumenical Councils*, vol.2, 728-729).

⁹⁸ Ibid., session 23, c. 16 in TANNER, *Decrees of the Ecumenical Councils*, 750.

⁹⁹ MCBRIDE, *Incardination and Excardination of Seculars*, 172.

¹⁰⁰ The Tridentine seminary legislation is contained in c. 18 of session 23 of the Council of Trent. See COUNCIL OF TRENT, session 23, c. 18, in TANNER, *Decrees*, vol. 2, 750-751. For a detailed study of this legislation see J.A. O'DONOHUE, *Tridentine Seminary Legislation: Its Sources and Its Formation*, JCD diss., Louvain, Publications Universitaires de Louvain, 1957, 17-162 (= O'Donohue, *Tridentine Seminary Legislation*).

old and had to know how to read and write competently. Since the formation of priests was a diocesan enterprise, it was naturally expected that, after the candidates had been ordained priests, they would serve the diocese that paid for their training throughout their life.¹⁰¹

The Council of Trent attempted to regulate the ministry and movement of clerics by ensuring that a candidate was ordained a cleric only after he been judged to be useful to and needed by his diocese.¹⁰² Similarly, if a cleric was to be transferred from one diocese to another, it would have to be because of the usefulness of the cleric and the need of the diocese, and not just because the cleric had his own wealth to support himself. Secondly, by strengthening the norms on benefices, the Council intended to guarantee that clerics remained in their churches, carrying out their ministry, and not wandering from place to place.¹⁰³ Thirdly, by requiring every diocese to have its own seminary, the Council of Trent intended to attach the future priests from a very young age to the service of a particular diocese.¹⁰⁴

1.5 The Period Between Trent and CIC/17

While the Council of Trent tried to restrict the movement of clerics, Christianity was beginning to expand to other parts of the world. Some priests saw it as part of their vocation to carry the message of Jesus Christ to mission territories. Since the titles of benefice and patrimony were totally lacking in those mission lands, there was a need to

¹⁰¹ MCBRIDE, *Incardination and Excardination of Seculars*, 178.

¹⁰² MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 27-28.

¹⁰³ Ibid.

¹⁰⁴ O'CONNELL, *The Mobility of Secular Clerics*, 52.

enact new laws that would provide for the sustenance of the clergy preparing for ministry in the mission countries.¹⁰⁵

1.5.1 The Title of Mission

The first piece of legislation introduced after the Council of Trent that helped regulate the ministry of clerics working in mission countries was the introduction of the “title of mission” (*titulus missionis*).¹⁰⁶ This title was first implicitly introduced by Pope Gregory XIII in the Bull that he published for the erection of the English College in Rome on 22 April 1579. In that Bull, Pope Gregory XIII granted the College rector the privilege of ordaining men to the priesthood without the titles of benefice or patrimony.¹⁰⁷ It was understood that the priests would be supported by the voluntary offerings of the people they would serve in the mission countries. With this, Pope Gregory XIII opened the way for the creation of the title of mission.

However, the title of mission was mentioned explicitly for the first time by Pope Urban VIII in his Apostolic Constitution *Sacrosanctae*, which he promulgated on 22 April 1631, for the erection of the Irish College in Rome.¹⁰⁸ Seven years later, on 18 May 1638, the same Pope, Urban VIII, in another Apostolic Constitution *Ad uberes*, extended the title of mission to all the colleges that were subject to the Sacred Congregation for the

¹⁰⁵ MCBRIDE, *Incardination and Excardination of Seculars*, 140.

¹⁰⁶ The title of mission can be defined as the cleric’s right to receive a suitable sustenance from the ministry to which he was assigned in some particular mission church. See MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 34.

¹⁰⁷ *Bullarum Diplomatum et Privilegiorum Sanctorum Romanorum Pontificum*, Taurinensis Editio, Tomus VIII, A. Gregorio XIII (MDLXXII) ad Sixtum V (MDLXXXVII), Turin, Seb. Franco et Henrico Dalmazzo Editoribus, 1872, 209-214.

¹⁰⁸ R. DE MARTINIS, *Iuris Pontifici de Propaganda Fide*, Pars Prima, Complectens bullas brevia acta S.S. a Congregatione institutione ad praesens iuxta temporis seriem disposita, vol. 1, Rome, Ex Typographia Polyglotta, S.C. de Propaganda Fide, 1888, 128-129.

Propagation of the Faith.¹⁰⁹ Candidates who were preparing for ordination to the subdiaconate with the title of mission had to take oaths promising that they would perpetually serve the mission territories for which they were destined. These oaths would only be dispensed by the Holy See.¹¹⁰ To get a canonical transfer, they needed permission of the Sacred Congregation for the Propagation of the Faith and the permission of the bishop of the mission diocese where they were serving.¹¹¹

The title of mission opened the way for a greater distribution of clerics to places that were subject to the Sacred Congregation for the Propagation of the Faith (*Propaganda Fidei*). Students who were studying in the Pontifical Colleges under *Propaganda Fidei* could be ordained on the basis of this title of mission without the traditional titles of benefice or patrimony and dimissorial letters from their proper bishops.¹¹²

1.5.2 Apostolic Constitution *Speculatores*

With the introduction of the title of mission, questions concerning the identity of a proper bishop were raised. On 4 November 1694, Pope Innocent XII issued an Apostolic Constitution *Speculatores*,¹¹³ which was primarily concerned with identifying the proper bishop of a candidate seeking ordination. Nevertheless, in the Constitution, Pope

¹⁰⁹ *Bullarium Pontificium Sacrae Congregationis de Propaganda Fide*, Tomus I, Romae, Typis Collegii Urbani, 1839, 91-92.

¹¹⁰ J. DE BECKER, "The Admission of Secular Priests into a Diocese in the United States," in *America Ecclesiastical Review*, 13 (1898), 156.

¹¹¹ MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 34.

¹¹² *Ibid.*, 34-35.

¹¹³ INNOCENT XII, Apostolic Constitution *Speculatores*, 4 November 1694, in P. GASPARRI, *Codicis Iuris Canonici Fontes*, vol. 1, no. 258, Romae, Typis Polyglottis Vaticanis, 1926, 501-504 (= INNOCENT XII, *Speculatores*).

Innocent XII also laid down some very specific and stringent rules regarding the transfer of clerics from one diocese to another.

The first rule was, if a cleric wanted to transfer to another diocese, he was expected to secure permission from his proper bishop to change dioceses, followed by obtaining an adequate benefice in the new diocese.¹¹⁴ When these conditions were met, the cleric would then proceed to do one of the following activities to acquire domicile in the new diocese. Either he would move to the new diocese and reside there for at least ten years, or he would transfer most of his personal and household belongings to the new diocese and then reside there for some considerable time sufficient to demonstrate his intention of staying there permanently.¹¹⁵ The intention would have to be fortified by an oath.¹¹⁶ If he fulfilled either of these conditions, the new diocese would become his acquired domicile and the bishop of that diocese his new proper bishop. Additionally, if the candidate was to be ordained to a higher holy order, he would have to provide the new proper bishop with a testimonial letter from his former bishop.¹¹⁷

This clear and detailed process of the transfer of clerics from one diocese to another established by the Constitution *Speculatores* became the norm upon which all

¹¹⁴ MCBRIDE, *Incardination and Excardination of Seculars*, 111.

¹¹⁵ The expression “*considerabile tempus* (considerable time)” was interpreted by custom to mean three years. See MCBRIDE, *Incardination and Excardination of Seculars*, 61.

¹¹⁶ “ut vel per decennium saltem in eo habitando, vel maiorem rerum ac bonorum suorum partem cum instructis aedibus in locum huiusmodi transferendo, ibique insuper per aliquod considerabile tempus commorando, satis superque suum perpetuo ibidem permanendi animum demonstraverit; et nihilominus ulterius utroque casu se vere, et realiter animum huiusmodi habere iureiurando affirmet” (INNOCENT XII, *Speculatores*, no. 5, 504, English translation is adopted from MCBRIDE, *The Incardination and Excardination of Seculars*, 61).

¹¹⁷ MCBRIDE, *Incardination and Excardination of Seculars*, 61.

cases were judged up to the nineteenth century.¹¹⁸ Unfortunately, this whole process would take between three to ten years, which was considerably too long for some bishops who had an urgent need for priests to fill the vacancies in their dioceses.¹¹⁹ The bishops who could not wait this length of time resolved the problem by allowing clerics to acquire domicile in their dioceses by merely declaring their intention to remain there perpetually and then confirming the declared intention by taking an oath.

The clerics who wanted to leave their own dioceses and exercise their ministry in another diocese permanently would obtain from their proper bishop a full and perpetual release, called *excardination*.¹²⁰ This would be accompanied by a petition to the bishop of the diocese of their choice for an immediate affiliation in his diocesan presbytery, called *incardination*.¹²¹ If the bishop of the new diocese conceded, the cleric would then take the oath required by the Constitution *Speculatores*, and he would immediately become the proper subject of the new bishop.¹²² This procedure soon gave rise to many controversies, causing the whole question to be submitted to the Holy See for adjudication.¹²³

¹¹⁸ Ibid., 60.

¹¹⁹ Ibid., 144.

¹²⁰ Ibid.

¹²¹ Ibid.

¹²² Ibid.

¹²³ Ibid.

1.5.3 The Decree *A primis*

On 20 July 1898, the Sacred Congregation of the Council issued a decree *A primis*¹²⁴ in which incardination was made a new title for gaining a proper bishop for the ordination of clerics. Certain rules had to be followed, including the following.

1. Excardination cannot licitly be given except for just causes, and it does not completely take effect until incardination in another diocese has been put into execution.
2. Incardination must be performed by a Bishop, not orally but in writing, and even that must be absolute and perpetual, without any expressed or implied conditions attached, so that the cleric becomes entirely subject to the diocese after having taken an oath to remain in it permanently [...]
3. Incardination cannot be effected unless it is first clear from a legitimate document that the alien cleric seeking it has been perpetually dismissed from his native diocese, and opportune testimony has been obtained, secretly if necessary, from the Bishop who is releasing him as to his birth, life, morals, and studies.
4. Those incardinated into a diocese in this way can, indeed, be promoted to orders [...]
5. In incardinating clerics of a foreign tongue and nationality, Bishops must proceed with greater caution and strictness, and never should they receive such clerics unless they have first sought and obtained from the respective Ordinaries of the candidate secret and favorable information concerning these foreign cleric's life and morals. This duty binds the conscience of the incardinating Bishop under the pain of grave sin.
6. Finally, as to laymen, or also as to clerics who are either unable or unwilling to use the benefit of excardination, the provisions of the Constitution *Speculatores* must be obeyed, which notwithstanding this present decree, must always remain binding.¹²⁵

¹²⁴ SACRED CONGREGATION OF THE COUNCIL, Decree, *A primis*, 20 July 1898, in *ASS*, 31 (1898-1899), 49-51 (= SACRED CONGREGATION OF THE COUNCIL, *A primis*). It is also found in GASPARRI, *Fontes*, vol. 1, no. 4307.

¹²⁵ “1°. Excardinationem fieri non licere nisi iustis de causis, nec effectum undequaque sortiri, nisi incardinatione in alia dioecesi executioni demandata. 2°. Incardinationem faciendam esse ab Episcopo non oretenus, sed in scriptis, absolute et in perpetuum, id est nullis sive expressis sive tacitis limitationibus obnoxiam; ita ut clericus novae dioecesi prorsus mancipetur, praestito ad hoc iuramento ad instar illius quod Constitutio *Speculatores* pro domicilio acquirendo praescribit. 3°. Ad hanc incardinationem deveniri non posse, nisi prius ex legitimo documento constiterit alienum clericum a sua fuisse in perpetuum dimissum, et obtenta insuper fuerint ab Episcopo dimittente, sub secreto, si opus sit, de eius natalibus, vita, moribus ac studiis opportuna testimonia. 4°. Hac ratione adscriptos posse quidem ad ordines promoveri. Cum tamen nemini sint cito manus imponendae, officii sui noverint esse Episcopi, in singulis casibus perpendere, an, omnibus attentis, clericus adscriptus talis sit, qui tuto possit absque ulteriori experimento ordinari, an potius oporteat eum diutius probari. Et meminerint quod sicut “nullus debet ordinari qui iudicio sui Episcopi non sit utilis aut necessarius suis Ecclesiis” ut in *cap. 16, sess. 23 de reform.* Tridentinum statuit; ita pariter nullum esse adscribendum novum clericum, nisi pro necessitate aut commoditate dioecesis. 5°. Quo vero ad clericos diversae linguae et nationis, oportere ut Episcopi in iis admittendis cautius et severius procedant, ac numquam eos recipiant, nisi requisiverint prius a respectivo eorum Ordinario, et obtinuerint, secretam ac favorabilem de ipsorum vita et moribus informationem, onerata super hoc graviter Episcoporum conscientia. 6°. Denique quoad laicos, aut etiam quoad clericos, qui excardinationis beneficio uti nequeunt vel nolunt, standum esse dispositionibus const. *Speculatores* quae,

The decree *A primis* was the first curial document to give a detailed process for the transfer of clerics from one diocese to another based on the exchange of letters between the bishops concerned. The exchange of the written documents was needed for the validity of the process. This is what evolved into the present formal process of incardination and excardination found in the *CIC*.

1.5.4 The Decree *Ethnografica studia*

On 25 March 1914, another important curial decree was issued by the Sacred Consistorial Congregation *Ethnografica studia*.¹²⁶ This document was meant to regulate the movement of priests of the Latin rite traveling from any country to the United States of America and the Philippines. As Pope Pius XII indicated in his Apostolic Constitution *Exsul familia* issued on 1 August 1952,¹²⁷ the decree *Ethnografica studia* was written to keep a check on priests who were traveling solely for material gain. The pope said that,

Since, in fact, some of the priests who emigrated overseas were victimized by material comforts and overlooked the welfare of souls, timely rules were published by the same Consistorial Congregation. The rules also applied to priests “discharging their mission among farmers and other workers.” By these rules, potential abuses would be rooted out and penalties fixed for violation.¹²⁸

This document *Ethnografica studia* was divided into two chapters. The first chapter dealt with the norms regarding priests who were migrating permanently or for an

nihil obstante praesenti decreto, ratae ac firmae semper manere debent” (Ibid., 50-51, English translation in MCBRIDE, *Incardination and Excardination of Seculars*, 115-116).

¹²⁶ SACRED CONSISTORIAL CONGREGATION, Decree, *Ethnografica studia*, 25 March 1914, in AAS, 6 (1914), 182-186 (= SACRED CONSISTORIAL CONGREGATION, *Ethnografica studia*).

¹²⁷ PIUS XII, Apostolic Constitution *Exsul familia*, 1 August 1952, in AAS, 44 (1952), 649-704, English translation in *CLD*, vol. 3, 88-99 (= PIUS XII, *Exsul familia*).

¹²⁸ “Quia vero inter clericos in regiones transmarinas demigrantes nonnulli forte adesse poterant, qui potius pecuniae quam animarum lucrum exquirent, eiusdem Sacrae Congregationis Consistorialis decreto aptae editae sunt leges - attingentes etiam sacerdotes “agricolis aliisque operariis suum praestantes ministerium” quibus abusus, si adessent, removeri possent, poenis quoque in transgressores statutis” (Ibid., 665, English translation in G. TESSAROLO, [ed.], *Exsul Familia: The Church’s Magna Charta for Migrants*, Staten Island, N.Y., The Society of St. Paul, 1962, 35 [= TESSAROLO, *Exsul Familia: The Church’s Magna Charta for Migrants*]).

extended period, while chapter two, contained regulations for priests who were traveling for a short time. Like the previous legislation, the decree insisted on the priest getting permission from his own bishop, the bishop of the receiving diocese and if he was an Italian, also of the Sacred Consistorial Congregation.¹²⁹ However, if the priest was traveling for a short time, he only needed the permission of his own bishop and not of the bishop of the diocese to which he was destined. This permission could only be given if the priest had a good reason for his visit, or if the length of his intended visit would not exceed four months, including the time of travel. If, due to extraordinary circumstances, the priest needed to stay for a longer time, the bishop could give him permission for a period not exceeding six months. Once the local bishop had given permission for a certain period of time, he could not extend it. If for health reasons or some other serious reason a priest could not return to his original diocese when the period allotted to him had expired, the bishop of the place could permit him to remain for another month. For any further extension, the Apostolic Delegate would have to be approached.¹³⁰

¹²⁹ “Sacerdotibus, qui iam in aliquam demigraverint dioecesim, ab hac in aliam in perpetuum vel ad diuturnum tempus discedere ne liceat, nisi assenserint tum Ordinarius proprius, tum primae Ordinarius commorationis; si vero agatur de italibus sacerdotibus, accedat praeterea oportet sacrae huius Congregationis venia” (SACRED CONSISTORIAL CONGREGATION, *Ethnografica studia*, no. 6, AAS, 6 [1914], 184).

¹³⁰ “12. Sacerdotibus, qui, ad breve tempus, ob honestam vel necessariam causam sint in Americam velad Philippinas insulas profecturi, possunt Ordinarii discessoriales litteras concedere, inconsulto quidem Ordinario loci *ad quem*, at servatis tamen regulis quae sequuntur. 13. In litteris discessorialibus, praeter reliqua, mentio expressa fiat de causa temporarii discessus. 14. Ad quatuor menses coarctetur dierum itineris et mansionis licentia; sex mensium concedatur nulli, nisi casus aliquis extra ordinem inciderit. 15. Sacerdoti haud omni ex parte probato discedendi venia ne detur, nisi ante de honesta simul et necessaria abeundi causa constiterit; praeterea Ordinario loci *ad quem*, secretis litteris, adventus eius renuntietur. 16. Itali "autem sacerdotes, quandoque ob honestam et temporariam causam profecturi sunt, prius impetrent veniam discessus a sacra hac Congregatione. 17. Qui, denique, ob temporariam causam discesserunt, elapso temporis spatio sibi concesso, regrediantur, nullamque habeant Ordinarii prorogandae licentiae semel datae facultatem” (Ibid, AAS, 6 [1914], 185, nos.12-17, English translation adopted from E. A. FUS, “Priest Emigrants Under the Constitution ‘Exsul Familia,’” in *The Jurist*, 16 [1956], 365).

This decree was innovative because it was the first time, at the level of the universal Church, that a whole set of laws was being published for priests traveling from one place to another on a temporary basis.

1.6 The *CIC/17* and the Movement of Diocesan Priests

Due to the diverse nature of the canonical norms in existence at the time, there was a need to codify all the norms into a single volume. The work of codifying the first Code was started by Pope Pius X and promulgated by Pope Benedict XV on 27 May 1917. Like the previous pieces of legislation, the *CIC/17* also aimed to eliminate wandering clerics. Some of the canons dealing with the issues associated with the movement of clerics can be found in Title I of Book II of the Code entitled “On the ascription of clerics to a given diocese.” Other canons on canonical titles, benefices, and proper bishops can be found in other parts of the Code.

1.6.1 Canonical Attachment of a Cleric to a Definite Diocese

The *CIC/17* reiterated the age-old custom in the Church which required that no one should be ordained a cleric unless there is a definite diocese or religious institute to which he would be permanently attached. This is stipulated in *CIC/17*, c. 111, §1: “Every cleric whatsoever must be ascribed to a given diocese or religious (institute) so that wandering clerics are in no way admitted.”¹³¹ This canon was addressed to clerics, that is, everyone who had entered the clerical state by the reception of the first *tonsure*. Every cleric, whether secular or religious, was supposed to be attached permanently either to a diocese or a religious institute. The word *adscriptum* was deliberately used here to mean

¹³¹ “Quemlibet clericum oportet esse vel alicui dioecesi vel alicui religioni adscriptum, ita ut clerici vagi nullatenus admittantur” (*CIC/17*, c. 111, §1, English translation in E.N. PETERS, [Curator], *The 1917 Pio Benedictine Code of Canon Law*, San Francisco, Ignatius Press, 2001 [= PETERS, *The 1917 Pio Benedictine Code*]). This translation is used for all subsequent citations of the *CIC/17*.

that the cleric was so bonded to a particular diocese or religious institute that he was permanently unable to withdraw from it at will but could only do so by following prescribed norms.¹³² According to *CIC/17*, c. 111, §2, this bond which was initially established at the moment a candidate received the first tonsure was incardination.¹³³

It is also important to note here that before the *CIC/17*, a secular cleric was attached to an individual Church or a determined place, but in the *CIC/17* the secular cleric's bond was to the diocese.¹³⁴ Since the bishop is the head of the diocese, it follows that a legal relationship was established between the cleric and the diocese and its bishop.¹³⁵ The bond which attached a secular cleric permanently to a diocese was called incardination and according to *CIC/17*, c. 111, §2 it came into being at the moment a candidate received the first tonsure.¹³⁶ The bond of incardination gives rise to some rights and obligations of clerics, for example, the obligation of obedience, which a cleric owes his bishop. On the bishop's side, the legal relationship that incardination establishes between him and his clerics gives him the obligation to take care of his clerics (*CIC*, c. 384) and to regulate their pastoral activities.

¹³² MCBRIDE, *Incardination and Excardination of Seculars*, 288.

¹³³ McBride explains that the word "incardination" was formerly used to signify absorption into a new diocese after a transfer from another. In the Decree *A primis* it was used in a narrower sense of incorporation into a diocese by the formal exchange of letters after a transfer elsewhere. In the *CIC/17*, it was used in the sense of attachment to a diocese or religious institute (MCBRIDE, *Incardination and Excardination of Seculars*, 290).

¹³⁴ O'CONNELL, *The Mobility of Secular Clerics*, 75.

¹³⁵ MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 43.

¹³⁶ MCBRIDE, *Incardination and Excardination of Seculars*, 290.

1.6.2 Initial Incardination in a Diocese

“Initial” incardination is the cleric’s first incardination into a diocese or religious institute in which he has a canonical domicile.¹³⁷ In the *CIC/17*, this initial or first incardination occurred at the moment of entering the clerical state. According to *CIC*, c. 108, §1, a man entered the clerical state at the moment when he received the tonsure, which was conferred upon him by his proper bishop. So, it was during the single act of conferring the first tonsure that a man became a cleric and, at the same time, incardinated into his own diocese. This is stipulated in *CIC/17*, c. 111, §2: “Through the reception of the first tonsure a cleric is ascribed, or, as they say, *incardinated*, into that diocese for whose service he was promoted.”¹³⁸ It is clear that this canon made incardination or permanent attachment of a cleric to his diocese of domicile an *ipso iure* effect of the candidate’s admission to the clerical state by the reception of the first tonsure.¹³⁹ The cleric became perpetually attached to his diocese the moment the ordaining bishop performed the rite of conferral of the first tonsure.¹⁴⁰ This did not mean that the cleric could not be legally transferred to serve in another diocese. If there were just reasons, the cleric could ask his bishop to permit him to move to another diocese following the procedures stipulated in the law.

¹³⁷ G.L. SUBOTICH, “Formal Incardination and Excardination of Secular Clerics,” in *The Jurist*, 15 (1955), 435 (= SUBOTICH, “Formal Incardination and Excardination of Secular Clerics”).

¹³⁸ “Per receptionem primae tonsurae clericus adscribitur seu, ut aiunt, incardinatur dioecesi pro cuius servitio promotus fuit” (*CIC/17*, c.111 §2).

¹³⁹ For the requirements of valid reception of first tonsure, see *CIC/17*, cc. 948-1011.

¹⁴⁰ MCBRIDE, *Incardination and Excardination of Seculars*, 299.

1.6.3 The Modes of Movement of Clergy in the *CIC/17*

In the *CIC/17*, there were three ways by which a diocesan cleric could validly move from one diocese to another. These three ways were: 1) formal incardination and excardination, 2) virtual incardination and excardination, and 3) temporary movement.

1.6.3.1 Formal Incardination and Excardination

This method applied to clerics incardinated in their diocese of domicile and who now wished to move and serve in another diocese. In this case, a formal process of incardination and excardination was followed, which involved an official exchange of documents between the respective bishops involved, as stipulated in *CIC/17*, c. 112.

Beyond those cases mentioned in canons 114 and 641, §2, in order for a cleric from another diocese to be validly incardinated, he must obtain from his own Ordinary letters of perpetual and absolute excardination written by him, as well as letters of similar perpetual and absolute incardination written by the Ordinary of the other diocese.¹⁴¹

It is important to note here that this canon deals specifically with formal excardination and incardination of secular clerics. It excludes from consideration the implicit process and the incardination/excardination of the religious by words, “Beyond those cases mentioned in canons 114 and 641, §2.”¹⁴² The canon explicitly states that the requirements contained in it were needed for the *validity* of the process. If even a single item in the canon was omitted, the entire formal process would be invalid.¹⁴³

The first requirement was that the cleric had to obtain a letter of excardination from his proper Ordinary and a letter of incardination from the Ordinary of the new

¹⁴¹ “Praeter casus de quibus in can. 114, 641, §2, ut clericus alienae dioecesi valide incardinetur, a suo Ordinario obtinere debet litteras ab eodem subscriptas excardinationis perpetuae et absolutae; et ab Ordinario alienae dioecesis litteras ab eodem subscriptas incardinationis pariter perpetuae et absolutae” (*CIC/17*, c. 112).

¹⁴² MCBRIDE, *Incardination and Excardination of Seculars*, 386.

¹⁴³ *Ibid.*

diocese where he was destined. Although the canon used the word *Ordinarius*¹⁴⁴ to describe the ecclesial authority with the power to issue such letters, the vicar general (*CIC/17*, cc. 366-371) could not do so without a special mandate from the diocesan bishop. The vicar capitular (*CIC/17*, cc. 429-444) could issue the letters of excardination/incardination only after the diocesan See had been vacant for one year and with the consent of the Chapter of Canons (*CIC/17*, cc. 391-422).

Secondly, both letters had to indicate that the excardination and incardination were perpetual and absolute. “Perpetual” means that there is no term limit attached to the excardination or incardination. A bishop could not incardinate a cleric for a specific period only. For example, it would not be permissible to say, “I incardinate you for as long as I need your help.”¹⁴⁵ Similarly, “absolute” means that no conditions would be placed as prerequisites for the incardination or excardination. For example, the whole process would be invalid if the receiving bishop wrote a letter containing the clause, “provided that the candidate proves worthy.”¹⁴⁶

There were also conditions that had to be observed for the liceity of the process. Firstly, there was a need for a just cause (*iusta causa*). According to *CIC/17*, c. 116,

¹⁴⁴ *CIC/17*, c. 112 uses the term *Ordinarius*, which is defined in c. 198, §1 as “the Roman Pontiff, a residential Bishop in his own territory, an Abbot or Prelate *of one* and his Vicar General, Administrator, Vicar or Prefect Apostolic, and likewise those who, in the above mentioned, temporarily take their place in governance by prescript of law or by approved constitution, and, for their subjects, major Superiors of exempt clerical institutes.” However, c. 113 specifies that, “Excarnation and Incardination cannot be granted by the Vicar General without a special mandate, or by the Vicar Capitulary, except when the episcopal see has been vacant for one year and with the consent of the Chapter.” In place of the vicar capitular and the cathedral chapter one must substitute the diocesan administrator and the board of diocesan consultors. See J.A. ABBO, “Incardination of Clerics into a Diocese,” in J.A. ABBO and J.D. HANNAN, *The Sacred Canons: A Concise Presentation of the Current Disciplinary Norms of the Church*, vol. 1, London, Herder Brook Co., 1957, 167 (= ABBO, “Incardination of Clerics into a Diocese”).

¹⁴⁵ BACHOFEN, *A Commentary on the New Code of Canon Law*, vol. 4, 54.

¹⁴⁶ MCBRIDE, *Incardination and Excardination of Seculars*, 389.

excardination could not be granted except when a just cause was present.¹⁴⁷ The excardinating bishop was the competent judge who determined what constituted a just cause. The Code did not give examples of just causes but the following are some examples: the loss of reputation in one's own diocese, the need for a permanent change of climate because of health, special capacities or talents not required in one's own diocese and the difficulty or the impossibility of obtaining adequate economic support.¹⁴⁸ However, mere ambition or financial gain would not suffice as just causes. For example, a priest who worked in a poor diocese could not licitly ask for excardination to work in a diocese where the priests' remuneration was more lucrative.¹⁴⁹ Secondly, the bishop of the diocese to which (*ad quem*) the priest was being incardinated had to inform the bishop of the diocese from which (*a quo*) that he was prepared to incardinate the cleric. This is because excardination cannot become effective unless incardination into another diocese is simultaneously taking place.

In addition to the above, c. 117 further stipulated other conditions required for the liceity of the formal process of incardination and excardination. According to *CIC/17*, c. 117, 2°, before incardinating a cleric from another diocese, the bishop of the diocese *ad quem* had the responsibility of carrying out background checks of the priest applying for incardination in his diocese.¹⁵⁰ This information could be gathered from official

¹⁴⁷ “Excardinatio fieri nequit sine iustis causis, et effectum non sortitur, nisi incardinatione secuta in alia dioecesi, cuius Ordinarius de eadem priorem Ordinarium quantocius certiore reddat” (*CIC/17*, c. 16).

¹⁴⁸ ABBO, “Incardination of Clerics into a Diocese,” 169.

¹⁴⁹ SUBOTICH, “Formal Incardination and Excardination of Clerics,” 437.

¹⁵⁰ “Ex legitimo documento sibi constiterit de obtenta legitima excardinatione, et habuerit praeterea a Curia dimittente, sub secreto, si opus sit, de clerici natalibus, vita, moribus ac studiis opportuna testimonia, maxime si agatur de incardinandis clericis diversae linguae et nationis; Ordinarius autem

documents issued by the bishop *a quo*. These documents included: the official letter granting excommunication and a testimonial letter written by the bishop *a quo* stating the cleric's background, personal qualities, studies and other factors.

Furthermore, *CIC/17*, c. 117, 3° required that the cleric had to take an oath before the incardinating bishop or his delegate.¹⁵¹ By taking this oath, the cleric would be declaring his intention to be ascribed in the new diocese perpetually. The administration of this oath marked the completion of the process of incardination/excommunication and the official ascription of the cleric to the new diocese. It is important to add that this oath did not mean that the cleric was forbidden from seeking a transfer from the new diocese in the future. He could still, if circumstances changed, seek excommunication or join a religious institute.¹⁵²

Also, for liceity, the bishop of the diocese *ad quem* was not to incardinate a cleric of another diocese unless he was certain that the cleric would be of some use or at least that his services would be necessary to the diocese (*CIC*, c. 117, 1°). Moreover, the bishop *ad quem* had to be sure that he had a canonical title of ordination for the cleric, that is, that there was a place where the cleric would exercise his ministry and receive adequate remuneration for his sustenance. It was not enough that the priest would be useful or needed by the diocese, but there also had to be a canonical title of ordination for the cleric's support. If the bishop did not have a canonical title for the cleric and the cleric

dimittens, graviter onerata eius conscientia, advigilare debet ut testimonia sint veritati conformia" (*CIC/17*, c. 117, 2°).

¹⁵¹ "Clericus iureiurando coram eodem Ordinario eiusve delegato declaraverit se in perpetuum novae dioecesis servitio velle addici ad normam sacrorum canonum" (*CIC/17*, c. 117, 3°).

¹⁵² *Ibid.*, 441.

did not have any other means of support, the bishop would have been bound to provide for the sustenance of that cleric from his own resources.¹⁵³

1.6.3.2 Virtual Incardination and Excardination

Another way by which a secular priest could validly transfer from one diocese to another was by virtual or implied incardination and excardination. This method did not involve any formal exchange of documents and was effected in two ways as stipulated in *CIC/17*, c. 114.¹⁵⁴

Excardination and incardination are considered to take place when a cleric has received a residential benefice from the Ordinary of another diocese with the consent of his own Ordinary given in writing, or when a cleric receives permission in writing from him to be gone from the diocese forever.¹⁵⁵

In this first method, the priest was required to get his proper bishop's written consent to receive a residential benefice¹⁵⁶ from the bishop of another diocese. The consent of the bishop *a quo* was given to the cleric specifically to accept a residential benefice offered by the bishop *ad quem*. The priest became excardinated from his initial diocese and incardinated in the new diocese when the bishop *ad quem*, having seen the written consent of the bishop *a quo*, conferred a residential benefice upon him. So, the excardination/incardination occurred not by a formal exchange of documents as in

¹⁵³ SUBOTICH, "The Formal Incardination and Excardination of Secular Clerics," 439.

¹⁵⁴ L.T. BOUSCAREN and A.C. ELLIS, *Canon Law: A Text and Commentary*, 3rd rev. ed., Milwaukee, Bruce Publishing Co., 1966. 99 (= BOUSCAREN and ELLIS, *Canon Law: A Text and Commentary*).

¹⁵⁵ "Habetur excardinatio et incardinatio, si ab Ordinario alienae dioecesis clericus beneficium residentiale obtinuerit cum consensu sui Ordinarii in scriptis dato, vel cum licentia ab eodem in scriptis concessa e dioecesi discedendi in perpetuum" (*CIC/17*, c. 114).

¹⁵⁶ According to canon 1411, 3^o, a benefice was residential when it contained the obligation of perpetual residence in a specific place. James McBride enumerates many examples of diocesan positions that were considered to have residential benefices. These include: all the members of the diocesan curia, vicars forane, pastors and parochial vicars, rectors of churches and seminaries, chaplains and parochial administrators. See MCBRIDE, *Incardination and Excardination of Seculars*, 461-490.

CIC/17, c. 112 but *ipso facto* by the very act of conferring a residential benefice upon the cleric.¹⁵⁷ It is called virtual or implied because the excardination and incardination were not the direct and immediate effects of the act of conferring the residential benefice.¹⁵⁸ The granting of consent to the cleric in writing by his bishop was a constitutive element of this process and, consequently, without it, there would be no excardination and incardination.

In the second form, excardination and incardination could occur when a cleric received permission (*licentia*) in writing from his proper bishop to be gone from the diocese forever (*in perpetuum*). Like in the case of the consent to receive a residential benefice, the written permission to depart the diocese forever was a constitutive element of the process, without which the acts of excardination and incardination would be nonexistent. After receiving permission from his bishop to depart perpetually, the cleric would then look for a new diocese that was willing to accept him, if he had not found one already. He would only become excardinated from his initial diocese and incardinated in the new diocese after receiving a residential benefice from the diocese *ad quem*.

The transfer of religious clerics will not be discussed here because it is outside the scope of this thesis. It is, however, important to mention here that *CIC/17*, c. 115 deals with another implied incardination in relation to a diocesan cleric transferring from his diocese to join a religious institute. A secular cleric became excardinated from his diocese and incardinated *ipso facto* into a religious institute by the very act of professing

¹⁵⁷ MCBRIDE, *Incardination and Excardination of Seculars*, 403.

¹⁵⁸ *Ibid.*

perpetual vows, whether solemn or simple (*CIC/17*, c. 585). Professing temporary vows did not have this effect.¹⁵⁹

1.6.3.3 Temporary Movement [*CIC/17*, c. 144]

Both the formal process and virtual method of incardination/excardination involved a permanent transfer of a cleric from one diocese to another. By these two methods, a cleric was perpetually unbound from his former proper diocese and permanently bound to another diocese. Canon 144 of the *CIC/17* introduced a method whereby bishops would share priests on a temporary basis with other dioceses which were in more need of clergy. According to O’Connell, this canon contributed towards the understanding of a diocesan priest as a universal servant who is not bonded to a single bishop.¹⁶⁰ Although it was not its intended purpose, the canon enabled easier movement and distribution of priests in the whole world. The canon states:

Clerics who go into another diocese with the permission of their bishop, but are not excardinated, may be recalled for a just reason, but the laws of equity must be observed. Similarly, the bishop of the other diocese may for a just reason deny a priest permission to prolong his stay in that diocese, unless he has given the extern priest a benefice.¹⁶¹

As it will be seen in the second chapter, except for a few changes, this canon is similar to *CIC*, c. 271, §3, which is the central topic of this thesis. The canon deals primarily with instances where a cleric who had legitimately moved to serve another diocese but remained incardinated in his proper diocese is recalled to his own diocese or denied further residence in another diocese. For such recall or denial of further residence to

¹⁵⁹ ABBO, “Incardination of Clerics in a Diocese,” 167.

¹⁶⁰ O’CONNELL, *The Mobility of Secular Clerics*, 87.

¹⁶¹ “Qui cum licentia sui Ordinarii in aliam dioecesim transierit, suae dioecesi manens incardinatus, revocari potest, iusta de causa et naturali aequitate servata; et etiam Ordinarius alienae dioecesis potest ex iusta causa eidem denegare licentiam ulterioris commorationis in proprio territorio, nisi beneficium eidem contulerit” (*CIC/17*, c. 144).

occur, there had to be a just reason, and natural equity had to be observed. A just reason here could mean something like the pastoral need in his own diocese, and natural equity could mean fairness in assisting the priest to resettle in his own diocese.

1.6.4 Canonical Titles

A detailed discussion of canonical titles according to the *CIC/17* is not central to this thesis, but it is important to note that the provision of a canonical title was a requirement of the law for a licit ordination of a candidate to the subdiaconate. According to *CIC/17*, c. 974, §1, 7°, to be ordained licitly to the subdiaconate, a candidate was required to have a canonical title.¹⁶² By canonical title, the Code primarily meant the title of benefice and, secondarily, that of patrimony or pension.¹⁶³ If none of these three titles was available in a particular diocese, the *CIC/17* provided for two extraordinary titles under which a candidate would be ordained a secular cleric: the title of service to the diocese and, in places subject to the Congregation for the Propagation of the Faith, the title of mission. Those who were ordained under these titles would have to take an oath declaring that they would serve that particular diocese or mission perpetually under the authority of the local bishop at the time.¹⁶⁴ However, the Code still specifically mandated that the bishop had to provide those whom they had ordained under these two titles a place of ministry where they could earn sufficient income for their sustenance.¹⁶⁵

¹⁶² “Titulus canonicus, si agatur de ordinibus maioribus” (*CIC/17*, c. 974, §1, 7°).

¹⁶³ SUBOTICH, “The Formal Incardination and Excardination of Secular Clerics,” 440.

¹⁶⁴ “Si ne unus quidem ex titulis de quibus in can. 979, §1, praesto sit, suppleri potest titulo servitii dioecesis, et, in locis sacrae Congregationi de Prop. Fide subiectis, titulo missionis, ita tamen ut ordinandus, iureiurando interposito, se devoveat perpetuo dioecesis aut missionis servitio sub Ordinarii loci pro tempore auctoritate” (*CIC/17*, c. 981, §1).

¹⁶⁵ “Ordinarius presbytero, quem promoverit titulo servitii ecclesiae vel missionis, debet beneficium vel officium vel subsidium, ad congruam eiusdem sustentationem sufficiens, conferre” (*CIC/17*, c. 981, §2).

If a cleric lost his title of ordination, it became his responsibility to secure another title.¹⁶⁶ However, if a bishop ordained a subject to the sacred order without a canonical title, the bishop or his successor was bound to provide for the maintenance of that cleric.¹⁶⁷ This law affected the transfer of priests because, through excardination, a cleric lost the canonical title he held in the former diocese. So, it was obvious that for him to be incardinated into another diocese, he had to be provided with another title in his new diocese unless he had some other legitimate means of supporting himself.¹⁶⁸

1.7 Relevant Holy See Documents Issued Between *CIC/17* and Vatican II

In the decades following the promulgation of the *CIC/17*, many people migrated and Christianity expanded to different parts of the world. The norms of the *CIC/17* were general and universal and so could not address some specific issues like the spiritual care of priest emigrants. Several documents were issued by the Holy See addressing the changing situations of the Church at that particular period. Three of them are most relevant to this study: the decree *Magni semper* issued in 1918 by the Sacred Consistorial Congregation, the 1952 Apostolic Constitution *Exsul familia* of Pope Pius XII and his 1957 Encyclical Letter *Fidei donum*.

1.7.1 *Magni semper* (1918)

The period following the promulgation of the *CIC/17* was also the time marking the end of the First World War, which saw an increase in human migration. Many priests

¹⁶⁶ “Ordinatus in sacris, si titulum amittat, alium sibi provideat, nisi, iudicio Episcopi, eius congruae sustentationi aliter cautum sit” (*CIC/17*, c. 980, §1).

¹⁶⁷ “Qui, citra apostolicum indultum, suum subditum in sacris sine titulo canonico scienter ordinauerint aut ordinari permiserint, debent ipsi eorumque successores eidem egenti alimenta necessaria praebere, donec congruae eiusdem sustentationi aliter provisum fuerit” (*CIC/17*, c. 980, §2).

¹⁶⁸ SUBOTICH, “The Formal Incardination and Excardination of Secular Clerics,” 440.

were migrating together with their people to places such as the United States of America and the Philippines. The Holy See, through its Sacred Consistorial Congregation, found it necessary to issue the decree *Magni semper*.¹⁶⁹ This decree governed the travel of priests from Europe to the United States or the Philippines. Like the preceding decree, *Ethnographica studia*,¹⁷⁰ which was now abrogated, *Magni semper*, was divided into two major sections. Section one contains norms governing priests who were traveling abroad for an indefinite period and therefore in need of permission to excardinate and incardinate. On the other hand, section two was concerned with priests traveling for short periods of time.

Priests emigrating for longer periods of time had several conditions that they had to meet before their bishops could grant the dimissorial letters necessary for embarking on their journey. Some of the conditions were that the priest had been a member of the secular clergy and had a proper canonical title of his own; he had served his diocese for some years after ordination; he possessed good morals and sufficient learning; and there was a just cause for his migration.¹⁷¹ Condition no. 5 of the decree required that before

¹⁶⁹ SACRED CONSISTORIAL CONGREGATION, Decree *Magni semper*, 30 December 1918, in AAS, 11 (1919), *Magni semper*, 39-43, English translation in *Canon Law Digest* (= *CLD*), vol. 1, 93-97 (= SACRED CONSISTORIAL CONGREGATION, *Magni semper*).

¹⁷⁰ SACRED CONSISTORIAL CONGREGATION, *Ethnographica studia*, 182-186.

¹⁷¹ “1. Pro sacerdotibus ad longum vel indefinitum tempus aut in perpetuum ex Europa vel ex Mediterranei oris ad Americam vel ad insulas Philippinas migraturis, fas esto Episcopis, non vero Vicariis Generalibus aut Capitularibus, litteras iscessoriales concedere, hisce tamen servatis conditionibus: *a*) ut agatur de sacerdotibus cleri saecularis ex canonico titulo sibi propriis ; *b*) ut hi post ordinationem suam saltem per aliquot annos dioecesi deservierint ; *c*) et intra hoc tempus, sicut antea in Seminario, intemeratae vitae certum argumentum praestiterint, et sufficienti scientia sint instructi, adeo ut solidam spem praebeant aedificandi verbo et exemplo populous ad quos transire postulant, et sacerdotalem dignitatem numquam a se maculatura iri, prout iterato praecedentibus decretis Apostolica Sedes praescrisit; *d*) dummodo ad migrandum iustam habeant causam, e. g. desiderium se addicendi spirituali adsistentiae suorum concivium vel aliorum illic commorantium, necessitatem valetudinis curandae, vel aliud simile motivum, coherenter ad ea quae canon 116 Codicis in casu excardinationis requirit” (SACRED CONSISTORIAL CONGREGATION, *Magni semper*, 40, English translation in *CLD*, vol. 1, 94).

issuing the dimissorial letter, the bishop *a quo* had to secretly consult with the bishop *ad quem* and inform him about the age, education, and morals of the priest in question. Also, the bishop *a quo* had to receive assurance from the bishop *ad quem* that he was willing to accept the priest in question and, if the priest was young and in good health, that he was going to be assigned some ecclesiastical work other than merely saying Mass.¹⁷²

What is of particular importance to mention here is the fact that the decree significantly stressed the format of the letters to be issued. The letters had to express the permission of the bishop *a quo*, the length of time the priest is permitted to be away from his diocese, the acceptance of the bishop *ad quem*, and information identifying the priest in such a way that it would rule out any fraud or mistaken identity.¹⁷³ Without this prescribed form, the letters would be considered invalid, and consequently, the priest in question would not be allowed to travel or exercise sacred ministry. The decree threatened the penalty of suspension to be incurred *ipso facto*.¹⁷⁴

For priests traveling to the United States or the Philippines for a period of less than six months, very similar rules applied. The only difference is that they did not

¹⁷² “1. *e*) sub lege, quae sub gravi ab utroque Ordinario servanda erit ut Episcopus dimittens, antequam licentiam ac discessoriales litteras concedat, directe pertractet cum Episcopo *ad quem*, illumque de sacerdotis aetate, vita, moribus, studiis et migrandi motivis doceat, ab eoque requirat, an dispositus sit ad illum acceptandum et ad aliquod ecclesiasticum ministerium eidem tribuendum, quod in simplici missae celebratione consistere non debet, quoties migrans sacerdos aetate iuvenili et integris viribus polleat; neque licentiam et discessoriales litteras sacerdoti antea concedat quam responsonem ad utrumque affirmativam assecutus sit” (Ibid., 40, English translation in *CLD*, vol. 1, 94).

¹⁷³ “2. Discessoriales litterae non communi sed specifica forma conficiendae erunt, hoc est, exprimere debent consensum sive tempora neum, sive perpetuum vel ad beneplacitum Episcopi dimittentis, acceptationem Episcopi ad quem, et notas sacerdotis individuas, aetatis scilicet, originis, aliasque, quibus persona describatur, adeo ut nemo circa eius identitatem decipi possit: aliter autem confectae litterae nihil valeant et nullae habeantur” (Ibid., 40-41, English translation in *CLD*, vol. 1, 94).

¹⁷⁴ “16. Sacerdotes qui, his legibus non servatis, temere arroganterque demigraverint, suspensi a divinis ipso facto maneat: qui nihilominus sacris (quod Deus avertat) operari audeant, in irregularitatem incidant; a. quibus poenis absolvi non possint nisi a Sacra hac Congregatione” (Ibid., 43, English translation in *CLD*, vol. 1, 97).

require the prior permission of the bishop of the dioceses they intended to visit. One thing that was significantly missing in this decree is the input from the priest himself. He was not consulted about whether he consented to the conditions laid down as prerequisites for his travel.

1.7.2 Apostolic Constitution *Exsul Familia* (1952)

On 1 August 1952, Pope Pius XII issued the Apostolic Constitution *Exsul familia*,¹⁷⁵ which also played a significant role in shaping the norms governing the movement of priests from one diocese to another. The primary reason for the publication of this Constitution was to prevent pseudo priests and priests who were not in good standing with their bishops from being admitted to the priestly ministry.¹⁷⁶ As far back as 14 November 1903, the Sacred Congregation of the Council, which was then competent in matters of this kind, sent a letter to the bishops of Italy and the United States warning them of this danger.¹⁷⁷ The Congregation noted that it was usually quite difficult because of the great distances between places to make a prudent judgment about the priest's identity and his good standing as well as the authenticity of the documents he exhibited. The Congregation declared that experience had shown that fraud and deceit occurred.¹⁷⁸

¹⁷⁵ PIUS XII, *Exsul familia*. This Apostolic Constitution, which was divided into two titles, did not abrogate the norms of *Magni semper negotii* or the norms of *CIC/17* dealing with incardination and excardination. Title one, *De Materna Ecclesiae in Emigrantes Sollicitudine*, dealt mainly with the historical aspect of the Church's care for exiles and refugees from the earliest times to the time the document was written. The second part, entitled *Normae pro Spirituali Emigratum Cura Gerenda*, laid down the norms for the spiritual care of emigrants.

¹⁷⁶ E.A. FUS, "Priest Emigrants Under the Constitution "*Exsul Familia*," in *The Jurist*, 16 (1956), 360 (= FUS, "Priest Emigrants Under the Constitution '*Exsul Familia*'").

¹⁷⁷ SACRED CONGREGATION OF THE COUNCIL, Letter Concerning Clerics Leaving for America and the Philippine Islands *Clericos peregrinos*, 14 November 1903, in GASPARRI, *Fontes*, vol. VI, no. 4315, 805-806.

¹⁷⁸ *Ibid.*

In the second section of the Constitution, the pope gave the Sacred Consistorial Congregation the exclusive competency to grant permission to the priests of the Latin rite, who were traveling from European or Mediterranean countries to overseas countries.¹⁷⁹ Two very significant changes were made by this Constitution. The first concerns the ecclesiastical authority to grant priests permission to travel abroad. Previously, the priests' proper bishop would do this. The constitution took away this right from the bishops. The Sacred Consistorial Congregation had the right to give this permission.¹⁸⁰ Nuncios and Apostolic Delegates could also grant this same permission to priests of the nation to which they were permanently assigned, provided that this faculty was given to them.¹⁸¹

The second major change was that there was no distinction about whether the priest intended to travel and stay overseas for a long time or a short period. Every priest traveling abroad for any length of time, be it one day or an indefinite number of years, needed permission from the Congregation. Moreover, before the Congregation could grant this permission, the priest had to fulfill these conditions: 1) present a testimonial of good conduct; 2) have a just and reasonable cause for migrating; 3) have the consent of

¹⁷⁹ “2 § 1. Sacerdotibus Latini ritus, si quando emigrent, unice cavebit Sacra Congregatio Consistorialis,” English translation in *CLD*, vol. 3, 85. The Sacred Consistorial Congregation also had the care of priests of the Latin Rite who were subjects of the Sacred Congregation for the Propagation of the Faith or of the Sacred for Oriental Churches, when they desired to travel to a territory that was not subject to the respective Congregation” (Ibid., 693. See also FUS, “Priest Emigrants Under the Constitution “*Exsul Familia*, 372).

¹⁸⁰ “3 § 1.1° Unius Sacrae Congregationis Consistorialis est sacerdotibus, qui ex Europa vel Mediterraneis oris ad exteras transmarinas regiones, per quodvis temporis spatium, sive breve sive longum sive indefinitum, aut in perpetuum, migrare desiderent, licentiam proficiscendi ibique manendi aut diutius commorandi concedere” (Ibid., English translation in *CLD*, vol. 3, 87).

¹⁸¹ “3. §1. 2° Nuntii, Internuntii et Delegati Apostolici eandem licentiam concedere poterunt sacerdotibus illius nationis, apud quam legatione stabili funguntur, dummodo huiusmodi facultas eisdem attributa sit et reservata” (Ibid., English translation in *CLD*, vol. 3, 86).

both the bishop *a quo* or of a religious Superior if the priest was a religious and of the bishop *ad quem*; and 4) if the priest was a pastor and was going to be absent for more than two months, obtain an indult from the Sacred Congregation of the Council.¹⁸²

1.7.3 Encyclical Letter *Fidei donum*

The encyclical letter *Fidei donum*,¹⁸³ of Pope Pius XII was one of the most influential papal documents in the period following the promulgation of the *CIC/17* and the beginning of the Second Vatican Council. As the title of the encyclical suggests, the pope made a passionate appeal to the bishops of the world to bring the gift of faith (*fidei donum*), which the Church had received, to all the world but specifically to the continent of Africa. This call had been made before by Pope Benedict XV in his apostolic letter *Maximum illud*¹⁸⁴ and by Pope Pius XI in the encyclical letter *Rerum ecclesiae*,¹⁸⁵ but the novelty brought by *Fidei donum* is that, for the first time, a Roman Pontiff was making an appeal for missionary aid for a specific continent. The Pope acknowledged that the increase in the number of native clergy in Africa could not match the enormous growth in

¹⁸² “3. § 3. Haec autem licentia, firmis ceteris legibus in decreto *Magni semper negotii* statutis, ne concedatur nisi certo constet: 1° de bono oratoris vitae testimonio; 2° de iusta et rationabili migrandi causa; 3° de consensu tum Episcopi *a quo* discedit, aut Superioris si agatur de religiosis, tum Episcopi *ad quem* accedit; 4° de habito Sacrae Congregationis Concilii indulto si agatur de parochis, quoties absentia ultra duos menses protrahi debeat” (Ibid., 694, English translation in *CLD*, vol. 3, 86).

¹⁸³ PIUS XII, Encyclical Letter *Fidei donum*, 21 April 1957, in *AAS*, 49 (1957), 225-248, English translation in *The Pope Speaks*, 4 (1957-1958), 295-312 (= PIUS XII, *Fidei donum*). It is important to note that since this is an encyclical letter, it is not a legislative document.

¹⁸⁴ BENEDICT XV, Apostolic Letter, *Maximum illud*, 30 November 1919, in *AAS*, 11 (1919), 440-455.

¹⁸⁵ PIUS XI, Encyclical Letter *Rerum Ecclesiae*, 28 February 1926, English translation in C. CARLEN, *The Papal Encyclicals*, vol.3, 1903-1939, Raleigh, McGrath Publishing Company, 1981, 281-291.

the number of the Catholic faithful, and so assistance by foreign missionaries was needed.¹⁸⁶

Quoting from his previous encyclical letter *Mystici corporis Christi*,¹⁸⁷ the pope emphasized the universality of the Church saying that, “in the Church the individual members do not live for themselves alone but also to assist others and render mutual aid to all, not only in comforting one another but also in contributing to the greater edification of the entire body.”¹⁸⁸ By saying this, the pope wanted to instill in the hearts and minds of every priest the missionary spirit of service to the universal Church. This would, later on, become a major theme of discussion at the Second Vatican Council. A priest was ordained to serve not only the particular Church but the universal Church as well.

To address the need of the universal Church and specifically the urgent need of the developing Church in Africa, the pope proposed three concrete actions, namely, prayers, material aid and, in some cases, the gift of oneself.¹⁸⁹ Firstly, there was a need to

¹⁸⁶ “Probe nostis, Venerabiles Fratres, in Africa adauctae christifidelium multitudini auctum pariter et congruenter sacrorum administrorum numerum non respondere. Frequentior quidem in dies illic crescit Clerus ex incolis delectus; at sacerdotes illi serius tantummodo recte poterunt in suis dioecesibus plenam populi sui aliquando gubernationem suscipere, et quidem semper auxilium praebentibus missionalibus advenis, qui eos ad fidem adduxerunt” (PIUS XII, *Fidei donum*, 234, English translation in *The Pope Speaks*, 302).

¹⁸⁷ PIUS XII, Encyclical Letter *Mystici Corporis Christi*, 29 June 1943, in AAS, 35 (1943), 193-248.

¹⁸⁸ “Ecclesiae vita, quae aspectabilis est, in veteres Europae regiones vigorem suum praecipue exsereret, unde... in eas affiuebat oras, quae terrarum orbis peripheria nuncupari poterant; nunc contra prae se fert quodammodo mutuum permutationem vitae viriumque inter omnia membra Corporis Mystici Christi” (PIUS XII, *Fidei donum*, 235, English translation in *The Pope Speaks*, 303).

¹⁸⁹ “Cum inde ab originibus sancta Ecclesia ad divinum verbum usquequaque propagandum natura sua compellatur, eadem ad officium suum obeundum, cui deesse nescit, numquam destitit a suis filiis triplicem opem expetere: nempe preces, adiumenta, et a nonnullis etiam sui ipsorum onum. In praesens quoque sacrae expeditiones, eae praesertim quae ad Africam pertinent, a catholico orbe trina huiusmodi auxilia exposcunt” (Ibid., 238, English translation in *The Pope Speaks*, 305).

pray fervently and continuously throughout all the liturgical year's seasons. Secondly, the prayers had to be accompanied by generous charitable support to the Church's missionary efforts in Africa and other parts of the world. Thirdly, charitable support could be given in the form of material donations or in the form a personal gift of self. A person could give himself or herself as a missionary to the mission fields as a cleric, a religious man or woman or a lay person attached to a religious community or institute.

The pope goes on to encourage bishops of the world to send some of their priests to go and work for some time as missionaries in the dioceses of Africa.

Another form of assistance, which is more burdensome, has been undertaken by some bishops who, despite the difficulties attendant upon so doing, have permitted this or that priest of the diocese to go and spend some time in working for the bishops of Africa.¹⁹⁰

This is the greatest contribution that this encyclical letter made to the Church's efforts to address the shortage of priests in the world. Canon 144 of the *CIC/17* allowed a cleric with permission from his bishop to temporarily move to serve in another diocese while he remained incardinated in his home diocese, but it did not explicitly encourage it. In this encyclical, not only did the pope approve it but also strongly encouraged it as a specialized form of priestly ministry for the diocesan clergy.

This procedure has the exceptional result of allowing the wise and well-planned establishment of specialized forms of priestly ministry, such as taking charge of teaching the secular and sacred science (*munera*) for which the local clergy have not been trained. We are happy to encourage these timely and fruitful undertakings. If this course of action is taken with due preparation, very important advantages will accrue to the Catholic Church in present-day Africa, which has its full measure of both difficulties and hopes.¹⁹¹

¹⁹⁰ “Alia opitulandi ratio, onerosior sane, quae ab aliquibus sacris Antistitibus invecta est, eo efficitur, quod ii, licet gravamen sentiant, sinunt hunc illumve sacerdotem e dioecesi abire et certo temporis spatio Africae locorum Ordinariis opem ferre” (Ibid., 245-246, English translation in *The Pope Speaks*, 310).

¹⁹¹ “Id enim quam maxime ad hoc confert, ut nempe sapienter et considerate illic sacerdotalis ministerii novae ac peculiare formae constabulantur, itemque ut dioecesani cleri sacra et profana docendi munera suppleantur, quibus illi non suppetunt. Ad haec opportuna et frugifera perficienda incepta libenter adhortationes Nostras admovemus. Si haec prudenter parata et subinde in rem adducta fuerint, catholicae

With *Fidei donum*, the pope helped diocesan priests recognize that by the grace of their ordination, they are called to serve the welfare of not only their dioceses but also of the whole universal Church. This resulted in cooperation between dioceses in such a way that a diocesan priest could serve in two dioceses at different times, while he remained incardinated in his diocese but under the authority of the bishop where he was working.

1.8 Vatican Council II and the Distribution of Clergy

On 25 January 1959, two years after the publication of the encyclical letter *Fidei donum*, Pope John XXIII announced three important decisions: the intention to hold a synod of the Diocese of Rome, to convoke an ecumenical council, and to revise the Code of Canon of Law. In making that announcement, Pope John XXIII intended to address the problem of the shortage of priests throughout the world. This was to be done in two ways: firstly, by discussing in the ecumenical council the universal scope of the ministry of a priest, that is, envisioning a priest as having an important universal role as well as diocesan calling; and secondly, by reforming the rules on incardination and excardination in order to allow priests to move more easily for the purpose of fulfilling their responsibilities towards the universal Church.¹⁹²

Shortly after announcing the convocation of the Second Vatican Council, the pope carried out extensive consultations with the bishops of the world, pontifical universities and the various dicasteries of the Roman Curia on the major issues that needed to be discussed at the Council. During this *antepreparatoria* period, diocesan bishops and other heads of ecclesiastical circumscriptions all over the world were asked to send letters

Ecclesiae in Africa hac aetate, quae difficultatibus et spe referta est, summi momenti utilitates afferentur” (Ibid., 246, English translation in *The Pope Speaks*, 310).

¹⁹² O’CONNELL, *The Mobility of Secular Clerics*, 129.

describing what, in their opinion, they wanted the Council to discuss.¹⁹³ In their responses, some of the bishops raised the issue regarding the need for a better distribution of priests throughout the world.¹⁹⁴ They wanted the Church to take immediate action to address the imbalance of the world's clergy whereby some dioceses had an excess number of priests while others had very few. For example, Bishop Cardoso Cunha of Portugal asked the Church to “distribute clergy more equitably in Catholic territories in such a way that dioceses with many priests come to help particularly those nations that are in distress due to scarcity.”¹⁹⁵

Some of the bishops indicated that they wanted a change in the norms governing incardination and excardination to ease the movement of priests.¹⁹⁶ For example, Bishop Tabera Araoz of Albacete, Spain, stated in his letter that the better distribution of priests was a significant problem that the Council needed to examine because it was bad for people to have no priests. Where priests are abundant, Christian morals flourish, but where there are insufficient numbers, souls can be greatly damaged. Therefore, he wrote that finding a solution to the system of incardination would solve one of the greatest pastoral problems in the Church of that time.¹⁹⁷ Some bishops wanted the canons on

¹⁹³ Ibid., 130.

¹⁹⁴ These letters can be found in *Acta et documenta Concilio Oecumenico Vaticano II Apparando*, Series I (ANTEPRAEPARATORIA), Vatican City, Typis polyglottis Vaticanis, 1960, vols. I-IV (= ACTA ET DOCUMENTA, Series I).

¹⁹⁵ “IV. Distributio magis aequa cleri in orbe catholico et sic dioeceses quae multos sacerdotes habent veniant in auxilium, praesertim in eadem natione, earum quae in magna penuria laborant” in ACTA ET DOCUMENTA, Series I, vol. II, par. II, 617, English translation by O’Connell, *The Mobility of Secular Clerics*, 132.

¹⁹⁶ See for example the letter of Bishop Tabera Araoz of Albacete, Spain in ACTA ET DOCUMENTA, Series I, vol. II, par. II, 112-129.

¹⁹⁷ “Melior et sapientior distributio sacerdotum in dioecesibus magnum equidem problema est, quod Concilium oecumenicum posset utilissime examini Patrum subicere, in bonum Ecclesiae. Regiones et

incardination and excardination to remain but simply improved upon to accommodate the changing situations of the Church at the time.¹⁹⁸ By reading through these letters, one can see that there was a significant shift in the mindset of the bishops at the time regarding the theological understanding of a priest's pastoral ministry. It was becoming clearer to the bishops that a priest is not ordained just for the service of a particular Church but also for the universal Church as a whole.

On 5 June 1960, Pope John XXIII created ten Preparatory Commissions to coordinate the work of preparing for the Council's deliberations. The commissions reviewed and compiled all the materials that had been gathered for consideration by the Council into different categories called "schemata." Each of the commissions was accountable to the Central Preparatory Commission. One of the commissions was entitled the Commission Concerning the Discipline of Clerics and the Christian People (*Commissio de disciplina clerici et populi christiani*) headed by Cardinal Pietro Ciriaci.¹⁹⁹ This commission was responsible for writing the schema that would eventually become the conciliar document, *Presbyterorum ordinis*. Another commission was called the Commission Concerning Bishops and Diocesan Government (*Commissio de*

dioeceses sunt in quibus, ex variis causis, abundant sacerdotes, pullulant vocationes, vita atque mores christiani florescunt, actio pastoralis atque ovium cura facilis evadit. Aliae vero sunt quae fame pereunt, cum magno detrimento animarum et ministeriorum sacerdotium. Systema incardinationis sacerdotum dioecesis, iure actuali vigen, impedimentum ex magna parte affert, ut clerici per totum Ecclesiae territorium facile distribui possint, quod secum ferret solutionem magnorum problematum pastoralium huius temporis" (ACTA ET DOCUMENTA, Series I, vol. II, pars II, 122, English translation by O'Connell, *The Mobility of Secular Clerics*, 132).

¹⁹⁸ See for example the letter of Bishop Ioannis B. Cesana of Gulu in Uganda in ACTA ET DOCUMENTA, Series I, vol. II, pars V, 512 and the letter of Bishop Dominicus Picchinenna of Acerenza, Italy in ACTA ET DOCUMENTA, Series I, vol. II, pars III, 11.

¹⁹⁹ *Acta et documenta Concilio Oecumenico Vaticano II Apparando*, Series II (PRAEPARATORIA), Vatican City, Typis polyglottis Vaticanis, 1962, vol. II, pars I, 565 (= ACTA ET DOCUMENTA, Series II).

Episcopis et de dioecesani regime), headed by Cardinal Paolo Marella. This commission discussed the schema which was eventually promulgated as *Christus Dominus*.²⁰⁰

1.8.1 *Presbyterorum ordinis*

The Commission Concerning the Discipline of Clerics and the Christian People worked under nineteen subcommittees and presented its first *schema* to the central Preparatory Commission on 10 November 1961, in which it addressed among other things the subject of the distribution of clerics as described by bishops in their letters.²⁰¹ The *schema* contained ten norms, each dealing with a different aspect of its core issue of the distribution of clerics. The first of the norms dealt with the care that bishops were supposed to provide to the universal Church. They were to help those dioceses where the practice of the Christian life and the integrity of the faith were in danger because of a shortage of priests.²⁰² The ninth norm discussed the desired changes to the institute of incardination and excardination. These changes would later be proposed by Pope Paul VI's apostolic letter *Ecclesiae sanctae* issued *motu proprio*.²⁰³ During the Council deliberations, this schema underwent different stages of development, eventually becoming no. 10 of the Decree *Presbyterorum ordinis*.

²⁰⁰ For a further study of the evolution of the decrees *Presbyterorum ordinis* and *Christus Dominus* see O'CONNELL, *The Mobility of Secular Clerics*, 141-149.

²⁰¹ ACTA ET DOCUMENTA, Series II, pars I, 563-565.

²⁰² "I. Episcopi, qua Apostolorum successores, recolant sibi omnium ecclesiarum sollicitudinem cordi esse debere. Curent proinde auxilio iuvare illas dioeceses, in quibus, ob parvum sacerdotum numerum, integritas fidei et praxis vitae christianae in discrimen vertuntur" (Ibid., vol. II, pars I, 564, English translation adopted from MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 120).

²⁰³ PAUL VI, Apostolic Letter *motu proprio Ecclesiae sanctae I*, 6 August 1966, in AAS, 58 (1966), 757-787, English translation in *FLANNERY I*, 591-610 (= PAUL VI, *ESI*).

In this decree, the Council desired to deepen the theological understanding of the priesthood by emphasizing that, through the reception of sacred orders, a priest receives a universal mission and so has a role to play in the life of the universal Church. The decree articulates it in this way:

Priests, therefore, should bear in mind that they ought to care for all the churches. For this reason, priests of dioceses which are blessed with a greater abundance of vocations should be prepared to offer themselves willingly-with permission or encouragement of their own ordinary-for ministry in countries or missions or tasks that are hampered by shortage of clergy.²⁰⁴

It is important to note that the above paragraph allows the priest to take the initiative to move to another diocese. It is no longer necessary for the diocesan bishop to ask his priest to consider rendering his priestly service in another diocese. The priest himself, with the permission of his bishop, may take the initiative to move to another diocese.

However, to allow the priests to move easily for the purpose of fulfilling their responsibilities towards the universal Church, the Council called for a reform of the rules concerning incardination and excardination. “In addition, the rules about incardination and excardination should be revised in such a way that, while this ancient institution remains intact, it will answer better to the pastoral needs of today.”²⁰⁵ By calling for the renewal of the rules about incardination and excardination, the Council intended to promote an easier way of transferring diocesan priests from one diocese to another as an urgent necessity. If the priests were to fulfill their call to share in the universal mission of

²⁰⁴ “Meminerint igitur Presbyteri omnium ecclesiarum sollicitudinem sibi cordi esse debere. Quapropter Presbyteri illarum dioecesium, quae maiore vocationum copia ditantur, libenter se paratos praebeant, permittente vel exhortante proprio Ordinario, ad suum ministerium in regionibus, missionibus vel operibus cleri penuria laborantibus exercendum” (SECOND VATICAN COUNCIL, Decree on the Ministry and Life of Priests *Presbyterorum ordinis*, 7 December 1965, in *AAS*, 58 [1966], no. 10, 1007, English translation in *FLANNERY I*, 882).

²⁰⁵ “Normae praeterea de incardinatione et excardinatione ita recognoscantur ut, pervetere hoc instituto firmo manente, ipsum tamen hodiernis pastoralibus necessitatibus melius respondeat” (Ibid., English translation in *FLANNERY I*, 882).

the Church, the law governing incardination/excardination had to allow their easy movement.

1.8.2 *Christus Dominus*

Presbyterorum ordinis, no. 10, helped to deepen the theological understanding of the priesthood by highlighting its universal dimension. It also called for the renewal of the institutes of incardination and excardination to enable priests to realize their vocation to serve the universal Church. *Christus Dominus*, no. 28, on the other hand, focuses on the significance of incardination and attachment of a diocesan priest to a particular Church. It states that,

The diocesan clergy have, however, a primary role in the care of souls because, being incardinated in or appointed to a particular Church, they are wholly dedicated in its service to the care of a particular section of the Lord's flock, and accordingly form one priestly body and one family of which the bishop is the father.²⁰⁶

In the *CIC/17*, incardination was seen more like a disciplinary tool that afforded a bishop an avenue to supervise the life and ministry of every priest. In addition, incardination was a means of securing sustenance for an individual cleric from the diocese to which he was attached. In *Christus Dominus*, no. 28, the Church elevated the understanding of incardination to that of a relationship of service between the cleric himself and the people of a particular Church. The decree clearly stipulates that the primary duty of a diocesan priest is the care of souls. This care of souls cannot be provided in the abstract but must be done in a concrete particular section of the Church.

²⁰⁶ “In animarum autem cura procuranda primas partes habent sacerdotes dioecesani, quippe qui, Ecclesiae particulari incardinati vel addicti, eiusdem servitio plene sese devoveant ad unam dominici gregis portionem pascendam; quare unum constituunt presbyterium atque unam familiam, cuius pater est Episcopus” (SECOND VATICAN COUNCIL, Decree on the Pastoral Office of Bishops in the Church *Christus Dominus*, 28 October 1965, in AAS, 58 [1966], 687, English translation in *FLANNERY I*, 580).

Incardination, therefore, provides the context within which a priest can care for the Lord's flock.²⁰⁷

According to Avery Dulles, particular Churches are expressions of the universal Church.²⁰⁸ So, by serving members of a particular Church under the leadership of his bishop, a priest is, at the same time, serving the universal Church. Therefore, both bishops and presbyters have the responsibility of shepherding the flock of the universal Church as a whole. That is why the Council found it necessary to seek an easier way of sharing and distributing priests throughout the world to counter the danger of the faithful in some countries abandoning the Christian faith due to the scarcity of priests. Consequently, the Council had to make a direct appeal to local bishops to share their priests and laity with needy dioceses that suffered from a lack of sufficient clergy.

Christus Dominus, no. 6, directly appeals to the bishops to arrange “as far as possible, that some of their priests should go to the missions or dioceses to exercise ministry there, either permanently or for a fixed period.” What is significant to note here is that the bishops are exhorted to send some of their priests to serve needy dioceses or missions whether perpetually or temporarily. If a priest was to be sent to serve temporarily, then he would have to remain incardinated in his home diocese. The Council is making reference to priests who serve temporarily in another diocese while they remain incardinated in their home diocese. It does not mention that a written agreement is needed between the bishops for this to take place. The *motu proprio Ecclesiae sanctae* would determine and lay down other instructions for implementing recommendations made in *Christus Dominus* nos. 6 and 28, and in *Presbyterorum ordinis* no. 10.

²⁰⁷ KEELER, *The Pastoral Office of Priests*, 173.

²⁰⁸ A. DULLES, “The Papacy for a Global Church,” in *America*, vol. 183, no. 17 (2000), 13.

1.9 Relevant Holy See Documents Issued between Vatican II and *CIC*

In the period between the Second Vatican Council and the promulgation of the *CIC*, numerous documents were issued by the popes and the different dicasteries of the Roman Curia. Two are most relevant to this study. First is the Apostolic Letter *Ecclesiae sanctae I* issued *motu proprio* by Pope Paul VI on 6 August 1966, which implemented four conciliar documents: *Christus Dominus*, *Presbyterorum ordinis*, *Perfectae caritatis* and *Ad gentes*.²⁰⁹ These norms were to be in effect only *ad experimentum* until the new Code of Canon Law was promulgated. The second is the Directive Norms for the Distribution of the Clergy *Postquam apostoli*, which was dated 25 March 1980, but was published in August the following year.

1.9.1 Apostolic Letter *Ecclesiae sanctae I*

This *motu proprio* is divided into 43 paragraphs, of which the first five deal with the norms concerning the implementation of *Christus Domus*, no. 6 and *Presbyterorum ordinis*, no. 10. It is evident from the first five paragraphs that Paul VI had as a high priority the issue of the distribution of priests and aid to be given to dioceses that had shortages of priests. In order to address this issue, the pope sought to implement the prime concerns of the Council: “to allow the bishop to fulfill his responsibility to the universal Church and likewise to allow the priest to fulfill his share in this responsibility.”²¹⁰

Paragraph 3 of the *motu proprio* is of particular interest to this study. It is in this paragraph, which is divided into five sections numbered I to V, that the pope proposes

²⁰⁹ PAUL VI, *ESI*, 757-787.

²¹⁰ J.I. DONLON, *The Human Rights of Priests to Equitable Sustenance and Mobility: An Evaluation of Canon Law from the Codex Iuris Canonici to the Proposed Revision of the Code of Canon Law*, Canon Law Studies, no. 510, Washington, DC, The Catholic University of America, 1983, 252.

specific amendments to the norms governing incardination and excardination in order to facilitate the transfer of clerics from one diocese to another.

The introductory portion of the paragraph clearly explains that while some changes were made to adapt to the new situations, the law of incardination and excardination was to be retained. Numbers 1 and 3 of the paragraph deal with the formation of seminarians and the preparation of clerics who intended to transfer to other dioceses. Seminary formation was to be done in such a way that the future clerics were trained early enough to feel concern not only for the diocese for whose service they were to be ordained but also for the whole Church. With the consent of their bishops, the seminarians could express their desire to enter the service of other dioceses that were hard-pressed. Bishops were to make sure that clerics who intended to transfer from their own diocese to another were given appropriate training for their future ministry, especially in regard to the language of the place and an understanding of its institutions, social conditions, manners and customs (paragraph 3, no. 3).

In numbers 2, 4, and 5, the pope stipulates the new norms governing the transfer of clerics from one diocese to another:

2. Apart from the case of true need in their own dioceses, ordinaries or hierarchs shall not refuse permission to clerics to emigrate to regions suffering from a grave shortage of priests and exercise their ministry there, provided they know of their willingness to go and consider them suitable to work there. They are to see to it that by a written agreement with the Ordinary of the place in question the rights and obligations of their clerics are clearly determined.
4. Ordinaries may give permission to their clerics to transfer to another diocese for a prescribed time, a permission which could be renewed many times, with the result however that these clerics remain incardinated in their own diocese and on returning to it enjoy all the rights they would have if they had been ministering there.
5. If, however, a cleric has lawfully transferred from his own diocese, after five years he becomes incardinated by law into the diocese, provided he has manifested his wish to do so in writing both to the ordinary of the diocese which received him and to his own

ordinary and that neither of these has within four months signified to him his disapproval.²¹¹

Most of the elements declared in these numbers were not new because they had already been proposed as an appendix to the *Schema De cura animarum* presented by the Commission for Bishops to the General Assembly of the Council Fathers on 22 April 1963.²¹² One common element in both the *schema* and *ESI* is that a bishop needed to have a true need in his diocese in order to deny a priest permission to go and serve in another diocese. Suitability of the priest for ministry in the new diocese was also another factor that was emphasized by both Paul VI and the *schema*.

The most significant novelty in this *motu proprio* is found in no. 2, where Paul VI introduced a written agreement as a prerequisite for a cleric to move from one diocese to another to offer temporary service. This is the first time that a written agreement is being explicitly mentioned as a requirement for a cleric's temporary service in the diocese where he is not incardinated.

Number 4 is very similar to c. 144 of the *CIC/17* because they both deal with a cleric's temporary movement from his diocese of incardination to work in another diocese while remaining incardinated in his original diocese. In both places, the priest needed permission from his bishop in order to make the transfer. One major difference is

²¹¹ “§ 2. Extra casum verae necessitatis propriae dioecesis, Ordinarii seu Hierarchae ne denegent licentiam emigrandi clericis, quos paratos sciant atque aptos aestiment qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi; curent vero, ut per conventionem scriptam cum Ordinario loci quem petunt iura et officia eorum clericorum stabiliantur; [...]; § 4. Ordinarii licentiam ad aliam dioecesim transmigrandi concedere possunt suis clericis, ad tempus praefinitum, etiam pluries renovandum, ita tamen ut iidem clerici in propria dioecesi incardinati maneant, atque in eandem redeuntes omnibus iuribus gaudeant, quae Ihabent si in ea sacro ministerio addicti fuissent; § 5. Clericus autem qui a propria dioecesi in aliam legitime transmigraverit, huic dioecesi, transacto quinquennio, ipso iure incardinetur, si talem voluntatem in scriptis manifestaverit tum Ordinario dioecesis hospitis tum Ordinario proprio, nec horum alteruter ipsi contrariam «cripto mentem intra quattuor menses significaverit” (PAUL VI, *ESI*, 760, English translation in *FLANNERY I*, 594).

²¹² The *Schema De cura animarum* contained five chapters and five appendices. The appendices were the items that were to be referred to the Commission for the Revision of the *CIC*.

that in the *CIC/17* the priest could be called back by the bishop of his diocese of incardination or could be denied further residence by the bishop of the host diocese for a just cause. In *ES I*, it is the cleric who has the freedom to return to his home diocese and upon return he was expected to enjoy all the privileges he would have received had he not moved.

1.9.2 Directive Norms *Postquam Apostoli*

Postquam apostoli was published on 25 March 1980 by the Sacred Congregation for the Clergy “with the approval of the supreme pontiff” (*approbante Summo Pontifice*).²¹³ Since it was approved by the pope in general form (*in forma communi*) and not in specific form (*in forma specifica*), the document remains an act of the executive power of the Congregation for the Clergy.²¹⁴ It is, therefore, not law (*lex*) and does not have the force of legislation (*vis legis*), but it juridically binds those for whom it was issued. The full title of the document is “Directive Norms for the Cooperation of the Local Churches among Themselves and Especially for a Better Distribution of the Clergy in the World” (*Notae directivae de mutua Ecclesiarum particularium cooperatione promovenda ac praesertim de aptiore cleri distributione*). The fact that the document is addressed to bishops initially suggests that the norms it contains are the instructions of *CIC*, c. 34 since instructions “are given for the use of those whose duty it is to see that laws are executed and oblige them in the execution of laws” (*CIC*, c. 34, §1). Instructions, however, are intended to “clarify the prescripts of laws and elaborate on and determine the methods to be observed in fulfilling them” (*CIC*, c. 34, §1). Yet, this

²¹³ SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, 343-364.

²¹⁴ J.M. HUELS, “Interpreting an Instruction Approved *in forma specifica*,” in *Studia canonica*, 32 (1998), 10.

document is not directly based on any prior legislation, so its norms are best classified according to what some canonists refer to as independent general administrative norms.²¹⁵

Unlike general executory decrees and instructions, which are intended to implement laws, independent general administrative norms are not dependent on any pre-existing laws. Nevertheless, the rules of *CIC*, c. 34 are, for the most part, also applicable to independent general administrative norms.

According to *CIC*, c. 34, §3, instructions can be revoked in two ways. The first is by express revocation made by the competent ecclesiastical authority who issued them or by the superior of that authority.²¹⁶ This rule applies also to general executory decrees (*CIC*, c. 33, §2) and to independent general administrative norms. Express revocation can be done by the competent authority explicitly or implicitly.²¹⁷ The competent authority for this revocation can be either the executive authority who issued the document and its successor or a superior authority.²¹⁸ There is no evidence that the Congregation for the

²¹⁵ J.M. HUELS, “Independent General Administrative Norms in Documents of the Roman Curia,” in *The Jurist*, 76 (2016), 85-92.

²¹⁶ Express revocation occurs when the competent authority issues a new document, which expressly states that it is revoking the old one.

²¹⁷ Explicit revocation occurs when the competent authority promulgates a law or issues a new document, which declares in explicit words that it is abrogating or derogating from the previous norms. The new norm names the older document and specifically states that it is abrogating it or derogating from it. Implicit revocation occurs when the competent authority issues a new document that uses a general expression or formula indicating that the previous document is being abrogated or derogated from. Examples of such expressions are: “Anything to the contrary notwithstanding” and “Anything to the contrary notwithstanding, even if worthy of special mention.” See J.M. HUELS, “General Revoking Formulas in Canon Law and Their Juridical Effects,” in *Studia canonica*, 46 (2012), 120 (= HUELS, “General Revoking Formulas”).

²¹⁸ HUELS, “General Revoking Formulas,” 112.

Clergy or any superior authority has issued a new document or norms that explicitly or implicitly revoked *Postquam apostoli*.

Secondly, instructions can also be revoked when a law for whose clarification or execution they were given ceases to exist (*CIC*, c. 34, §3). This rule likewise pertains to general executory decrees (*CIC*, c. 33, §2) but not to independent general administrative norms since, by definition, they are independent of legislation and so do not execute any prior laws. *Postquam apostoli* is not based on a specific prior law. Its remote origin can be attributed to the call the fathers of the Second Vatican Council made to the bishops of the world to be solicitous for all the churches and arrange for some of their priests to go to missions or dioceses with a scarcity of priests to exercise sacred ministry there, either permanently or for a fixed period.²¹⁹ Later, Pope Paul VI, in his apostolic letter *Ecclesiae sanctae*, ordered the establishment of a special commission within the Holy See “with the task to issue general principles for a better distribution of the clergy, keeping in mind the needs of the various churches.”²²⁰ In response to this order, the Sacred Congregation for the Clergy convened an International Congress on the Better Distribution of the Clergy in the World, which was held in Malta from May 24 to 28, 1970.²²¹ The *Acta* from this Congress and *Ecclesiae sanctae* are the only written antecedents that *Postquam apostoli* itself identifies as sources, but the *Acta* have no juridical value. Moreover, *Ecclesiae sanctae*, which was an interim and experimental document, was expressly revoked by the

²¹⁹ *Christus Dominus*, no. 6, in *FLANNERY I*, 567.

²²⁰ PAUL VI, *ESI*, no. 1, 759.

²²¹ *Atti del 1° Congresso “pro meliori cleri distributione in mundo,” Il Mondo è la mia parrocchia*, Rome, 1971. See F. ROMITA, “La Distribuzione del clero: Il mondo è la mia parrocchia,” in *Monitor Ecclesiasticus*, 43, (1970), 5.

1983 Code and other post-conciliar legislation.²²² The norms of *Postquam apostoli*, however, were not expressly revoked. This fact is supported by Pope John Paul II in his encyclical letter, *Redemptoris missio*. The pope exhorts “bishops and Episcopal Conferences to act generously in implementing the provisions of the norms which the Congregation for the Clergy issued regarding co-operation between particular churches and especially regarding better distribution of clergy in the world.”²²³

In addition, general administrative norms can also be revoked tacitly when the competent authority issues a new law or administrative document which directly contradicts or integrally reorders the entire subject matter of the earlier instruction (cf. *CIC*, c. 20).²²⁴ This is because independent general administrative norms have much the same nature as laws, the only major difference being that they are inferior in juridical value to laws.²²⁵ According to *CIC*, c. 20, apart from express abrogation and derogation of an earlier law by a later law, laws can also be revoked tacitly when the legislator promulgates a new law²²⁶ which is directly contrary to the earlier law, or which

²²² The motu proprio *Ecclesiae sanctae* was revoked because it contained a provision for the express abrogation of its norms once the revised *CIC* was promulgated. In the introduction to the motu proprio, the pope expressly stated that “we commend that they be observed by way of experiment, that is, until the new Code of Canon Law is promulgated, unless in the meantime some other provision is to be made by the Apostolic See.” PAUL VI, *ESI*, no. 1, 759. For a further discussion, see P. SMITH, *Theoretical and Practical Understanding of the Integral Reordering of Canon Law*, Lewiston, The Edwin Mellen Press, 2002, 29 (= SMITH, *Theoretical and Practical Understanding of the Integral Reordering of Canon Law*).

²²³ JOHN PAUL II, Encyclical Letter *Redemptoris missio*, art. 64, in *AAS*, 83 (1991), 312, English translation in *Origins*, 20 (1991), 559.

²²⁴ The following canons on *leges* are applicable also to general administrative norms: *CIC*, cc. 9, 11-15, 17-18, 20-21. See HUELS, “Independent General Administrative Norms,” 113.

²²⁵ J.M. HUELS, “A Theory of Juridical Documents Based on Canons 29-34,” in *Studia canonica*, 32 (1998), 349-351 (= HUELS, “A Theory of juridical Documents Based on Canons 29-34”).

²²⁶ *CIC*, c. 20 speaks of “abrogation” when the revocation of the law is total, that is, when the new law completely replaces the earlier law or juridic institute. It uses “derogation” when the revocation is

completely reorders the entire matter of the earlier law. The Congregation for the Clergy or a higher authority has not issued a document directly contrary to *Postquam apostoli*. However, *CIC* was promulgated three years after the publication of this document, and some of its subject matter is treated in *CIC*, c. 271. This raises a doubt whether or not the *CIC* has integrally reordered²²⁷ some of the norms in *Postquam apostoli*.

When there is doubt about whether or not an earlier law has been tacitly revoked by later law, *CIC*, c. 21 prescribes that “the revocation of the pre-existing law is not presumed, but later laws must be related to earlier ones and, insofar as possible, must be harmonized with them.”²²⁸ This means that tacit revocation of a previous law by integral ordering must not be presumed. It must be proven by closely examining the words and concepts of the individual norms of the previous law in comparison to the words and concepts of the individual norms of the new law. The parts of the former law that are revoked are only those from which the new law has derogated. Derogation here can be done in various ways: by eliminating parts of the law, by adding some new element to the norm itself, by altering the meaning of significant concepts or words, or by changing the tone of the law.²²⁹ The parts of the previous law that are not derogated from or not addressed at all by the new law are to be harmonized with the new law. If they can be harmonized, then both should be observed. If they cannot be reconciled, then they are

partial. See P. SMITH, “Determining the Integral Reordering of Law: Tools for the Canonist,” in *Studia canonica*, 35 (2001), 111 (= SMITH, “Determining the Integral Reordering of Law”).

²²⁷ Integral reordering of a law can be “understood as its tacit revocation by a later law that treats the entire matter of the earlier law, thus resulting in an incompatibility between the two.” See SMITH, “Determining the Integral Reordering of Law,” 107-108.

²²⁸ “In dubio revocatio legis praeexistentis non praesumitur, sed leges posteriores ad priores trahendae sunt et his, quantum fieri potest, conciliandae” (*CIC*, c. 21).

²²⁹ SMITH, “Determining the Integral Reordering of Law,” 112.

incompatible and, therefore, the norm of the former law will be revoked and the new law will have to be observed in that matter.

Postquam apostoli is divided into six chapters.²³⁰ Chapter Six, which is of significant importance to this study, is concerned with the needs, rights and duties of priests working outside their dioceses of incardination. The document emphasizes that the rights and obligations of the priests concerned have to be protected by means of a written agreement between the bishop *a quo* and the bishop *ad quem*. To guarantee that the priest's rights are protected, the document insists that the priest involved must (*debet*) accept and sign the agreement in order for it to have a juridical force. The document also contains other norms that are relevant to our study, some of which have been integrally reordered by *CIC*, c. 271, §§1-3 as shown in the table below.

²³⁰ For a longer commentary on the document, see V. T. MALLON, "Apportioning of the World's Clergy: A Commentary on *Postquam apostoli*, an instruction from the Sacred Congregation for the Clergy of March 25, 1980," in *Omnis Terra*, English edition, no. 124 (Jan. 1982), 36-50.

<i>Postquam apostolic</i>	<i>CIC</i>
<p>26. It is absolutely necessary that the rights and duties of the priests who volunteer for such a transfer be accurately defined by the means of a written agreement between the bishop <i>a quo</i> and the bishop <i>ad quem</i>. <u>This agreement, drawn up also with the involvement of the priest himself, must, in order that it have legal force, be accepted and signed by the priest.</u> Further, a copy of the agreement shall be preserved by the priest and by both curias.²³¹</p> <p>27. In the agreement the following points are to be specified: a) length of time of service is to be rendered; b) the duties to be performed by the priest and the place of ministry and residence, with consideration, however, of the living conditions in the region which the priest is seeking; c) the support he is to receive and from whom; d) his social security in case of illness, disability, and old age. It will be useful to add, if the case so warrants, the possibility of visiting his homeland after a definite length of time. <u>This agreement cannot be changed unless there is the consent of all interested parties. The bishop <i>ad quem</i> retains the right of sending the priest back to his own diocese, after having notified the bishop <i>a quo</i> if the priest's ministry turns out to be harmful,</u> but, of course, natural and canonical equity must be observed.²³²</p> <p>28. In dealing with priests who exercise the sacred ministry outside their own diocese, the originating bishop is to show special concern as far as possible. He should regard them as members of his own community who are working abroad. He should show his concern by correspondence, by visiting them in person or through delegates, and by helping them in accordance with the terms of the agreement. Since the host bishop profits by the help of these priests, he is responsible for their material</p>	<p>Can. 271 §1. Apart from the case of true necessity of his own particular church, a diocesan bishop is not to deny permission to clerics, whom he knows are prepared and considers suitable and who request it, to move to regions laboring under a grave lack of clergy where they will exercise the sacred ministry. <u>He is also to make provision that the rights and duties of these clerics are determined through a written agreement with the diocesan bishop of the place they request.</u></p> <p>§2. A diocesan bishop can grant permission for his clerics to move to another particular church for a predetermined time, which can even be renewed several times. Nevertheless, this is to be done so that these clerics remain incardinated in their own particular church and, when they return to it, possess all the rights which they would have had if they had been dedicated to the sacred ministry there.</p> <p>§3. <u>For a just cause the diocesan bishop can recall a cleric who has moved legitimately to another particular church while remaining incardinated in his own church provided that the agreements entered into with the other bishop and natural equity are observed;</u> the diocesan bishop of the other particular church, after having observed these same conditions and for a just cause, likewise can deny the same cleric permission for further residence in his territory.²³⁴</p>

²³¹ “Necesse est omnino ut iura et officia sacerdotum qui sponte ad talem transitum sese offerunt, accurate definiantur per conventionem scriptam inter Episcopum a quo et Episcopum ad quem; quae conventio ipsius quoque sacerdotis interventu exarata, ut vigorem iuris habeat, a sacerdote accipi et subscribi debet; exemplar vero conventionis asservetur apud sacerdotem et apud utramque Curiam” (SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 26, 361-362, English translation in *CLD*, vol. 9, 760-787).

²³² “In hac conventionem definiantur oportet: a) spatium temporis servitii peragendi; b) officia a sacerdote obeunda ac locus ministerii et habitationis, ratione tamen habita vitae condicionum in regione, quam sacerdos petit; c) subsidia quaelibet a quo et quaenam praestanda; d) cautiones sociales in casu aegrotationis, inhabilitatis et senectutis. Addi utiliter poterit, si casus ferat, possibilitas patriam invisendi post certum quoddam temporis spatium. Quae conventio mutari nequit, nisi accedat consensus eorum, quorum interest. Firmum manet ius Episcopi ad quem sacerdotem in propriam dioecesim remittendi, praemonito Episcopo a quo, servata utique naturali et canonica aequitate, si ministerium eius noxium evaserit” (Ibid., no. 27, 362, English translation in *CLD*, vol. 9, 784).

and spiritual needs, again according to the terms of the agreement. ²³³	
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The Code introduced several changes to no. 26 of *Postquam apostoli*. Firstly, the instruction uses the phrase, “It is absolutely necessary that [the rights and duties] ... should be accurately defined [in a written agreement]” (*Necesse est ... accurate definiantur*). The verb *definiantur* is in the present tense, subjunctive mood, which normally expresses a mild form of command or a recommendation. However, the use of *necesse est* strengthens it and makes it a stronger, positive command. So, *Postquam apostoli* rather strongly requires the bishops *a quo* and *ad quem* to ensure that the rights and obligations of the priests working outside their diocese of incardination are protected by means of a written agreement. Canon 271, §1, however, eliminates *necesse est* and uses only the jussive subjunctive *proscipiat*. It, therefore, lessens the force of the law binding the bishops to make a written agreement for a priest to serve temporarily in

²³⁴ “Extra casum verae necessitatis Ecclesiae particularis propriae, Episcopus dioecesanus ne denegat licentiam transmigrandi clericis, quos paratos sciat atque aptos aestimet qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi; prospiciat vero ut per conventionem scriptam cum Episcopo dioecesano loci, quem petunt, iura et officia eorundem clericorum stabiliantur. §2. Episcopus dioecesanus licentiam ad aliam Ecclesiam particularem transmigrandi concedere potest suis clericis ad tempus praefinitum, etiam pluries renovandum, ita tamen ut iidem clerici propriae Ecclesiae particulari incardinati maneant, atque in eandem redeuntes omnibus gaudeant iuribus, quae haberent si in ea sacro ministerio addicti fuissent. §3. Clericus qui legitime in aliam Ecclesiam particularem transierit propriae Ecclesiae manens incardinatus, a proprio Episcopo dioecesano iusta de causa revocari potest, dummodo serventur conventiones cum altero Episcopo initae atque naturalis aequitas; pariter, iisdem condicionibus servatis, Episcopus dioecesanus alterius Ecclesiae particularis iusta de causa poterit eidem clerico licentiam ulterioris commorationis in suo territorio denegare” (*CIC*, c. 271, §1).

²³³ “Erga sacerdotes qui sacrum ministerium extra propriam dioecesim exercent, Episcopus a quo peculiarem sollicitudinem pro viribus gerat, eosque consideret uti membra suae communitatis procul agentes; idque faciat sive per commercium epistulare, sive eos visitando per se aut per alios, sive adiuvando iuxta tenorem conventionis. Episcopus vero ad quem, qui horum sacerdotum auxilio fruitur, sponsor manet eorum vitae sive materialis sive spiritualis, item secundum conventionem” (SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 28, 362).

another diocese, although the obligation still exists. This kind of integral reordering is what Patricia Smith refers to as a “change in tone.”²³⁵

Secondly, *Postquam apostoli* identifies three parties to the written agreement: the diocesan bishop *a quo*, the diocesan bishop *ad quem* and the priest concerned. The document insists that the priest concerned must (*debet*) accept and sign the written agreement in order for it to have juridical force. Canon 271, §1 identifies only two parties to the agreement: the diocesan bishop *a quo* and the diocesan bishop *ad quem*. The canon eliminates the statement, “This agreement, drawn up also with the involvement of the priest himself, must, in order that it have juridical force, be accepted and signed by the priest.” By omitting this statement, the canon eliminates the mandatory participation of the priest concerned as a third party to the agreement. The law no longer requires him to accept and sign the agreement in order for it to have juridical force.²³⁶ The omitted statement from *Postquam apostoli* cannot be harmonized with the stipulation of the current law. While the instruction requires the participation of three parties for the agreement to have juridic force, the *CIC* requires the participation of only two parties. The law of the Code takes precedence over the earlier document with respect to this matter. Therefore, this particular provision of *Postquam apostoli* is derogated from by the *CIC*.

Thirdly, the canon omits the requirement of *Postquam apostoli* that “a copy of the agreement shall be preserved by the priest and by both curias.” This, too, is incompatible with the stipulation of the canon, which excludes the involvement of the priest in making

²³⁵ SMITH, “Determining the Integral Reordering of Law,” 128.

²³⁶ It should, however, be noted that the canon does not categorically state that the priest should not sign the agreement. When making the agreement, dioceses can still involve the priest concerned and require him to sign it.

the agreement. It is, therefore, not legally required that he be given a copy of the agreement to keep since he has not participated in making it. It is clear that *CIC*, c. 271, §1 integrally reordered no. 26 of *Postquam apostoli* and is the *ius vigens* on this matter. That being said, there is no incompatibility with the Code regarding the obligation of the two bishops to keep a copy of the agreement in their respective curias. This obligation of *Postquam apostoli* remains juridically binding. Moreover, it would ordinarily be desirable, albeit not required, to give the priest a copy as well, since the agreement concerns him directly even if he is not a party to it.

Number 27 of *Postquam apostoli* gives only the bishop *ad quem* the power to deny the priest concerned continued residence in the diocese if the priest's ministry turns out to be harmful. Canon 271, §3 adds to this norm and gives the bishop *a quo* also the same power to recall the priest concerned to his home diocese if there is a just reason and the conditions of the agreement are observed. Additionally, *Postquam apostoli* required the bishop *ad quem* to give prior notice to the bishop *a quo* before dismissing the priest from his diocese. The canon did not mention the need for this prior notice by any of the bishops. The requirement of giving prior notice limits the freedom of the bishops to end the priest's temporary service in the host diocese at the time of their choosing when there is a just cause to do so.²³⁷ Thus, adding it as a requirement to the current law would change the meaning of the law. It is, therefore, clear here that *CIC*, c. 271, §3 has integrally reordered this particular paragraph of the norm by substantially changing its meaning. Therefore, it is only the canon which is the *ius vigens* in this matter.

²³⁷ However, if the written agreement itself expressly requires prior notice by the bishop terminating the priest's temporary ministry to the other bishop, then this requirement must be observed by the bishop concerned.

In addition to the above, *Postquam apostoli* states that “This agreement cannot be changed unless there is the consent of the interested parties.” This statement was omitted by *CIC*, c. 271. Nevertheless, when two or more parties make a written agreement, it implies that if any changes are to be made to that item, the consent of the two parties is again required. So, this omitted statement from *Postquam apostoli* can be reconciled with and read in light of the stipulation of the law. Therefore, the statement is still in force, that is, the written agreement cannot be changed unless there is the consent of both the bishop *ad quem* and bishop *a quo*.

Other sections of *Postquam apostoli* are also compatible with the *CIC*, c. 271. Both require that the rights and obligations of the priest working outside his diocese of incardination be protected by means of a written agreement. However, no. 27 of *Postquam apostoli* outlines the specific elements that should form the content of the agreement. Canon 271, §2 emphasizes the fact that the priest concerned remains incardinated in his home diocese and, when he returns at the end of his service in the host diocese, he deserves to enjoy all the rights as if he never left. Number 28 of the document of the Congregation for the Clergy spells out the duties of both bishops *a quo* and *ad quem* towards the priest working outside his own diocese. The bishop *a quo* is urged to show his care and support toward the priest while the bishop *ad quem* who is the recipient of the priest’s service is responsible for the spiritual and material welfare of the priest. These articles of *Postquam apostoli* readily harmonize with and can be interpreted in light of the provisions of *CIC*, c. 271 and are, therefore, still in force.

It is evident that, for the most part, *Postquam apostoli* was not integrally reordered by *CIC*, c. 271. While some of its norms have been integrally reordered, most

of the others have not and are still in force. Although not a legislative text, these “directive norms” are binding general administrative norms of executive power with the same force as the general executory decrees and instructions of canons 31-34. Still in force today, they provide the juridical foundation for dioceses involved in drafting agreements for priests working outside their dioceses of incardination.

CONCLUSION

Formal rules regulating the movement of clerics from one place to another developed gradually throughout the different stages of the Church’s history. During the first three centuries, there were no written norms regulating the ministry and movement of church leaders. Itinerant preaching was the common method of evangelization. The Church started to officially address the issue of the movement of its ministers in the fourth century during the Council of Arles. It was in this Council that the first formal legislation requiring ordained ministers to remain attached to their churches of ordination was formulated. The law’s intention was to forbid clerics from moving unnecessarily from one place to another. Church leaders needed to remain attached to specific churches in order to provide stable service to the Christian faithful. In this way, the bond that joined a cleric to his church of ordination was highlighted. Unfortunately, the legislation left no legal room for the transfer of clerics from one church to another, which became an obstacle to the expansion of the Christian faith to other areas.

The bishops of the First Council of Nicaea passed a law that allowed clerics with the consent of their bishops to transfer from one place to another. This did not only open the door for legitimate transfers of clerics but also accentuated the special relationship existing between a cleric and his proper bishop. Later on, the First Council of Carthage

demanded that such permission needed to be put in writing, and this became the first known legislation to require a foreign cleric to have written permission from his bishop in order to transfer legitimately to another diocese. The giving of permission in writing was for liceity only, but it was necessary for ensuring that the permission originated from an authentic ecclesiastical authority.

As legitimate transfers of clergy started to be allowed under some exceptional circumstances, the number of wandering clerics also continued increasing. In order to curb this growing problem of acephalous clerics, every cleric was required to have a title (*titulus*) of ordination. This requirement, which was first introduced by the Council of Chalcedon, limited the ministry of a cleric to one particular place or position where he would receive adequate sustenance in return for the service rendered. Three major titles emerged: the benefice system, the title of patrimony and later the title of mission. These titles had two basic purposes: to safeguard the rights of clerics to proper maintenance and regulate the illicit movement of clerics. Regrettably, the introduction of titles did not succeed in eliminating the problem of vagrant clerics. This was partly because the bishops who did not have enough benefices for every cleric started carrying out absolute ordinations, and as a result, there was a big increase in the number of *clerici acephali*. In addition, the clerics who were ordained with the title of patrimony were not required to serve any definite church, which gave them unlimited freedom to move from one place to another giving rise to an even greater number of wandering clerics. It was clear that further actions needed to be taken.

On account of the rising number of roaming clerics, the Council of Trent was impelled to limit the application of the norms on the title of patrimony and strengthen the

benefice system. The intention of the Council of Trent was to completely eliminate the existence of vagrant clerics and create a stable clergy that was permanently attached to a particular diocese. It renewed the law allowing secular clerics to legitimately transfer from one diocese to another, which required them to obtain written permission from their proper bishops and present it to the receiving bishops. The receiving bishop would then make a judgment either to accept or refuse the cleric from joining his diocese depending on whether or not the cleric was useful to and needed by the diocese.

Pope Innocent XII in his Apostolic Constitution *Speculatores* developed a process for the method of transferring clerics as stipulated by the Council of Trent. Subsequently, the decree *A primis* of the Sacred Congregation of the Council expanded it into a more detailed process, now known as incardination and excardination, which involved a formal exchange of letters between the bishop *a quo* and the bishop *ad quem*. Excardination here meant that after a cleric had obtained the written consent from his proper bishop, he was permanently released from being a member of his diocese. This was simultaneously accompanied by a correlative act called incardination, whereby the same cleric is perpetually affiliated into the membership of another diocese after obtaining written consent of the bishop of that diocese. This process, which had now become the new technique of regulating the movement and ministry of clerics, formed the basis for the legislation on incardination and excardination found in the *CIC/17*.

In the *CIC/17* the concept of incardination shifted. A diocesan cleric now became incardinated into a diocese not only through the exchange of letters but first and foremost by the act of ordination to the first tonsure. Incardination, therefore, became a legal bond that permanently attached a diocesan cleric from the moment he received tonsure to the

diocese for which he was ordained. If, however, there were just reasons, a cleric would be allowed to break that bond and transfer to another diocese following the process of a formal exchange of letters or the implied method. Unfortunately, this new understanding of incardination made it more difficult for diocesan priests to serve the missionary needs of the Church by going to work in other needy dioceses. It was, therefore, not a surprise that c. 144 of the *CIC/17* was introduced to allow clerics with permission from their bishops to go and work temporarily in other dioceses while they remained incardinated in their proper dioceses. This helped to promote the universal aspect of the priestly vocation and a priest's obligation to respond to the missionary needs of the universal Church.

Owing to the above, the Holy See issued documents including the decree *Magni semper*, the Apostolic Constitution *Exsul familia* and encyclical letter *Fidei donum*, which opened the way for distribution of clerics throughout the world. Consequently, in order to enable secular clerics to move more easily from one diocese to another to participate in the universal mission of the Church, the Second Vatican Council called for the renewal of the laws governing the institutes of incardination and excardination. The Council further urged bishops to share their priests either perpetually or temporarily with dioceses that did not have enough clergy to meet the pastoral needs of their faithful.

In an effort to implement the recommendations of the Second Vatican Council, Pope Paul VI, in his apostolic letter *Ecclesiae sanctae I*, specifically required a written agreement as a means of regulating the ministry of diocesan clerics working outside their dioceses of incardination. This was the first time in the history of the Church that the written agreement for a cleric to serve in another diocese was explicitly required. The main purpose of the agreement is twofold. Firstly, it controls the unnecessary movement

of diocesan clerics because, before a cleric moves to work in another diocese, this agreement has to be made. Secondly, the agreement safeguards not only the rights and obligations of diocesan clerics working outside their dioceses of incardination but also of the bishop *a quo* and bishop *ad quem*. In 1980, the Congregation for the Clergy issued the Directive Norms *Postquam apostoli*, which provides a list of some elements that should be included in the agreement, but it is not an exhaustive list. This written agreement became the subject matter of c. 271, §§ 1 and 3 of the *CIC*, whose analysis is the focus of this study.

2 INCARDINATION AND TEMPORARY SERVICE IN THE *CIC*

As outlined in chapter one, the Church has throughout its history regulated the ministry and movement of clerics from one diocese to another by formulating stringent laws that forbade clerics from moving unnecessarily. One of these laws required a cleric to obtain written permission from his proper bishop allowing him to work in another diocese. Another law required a cleric first to possess a title of ordination before he could be accepted in a different diocese. Additionally, the *CIC/17* stipulated clear laws governing the process of incardination and excardination, requiring compliance before a cleric could change dioceses permanently. There was also a law in the *CIC/17* (c. 144) that allowed a cleric to move temporarily to serve in another diocese while maintaining incardination in his home diocese. These were methods through which the legislator regulated the movements of clerics from one diocese to another.

The purpose of this chapter is to show how the legislator uses the method of temporary service of clerics outside their dioceses of incardination, stipulated in *CIC*, c. 271, as a way of regulating the ministry and movement of diocesan priests. As already mentioned in the General Introduction, the law on temporary service of clerics applies to all priests and deacons, but the focus here is on diocesan priests only. However, before treating temporary service, it is important to show how the legislator uses the process of incardination and excardination to regulate the ministry and movements of clerics from one diocese to another. The essential purpose of the canonical institute of incardination is the creation of a stable clergy who can provide steady service to a faith community. James Donlon rightly connects incardination to the rights of the Christian faithful to receive the spiritual riches of the Church from their sacred pastors as stated in *CIC*, c.

213.²³⁸ The institute of incardination, therefore, guarantees that the needs of the Christian faithful are provided for by a stable clergy. Without such stability, the spiritual welfare of the faithful would suffer because clerics would be constantly moving from one particular Church to another.²³⁹ The *CIC*, like the legislation before it, absolutely forbids wandering clerics (*CIC*, c. 265) and demands that at the ordination to the diaconate every cleric be incardinated to a particular Church or institute with the faculty to incardinate (*CIC*, c. 266). After being initially incardinated to an ecclesiastical entity through the diaconal ordination, if there is need, a cleric can subsequently change his incardination status either through the formal method (*CIC*, cc. 267, 269 and 270) or automatic processes (*CIC*, cc. 268 and 693). This is in response to the call of the Second Vatican Council for the reform of the norms of incardination and excardination to enable a better and just distribution of clerics throughout the world.

In addition to the formal and automatic processes of changing incardination status, the legislator designed another method described in the norms of c. 271 of the *CIC*, which allows clerics to serve in other dioceses without being excardinated from their home dioceses. Through this method, the legislator uses a process that differs from, and does not require, incardination and excardination to regulate the movement of clerics.²⁴⁰

²³⁸ J.A. DONLON, "Incardination and Excardination: The Rights and Obligations of the Cleric and of the Church: A Matter of Personal Justice," in *CLSAP*, 43 (1991), 131.

²³⁹ MCBRIDE, *Incardination and Excardination of Seculars*, 37.

²⁴⁰ W.A. ŁAPCZYŃSKI, *The Juridic Status of Fidei Donum Priests: The Archdiocese of Lusaka in Zambia: An Example of Application*, JCD diss., Rome, Edizioni Università della Santa Croce, 2010, 112 (= ŁAPCZYŃSKI, *The Juridic Status of Fidei Donum Priests*). Also, see E. OLIVARES, "Incardinatione," in V. DE PAOLIS, G. GHIRLANDA, C.C. SALVADOR (eds.), *Nuovo dizionario di diritto canonico*, Milan, San Paolo, 1993, 567-569.

In this chapter, we shall first systematically examine the seven canons that contain the various aspects of incardination/excardination in the *CIC* and point out how the legislator applies them to regulate the ministry and movements of clerics. Secondly, we shall analyze the law on temporary service of clerics outside their dioceses of incardination as stipulated in *CIC*, c. 271. This will include tracing the textual development of the canon and evaluating its three components. The textual analysis will help provide the context in which the agreement for the temporary service of a diocesan cleric in another diocese was placed in the *CIC* section dealing with incardination, although the agreement itself does not deal with any aspect of incardination or excardination.

2.1 Canonical Structures with the Faculty to Incardinate

In *CIC*, c. 265, the *CIC* reiterates the canonical principle that absolutely forbids the existence of acephalous clerics, that is, clerics who do not have ecclesiastical superiors to whom they are accountable. The canon reads: “Every cleric must be incardinated either in a particular church or personal prelatore, or in an institute of consecrated life or society endowed with this faculty, in such a way that unattached or transient clerics are not allowed at all.”²⁴¹ A similar canon is enacted in *CCEO*, c. 357, §1.²⁴²

²⁴¹ “Quemlibet clericum oportet esse incardinatum aut alicui Ecclesiae particulari vel praelaturae personali, aut alicui instituto vitae consecratae vel societati hac facultate praeditis, ita ut clerici acephali seu vagi minime admittantur” (*CIC*, c. 265).

²⁴² “Quilibet clericus debet esse ut clericus ascriptus aut alicui eparchiae aut exarchiae aut instituto religioso aut societati vitae communis ad instar religiosorum aut instituto vel consociationi, quae ius clericos sibi ascribendi adepta sunt a Sede Apostolica vel intra fines territorii Ecclesiae, cui praeest, a Patriarcha de consensu Synodi permanentis” (*CCEO*, c. 357, §1).

There are two major sources for this norm: *CIC/17*, c. 111 and *Presbyterorum ordinis*, no. 10. Canon 111 of the *CIC/17* reads as follows:

- §1. Every cleric whatsoever must be ascribed to a given diocese or religious institute, so that wandering clerics are in no way admitted.
 §2. Through the reception of the first tonsure a cleric is ascribed, or as they say, *incardinated*, into that diocese for whose service he was promoted.²⁴³

There are two things to be noted here. Firstly, instead of *incardination*, this canon uses the term *adscription*, which referred to the permanent attachment of both secular and religious clerics to some ecclesiastical entity, which was either a diocese or a religious institute. This was to emphasize the fact that the *CIC/17* did not speak of religious clerics as *incardinated* but as *inscribed* in the institute while secular clerics were either *inscribed* or *incardinated* into a diocese.²⁴⁴ Secondly, according to *CIC/17*, c. 111, §1, dioceses and religious institutes were the only ecclesiastical entities listed as having the competency to *incardinate* clerics.

The second source of *CIC*, c. 265 was *Presbyterorum ordinis*, no. 10, which reads in part:

In addition, the rules about *incardination* and *excardination* should be revised in such a way that, while this ancient institution remains intact, it will answer better the pastoral needs of today. [...] For this purpose international seminaries can with advantage be set up, special dioceses, or personal prelacies and other institutions to which, by methods to be decided for the individual undertaking and always without prejudice to the rights of local ordinaries, priests can be attached or *incardinated* for the common good of the whole church.²⁴⁵

From the text quoted above, it can be seen that the Second Vatican Council was making a significant departure from the 1917 Code, which limited attachment or

²⁴³ “Quemlibet clericum oportet esse vel alicui dioecesi vel alicui religioni adscriptum, ita ut clerici vagi nullatenus admittantur. §2. Per receptionem primae tonsurae clericus adscribitur seu, ut aiunt, *incardinator* dioecesi pro cuius servitio promotus fuit” (*CIC/17*, c. 111, §1, English translation in E.N. PETERS, *The 1917 Pio-Benedictine Code of Canon Law*).

²⁴⁴ WOESTMAN, *The Sacrament of Orders and the Clerical State*, 148.

²⁴⁵ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 10, in *FLANNERY I*, 882.

incardination of a cleric to a diocese or religious institute. In a major change to *CIC/17*, c. 111, the Council widened the structures where clerics can be incardinated to include personal prelatures. This change was affirmed by Pope Paul VI in his apostolic letter *Ecclesiae sanctae I*, where he granted personal prelatures the faculty to incardinate their priests.²⁴⁶ By giving personal prelatures the right to incardinate, the pope was opening the way for entities or structures other than dioceses and religious institutes to incardinate clerics. During the revision of the *CIC/17*, the study group or *coetus De sacra hierarchia*, which was given the task of revising the section of the code where the norms of incardination are treated, also discussed the change of ecclesiastical structures to which a cleric could be attached or incardinated.

The *coetus* proposed a wider norm that would allow clerics to be incardinated into either particular Churches (*CIC*, c. 368),²⁴⁷ personal prelatures (*CIC*, cc. 294-297), institutes of consecrated life (*CIC*, cc. 573-606) or clerical societies of apostolic life which have the faculty to incardinate (*CIC*, cc. 731-746).²⁴⁸ Incardination into all these ecclesiastical structures takes effect *ipso iure* by ordination to the diaconate.²⁴⁹ The

²⁴⁶ “Moreover, to carry on special pastoral or missionary work for various regions or social groups which need special assistance, prelatures composed of priests from the secular clergy equipped with special training can be usefully established by the Apostolic See. These prelatures are under the government of their own prelate and possess their own statutes. It will be in the competence of this prelate to establish and direct a national or international seminary in which students are suitably instructed. The same prelate has the right to incardinate the same students and to promote them to sacred orders under the title of service for the prelate” (PAUL VI, *ESI*, no. 4).

²⁴⁷ *CIC*, c. 368 defines a particular Church as a diocese and those entities equivalent to a diocese, namely, a territorial prelate (*CIC*, c. 370), a territorial abbacy (*CIC*, c. 370), an apostolic vicariate (*CIC*, c. 371, §1), an apostolic prefecture (*CIC*, c. 371, §1) or an apostolic administration erected in a stable manner (*CIC*, c. 371, §2).

²⁴⁸ D. LE TOURNEAU, “The Enrollment or Incardination of Clerics,” in A. MARZOA, J. MIRA, and R. RODRIGUEZ-OCAÑA (eds.), *Exegetical Commentary on the Code of Canon Law*, Prepared under The Martin de Azpilcueta Institute Faculty of Canon Law, University of Navarra, vol. II/I, Montreal, Wilson & Lafleur, 2004, 303 (= LE TOURNEAU, “The Enrollment or Incardination of Clerics”).

²⁴⁹ *Ibid.*, 303.

intention of the *coetus* was to ensure that every juridical institute, which had emerged in response to the pastoral challenges of the Church, had the right to incardinate clerics so that there was no excuse for clerics not being incardinated somewhere.

Another major change was in the language of the final text of c. 265. The *coetus* dropped the term *adscriptio* and preferred to use only one term, *incardinatio*, to emphasize and simplify the fact that all clerics, whether secular or religious, have to be incardinated into a canonical entity. The use of only one term was a way of eliminating any confusion that could arise in trying to differentiate the meanings of the terms adscription and incardination. The legislator wanted to be categorically clear that all clerics are supposed to be incardinated.

It is important to add here that the list of canonical structures with the competency to incardinate in *CIC*, c. 265 is not exhaustive. In fact, since the *CIC* came into effect, two other ecclesiastical structures have emerged which have the faculty to incardinate clerics, namely, military ordinariates²⁵⁰ and the personal ordinariates of Anglicans who wish to enter full communion with the Catholic Church.²⁵¹ Both of these new structures are governed by special laws.

In addition to the above, when revising *CIC*, c. 111, §1, the *coetus* decided to add the ancient word *acephali* to the phrase *clerici vagi*. The new phrase in *CIC*, c. 265 now reads as *clerici acephali seu vagi*. Although the two phrases mean essentially the same

²⁵⁰ JOHN PAUL II, Apostolic Constitution *Spirituali militum curae*, 21 April 1986, in AAS 78 (1986), 481-486, English translation in *The Pope Speaks*, 31 (1986), 284-288. Article 6 §4 reads, "Other clerics also may be incardinated, according to the norm of law, into the Army Ordinariate."

²⁵¹ BENEDICT XVI, Apostolic Constitution *Anglicanorum coetibus*, 4 November 2009, in AAS, 102 (2010), 985-990, English translation in *Origins*, 39 (2009), 388-392. Article 4, §2 of the complementary norms issued by the Congregation of the Doctrine of the Faith states that "The Ordinary has the faculty to incardinate former Anglican ministers who have entered full communion with the Catholic Church, as well as candidates belonging to the Ordinariate and promoted to Holy Orders by him."

thing, there is a slight but significant difference between them. On the one hand, the term *clericus vagus* portrays more the notion of wandering, roaming or transient clerics, in the sense of not being attached to a specific ecclesiastical structure. The emphasis is on the lack of attachment to an ecclesiastical structure in a geographical sense. On the other hand, *clericus acephalus* emphasizes the relationship that is lacking between a cleric and a superior or head of particular Church or religious institute.²⁵² Therefore, by adding the word *acephali*, the legislator wanted to emphasize the fact that when a cleric is incardinated into an ecclesiastical entity, he also develops a special relationship with the superior of that canonical entity who, consequently, becomes his ecclesiastical superior. Therefore, the *mens legislatoris* of *CIC*, c. 265 is that every cleric must be incardinated somewhere at any given moment and, as a result, must have a canonical superior who regulates his movements and his pastoral activities.²⁵³

2.2 Initial Incardination

Having stated in the introductory *CIC*, c. 265 that every cleric must be incardinated in some canonical entity, the legislator proceeds to stipulate exactly when a cleric becomes initially incardinated into a competent canonical structure. Canon 266 of *CIC*, which has three paragraphs, identifies three ways by which a cleric is initially incardinated into a canonical structure with a capacity to incardinate. The canon reads as follows:

§1. Through the reception of the diaconate, a person becomes a cleric and is incardinated in the particular church or personal prelature for whose service he has been advanced.

§2. Through the reception of the diaconate, a perpetually professed religious or a definitively incorporated member of a clerical society of apostolic life is incardinated as a

²⁵² MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 143.

²⁵³ *Ibid.*, 144.

cleric in the same institute or society unless, in the case of societies, the constitutions establish otherwise.

§3. Through the reception of the diaconate, a member of a secular institute is incardinated in the particular church for whose service he has been advanced unless he is incardinated in the institute itself by virtue of a grant of the Apostolic See.²⁵⁴

The *CCEO* addresses initial incardination of a secular cleric in c. 358, which reads:

Through diaconal ordination, one is ascribed as a cleric to the eparchy for whose service he is ordained, unless in accord with the norm of particular of his own Church *sui iuris*, he has already been ascribed to the same eparchy.²⁵⁵

The three paragraphs of *CIC*, c. 266 identify three modes of initial incardination which are specific to where the person to be ordained and incardinated belongs. The basic principle common to all the three modes is that a person becomes a cleric through ordination to the diaconate, while at the same time becomes incardinated into an ecclesiastical structure for whose service he is ordained. This is a major change from the former law of the *CIC/17*, where reception of first tonsure was the entry to the clerical state. A man became a minor cleric through the reception of a tonsure (*CIC/17*, c. 108, §1) and, consequently, incardinated into the diocese for which he would be ordained (*CIC/17*, c. 111, §2).

The main source of paragraph one of *CIC*, c. 266 is Pope Paul VI's 1972 apostolic letter *Ministeria quaedam*,²⁵⁶ in which the pope abolished the reception of the first

²⁵⁴ “Per receptum diaconatum aliquis fit clericus et incardinatur Ecclesiae particulari vel praelaturae personali pro cuius servitio promotus est. §2. Sodalitas in instituto religioso a votis perpetuis professus aut societati clericali vitae apostolicae definitive incorporatus, per receptum diaconatum incardinatur tamquam clericus eidem instituto aut societati, nisi ad societates quod attinet aliter ferant constitutiones. §3. Sodalitas instituti saecularis per receptum diaconatum incardinatur Ecclesiae particulari pro cuius servitio promotus est, nisi vi concessionis Sedis Apostolicae ipsi instituto incardinetur” (*CIC*, c. 266, §1).

²⁵⁵ “Per ordinationem diaconalem aliquis ut clericus ascribitur eparchiae, pro cuius servitio ordinatur, nisi ad normam iuris particularis propriae Ecclesiae sui iuris eidem eparchiae iam ascriptus est” (*CCEO*, c. 358). See also *CIC*, c. 428 for the initial ascription of a religious cleric.

²⁵⁶ PAUL VI, Apostolic letter *motu proprio* on first tonsure, minor orders and the sub diaconate *Ministeria quaedam*, 15 August 1972, in *AAS*, 64 (1972), 529-534, English translation in *CLD*, vol. 7, 690-698 (= Paul VI, *Ministeria quaedam*).

tonsure and made the ordination to the diaconate the entry point to the clerical state. The pope states:

By our apostolic authority, we enact the following norms, amending-if and in so far as is necessary-provisions of the *Codex Iuris Canonici* now in force, and we promulgate them through this Motu Proprio.

1. First tonsure is no longer conferred; entrance into the clerical state is joined to the diaconate.²⁵⁷

With the above pronouncement of Pope Paul VI, beginning 1 January 1973, valid ordination to the diaconate became the point through which an individual entered the clerical state and consequently became incardinated into a specific canonical entity. If for some reason, the diaconate ordination were invalid, the incardination too would be invalid because initial incardination is the direct consequence of the diaconate ordination. Therefore, it is very important that before ordaining anyone to the diaconate, the bishop performing the ordination needs to ensure that the candidate to be ordained a deacon meets the canonical requirements for the ordination to the diaconate, as stipulated in *CIC*, cc. 1024-1039.²⁵⁸ The *coetus de sacra hierarchia*, which was in the process of revising the *CIC/17*, discussed the change introduced by Pope Paul VI and adopted it as the principal element of c. 266 of the *CIC*.²⁵⁹

Paragraph two of *CIC*, c. 266 speaks of the incardination of the perpetually professed members of religious institutes and members of clerical societies of apostolic life who are already definitively incorporated into the society. Although it is outside the

²⁵⁷ "... Apostolica auctoritate Nostra decernimus ea, quae sequuntur, derogando si et quatenus opus sit praescriptis Codicis Iuris Canonici hucusque vigentis, eademque hisce Litteris promulgamus. I. Prima Tonsura non amplius confertur; ingressus vero in statum clericalem cum Diaconatu coniungitur" (Ibid., 31, English translation in *CLD*, vol. 7, 691).

²⁵⁸ R.J. KASLYN, "Two Incardination Processes: Initial and Subsequent Alteration," in *Studies in Church Law*, 3 (2007), 246-247 (= KASLYN, "Two Incardination Processes"). *CCEO* contains requirements for candidates for sacred ordination in cc. 758-761.

²⁵⁹ *Communicationes*, 24 (1992), 276.

scope of this research, it is important to mention that a person belonging to a religious institute must have first made perpetual vows before he can be incardinated into the institute through diaconal ordination. In other words, perpetual vows have to come first before diaconate ordination and the consequent incardination into the institute. Similarly, a member belonging to a clerical society of apostolic life must first be definitively incorporated into the society before he can be ordained a deacon and incardinated into the society. However, the canon leaves room for an exception when the constitutions of a society of apostolic life indicate that incardination may take place somewhere else. For example, the constitutions of the Society of St. Sulpice specify that their members are incardinated in their home diocese.²⁶⁰

Paragraph three of *CIC*, c. 266 applies to members of secular institutes.²⁶¹ This paragraph is also outside the scope of this research but it is helpful to mention that, as a general rule, secular institutes do not have the right to incardinate unless the Holy See has granted them the faculty to do so. Their members are incardinated by means of diaconal ordination either into the diocese for whose service they were ordained or into the secular institute itself if an indult of the Holy See has permitted the institute to incardinate.²⁶²

²⁶⁰ W.H. WOESTMAN, *The Sacrament of Orders and the Clerical State: A Commentary on the Code of Canon Law*, third edition, Ottawa, Saint Paul University, Faculty of Canon Law, 2006, 151. Article 55 of the Constitution states: “Members of the Society and candidates remain incardinated in their dioceses. If they leave the Society by their own choice, if they are canonically dismissed or if they are denied temporary or definitive admission, they come once more under the direct authority of their Ordinary.” The Constitutions can be found in <http://www.sulpc.org/CONSTITUTIONS-EN.pdf>, 22 December 2015.

²⁶¹ *CIC*, c. 710 describes a secular institute as follows: “A secular institute is an institute of consecrated life in which the Christian faithful, living in the world, strive for the perfection of charity and seek to contribute to the sanctification of the world, especially from within.”

²⁶² *CIC*, c. 711 states that “The consecration of a member of a secular institute does not change the member’s proper canonical condition among the people of God, whether lay or clerical, with due regard for the prescripts of the law which refer to the institutes of consecrated life.”

The intention of the legislator behind *CIC*, c. 266 is to ensure that no person enters the clerical state without being incardinated somewhere. With this canon, the legislator guarantees that by the very act of his ordination to the diaconate, the cleric is incardinated by the law itself (*ipso iure*) into the canonical entity for which he is being ordained. Consequently, incardination creates a special and permanent bond between the cleric and the particular Church or ecclesiastical structure for which he is ordained. Similarly, a special bond is created between the cleric and the ecclesiastical superior of that individual structure, who becomes the supervisor of the cleric's pastoral activities. This is how the legislator uses this canon to regulate the ministry and movement of clerics.

2.3 Procedures for Changing Incardination

As already noted, it has consistently been the law of the Church that every cleric must be attached to a specific canonical entity in order to provide stable service to the people belonging to that structure. However, as stated in *Presbyterorum ordinis*, no. 10, priests have a divine call to serve the needs of the universal Church.²⁶³ Therefore, to allow priests to respond to the universal dimension of their vocation and to the Second Vatican Council's call for a better distribution of clergy throughout the world, the *CIC*, like the *CIC/17* before it, provides the means through which a priest who has already been initially incardinated can change his incardination status. This can be done either through the formal process (*CIC*, cc. 267, 269 and 270) or automatic processes (*CIC*, cc. 268 and 693). In the sections that follow, the formal process will be discussed first, followed by the automatic method of changing incardination.

²⁶³ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 10, in *FLANNERY I*, 882.

2.3.1 Formal Process (*CIC*, cc 267, 269 and 270)

A cleric who has already been initially incardinated through the diaconate ordination into a particular Church or another canonical entity can change his incardination status by petitioning the bishop *a quo* for excardination and the bishop *ad quem* for incardination. The two bishops or their equivalents in law would then officially exchange letters regarding the cleric's request for excardination and incardination. This process is called formal or derived incardination, and its procedure and requirements are clearly outlined in cc. 267, 269 and 270 of the *CIC* or cc. 359, 366, 365, §1 of the *CCEO*.

2.3.1.1 Requirements for the Validity of the Formal Process

Canon 267 reads as follows:

§1. For a cleric already incardinated to be incardinated validly in another particular church, he must obtain from the diocesan bishop a letter of excardination signed by the same bishop and a letter of incardination from the diocesan bishop of the particular church in which he desires to be incardinated signed by that bishop.

§2. Excardination thus granted does not take effect unless incardination in another particular church has been obtained.²⁶⁴

The requirements stipulated in this canon had already been provided for in *CIC/17*, c. 112, and reechoed by the decree *Magni semper* of the Sacred Consistorial Congregation²⁶⁵ and Pope Pius XII's Apostolic Constitution *Exsul familia*.²⁶⁶ During the revision of the *CIC/17*, the *Coetus de sacra hierarchia*, responsible for the reworking of the norms of incardination, in their first session in 1966, decided that they would retain

²⁶⁴ “§1. Ut clericus iam incardinatus alii Ecclesiae particulari valide incardinetur, ab Episcopo dioecesano obtinere debet litteras ab eodem subscriptas excardinationis; et pariter ab Episcopo dioecesano Ecclesiae particularis cui se incardinari desiderat, litteras ab eodem subscriptas incardinationis. §2. Excardinatio ita concessa effectum non sortitur nisi incardinatione obtenta in alia Ecclesia particulari” (*CIC*, c. 267). *CCEO* enacts a similar norm in c. 359: “Ut clericus alicui eparchiae iam ascriptus ad aliam eparchiam valide transire possit, a suo Episcopo eparchiali obtinere debet litteras dimissionis ab eodem subscriptas et pariter ab Episcopo eparchiali eparchiae, cui ascribi desiderat, litteras ascriptionis ab eodem subscriptas.”

²⁶⁵ SACRED CONSISTORIAL CONGREGATION, Decree *Magni semper*, 39-43.

²⁶⁶ PIUS XII, Apostolic Constitution *Exsul familia*, 649-704.

the text of the c. 112, §1 of the *CIC/17* with a few minor changes. One of the changes made by the *coetus* was wherever the word *dioecesis* appeared in the canon, it was replaced by *Ecclesia particularis*.²⁶⁷

Paragraph one of this canon clearly spells out that, for the validity of the formal process of incardination, the cleric seeking to change his incardination status must obtain from his proper bishop a letter granting him excardination. Secondly, the cleric must obtain from the diocesan bishop of the receiving diocese a letter granting him incardination. The first letter only becomes effective when the second one comes into existence and also takes effect.²⁶⁸ In other words, neither one of these letters is effective without the other. The excardination and incardination occur simultaneously once the cleric has received both letters, unless a specific date for the effectiveness of the incardination is indicated in the letter of the bishop *ad quem*. In this way, the legislator eliminates the possibility of there being, at any moment and for however short a time in the administrative proceedings, clerics who have been excardinated and not incardinated.²⁶⁹ The letters must be addressed to the cleric requesting excardination and incardination and explicitly mention both of the dioceses involved.²⁷⁰

In addition to the above, for the validity of the juridic acts of excardination and incardination, the letters must be signed by the respective diocesan bishops or their

²⁶⁷ “Praeterea, logice admittitur loco verbi “dioecesis,” uti in canone 112, ponenda esse verba ‘Ecclesia particularis’” (*Communicationes*, 16 (1984), 162).

²⁶⁸ LE TOURNEAU, “The Enrollment or Incardination of Clerics,” 310.

²⁶⁹ T. RINCÓN, “Commentary on Canon 267,” in *CCLA*, 225.

²⁷⁰ See F. MORRISEY, in *Roman Replies and CLSA Advisory Opinions 2004*, 111-112.

equivalents in law (*CIC*, c. 474).²⁷¹ Any oral communication or unsigned statements through e-mail or other social media would not suffice.

Since the requirements stated in this canon are for validity, if any prescribed element is lacking, the process is rendered inoperative and the cleric remains incardinated in his original diocese. Furthermore, since these requirements are constitutive to this canon, in light of *CIC*, c. 86, neither the bishop *a quo* nor the bishop *ad quem* can dispense from them. As described by John Huels, a law that is essentially constitutive of a juridic act is “one that determines an essential element of the act such that, lacking that element, the act would be null, juridically nonexistent.”²⁷² These laws are not subject to dispensation by the diocesan bishop. In other words, the written permission from both bishops required by *CIC*, c. 267, §1 is a legal formality that must be observed in order for the priest to be able to change his incardination status. In this way, the universal law gives the diocesan bishop the power to be in full control of the process of incardination and excardination and, consequently, regulate the movements of clerics.

2.3.1.2 Requirements for Licit Incardination

The diocesan bishop *ad quem* is supposed to observe certain conditions before he incardicates a cleric who is already incardinated elsewhere. Canon 269 outlines three conditions that are not taxative and are needed for liceity only.²⁷³ The canon reads as follows:

²⁷¹ KASLYN, “Two Incardination Processes,” 255.

²⁷² J.M. HUELS, “Categories of Indispensable and Dispensable Laws,” in *Studia canonica*, 39 (2005), 43. Also, see J.M. HUELS, “Constitutive Law and Juridic Institutes (c. 86),” in *Ius Ecclesiae*, 16 (2004), 711-739.

²⁷³ KASLYN, “Two Incardination Processes,” 254. It is important to mention here that although *CIC*, c. 269 contains the particle *nisi* (unless), the conditions are not required for validity because they are imposed by the law itself. According to *CIC*, c. 39, conditions expressed by the particles *si*, *nisi*, or

A diocesan bishop is not to allow the incardination of a cleric unless:

- 1° the necessity or advantage of his own particular church demands it, and without prejudice to the prescripts of the law concerning the decent support of clerics;
- 2° he knows by a lawful document that excardination has been granted, and has also obtained from the excardinating bishop, under secrecy if need be, appropriate testimonials concerning the cleric's life, behavior and studies;
- 3° the cleric has declared in writing to the same diocesan bishop that he wishes to be dedicated to the service of the new particular church according to the norm of law.²⁷⁴

These conditions are drawn from *CIC/17*, c. 117, which is the only source identified for this canon. During the revision of the *CIC/17*, the *Coetus de sacra hierarchia* retained *CIC*, c. 117 with some changes.²⁷⁵

Number one of the canon requires the bishop *ad quem* to determine, before incardinating the cleric, whether there is a need (*necessitas*) for such a cleric or whether such a cleric will be useful (*utilitas*) to his diocese. For example, if the diocese does not have sufficient clergy of its own, the bishop might judge that the addition of this particular cleric to his presbyterate will help alleviate that problem. Alternatively, the cleric might be qualified in a specific field like canon law, so the bishop might judge that such a cleric will be useful in the diocesan tribunal or chancery.

dummodo affect the validity of only singular administrative acts. They do not apply to conditions imposed by the law. According to *CIC*, c. 10, laws that are invalidating or disqualifying have to be expressly stated to be such in the law.

²⁷⁴ “Ad incardinationem clerici Episcopus dioecesanus ne deveniat nisi: 1° necessitas aut utilitas suae Ecclesiae particularis id exigat, et salvis iuris praescriptis honestam sustentationem clericorum respicientibus; 2° ex legitimo documento sibi constiterit de concessa excardinatione, et habuerit praeterea ab Episcopo dioecesano excardinanti, sub secreto si opus sit, de clerici vita, moribus ac studiis opportuna testimonia; 3° clericus eidem Episcopo dioecesano scripto declaraverit se novae Ecclesiae particularis servitio velle addici ad normam iuris” (*CIC*, c. 269). The *CCEO* has a similar norm in c. 366, which reads, “§1. Episcopus eparchialis suae eparchiae alienum clericum ne ascribat, nisi: 1° necessitates vel utilitas eparchiae id exigunt; 2° sibi constat de aptitudine clerici ad ministeria peragenda, praesertim si clericus ab alia Ecclesia sui iuris pervenit; 3° sibi ex legitimo documento constat de legitima dimissione ex eparchia et habet ab Episcopo eparchiali dimittente opportuna testimonia de curriculo vitae et moribus clerici, etiam, si opus est, sub secreto. 4° clericus scripto declaravit se novae eparchiae servitio devovere ad normam iuris. §2. Episcopus eparchialis de peracta suae eparchiae ascriptione clerici priorem Episcopum eparchialem quam primum certiore faciat.”

²⁷⁵ *Communicationes*, 16 (1984), 166.

Secondly, before the bishop *ad quem* proceeds to grant incardination, he needs to ascertain from the bishop *a quo*, through a legitimate document, that excardination has been granted. A promise of excardination is not enough.²⁷⁶ In addition, the bishop *ad quem* needs to receive from the bishop *a quo* testimonials concerning the suitability of the cleric. The bishop *ad quem* needs to evaluate this suitability in the same way he would assess a candidate for orders.²⁷⁷

Thirdly, the canon requires that the cleric who is changing incardination declares in writing his intention to serve permanently in the new diocese. In the *CIC/17*, the incardinating cleric was required to take an oath (*CIC/17*, c. 117, 3°). In this canon, expressing intention in writing is sufficient. The declaration concerns the present intention; it does not mean that the cleric may not later wish to change his incardination again.²⁷⁸ The canon does not demand that the cleric repeat the promise of obedience made at ordination. However, the bishop *ad quem* becomes his proper bishop when he is incardinated.²⁷⁹

2.3.1.3 Requirements for Licit Excardination

Canon 270 reads as follows:

Excardination can be licitly granted only for just causes such as the advantage of the Church or the good of the cleric himself. It cannot be denied, however, except for evident, grave causes. A cleric who thinks he has been wronged and has found an accepting bishop, however, is permitted to make recourse against the decision.²⁸⁰

²⁷⁶ MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 76.

²⁷⁷ *Ibid.*, 76.

²⁷⁸ *Ibid.*, 177.

²⁷⁹ SCHNEIDER, "The Enrollment, or Incardination, of Clerics," 336.

²⁸⁰ "Excardinatio licite concedi potest iustis tantum de causis, quales sunt Ecclesiae utilitas aut bonum ipsius clerici; denegari autem non potest nisi exstantibus gravibus causis; licet tamen clerico, qui se gravatum censuerit et Episcopum receptorem invenerit, contra decisionem recurrere" (*CIC*, c. 270). A similar norm is enacted in *CCEO*, c. 365, §1, which reads, "Ad licitum transitum vel transmigracionem

A similar norm is enacted in *CCEO*, c. 365, §1.

The primary source of this canon is the Second Vatican Council's decree *Presbyterorum ordinis*, no.10. In this decree, the fathers of the Second Vatican Council urged priests to "bear in mind that they ought to care for all the churches" because they share in the priesthood of Christ, which is "directed to all peoples and all times, and is not confined by any bounds of blood, race, or age."²⁸¹ Priests, therefore, have a divine call and right to respond to the needs of the universal Church by exercising ministry where there is greater need. Since priests are ordained for, and are incardinated in, particular Churches, they need to be able to move easily to serve the needs of another local Church. To some degree *CIC/17*, c. 116 had already made this possible by allowing excardination to be granted for just causes only.

Black's Law Dictionary defines a just cause (*iusta causa*) as "a legally sufficient reason."²⁸² In this canon, it is the minimal reason that the bishop *a quo* needs to legally grant excardination to a cleric who has requested it. The present canon goes beyond *CIC/17*, c. 116 to give two examples of a just cause. Firstly, it can be the advantage of the Church, for example, another diocese may have a serious lack of clergy.²⁸³ Secondly, it can be the good of the priest himself, for example serious health problems or desire to be closer to family members.²⁸⁴ These examples are not taxative.

requiruntur iustae causae, quales sunt Ecclesiae utilitas vel bonum ipsius clerici; licentia autem ne denegetur nisi exstantibus gravibus causis."

²⁸¹ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 10, in *FLANNERY I*, 891.

²⁸² B.A. GARNER, (ed. in chief), *Black's Law Dictionary*, 7th ed., St. Paul, MN, West Group, 1999, 213 (= GARNER, *Black's Law Dictionary*).

²⁸³ SCHNEIDER, "The Enrollment, or Incardination, of Clerics," 337.

²⁸⁴ L. JARRELL, "A Look at Current Practices Surrounding the Transfer of Clerics," in *The Jurist*, 50 (1990), 315-316.

The canon also goes further to restrict the bishop *a quo* from denying excommunication to a cleric who has requested it without having a serious reason. Canon 270 makes a provision for a cleric who feels that he has been unjustly denied excommunication to take recourse to the Holy See against the bishop's decision. He would have to do so following the procedures laid down in book VII of the *CIC* (cc. 1732-1739).

This canon does two things simultaneously. It protects the cleric's right to petition his bishop for excommunication in order to serve the needs of the universal Church while, at the same time, leaving the power of the bishop to regulate the transfer of his clergy intact. The cleric only needs to have a just cause to request excommunication while the bishop needs to have a serious reason to deny it. However, the bishop is the judge who determines what constitutes the just cause for granting excommunication and the serious cause for denying it. The canon, therefore, gives the bishop the power to regulate the excommunication of his clerics.

2.3.2 *Ipsa iure* process (Canon 268, §1)

As it has been discussed above, a cleric is initially incardinated into a particular Church or another ecclesiastical entity by ordination to the diaconate (*CIC*, c. 266). After this initial incardination, a cleric can, for a just reason, change his incardination status either through the formal process (*CIC*, cc. 267, 269-270) or the *ipso iure* method whereby a cleric is automatically excommunicated from one diocese and incardinated into another by the law itself (*ipso iure*) under specified conditions. The *CIC* provides for three forms of *ipso iure* incardination. The first form, found in *CIC*, c. 268, §1, deals with secular clerics changing their incardination status from one particular Church to another particular Church. The second form, described in *CIC*, c. 268 §2, concerns a secular

cleric who wishes to change his incardination status from his own particular Church to a religious institute or a society of apostolic life with the faculty to incardinate its members. The third form of *ipso iure* incardination is not dealt with in *CIC*, c. 268 but in *CIC*, c. 693. It concerns the incardination of a former religious cleric who has legitimately left a religious institute or a society of apostolic life. Since the second and third forms of *ipso iure* incardination deal with religious clerics, they will not be discussed here because they fall outside the scope of this dissertation.

In the paragraphs that follow below, the first *ipso iure* method of changing incardination by secular clerics from one particular Church to another, as described in *CIC*, c. 268, §1, will be discussed. This *ipso iure* method of incardination did not exist in the *CIC/17*. It was first permitted by Pope Paul VI in *Ecclesiae sanctae I*, §3, no. 5, which reads as follows:

However, a cleric who has legitimately transferred from his diocese to another is, by law, incardinated into a new diocese at the end of five years if he manifested such an intention in writing both to the Ordinary of the guest diocese and to his own Ordinary and provided that neither of these indicate his opposition to his intention in writing within four months.²⁸⁵

This new norm of *ipso iure* incardination was, not long after its promulgation in *Ecclesiae sanctae I*, put to the test in a case in the Archdiocese of Miami involving Fr. Anthony X and the Archbishop of Miami.²⁸⁶ The case was brought first to the attention of the Sacred Congregation for the Clergy, which ruled against Fr. Anthony and in favor of the Archbishop. Fr. Anthony then made a recourse to the Apostolic Signatura against the

²⁸⁵ “Clericus autem qui a propria dioecesi in aliam legitime transmigraverit, huic dioecesi, transacto quinquennio, ipso iure incardinatur, si talem voluntatem in scriptis manifestaverit tum Ordinario proprio, nec horum alteruter ipsi contrariam scripto mentem intra quattuor menses significaverit” (PAUL VI, *ESI*, §3, no. 5, English translation from *FLANNERY I*, 594).

²⁸⁶ SUPREME TRIBUNAL OF APOSTOLIC SIGNATURA *Miamien: Incardinationis*, in *Communicationes*, 10 (1978), 152-158, English translation in *CLD*, vol. 9, 52-60.

ruling of the Congregation for the Clergy, which on 27 June 1978, ruled in his favor. Before delivering their ruling, the members of the Apostolic Signatura decided to clarify the norm of *ipso iure* incardination stipulated in *Ecclesiae sanctae I* by giving four detailed conditions required for the norm to take effect. These conditions are:

1. The cleric must manifest his will in writing. This manifestation can be made either during the course of the five years or when the five-year period has been terminated.
2. The manifestation should be made in writing, both to the guest Ordinary and to his own Ordinary, either at the same time or at different times.
3. Five years of legitimate residence have been passed in the guest diocese. The law does not demand that a person discharge some pastoral function in the guest diocese; it demands simply residence, not just *material* residence but *formal* residence, that is, residence had with the consent of each of the two Ordinaries, residence which has not been interrupted by the intervention of either of the two Ordinaries prohibiting the residence; or for other reasons outside, however, the legitimate person or need.
4. Either one of the two Ordinaries has not manifested in writing a contrary mind within four months of the making of the petition and the expiration of the five-year period.²⁸⁷

This decision of the Apostolic Signatura provided the earliest, important jurisprudence in the application of the new norm of *ipso iure* incardination that was first issued in *Ecclesiae sanctae I* and later promulgated as the current *CIC*, c. 268 §1. The canon reads as follows:

Can. 268 §1. A cleric who has legitimately moved from his own particular church to another is incardinated in the latter particular church by the law itself after five years if he has made such a desire known in writing both to the diocesan bishop of the host church and to his own diocesan bishop and neither of them has expressed opposition in writing to him within four months of receiving the letter.²⁸⁸

A similar canon is enacted in *CCEO*, c. 360, §2 as follows:

Five years after a legitimate move, a cleric is ascribed by virtue of the law itself in the host eparchy, if, after his desire was manifested in writing to both eparchial bishops, it was not objected to by either of them in writing within four months.²⁸⁹

²⁸⁷ *Communicationes*, 10 (1978), 152-158, English translation in *CLD*, vol. 9, 52-60.

²⁸⁸ “Clericus qui a propria Ecclesia particulari in aliam legitime transmigraverit, huic Ecclesiae particulari, transacto quinquennio, ipso iure incardinatur, si talem voluntatem in scriptis manifestaverit tum Episcopo dioecetano Ecclesiae hospitis tum Episcopo dioecetano proprio, neque horum alteruter ipsi contrariam scripto mentem intra quattuor menses a receptis litteris significaverit” (*CIC*, c. 268, §1).

²⁸⁹ “Quinquennio elapso post legitimam transmigrationem clericus ipso iure eparchiae hospiti ascribitur, si huic voluntati eius utrique Episcopo eparchiali scripto manifestatae neuter intra quattuor menses scripto contradixit” (*CCEO*, c. 360, §2).

This norm stipulates the steps that must be followed in order for *ipso iure* incardination and excardination to take place. These requirements form the constitutive elements of the norm.²⁹⁰ This means that according to *CIC*, c. 86,²⁹¹ the four requirements are not subject to dispensation, because if anyone of them is dispensed, it would render the application of the norm inoperative. Below is an explanation of the four conditions.

2.3.2.1 Legitimate Movement

The first condition for the *ipso iure* incardination and excardination to occur is legitimate movement. The canon says that the cleric has legitimately moved (*legitime transmigraverit*) from his own Church to another. In order for the move to be legitimate, the cleric must have obtained consent from the bishop *a quo* to be absent from his home diocese and must have received permission from the bishop *ad quem* to reside in the host diocese. There are different opinions regarding what exactly determines the legitimacy of residence of a cleric in another diocese.²⁹² The position of this study is that the cleric does not need to be involved in active pastoral ministry in the host diocese or receive any formal assignment, whether full-time or part-time, or receive faculties for ministry from

²⁹⁰ KASLYN, “Two Incardination Processes: Initial and Subsequent Alteration,” 259.

²⁹¹ *CIC*, c. 86 reads: “Laws are not subject to dispensation to the extent that they define those things which are essentially constitutive of juridic institutes or acts.”

²⁹² James Donlon argues that the cleric does not need to have the consent of the bishop and does not need to get involved in active pastoral ministry in the host diocese for the residence to be legitimate. See DONLON, “Incardination and Excardination,” 145. According to John Lynch, the cleric must be resident in the host diocese with the consent of both his own bishop and the bishop of the host diocese without the need to discharge any pastoral function in that diocese. See J.I. LYNCH, “*Ipso iure* Change of Incardination,” in *CLSA Comm1*, 194. For Otto Garcia, the cleric needs permission from both bishops but does not need to be given a formal assignment in the host diocese. See GARCIA, “The Assignment of Non-Incardinated Priests,” 106. For Mark O’Connell, in order for a priest’s presence in another diocese to qualify as “legitimate residence,” the priest must not only have the permission of the two bishops but must have been given the permission to do a specific ministry in the host diocese. See, O’CONNELL, *The Mobility of Secular Clerics and Incardination*, 197.

the bishop *ad quem*.²⁹³ All that is required is that the cleric is resident in the host diocese with the consent of both the diocesan bishop *a quo* and diocesan bishop *ad quem*. This was the interpretation given by the Apostolic Signatura in its clarification of the norm in *Ecclesiae sanctae I*, which serves as the earliest jurisprudence and the standard upon which this norm should be interpreted. As Augustine Mendonça rightly points out, in order to allow for a legal verification, this “move to another diocese” should be verified through written documents.²⁹⁴

2.3.2.2 Five-Year Residence Period

The second condition required for the validity of the *ipso iure* incardination is the five-year residence period. The cleric ought to have resided in the host particular Church for no less than five years. The residence may last longer than five years but certainly not shorter than five years.²⁹⁵ The five-year period may be prolonged because it is the minimum time required in order for the cleric’s incardination status to change by the law itself provided that other conditions have been met. It starts when the cleric begins legitimate residence, that is, the day when he actually begins to reside in the host diocese after obtaining permission from both bishops.²⁹⁶ If, for example, the cleric was on a vacation in that diocese without permission from either of the bishops, that time of vacation would not be counted. Also, in the event that the cleric is given an assignment,

²⁹³ SCHNEIDER, “The Enrollment, or Incardination, of Clerics, 333.

²⁹⁴ A. MENDONÇA, “*Ipso iure* Incardination of a Cleric *Sede Vacante*,” in *Studies in Church Law*, 9 (2013), 378.

²⁹⁵ KASLYN, “Two Incardination Processes,” 260.

²⁹⁶ SCHNEIDER, “The Enrollment, or Incardination, of Clerics,” 333.

the computation of time does not need to begin from the time when he was given the assignment.

The Apostolic Signatura, in its clarification of the norm in *Ecclesiae sanctae I*, says that this time does not need to be interrupted by the intervention of either the bishop *a quo* or *ad quem* writing a letter opposing the cleric's request for incardination/excardination or by any other causes, apart from legitimate permissions or necessities. This means that the five years must be taken as continuous (*tempus continuum*),²⁹⁷ and in accordance with *CIC*, c. 202, §2, they are to be computed as they are in the calendar. This does not mean that when the cleric is periodically absent, the *ipso iure* process would be interrupted. He would still fulfill the requirement even if he was periodically absent for just reasons such as vacation and with permission from the bishop *ad quem*.²⁹⁸

2.3.2.3 Letters Written by the Cleric

The third condition required for the validity of the *ipso iure* method of incardination and excardination is that the cleric seeking to change his incardination status must have written two letters, either during the five-year residency period or afterwards, manifesting his intention to excardinate and incardinate. The nature of these letters is a petition that must be simple and precise. One letter must be addressed to the diocesan bishop *a quo* asking for permission to excardinate. The other letter must be addressed to the diocesan bishop *ad quem* stating the cleric's intention to incardinate in that diocese. Both letters must be dated and signed by the cleric. These two letters do not

²⁹⁷ WOESTMAN, *The Sacrament of Orders and the Clerical State*, 154.

²⁹⁸ KASLYN, "Two Incardination Processes," 260.

need to be sent at the same time.²⁹⁹ However, if possible, it is better to send them at the same time in order to make the computation of the four-month period easier.

2.3.2.4 No Opposition from the Bishops within Four Months

Fourthly, the canon requires that in order for the *ipso iure* excardination and incardination to occur, either the bishop *a quo* or bishop *ad quem* must not have expressed opposition to the cleric's request in writing within four months of receiving his letter.³⁰⁰ When either of the bishops fails to express a negative response to the cleric in writing within four months of receiving the cleric's letter, the law presumes consent, and it automatically excardinates and incardines the cleric upon the completion of the five-year residence.

What if one of the bishops gives a positive response to the cleric granting his request for excardination and incardination? In that case, the bishop would be opening the door for the formal process of incardination using *CIC*, cc. 267, 269 and 270. A positive response would not interrupt the four-month time limit. What is required is a letter from either the bishop *a quo* or bishop *ad quem* clearly and unambiguously stating his objection with a reason why he is opposing the cleric's request and order the cleric to return to his home diocese.³⁰¹ For example, the bishop *ad quem* could explicitly write to the cleric prior to the completion of the five-year residence as follows:

²⁹⁹ MENDONÇA, "*Ipsa iure* Incardination of a Cleric *Sede Vacante*," 379.

³⁰⁰ The words *a receptis litteris significaverit* (of the receiving the letter) found at the end of c. 268, §1 of *CIC* were not part of the norm when it was first promulgated in *ESI*. They were added during the preparation of the 1977 *Schema* to modify the phrase *intra quattuor menses* (within four months). The *CCEO* does not contain this phrase.

³⁰¹ The nature of the bishop's letter is a singular administrative decree because he is giving an unfavorable decision in response to the cleric's petition. According to c. 51 of *CIC*, "A decree is to be issued in writing, with the reasons at least summarily expressed if it is a decision."

You have expressed your intention to incardinate in this diocese; you have resided here for four years and eleven months, but I do not want incardination to occur because I already have enough priest personnel. Therefore, I reject your petition to change your particular Church and request that you return to your home diocese.

The computation of the four-month period begins from the time the bishops receive the cleric's letter, or, if the letters were sent at different times, from the moment the last letter is received. So, the cleric must make sure that he sends the letters either by registered mail or, if possible, deliver them personally. The four-month period, unlike the five-year residence period, is useful time (*tempus utile*).³⁰²

Should the cleric write the letters during the course of the five-year period or after it has ended? The Apostolic Signatura was very clear on this point. The cleric can present his letters requesting excardination and incardination to the bishops either "during the course of the five years or when the five-year period has been terminated."³⁰³ If the cleric writes his letters during the course of the five-year residence period, and neither bishop opposes within four months, then, after the four months have elapsed, the *ipso iure* excardination and incardination occur at the end of the five years.³⁰⁴ This means that the four-month period can end either earlier or simultaneously with the five-year period. However, if the cleric writes his letters after the five-year residence period has elapsed and neither bishop opposes his request within four months of receiving the letter, then the

³⁰² MENDONÇA, "*Ipso iure* Incardination of a Cleric *Sede Vacante*," 379.

³⁰³ SUPREME TRIBUNAL OF APOSTOLIC SIGNATURA, *Miamien: Incardinationis*, 55.

³⁰⁴ O'CONNELL, *The Mobility of Secular Clerics and Incardination*, 250. Also, see E. KNEAL, "Canon 268-Incardination Requests and Four Months for Acknowledgement," in *Roman Replies and CLSA Advisory Opinions 1994*, K.W. VANN and J.I. DONLON (eds.), Washington, DC, Canon Law Society of America, 1994, 73.

ipso iure excardination and incardination occur at the end of five years and four months.³⁰⁵

2.3.2.5 The Impact of Canon 268, §1 on the Movement of Clergy

Canon 268, §1 gives the bishop *a quo* an opportunity during the four-month period to oppose the movement of his priest to another diocese if, for the good of the diocese, he wants to retain him.³⁰⁶ Similarly, the bishop *ad quem* has an opportunity to reject the incardination of a priest whose services are not needed in that diocese. A bishop is not supposed to incardinate a cleric unless he has carried out background checks on his life, behavior and studies (*CIC*, c. 269, 1°). So, the four-month period of *CIC*, c. 268, §1 is basically designed to allow the bishop an appropriate amount of time and a last opportunity to evaluate the cleric before making a final decision without unduly prolonging the process.³⁰⁷ The canon requires several prerequisite conditions that must be fulfilled by both the cleric in question and the bishops concerned within a stipulated period of time before the *ipso iure* incardination occurs. Therefore, if a bishop has judged that it is for the good of the diocese that a particular priest should not be incardinated in the diocese or excardinated from the diocese, then he can easily prevent it from happening. In this way, the bishops are able to control the movements and ministry of their priests.

³⁰⁵ KASLYN, "Two Incardination Processes," 263. For James Provost, whether the cleric manifests his intention to incardinate during the course of the five-year period or after it has elapsed, the incardination takes place at the end of the five years and four months. See J. PROVOST, "Process of Incardination," in R.R. CALVO and N.J. KLINGER (eds.), *Clergy Procedural Handbook*, Washington, DC, Canon Society of America, 1992, 72.

³⁰⁶ DONLON, "Incardination and Excardination," 147.

³⁰⁷ O'CONNELL, *The Mobility of Secular Clerics and Incardination*, 250.

2.4 Competent Authority to Grant Incardination and Excardination

Canon 272 states:

A diocesan administrator cannot grant excardination or incardination or even permission to move to another particular church unless the episcopal see has been vacant for a year and he has the consent of the college of consultors.³⁰⁸

The *CCEO* has a similar norm in c. 363, which reads:

The following cannot validly ascribe a cleric to an eparchy, dismiss him from it, or grant permission to the cleric outside of it:

2° in other cases, the administrator of an eparchy, unless the eparchial see has been vacant for a year, and then only with the consent of the college of eparchial consultors.³⁰⁹

The source of this canon is *CIC/17*, c. 113, which explicitly permitted the vicar general with a special mandate to grant excardination and incardination. In case of a vacant diocesan see, the vicar capitular could only grant incardination and excardination after the see had been vacant for one year and with the consent of the cathedral chapter.³¹⁰ In the *CIC*, the vicar capitular and cathedral chapter have been replaced by the diocesan administrator and diocesan college of consultors. Canon 272 does not want to repeat what has already been mentioned in *CIC*, cc. 267 and 269, which explicitly identified the diocesan bishop by name as the competent authority to grant incardination and excardination. According to *CIC*, c. 134, §3, when an act of executive power is attributed to the diocesan bishop by name, it means that only the diocesan bishop and those equivalent to him in *CIC*, c. 381, §2 can perform that act. Vicars general and episcopal vicars would need a special mandate to perform the same act. It, therefore, follows that

³⁰⁸ “Excardinationem et incardinationem, itemque licentiam ad aliam Ecclesiam particularem transmigrandi concedere nequit Administrator dioecesanus, nisi post annum a vacatione sedis episcopalis, et cum consensu collegii consultorum” (*CIC*, c. 272).

³⁰⁹ “Clericum eparchiae ascribere vel ab ea dimittere vel licentiam transmigrandi clerico concedere valide non possunt: 2° in ceteris casibus Administrator eparchiae nisi post annum a sedis eparchialis vacatione et de consensu collegii consultorum eparchialium” (*CCEO*, c. 363).

³¹⁰ “Excardinationem et incardinationem concedere nequit Vicarius Generalis sine mandato speciali, nec Vicarius Capitularis, nisi post annum a vacatione sedis episcopalis et cum consensu Capituli” (*CIC/17*, c.113).

only the diocesan bishop and those equivalent to him in law can grant incardination, excardination, and permission to transmigrate.

When an episcopal see falls vacant (*CIC*, c. 416), the diocesan administrator (*CIC*, cc. 421-428), who is elected either by the college of consultors (*CIC*, c. 421, §1) or, exceptionally, is designated by the metropolitan Archbishop (*CIC*, c. 421, §2), possesses the same obligations and power as the diocesan bishop “excluding those matters which are excepted by their nature or by the law itself” (*CIC*, c. 427). The law itself, in *CIC*, c. 272, disqualifies (*concedere nequit*) the diocesan administrator from granting excardination, incardination and permission to transmigrate unless (*nisi*) two conditions have been fulfilled. Firstly, the see must have been vacant for at least one year (*CIC*, cc. 201 and 202). Secondly, he must have received the consent of the diocesan college of consultors in accord with *CIC*, c. 127. These conditions must be observed for validity.³¹¹ Although *CIC*, c. 272 does not explicitly mention it, these same conditions also apply to the bishop or presbyter who governs an impeded episcopal see (*CIC*, cc. 412-414)³¹² and the apostolic administrator of a vacant see appointed by the Holy See to be the administrator of the vacant see.³¹³

Canon 1018, §1, 2° permits the diocesan administrator, with the consent of the college of consultors, to issue dimissorial letters authorizing ordination to Holy Orders.

³¹¹ According to *CIC*, c. 10, invalidating or disqualifying law must expressly establish that an act is invalid or that a person is unqualified. Although *CIC*, c. 272 does not explicitly express that the diocesan administrator would act invalidly if he incardinated or excardinated a cleric before the vacancy of the see has lasted for one year and without consulting the diocesan college of consultors, the use of the words *concedere nequit* (cannot or is unable to grant) indicate an implicitly disqualifying law. See J.M. Huels commentary on c. 10 in *CLSA Comm2*, 62-63.

³¹² WOESTMAN, *The Sacrament of Orders and the Clerical State*, 161.

³¹³ MENDONÇA, “*Ipsa Iure* Incardination of a Cleric *Sede Vacante*,” 384.

Roger Keeler explains that “This provides the administrator with the means in effect, to grant “initial incardination” to the one who seeks ordination.”³¹⁴ This is an imprecise explanation because as already explained under *CIC*, c. 266, one becomes initially incardinated into a particular Church or another canonical structure through ordination to the diaconate. It is the law itself through the diaconal ordination, and not the act of a competent authority, that initially incardicates a cleric. Consequently, by issuing a dimissorial letter to allow someone to be ordained a deacon, the diocesan administrator is not granting initial incardination. He is authorizing diaconal ordination which, by the provision of the law itself (*CIC*, c. 266), incardicates the cleric into the canonical entity for whose service he is ordained.

2.5 Temporary Service in another Diocese (Canon 271)

Up to this point, we have been dealing with the norms on incardination and excardination and how the legislator uses these norms to regulate the ministry and movement of diocesan priests. The law generally envisions a priest being incardinated in the same diocese where he is ministering. However, in order to facilitate better distribution of diocesan priests for the common good of the universal Church, the law permits a diocesan cleric to serve in another diocese while maintaining incardination in his home diocese. Canon 271 of the *CIC* deals with such a scenario, and reads as follows:

Canon 271 §1. Apart from the case of true necessity of his own particular church, a diocesan bishop is not to deny permission to clerics, whom he knows are prepared and considers suitable and who request it, to move to regions laboring under a grave lack of clergy where they will exercise the sacred ministry. He is also to make provision that the rights and duties of these clerics are determined through a written agreement with the diocesan bishop of the place they request.

§2. A diocesan bishop can grant permission for his clerics to move to another particular church for a predetermined time, which can even be renewed several times. Nevertheless, this is to be done so that these clerics remain incardinated in their own particular church and, when they return to it, possess all the rights which they would have had if they had been dedicated to the sacred ministry there.

³¹⁴ KEELER, *The Pastoral Office of Priests*, 207.

§3. For a just cause the diocesan bishop can recall a cleric who has moved legitimately to another particular church while remaining incardinated in his own church provided that the agreements entered into with the other bishop and natural equity are observed; the diocesan bishop of the other particular church, after having observed these same conditions and for a just cause, likewise can deny the same cleric permission for further residence in his territory.³¹⁵

It can be seen that *CIC*, c. 271 does not deal with incardination and excardination of a cleric but with the temporary service of a cleric in another diocese while he remains incardinated in his home diocese.

2.5.1 Sources of Canon 271

There are three sources identified for paragraph one of *CIC*, c. 271. The first is *Presbyterorum ordinis*, no. 10, which speaks about the shortage of clergy and urges priests in dioceses with an abundance of priestly vocations to be prepared to offer themselves with the permission of or encouragement from their bishops for ministry in dioceses facing shortages of clergy.³¹⁶ The second source is the apostolic letter *motu proprio Ecclesiae sanctae I* issued by Pope Paul VI on 6 August 1966 to implement the proposals of the Second Vatican Council. In no. 3, §2, the pope established the principle that a bishop was not to refuse a request for a cleric to minister in another diocese unless the bishop had a true need.³¹⁷ The third source of *CIC*, c. 271, §1 is the 1980 Directive

³¹⁵ “§1. Extra casum verae necessitatis Ecclesiae particularis propriae, Episcopus dioecesanus ne denegat licentiam transmigrandi clericis, quos paratos sciat atque aptos aestimet qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi; prospiciat vero ut per conventionem scriptam cum Episcopo dioecesano loci, quem petunt, iura et officia eorundem clericorum stabiliantur. §2. Episcopus dioecesanus licentiam ad aliam Ecclesiam particularem transmigrandi concedere potest suis clericis ad tempus praefinitum, etiam pluries renovandum, ita tamen ut iidem clerici propriae Ecclesiae particulari incardinati maneant, atque in eandem redeuntes omnibus gaudeant iuribus, quae haberent si in ea sacro ministerio addicti fuissent. §3. Clericus qui legitime in aliam Ecclesiam particularem transierit propriae Ecclesiae manens incardinatus, a proprio Episcopo dioecesano iusta de causa revocari potest, dummodo serventur conventiones cum altero Episcopo initae atque naturalis aequitas; pariter, iisdem condicionibus servatis, Episcopus dioecesanus alterius Ecclesiae particularis iusta de causa poterit eidem clerico licentiam ulterioris commorationis in suo territorio denegare” (*CIC*, c. 271).

³¹⁶ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 10.

³¹⁷ PAUL VI, *ES I*, no. 3, §2. The text is quoted in chapter I, section 1.9.1.

Norms *Postquam apostoli*. Numbers 26 and 27 provide key elements that were incorporated into *CIC*, c. 271, §1.³¹⁸

Regarding paragraph two of our canon of study, two sources were identified:

Ecclesia sanctae I, 3, §4 and *Postquam apostoli* nos. 28 and 30, which read as follow:

28. In dealing with priests who exercise the sacred ministry outside their own diocese, the originating bishop is to show special concern as far as possible. He should regard them as members of his own community who are working abroad. He should show his concern by correspondence, by visiting them in person or through delegates, and by helping them in accordance with the terms of the agreement.

Since the host bishop profits by the help of these priests, he is responsible for their material and spiritual needs, again according to the terms of the agreement.

30. Priests who wish to return to their own diocese after the period determined in the agreement are to be welcomed back. Preparation must be made for their return just as it had been for their departure. They remain incardinated in their diocese of origin and, on their return to it, enjoy the same rights they would have had if they had been serving uninterruptedly in the sacred ministry there.⁷³ Because of the varied experiences they have had, these men can be a source of no little spiritual profit to their own diocese. On their return, and before taking up a new ministry, they are to be allowed time to accustom themselves to any new conditions that may have developed.³¹⁹

Finally, paragraph three of *CIC*, c. 271 has only one direct source, and that is *CIC/17*, c. 144.

2.5.2 The Textual Evolution of Canon 271

Having identified the canonical sources of *CIC*, c. 271, we now turn our attention to tracing the textual development of the canon. We shall first show the process of the evolution of the canon from the sources identified above to the present norm in the *CIC* and then analyze its different components and elements.

³¹⁸ SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, nos. 26 and 27.

³¹⁹ *Ibid.*, nos. 28 and 30.

2.5.2.1 The 1966 *Coetus Studiorum de Sacra Hierarchia*

On 28 March 1963, Pope John XXIII established the Commission for the Revision of the Code of Canon Law.³²⁰ The members of this commission had to wait until the end of the Second Vatican Council in 1965 before they could begin their work on the revision of the *CIC/17*. They divided the work of preparing the text of the new Code into ten sub-commissions called study groups or *coetus*.³²¹

The task of revising Part I of Book II of the *CIC/17*, where the norms on incardination and excardination were located, was entrusted to *Coetus studiorum de clericis* (*Coetus V*) later called *Coetus de sacra hierarchia* or the study group concerning the sacred hierarchy.³²² This *coetus* held its first session from 24 to 28 October 1966, where the subject of clerical enrollment and incardination was discussed.³²³ In this first session, the initial structure of what was to become a section in the new Code of Canon Law, entitled “The Enrollment of Clerics, or Incardination” (*De Clericorum adscriptione seu incardinatione*), was outlined for the first time. This initial structure was first divided into nine categories: 1) the principle of enrollment or necessity of incardination and communities that enroll clerics; 2) the basis of incardination; 3) a change in formal incardination; 4) automatic change of incardination; 5) emigration to another particular Church without incardination; 6) causes for licit excardination; 7) causes for licit

³²⁰ *CIC*, “Preface to the Latin Edition,” xxxv.

³²¹ MULLANEY, *Incardination and the Universal Dimension of the Priestly Ministry*, 141.

³²² *Ibid.*

³²³ *Communicationes*, 16 (1984), 158.

incardination; 8) who can grant excardination, incardination, and the permission to transmigrate; and 9) another question regarding clerical transmigration.³²⁴

Category 5 and Category 9 are particularly important to our study. Category 5 is important because it is the new proposed norm that would eventually become *CIC*, c. 271. It has four paragraphs, which correspond to the four paragraphs of the original norm in *Ecclesiae sanctae I* no. 3, §§ 1-4. The four paragraphs in category 5 were arranged in a different order than those of *Ecclesiae sanctae I*, no. 3, expressed somewhat differently, as can be seen in the table below.

³²⁴ “1. Principium adscriptionis seu necessitas incardinationis, necnon communitates in quibus clerici adscribi valent; 2. Radix incardinationis seu modus quo fit incardinatio; 3. Mutatio formalis incardinationis; 4. Mutatio incardinationis ipso facto seu automatica; 5. Emigratio in aliam Ecclesiam particularem, sine incardinatione in eadem; 6. Causae ad licitam cardinationem requisitae; 7. Causae ad licitam incardinationem requisitae; 8. Competentia concedendi excardinationem, incardinationem atque licentiam transmigrandi; 9. Iterum questio de clericis transmigrantibus” (*Communicationes* 16 [1984], 158-167, 187-190, English translation is taken from O’CONNELL, *The Mobility of Secular Clerics*, 204).

Category 5 (The New Proposed Norm)	<i>Ecclesiae sanctae I</i> , no. 3.
<p>§1. Outside the case of necessity of their own proper particular Churches, Ordinaries are not to deny clerics, whom they know are prepared and they consider fit and who request it, permission to emigrate to regions laboring under a grave lack of clergy, where they will exercise the sacred ministry; they are to take care that the rights and duties of the clerics are determined through a written agreement with the Ordinary of the place which they are requesting for.</p> <p>§2. Ordinaries are to take care that clerics are to be trained in such a way that they have concern not only for the particular Churches in which they are incardinated to serve but also for the universal Church, and to make themselves ready to devote their services to the particular Churches, with grave pressing need.</p> <p>§3. Ordinaries may grant permission to their clerics to transmigrate to another particular Church for a predetermined time, which could be renewed many times, however, with the result that these clerics remain incardinated in their own particular Churches and on returning to it, possess all the rights they would have had if they had been dedicated to sacred ministry there.</p> <p>§4. However, these Ordinaries are to take care that clerics intending to transmigrate from their own particular Church to a particular Church of another country are suitably prepared to exercise sacred ministry there, they should also an understanding of the language of the country, and have knowledge of its institutions, social conditions, practices and customs.³²⁵</p>	<p>§2. Apart from the case of true need in their own dioceses, ordinaries or hierarchies shall not refuse permission to clerics to emigrate to regions suffering from grave shortage of priests and exercise their ministry there, provided they know of their willingness to go and consider them suitable to work there.</p> <p>§1. Clerics are to be trained in seminaries to feel concern not only for the affairs of the diocese they are to serve but for the whole Church, with the result that, with approval of their bishop they should show themselves ready to devote their services to particular Churches in grave need.</p> <p>§4. Ordinaries may give permission to their clerics to transfer to another diocese for a prescribed time, a permission which could be renewed many times, with the result however that these clerics remain incardinated in their own diocese and on returning to it enjoy all the rights they would have if they had been ministering there.</p> <p>§3. These ordinaries, however, shall see that clerics intending to leave their home diocese to serve in another country shall be suitably prepared for their ministry there; they should also acquire the language of the region and an understanding of its institution, social conditions, practices and customs.³²⁶</p>

³²⁵ “§1. Extra casum verae necessitatis propriae Ecclesiae particularis, Ordinarii ne denegent licentiam emigrandi clericis, quos paratos sciant atque aptos aestiment qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi; curent vero ut per conventionem scriptam cum Ordinario loci quem petunt iura et officia eorum clericorum stabiliantur. §2. Curent Ordinarii ut clerici ita instituantur ut non tantum Ecclesiae particularis in cuius servitium incardinantur, sed universae Ecclesiae quoque sollicitudinem habeant, atque paratos se exhibeant qui Ecclesiis particularibus, quarum gravis urget necessitas, sese devoveant. §3. Ordinarii licentiam ad aliam Ecclesiam particularem transmigrandi concedere possunt suis clericis ad tempus praefinitum, etiam pluries renovandum, ita tamen ut iidem clerici in propria Ecclesia particulari incardinati maneat atque, in eandem redeuntes omnibus iuribus gaudeant, quae haberent si in ea sacro ministerio addicti fuissent. §4. Curent iidem Ordinarii ut clerici a propria Ecclesia particulari ad Ecclesiam particularem alterius nationis transmigrare intendentes apte praeparentur ad ibidem sacrum ministerium exercendum, ut scilicet et linguae nationis scientiam acquirant, et eiusdem institutorum, condicionum socialium, usuum et consuetudinum intelligentiam habeant” (Ibid., 188-189, English translation is mine).

³²⁶ “§1. Clerici in Seminaris ita instituantur, ut non tantum dioecesis, in cuius servitium ordinantur, sed universae Ecclesiae quoque sollicitudinem habeant, utque, de licentia proprii Episcopi, paratos se exhibeant qui Ecclesiis particularibus, quarum gravis urget necessitas, sese devoveant. §2. Extra casum verae necessitatis propriae dioecesis, Ordinarii seu Hierarchae ne denegent licentiam emigrandi clericis, quos paratos sciant atque aptos aestiment qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi, curent vero, ut per conventionem scriptam cum Ordinario loci quem petunt iura et

In the above table, there are three major changes to be noted. Firstly, the order of the paragraphs differs. Paragraphs 1, 2, 3 and 4 of the new proposed norm have been reordered from *Ecclesiae sanctae I*, no. 3, where the corresponding paragraphs are 2, 1, 4 and 3 respectively. Secondly, the new proposed canon uses the word “particular Church” instead of “diocese” as it is in *Ecclesiae sanctae I*, no. 3. Thirdly, the original norm in *Ecclesiae sanctae I*, no. 3 had five paragraphs. The fifth paragraph reads as follows:

§ 5. If, however, a cleric has lawfully transferred from his own diocese, after five years he becomes incardinated by law into the diocese, provided he has manifested his wish to do so in writing both to the ordinary of the diocese which received him and to his own ordinary and that neither of these has within four months signified to him his disapproval.³²⁷

This fifth paragraph of *Ecclesiae sanctae I*, no. 3 was omitted from the new proposed norm and categorized separately as category 4. This is because it deals with the automatic mode of changing incardination while the rest of the paragraphs of *Ecclesiae sanctae I* do not deal with incardination. So, it is clear that, right from the start, the members of the *coetus* did not want the new norm to involve any form of excardination and incardination.

It is also important to point out here that during the discussions, the members of the *coetus* suggested that paragraphs 2 and 4 of the new proposed norm be transferred to another section of the Code. For example, it was suggested that paragraph 2 be transferred to the section of the Code dealing with the formation of priests and paragraph

officia eorum clericorum stabiliantur. §3. Curent autem iidem Ordinarii, ut clerici a propria dioecesi ad dioecesim alterius nationis transmigrare intendentes apte praeparentur ad ibidem sacrum ministerium exercendum, ut scilicet et linguae regionis scientiam acquirant, et eiusdem institutorum, condicionum socialium, usuum et consuetudinum intellegentiam habeant. §4. Ordinarii licentiam ad aliam dioecesim transmigrandi concedere possunt suis clericis, ad tempus praefinitum, etiam pluries renovandum, ita tamen ut iidem clerici in propria dioecesi incardinati maneant, atque in eandem redeuntes omnibus iuribus gaudeant, quae habent si in ea sacro ministerio addicti fuissent” (PAUL VI, *ESI*, no. 3, English translation *FLANNERY* 1, 593-594).

³²⁷ “Clericus autem qui a propria dioecesi in aliam legitime transmigraverit, huic dioecesi, transacto quinquennio, ipso iure incardinatur, si talem voluntatem in scriptis manifestaverit tum Ordinario dioecesis hospitis tum Ordinario proprio, nec horum alteruter ipsi contrariam scripto mentem intra quattuor menses significaverit” (PAUL VI, *ESI*, no. 3, § 5).

4 to the section dealing with the obligations of bishops.³²⁸ This is because the two paragraphs correspond to paragraphs 1 and 3 of *Ecclesiae sanctae I*, no. 3, which as one of the consultors pointed out, refer more to ordination than to temporary service or incardination.³²⁹

Category 9 of the proposed section of the new Code dealing with incardination is also important to this study. It is entitled “Another question concerning transmigration of clerics” and has only one paragraph. Its source is *CIC/17*, c. 144. The members of the *coetus* agreed that it should be combined with the new proposed norm as paragraph 5.

CATEGORY 9 (now §5 of the new proposed norm)	<i>CIC/17</i> , c. 144
§ 5. A cleric who has moved legitimately to another particular Church, while remaining incardinated in his own proper Church, can be recalled by his proper bishop or prelate for a just cause, provided that the agreements with the other bishop and required natural equity are observed. The Ordinary of the other particular Church, after having observed these same conditions and for a just cause, likewise can deny the same cleric permission for further residence in his proper territory. ³³⁰	Clerics who go into another diocese with the permission of their bishop, but are not excardinated, may be recalled for a just reason, but the laws of equity must be observed. Similarly, the bishop of the other diocese may for a just reason deny a priest permission to prolong his stay in that diocese, unless he has given the extern priest a benefice. ³³¹

³²⁸ “Iuxta supradicta, conveniunt omnia membra §§2 et 4 huius extus, postea, si id expedire videatur, transferri posse in alium locum Codicis: v.g. §2 in loco, ubi agitur de institutione sacerdotali; §4, in loco ubi quaestio est de obligationibus Episcoporum” (*Communicationes*, 16 [1984], 164).

³²⁹ “Attamen iuxta mentem alterius Consultoris, §1 et 3 sese referunt ad ordinationem, non ad incardinationem...” (Ibid., 163).

³³⁰ “Clericus qui legitime in aliam Ecclesiam particularem transierit, suae propriae Ecclesiae manens incardatus, a proprio Episcopo aut Praelato iusta de causa revocari potest, dummodo serventur conventiones cum alio Episcopo initae atque requisita naturalis aequitatis. Pariter, iisdem condicionibus servatis, Ordinarius alienae Ecclesiae particularis iusta de causa poterit eidem clerico licentiam ulterioris commorationis in suo proprio territorio denegare” (Ibid., 167, English translation is taken from O’CONNELL, *The Mobility of Secular Clerics*, 205).

³³¹ “Qui cum licentia sui Ordinarii in aliam dioecesim transierit, suae dioecesi manens incardatus, revocari potest, iusta de causa et naturali aequitate servata; et etiam Ordinarius alienae dioecesis potest ex iusta causa eidem denegare licentiam ulterioris commorationis in proprio territorio, nisi beneficium eidem contulerit” (*CIC/17*, c. 144).

2.5.2.2 The 1971 *Coetus*

The members of the *Coetus de sacra hierarchia* met again in December 1971 and discussed the section of the new Code dealing with incardination of clerics.³³² This time they produced a structure containing eight categories, which were very similar to the categories of the 1966 structure.³³³ Category five of the 1971 structure now had five paragraphs, the fifth paragraph being the previous category 9 in the 1966 structure, which had now been added to it. The category just gives a summary of the newly added paragraph, and it reads as follows:

5. Emigration into another particular Church without incardination. The prescriptions that are found in the *motu proprio Ecclesiae sanctae*, 3, §§ 1 to 4, with a certain change of order, are also proposed to be inserted into the revised Code. However, a paragraph 5 is added, by which a cleric who legitimately migrates to another particular Church, while remaining incardinated in his own Church, can be recalled for a just reason to his own diocese, while keeping the initial agreements, and such a cleric respecting the same conditions can be sent back by the Ordinary who received him to his particular Church.³³⁴

2.5.2.3 The 1977 *Schema*³³⁵

In 1977, the Pontifical Commission for the Revision of the Code of Canon Law published one of their most significant projects, the *Schema Canonum Libri II De populo Dei*. Part two of this schema dealt with persons in particular (cc. 81-533), and its first section was about sacred ministers or clerics. This section was divided into four chapters: the formation of clerics (chapter I); the incardination or adscription of clerics (chapter II);

³³² O'CONNELL, *The Mobility of Secular Clerics*, 206.

³³³ *Communicationes*, 3 (1971), 189.

³³⁴ “5. *Emigratio in aliam Ecclesiam particularem, sine incardinatione*. Quae in *Motu Proprio Ecclesiae Sanctae*, 3, §§ 1 ad 4, habentur praescripta, mutato tamen eorum ordine, in Codice recognito inserenda proponuntur. Additur vero § 5, vi cuius clericus qui legitime in aliam Ecclesiam particularem transmigraverit, suae propriae Ecclesiae manens incardinatus, iusta de causa ad propriam Ecclesiam revocari potest, servatis quidem conventionibus initis, atque talis clericus, iisdem conditionibus servatis, ab Ordinario receptore ad propriam Ecclesiam particularem remitti potest” (Ibid., 191, English translation taken from O'CONNELL, *The Mobility of Secular Clerics*, 207).

³³⁵ PONTIFICIA COMMISSIO CODICI IURIS RECOGNOSCENDO, *Schema Canonum Libri II, De Populo Dei*, Typis Polyglottis Vaticanis, 1977, 8-9, 59-62 (= *Schema Canonum Libri II*, 1977).

the obligations and rights of clerics (chapter III); and finally, the loss of clerical state (chapter IV).³³⁶ Chapter two, which deals with the adscription or incardination of clerics, had been reduced to six categories down from eight in the 1971 structure, after categories 6 to 8 had been combined.

Category five of this 1977 *Schema* reads as follows: “Moving to another Church with incardination. The prescriptions of the same *motu proprio Ecclesiae sanctae I*, no. 3, §§ 1 to 4 are retained here, but with a change of order.”³³⁷ This change is contained in the new norm, listed in the *Schema* as c. 124, §§ 1-3. The new canon reads as follows:

Can. 124 (new)

§1. Apart from the case of true necessity of his own particular Church, an Ordinary is not to deny permission to clerics, whom he knows are prepared and considers suitable and who are request it, to emigrate to regions laboring under a grave lack of clergy where they will exercise the sacred ministry. He is also to make provision that the rights and duties of these clerics are determined through a written agreement with the Ordinary of the place they request.

§2. An Ordinary can grant permission for his clerics to move to another particular Church for a predetermined time, which can be renewed several times. Nevertheless, this is to be done so that these clerics remain incardinated in their own particular Church and, when they return to it, possess all the rights that they would have had if they had been dedicated to sacred ministry there.

§3. For a just cause the diocesan bishop can recall a cleric who has transferred legitimately to another particular Church while remaining incardinated in his own Church provided that agreements entered into with the Ordinary and natural equity are observed; the Ordinary of the particular Church, after having observed these same conditions and for a just cause, likewise can deny the same permission for further residence in his territory.³³⁸

³³⁶ “Haec Sectio quattuor complectitur capita, quae agunt de clericorum institutione (Caput I), de clericorum incardinatione seu adscriptione (Caput II), de clericorum obligationibus et iuribus (Caput III) et de amissione status clericalis (Caput IV)” (Ibid., 7).

³³⁷ “Emigratio in aliam Ecclesiam sine incardinatione. Quae in eodem M. P. *Ecclesiae sanctae*, I, no. 3, §§1 ad 4 habentur praescripta, mutato quidem ordine, hic recipiuntur” (Ibid., 9, 5, English translation from PONTIFICAL COMMISSION FOR THE REVISION OF THE CODE OF CANON LAW, *Draft of the Canons of Book Two: The People of God*, The Vatican Polyglot Press, 1977). This translation was done under the auspices of the Canon Law Society of America by a translation team under the direction of Rev. William Schumacher and distributed for study and consultation by NCCB.

³³⁸ “Can. 124 (novus) §1. Extra casum verae necessitatis Ecclesiae particularis propriae, Ordinarius ne denegat licentiam emigrandi clericis, quos paratos sciat atque aptos aestimet qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi; prospiciat vero ut per conventionem scriptam cum Ordinario loci quem petunt iura et officia eorundem clericorum stabiliantur.

The above canon contains only three paragraphs corresponding to paragraphs 1, 3 and 5 of the proposed norm in the 1971 *Schema*. This is because paragraphs 2 and 4 of the 1971 norm were transferred to a different section of the new Code of Canon Law as already explained above.³³⁹ The current canon is a direct product of *Ecclesiae sanctae I*, no. 3 and the *CIC/17*, c. 144. Paragraphs one and two of the current canon are direct products of *Ecclesiae sanctae I*, no. 3 corresponding to paragraphs 2 and 4. Paragraph three is a product of *CIC/17*, c. 144, having been added to this norm in 1966.

2.5.2.4 The 1980 *Schema*

In November 1977, the Code Commission sent the 1977 *Schema Canonum Libri II De Populo Dei* along with four other schemata for consultation to the bishops of the world, pontifical faculties, superiors general and the dicasteries of the Roman Curia.³⁴⁰ By the end of 1978, all the official consultative bodies had reviewed the schemata and returned their comments to the Secretariat of the Commission for the Revision of the Code. From 14 to 19 January 1980, the fourth session of the consultors was held to examine the responses given by the different consultative bodies regarding the 1977

§2. Ordinarius licentiam ad aliam Ecclesiam particularem transmigrandi concedere potest suis clericis, ad tempus praefinitum, etiam pluries renovandum, ita tamen ut iidem clerici in propria Ecclesia particulari incardinati maneant, atque in eandem redeuntes omnibus gaudeant iuribus, quae haberent si in ea sacro ministerio addicti fuissent. §3. Clericus qui legitime in aliam Ecclesiam particularem transierit, suae propriae Ecclesiae manens incardinatus, a proprio Ordinario iusta de causa revocari potest, dummodo serventur conventiones cum alio Episcopo initae atque naturalis aequitas; pariter, iisdem conditionibus servatis, Ordinarius alius Ecclesiae particularis iusta de causa poterit eidem clerico licentiam ulterioris commorationis in suo proprio territorio denegare” (Ibid., 61, English translation taken from O’CONNELL, *The Mobility of Secular Clerics*, 209).

³³⁹ Paragraphs 2 and 4 of the proposed norm in the 1971 *Schema*, which correspond to paragraphs 1 and 3 of *ESI*, no. 3, were taken to the section of the revised Code dealing with the formation of clerics and they become c. 257, §§ 1 and 2 respectively. It is also important to point out that paragraph 5 of *Ecclesiae sanctae I*, no. 3 went on to become c. 268 §1.

³⁴⁰ *Communicationes*, 28 (1996), 192.

Schema De Populo Dei.³⁴¹ In the meeting of 14 January 1980, the texts of cc. 123 to 127 of the 1977 *Schema De Populo Dei* was examined, and c. 124, §§1-3 was approved after a lengthy discussion. The discussion focussed mainly on two issues: the change of the word *emigrandi* to *transmigrandi* and the location of the canon within the section. As a result of the discussion, the consultors agreed that the word *emigrandi* be replaced by *transmigrandi* simply because transmigration indicates not only the term *a quo* but also *ad quem*.³⁴² In addition, they agreed that the placement of the canon be changed. What was c. 124, §§ 1-3 in the 1977 *Schema* was changed to c. 242, §§ 1-3 in the 1980 *Schema*.

The new norm in the 1980 *Schema* reads as follows:

Can. 242, §1. Apart from the case of true necessity of his own particular Church, an Ordinary is not to deny permission to clerics, whom he knows are prepared and considers suitable and who request it, to transmigrate to regions laboring under a grave lack of clergy where they will exercise the sacred ministry. He is also to make provision that the rights and duties of these clerics are determined through a written agreement with the Ordinary of the place they request.

§2. An Ordinary can grant permission for his clerics to move to another particular Church for a predetermined time, which can be renewed several times. Nevertheless, this is to be done so that these clerics remain incardinated in their own particular Church and, when they return to it, possess all the rights that they would have had if they had been dedicated to sacred ministry there.

§3. For a just cause the diocesan bishop can recall a cleric who has transferred legitimately to another particular Church while remaining incardinated in his own Church provided that agreements entered into with the Ordinary and natural equity are observed; the Ordinary of the particular Church, after having observed these same conditions and for a just cause, likewise can deny the same permission for further residence in his territory.³⁴³

³⁴¹ *Communicationes*, 16 (1982), 67.

³⁴² *Ibid.*, 69.

³⁴³ “Can. 124 (novus) §1. Extra casum verae necessitatis Ecclesiae particularis propriae, Ordinarius ne denegat licentiam transmigrandi clericis, quos paratos sciat atque aptos aestimet qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi; prospiciat vero ut per conventionem scriptam cum Ordinario loci quem petunt iura et officia eorundem clericorum stabiliantur. §2. Ordinarius licentiam ad aliam Ecclesiam particularem transmigrandi concedere potest suis clericis, ad tempus praefinitum, etiam pluries renovandum, ita tamen ut iisdem clerici in propria Ecclesia particulari incardinati maneant, atque in eandem redeuntes omnibus gaudeant iuribus, quae haberent si in ea sacro ministerio addicti fuissent. §3. Clericus qui legitime in aliam Ecclesiam particularem transierit, suae propriae Ecclesiae manens incardinatus, a proprio Ordinario iusta de causa revocari potest, dummodo serventur conventiones cum alio Episcopo initae atque naturalis aequitas; pariter, iisdem conditionibus servatis, Ordinarius alius Ecclesiae particularis iusta de causa poterit eidem clerico licentiam ulterioris

2.5.2.5 The 1982 Schema

From 20-29 October 1981, the final plenary session of the Code Commission was held in Rome,³⁴⁴ where the 1980 *Schema* together with the proposals found in the *Relatio*³⁴⁵ were discussed. The fruit of this discussion was the 1982 draft *Codex Iuris Canonici, Schema novissimum*,³⁴⁶ which contained two changes both in the wording and placement of c. 242, §§ 1-3 of the 1980 *Schema*. What was c. 242, §§ 1-3 in the 1980 *Schema* became c. 271, §§ 1-3 in the 1982 Code of Canon Law draft. In addition, the word *Ordinarius* in all the three paragraphs of the 1980 canon was replaced by the words *episcopus dioecesanus*. The text of this 1982 *Schema* was then presented to the Holy Father, Pope John Paul II who, after studying it with a small group of consultants, promulgated it on 25 January 1983. Consequently, the revised Latin Code of Canon Law became effective from the first Sunday of Advent that same year, that is, on 27 November 1983.³⁴⁷ The norm concerning the transmigration of clerics, which was promulgated as c. 271, §§ 1-3 in the *CIC* reads as follows:

Can. 271 §1. Apart from the case of true necessity of his own particular church, a diocesan bishop is not to deny permission to clerics, whom he knows are prepared and considers suitable and who request it, to move to regions laboring under a grave lack of clergy where they will exercise the sacred ministry. He is also to make provision that the rights

commorationis in suo proprio territorio denegare” (PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Iuris Canonici*, Rome, Libreria Editrice Vaticana, 1980, 54-55, English translation taken from O’CONNELL, *The Mobility of Secular Clerics*, 209).

³⁴⁴ *Communicationes*, 13 (1981), 256-270.

³⁴⁵ Before the final Plenary Session of the Commission was held in October 1981, the Secretariat of the Code Commission and the consultants were instructed to evaluate in writing the 1980 *Schema* and some other questions raised by the Commission. Their comments were carefully summarized into a comprehensive written report called the *Relatio*, which was sent to the members of the commission on 22 August 1981. See *Communicationes*, 14 (1982), 116-230.

³⁴⁶ PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Schema Iuris Canonici: Schema novissimum*, Rome, E Civitate Vaticana, 1982.

³⁴⁷ JOHN PAUL II, Apostolic Constitution *Sacrae disciplinae leges*, 25 January 1983, in AAS, 75 (1983), vi-xiv, English translation in the *CIC*, xxvii-xxxii.

and duties of these clerics are determined through a written agreement with the diocesan bishop of the place they request.

§2. A diocesan bishop can grant permission for his clerics to move to another particular church for a predetermined time, which can even be renewed several times. Nevertheless, this is to be done so that these clerics remain incardinated in their own particular church and, when they return to it, possess all the rights which they would have had if they had been dedicated to the sacred ministry there.

§3. For a just cause the diocesan bishop can recall a cleric who has moved legitimately to another particular church while remaining incardinated in his own church provided that the agreements entered into with the other bishop and natural equity are observed; the diocesan bishop of the other particular church, after having observed these same conditions and for a just cause, likewise can deny the same cleric permission for further residence in his territory.

2.5.3 Analysis of the Components of Canon 271

As it has been pointed out in the previous section, *CIC*, c. 271 is a new canon in the *CIC* in the sense that it did not exist in its present form in the *CIC/17*. It was designed to implement the Second Vatican Council's call for the renewal of the norms on incardination and excardination in order to allow for a more equitable distribution of priests throughout the world.³⁴⁸ The canon deals with a situation whereby a cleric is allowed by his diocesan bishop to move and serve temporarily in another diocese with a shortage of clergy while he remains incardinated in his home diocese. It does not involve any form of incardination or excardination, although it is placed in the section of the *CIC* which deals with incardination and excardination of clerics.³⁴⁹ By placing it in this section, the legislator intended to use it as a method of regulating the movements of clerics that differs from, and does not require, excardination and incardination, while at the same time respects the stability and permanence of the institute of incardination and excardination.³⁵⁰ The application of this norm is wider than just the transmigration of

³⁴⁸ F.J. SCHNEIDER, "The Enrollment, or Incardination, of Clerics [cc. 265-272]," in *CLSA Comm2*, 339 (= SCHNEIDER, "The Enrollment, or Incardination, of Clerics").

³⁴⁹ ŁAPCZYŃSKI, *The Juridic Status of Fidei Donum Priests*, 112.

³⁵⁰ SCHNEIDER, "The Enrollment, or Incardination, of Clerics," 339.

clerics from one particular Church to another. It may be applied to clerics who are placed by a particular Church at the disposal of the offices of episcopal conferences, dicasteries of the Roman Curia or military ordinariates.³⁵¹ In the sections that follow, the components of this norm will be analyzed.

2.5.3.1 Permission to Move

Paragraph one of *CIC*, c. 271 stipulates the guiding principle on the law concerning temporary service of clerics outside their dioceses of incardination. A bishop is not to deny a cleric, who requests to minister in another diocese which has a grave shortage of clergy, permission to move (*ne denegat licentiam transmigrandi*). The phrase *ne denegat licentiam transmigrandi* reveals the mind of the legislator in this norm, that is, the intention to allow the lawful flow of clergy to areas where there are shortages of priests. The canon gives the cleric the initiative of requesting permission from his bishop to transmigrate to offer service in another diocese where there is greater need of clergy. Consequently, the canon shifts the burden of proof onto the cleric's proper bishop who may want to refuse the cleric from moving to temporarily serve in another diocese.³⁵² In other words, if a cleric wants to go and temporarily help in another diocese which clearly has a shortage of priests, then he does not need to provide another reason other than the shortage of priests. Here, the law itself gives the reason for granting this permission. The permission is granted to the cleric for the purpose of exercising sacred ministry in the

³⁵¹ See D. LE TOURNEAU, "The Enrollment or Incardination of Clerics," in *Exegetical Comm.*, Vol. 11/I, 321.

³⁵² J. DONLON, "Incardination and Excardination: The Rights and Obligations of Clerics and of the Church: A Matter of Personal Justice," in *CLSAP*, 74 (1998), 139. For a more detailed treatment of this topic, see G. LISSOM, *La licentia transmigrandi selon le canon 271 du C.I.C de 1983*, JCD diss., Rome, Pontificia Universitas Urbaniana, 2001, 10-113.

new diocese and not for any other reason, like secular employment.³⁵³

Nevertheless, the same canon says that the diocesan bishop is not to deny permission to clerics whom he knows are prepared and considers suitable (*quos paratos sciat atque aptos aestimet*). By this phrase, the canon gives the bishop the discretion to judge whether to deny or grant the permission depending on two factors: true necessity of his diocese and the suitability of the cleric to undertake ministry in another diocese. The true necessity of a diocese can be either absolute, due to a shortage of priests or relative, for example, when a cleric holds a position that cannot be easily assigned to someone else.³⁵⁴ The cleric's suitability may include things like his life history, morals, priestly zeal, and his ability to adapt to the culture, language, customs and pastoral practices of the place where he intends to serve.³⁵⁵

It is therefore clear that while the *licentia transmigrandi* facilitates the distribution of priests to serve in dioceses with shortages of clergy, it also gives bishops the power to regulate the movement of their clerics. As John Huels explains, in canon law the purpose of permission "is to allow ecclesiastical authority a measure of control over the exercise of that individual's power, right, or faculty to ensure the correct observance of the law and to protect the common good in light of particular circumstances."³⁵⁶ This is precisely

³⁵³ O.L. GARCIA, "The Assignment of Non-Incardinated Priests," in *CLSAP*, 56 (1994), 103 (= GARCIA, "The Assignment of Non-Incardinated Priests"). Francis Schneider also states that the reason for the request is not just the priest's subjective "attraction to a particular place but an objective need for priests in the area." See SCHNEIDER, "The Enrollment, or Incardination, of Clerics," 339, footnote 61.

³⁵⁴ C. PAVENELLO, "I presbiteri *Fidei donum*: speciale manifestazione della comunione delle Chiese particolari tra loro e con la Chiesa universale," in *Quaderni di diritto ecclesiale*, 9 (1996), 51.

³⁵⁵ GARCIA, "The Assignment of Non-Incardinated Priests," 102.

³⁵⁶ J.M. HUELS, *Liturgy and Law: Liturgical Law in the System of Roman Catholic Canon Law*, Montréal, Wilson & Lafleur Ltée, 2006, 161 (= HUELS, *Liturgy and Law*).

what *licentia transmigrandi* does, it gives the bishop control over the priests who wish to transmigrate to temporarily serve in another diocese where there is greater need of clergy.

A central part of the permission to transmigrate is a written agreement. When the bishop *a quo* has given the cleric permission for temporary service in another diocese, the canon, like *Postquam apostoli*, demands that the bishop *a quo* ensures that there is a written agreement (*conventio scripta*) with the bishop *ad quem*. Since the bishop *a quo* is the one sending the priest, the law clearly puts a burden on him to ensure that the rights of his cleric are properly safeguarded. However, Otto L. Garcia recommends that this agreement should be prepared by the diocesan bishop *ad quem* in conjunction with the diocesan bishop *a quo* as well as with the priest involved.³⁵⁷ This agreement is the central topic of the next chapter.

The permission to move to another diocese is not a right of the concerned cleric, it is a favor.³⁵⁸ In other words, the cleric does not have the right to a temporary ministry in another diocese. He is free to petition for it, but the canon clearly gives the bishop *a quo* the discretion to judge the possibility of granting or denying the permission. Similarly, the bishop *ad quem* does not have the obligation to accept the cleric's request. If the cleric receives a negative decision from either of the bishops, even though the formulation of the canon does not refer to the possibility of recourse against the bishop's decision,³⁵⁹ nevertheless *licentia transmigrandi* being a singular administrative act (*CIC*, c. 35) of a diocesan bishop is subject to a hierarchical recourse. If the priest feels

³⁵⁷ GARCIA, "The Assignment of Non-Incardinated Priests," 105.

³⁵⁸ J.M. HUELS, "Permissions, Authorizations and Faculties in Canon Law," in *Studia canonica*, 36 (2002), 39.

³⁵⁹ ŁAPCZYŃSKI, *The Juridic Status of Fidei Donum Priests*, 115.

aggrieved with the bishop's decision, he may take administrative recourse to the Congregation for the Clergy.

2.5.3.2 Canonical Status of the Cleric in the Two Dioceses

Paragraph two of canon 271, like *Postquam apostoli*, states that the permission to move is to be granted for a determined period of time, which can be renewed several times (*etiam pluries renovandum*). The law leaves it to the bishops involved to determine the duration of the permission and how many times it can be renewed. This can be done by means of the agreement for temporary service.

Once the permission has been granted and the cleric moves to begin residence in the host diocese, he acquires domicile (*CIC*, c. 102, §1)³⁶⁰ or quasi-domicile (*CIC*, c. 102, §2)³⁶¹ in the host diocese. By this domicile or quasi-domicile, the bishop *ad quem* becomes his local ordinary (*CIC*, c. 107, §1).³⁶² Since he remains incardinated in his home diocese, the bishop *a quo* remains his proper bishop (*CIC*, c. 1016).³⁶³ Therefore, this priest can be described as having a juridic status of a priest on a temporary service in another diocese while maintaining incardination in his home diocese. Other names that

³⁶⁰ According to *CIC*, c. 102, §1, domicile is “acquired by residence within the territory of a certain parish or at least of a diocese, which either is joined with the intention of remaining there permanently unless called away or has been protracted for five complete years.”

³⁶¹ According to *CIC*, c. 102, §2, quasi-domicile is “acquired by residence within the territory of a certain parish or at least of a diocese, which either is joined with the intention of remaining there for at least three months unless called away or has in fact been protracted for three months.”

³⁶² *CIC*, c. 107, §1 states that “Through both domicile and quasi-domicile, each person acquires his or her pastor and ordinary.” *CCEO*, c. 916, §1 is clearer on this issue. It states: “Through both domicile and quasi-domicile each person acquires his or her local hierarch and pastor of the Church *sui iuris* in which he or she is enrolled, unless other provision is made by common law.”

³⁶³ *CIC*, c. 1016 states that, “As regards the diaconal ordination of those who intend to be enrolled in the secular clergy, the proper bishop is the bishop of the diocese in which the candidate has a domicile or the bishop of the diocese to which the candidate is determined to devote himself. As regards the presbyteral ordination of secular clerics, it is the bishop of the diocese in which the candidate was incardinated through the diaconate.”

are sometimes ascribed to a priest serving temporarily outside his diocese of incardination include: *fidei donum* (gift of faith) priests, priests on loan, supply priests, extern priests or non-incardinated priests. Whatever the terminology used to describe him, as long as he is serving temporarily in the host diocese with permission from both the bishop *a quo* and the bishop *ad quem*, he maintains the juridic status of a priest on temporary service.³⁶⁴

By virtue of his juridic status in the host diocese, the extern priest continues to have the rights and obligations of clerics given to him by the law. These rights and obligations should be the same as those of the incardinated priests in that diocese (*CIC*, cc. 273-289). According to *CIC*, c. 271, §2, these rights and obligation should be affirmed and protected in such a way that when the cleric completes his temporary service in the host diocese and he returns to his home diocese, he does not lose any of his benefits or rights. The best way to protect these rights and obligations is by means of a written agreement for temporary service, signed by the bishops involved.

2.5.3.3 Termination of the Cleric's Temporary Service

The third paragraph of *CIC*, c. 271 provides a way through which the temporary service of a cleric in another diocese can be terminated. The termination can take place either through an administrative recall of the cleric by the bishop *a quo* or through the denial of continued residence by the bishop *ad quem*. Since the cleric remains incardinated in his home diocese, this canon specifically gives the bishop *a quo* the right to call his cleric back at any time. Similarly, the law gives the bishop *ad quem* the power and authority to end the agreement by denying the cleric continued residence in his

³⁶⁴ For a more detailed treatment on this topic as understood in the *CIC/17* see A. SZENTIRMAI, "The Canonical Status of a Cleric Living Outside his Own Diocese," in *The Jurist*, 20 (1960), 179-193.

diocese. In both cases, the canon requires the presence of three conditions: there must be a just cause, the agreement for temporary service must be honored, and natural equity has to be observed. These conditions will be explained in the following paragraphs.

2.5.3.3.1 Just Cause

As previously discussed, a just cause is a minimal reason that is sufficient for someone to perform a legal act. In this canon, it is the minimal reason that the bishop *a quo* or the bishop *ad quem* is required to give indicating why the cleric should be recalled to his home diocese or should be denied continued residence in the host diocese. Examples of a just cause, which is required for liceity only, include: the pastoral necessity of the cleric in his home diocese or his ineffective ministry in the host diocese, the need for his special talent or qualification in the home diocese, problems with adjustment to the host diocese, or other personal difficulties.³⁶⁵ The canon leaves it to the discretion of the bishops to determine what constitutes a just cause. This shows that the requirement of a just cause was purposely designed to safeguard the rights of the bishops and dioceses involved in this process of temporary service.

Although the bishops involved are given the discretion to recall the cleric or deny him continued residence at any time, the canon also legally protects the rights of the individual cleric involved. The presence of a just reason is not sufficient for the bishops involved to exercise their administrative rights of recall or denial of continued domicile.³⁶⁶ The agreement for the cleric's temporary service must be honored and natural equity (*naturalis aequitas*) must be observed. Both of these conditions are

³⁶⁵ SCHNEIDER, "The Enrollment, or Incardination, of Clerics," 341.

³⁶⁶ V. R. UY, "The Principle of Equity in the Code of Canon Law," in *The Philippine Canonical Forum*, 8 (2006), 88 (= UY, "The Principle of Equity in the Code of Canon Law").

required for liceity only. If the bishop *a quo* recalls the cleric or if the bishop *ad quem* denies the cleric further residence without observing natural equity and honouring the agreement, they would be acting illicitly. That being said, the canon does not define what constitutes natural equity.

2.5.3.3.2 Natural Equity

Black's Law Dictionary defines the word "equity" as the spirit and habit of fairness, justness and right dealing, which would regulate the relationships between human beings.³⁶⁷ In a more practical and ethical sense, "equity" denotes applying the law mercifully while considering the person's situation and the concrete circumstances of the case.³⁶⁸ According to Vicente Uy, natural equity in *CIC*, c. 271, §3 involves abiding by the pacts or agreements that were made between the bishops and the individual priest involved.³⁶⁹ Similarly, J. Coughlin says that natural equity appears in *CIC*, c. 271, §3 to insure that a bishop honours the contractual agreement.³⁷⁰ F. Schneider explains that natural equity in this canon involves strictly keeping the terms of the agreement that has been entered into by the priest and the bishops involved.³⁷¹ For example, when the bishop *ad quem* terminates the agreement and sends the cleric back to his home diocese, any unfulfilled obligations stipulated in the agreement should be met by the bishop *ad quem*, who should also be attentive to the particular situation of the cleric.³⁷²

³⁶⁷ GARNER, *Black's Law Dictionary*, 560.

³⁶⁸ J.M. HUELS, "Commentary on c. 19," in *CLSA Comm2*, 79.

³⁶⁹ UY, "The Principle of Equity in the Code of Canon Law," 88.

³⁷⁰ J.J. COUGHLIN, "Canonical Equity," in *Studia canonica*, 3 (1996), 423.

³⁷¹ SCHNEIDER, "The Enrollment, or Incardination, of Clerics," 341.

³⁷² *Ibid.*

In the context of *CIC*, c. 273, §1, and in the event of an administrative recall or dismissal of the cleric, natural equity is observed when the bishop *a quo* and the bishop *ad quem* honor the agreement for temporary service they made in collaboration with the priest in question. As Vicente Uy rightly points out, “in the context of administrative recall, therefore, strict compliance to the written agreement entered into between two contracting bishops is an important consideration, the neglect of which would be an indictment of natural justice and natural equity due to the clerics concerned.”³⁷³ The affected cleric would then have a good ground to make an administrative recourse. It is, therefore, necessary that the agreement for a temporary service is entered before the cleric begins his ministry in the host diocese. The particular details of this written agreement will be dealt with in chapter three of this study.

It should, however, be noted here that *CIC*, c. 271, §3 says that “provided that the agreement entered into with the other bishop and natural equity are observed.” This means that in the context of this canon, natural equity involves much more than honoring the terms and conditions stipulated in the written agreement. As Edward Roelker says “It should, if at all possible, include a suitable exchange of offices and in default of this, adequate compensation for the loss incurred.”³⁷⁴ Additionally, it should include giving the extern priest an opportunity to present his case if he is to be dismissed from the host diocese by the bishop *ad quem* or recalled by the bishop *a quo*. Otherwise, he should be heard, which is a natural right of every human being. Whenever someone’s interests

³⁷³ UY, “The Principle of Equity in the Code of Canon Law,” 89.

³⁷⁴ E. ROELKER, “The Meaning of “Aequitas,” “Aequus” and “Aeque” in the Code of Canon Law,” in *The Jurist*, 6 (1946), 248.

might be adversely affected by a decision, he or she must be given an opportunity to present his or her case. This is another way of observing natural equity called for by *CIC*, c. 271, §3.³⁷⁵

2.5.3.3.3 Obligation to Follow the Procedures in Canons 1740-1752

After considering the conditions required for the termination of a cleric's temporary service outside his diocese of incardination, one may ask the following. Firstly, if such a priest had been appointed a pastor in the host diocese, would his recall or dismissal as provided for by *CIC*, c. 273, §3 constitute a transfer or removal? Secondly, are the bishops involved required to follow the procedures outlined in *CIC*, cc. 1740-1752?³⁷⁶

There is no norm in the *CIC* that prevents an extern priest from being appointed a pastor in the diocese where he is ministering. A diocesan bishop is free to confer the office of pastor to a priest whom he considers suitable and qualified (*CIC*, cc. 521, 523, 524, and 682, §1). Since the office of pastor entails the care of souls, it requires stability of tenure (*CD*, 31). To ensure this stability, the law requires that a pastor be appointed either for an indefinite period of time or for a specific term if the conference of bishops has issued a decree allowing this (*CIC*, c. 522). Nonetheless, like any other ecclesiastical officer, a pastor can lose his office by removal (*CIC*, cc. 193-194), transfer (*CIC*, cc. 190-191), resignation (*CIC*, cc. 187-189), privation (*CIC*, cc. 196), lapse of a predetermined

³⁷⁵ Natural equity is based on natural law and is characterized by respecting someone's natural rights when enforcing the law. It emphasizes the equality of human beings, that all human beings are equal and ought to be treated equally. The principles of natural equity are universal and do not change. See C. LEFEBVRE, "Natural Equity and Canonical Equity," in *Natural Law Forum*, 98 (1963), 122-136, accessed online at http://scholarship.law.nd.edu/nd_naturallaw_forum

³⁷⁶ *CCEO* has these procedures outlined in cc. 1389-1400.

time if he had been appointed for a specific term (*CIC*, c. 186), reaching the age determined by law (*CIC*, c. 538, §3), or death.

In case of the removal or transfer of a pastor, the law details a specific procedure that must be strictly followed (*CIC*, cc. 1740-1752). These procedures only apply to pastors who have been appointed for an indefinite term or who have been appointed for a specific term but have not completed their term of office.³⁷⁷ They do not apply in the removal or transfer of a religious priest who has been appointed a pastor in a diocese. The law makes a special provision that allows such a religious priest to be removed at the discretion of the diocesan bishop or the priest's competent superior (*CIC*, c. 682, §2).³⁷⁸ Do these procedures apply in the case of an administrative recall or the denial of continued residence of a priest temporarily serving in a diocese where he is not incardinated?

Canon 190, §1 states that “a transfer can be made only by a person who has the right of providing for the office which is lost as well as for the office which is conferred.” This means that in the *CIC*, a transfer can only occur between two offices that are subject to the same diocesan bishop. Therefore, the procedure for the transfer of pastors described in *CIC*, cc. 1748-1752 does not apply to the administrative recall or dismissal of the extern priest.

Removal is defined as the loss of an ecclesiastical office, which does not entail the conferral of a new office, effected by a competent authority through a decree or, in

³⁷⁷ V.G. D'SOUZA, “The Procedures for the Removal and Transfer of Pastors: Balancing the Rights,” in *Studies in Church Law*, 4 (2008), 288.

³⁷⁸ *CIC*, c. 682, §2 reads, “A religious can be removed from the office entrusted to him or her at the discretion either of the entrusting authority after having informed the religious superior or of the superior after having informed the one entrusting; neither requires the consent of the other.”

some cases, by the law itself.³⁷⁹ There are two types of removal: simple and administrative. Simple removal concerns an officer who was appointed at the prudent discretion (*ad prudentiam discretionem*) of the competent authority. Such an officer can be removed by the judgement of the same authority for a just cause (*CIC*, c. 193, §3).³⁸⁰

An administrative removal concerns an ecclesiastical officer who was appointed for an indefinite period or for a specific term that has not expired. In order to carry out such a removal, a competent authority needs to have a grave cause and to follow the procedure stipulated in law (*CIC*, c. 193, §1).³⁸¹ Therefore, a diocesan bishop needs to have a grave cause and follow the process outlined in *CIC*, cc. 1740-1747 to remove a pastor, who is not a religious priest, from office. Some of those grave reasons are listed in *CIC*, c. 1741.

On the contrary, the bishops involved in the temporary service of a priest outside his diocese of incardination only need to have a just cause and observe natural equity and the contractual agreement to recall the cleric or dismiss him from the host diocese. Here the law presumes that this recall or dismissal will be done in accordance with the terms and conditions set forth in the contractual agreement. So, if the agreement was made and it clearly sets the conditions of its termination, then the bishops *a quo* and *ad quem* would not need to follow the canonical process for removing a pastor. Like in the case of a pastor, who is a religious priest, the law here makes a special provision for the

³⁷⁹ J.I. ARRIETA, "Removal: Commentary on Canons 192-194," in *CCLA*, 178.

³⁸⁰ *CIC*, c. 193, §3 reads, "A person upon whom an office is conferred at the prudent discretion of a competent authority according to the prescripts of the law can, upon the judgment of the same authority, be removed from that office for a just cause."

³⁸¹ *CIC*, c. 193 §1 reads, "A person cannot be removed from an office conferred for an indefinite period except for grave causes and according to the manner of proceeding defined by law."

termination of the service of a priest ministering outside his diocese of incardination by the use of a contractual agreement.

However, if the extern priest was validly appointed and installed a pastor in the host diocese for a fixed term and there was no agreement made, or the agreement was made and it does not clearly identify the conditions of its termination, the recall or dismissal of such a priest against his will would be tantamount to removing a pastor from office. The bishop would, therefore, need to have a grave cause and to follow the canonical procedure for the removal of pastors (*CIC*, cc. 1740-1747). If the extern priest willingly accepts being recalled or sent back to his home diocese, a just cause would suffice and there would be no need to follow a canonical procedure, other than just issuing a singular decree in accordance with *CIC*, cc. 50-51.³⁸² Therefore, it is necessary that the agreement for a cleric serving temporarily outside his diocese of incardination clearly stipulate a method for its anticipated termination due to unforeseen circumstances.

2.6 Conclusion

The central theme of this study is the juridic elements contained in the agreement for a diocesan priest to minister in a diocese where he is not incardinated. This agreement, which is supposed to be entered by the bishop *a quo* and bishop *ad quem*, is a requirement of the law found in *CIC*, c. 271. This canon deals with temporary service of clerics outside their dioceses of incardination. It is neither concerned with nor intended to lead to incardination and excardination of clerics; nevertheless, it is placed in the section of the Code dealing with the enrolment, or incardination, of clerics. This indicates that

³⁸² *CIC*, c. 50 reads, "Before issuing a singular decree, an authority is to seek out the necessary information and proofs and, insofar as possible, to hear those whose rights can be injured." *CIC*, c. 51 reads, "A decree is to be issued in writing, with the reasons at least summarily expressed if it is a decision."

the legislator intended it to serve the same purpose that the institutes of incardination and excardination serve, which is to create a stable clergy who can provide steady ministry to a faith community. Such stability ensures that clerics are able to steadily meet the spiritual needs of the Christian faithful and are not just constantly moving from one particular Church to another. The law governing both the institute of incardination and the temporary service of a cleric in a different diocese, provides the bishops with the tools they need to regulate the ministry and movement of clerics from one particular Church to another.

Canon 265 of the *CIC* does not allow the existence of a cleric who is not incardinated in some ecclesiastical structure. The competent authority of the ecclesiastical entity where the cleric is incardinated becomes his canonical superior and, consequently, has the duty to regulate the movement and ministry of the cleric. The first or initial incardination takes place during diaconal ordination (*CIC*, c. 266) and creates a special bond between the cleric and the particular Church for which he is ordained. With that special bond comes the obligation of obedience on the part of the cleric. Although the bond of incardination permanently attaches a cleric to the particular Church for which he was ordained, it does not mean that the cleric cannot go and minister in another diocese. When there is pastoral necessity like the shortage of clerics in another diocese, a cleric can with the permission of his bishop, move to offer service in that needy diocese. This movement can be made either permanently or temporarily. Permanent movement involves breaking the bond of the first incardination and becoming incardinated into the host diocese. This can be done through the formal process of excardination and incardination outlined in *CIC*, cc. 267, 269 and 270 or through the *ipso iure* processes

stipulated in *CIC*, cc. 268 and 693. Temporary movement involves the cleric maintaining the bond of incardination to his proper diocese while ministering temporarily in the host diocese under the terms and conditions stipulated in a contractual agreement as required by *CIC*, c. 271.

One of the sources of *CIC*, c. 271 is *Presbyterorum ordinis*, no. 10, which urges priests in dioceses with abundance of priestly vocations to be prepared to offer themselves with the permission of or encouragement from their bishops for ministry in dioceses facing shortages of clergy.³⁸³ The canon is, therefore, designed for the purpose of addressing the shortage of clergy in some dioceses with a method that does not involve incardination and excardination of the cleric while at the same time respects the principle of those two institutes. To some extent, the canon fulfills this purpose considering the fact that there are many priests today who desire to serve in other dioceses without cutting ties with their dioceses of incardination.

However, the canon puts more emphasis on the priest requesting permission from his proper bishop to move than on the initiative of the diocesan bishop to send a priest to serve in another diocese with a shortage of clergy. The canon says that if the bishop finds that the priest is well prepared and suitable for ministry in the needy diocese, he is not to deny him the permission to move (*ne denegat licentiam transmigrandi*). The initiative to move to serve the needs of another particular Church or the universal Church in the Roman Curia or the conference of bishops is made by the priest rather than the bishop. In other words, the canon does not address the initiative of the diocesan bishop for the solicitude of other particular Churches or the universal Church.

³⁸³ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 10, in *FLANNERY I*, 882.

Although the canon does not make sending a priest to serve the grave necessity of other particular Churches or the universal Church the initiative of the diocesan bishop, it gives him the responsibility to ensure the rights of the priest are protected by means of an agreement. In granting a priest, who has requested to serve in another diocese, permission to move, the diocesan bishop *a quo* must ensure that an agreement is made with the diocesan bishop *ad quem* and the priest in question. This does not mean that the diocesan bishop *ad quem* cannot initiate making the agreement. In fact, it is preferable that the diocesan bishop *ad quem* be the one to draw up the juridic contents of the agreement, which will be discussed in the next chapter. This is because the purpose of the agreement is not only to protect the rights of the priest and the bishops involved but also to lay out the duties and responsibilities of the priest in the host diocese. Therefore, the agreement for temporary service of a priest in a diocese where he is not incardinated should be a condition for acceptance of the priest to minister in the host diocese. The diocesan bishop *ad quem* should make it clear to the priest that he will only accept him to exercise ministry in his diocese after the agreement has been signed by the concerned parties.

3 LEGAL ASPECTS OF THE WRITTEN AGREEMENT

In chapter two, the norm of *CIC*, c. 271 was systematically analyzed and included an investigation of the legislative and textual development of the canon and an examination of its major components. This norm was promulgated to allow clerics to move temporarily from one diocese to another to offer sacred ministry in the new diocese without the intention of excommunicating and incardinating. A central element of this temporary movement is a written agreement between the bishops *a quo* and *ad quem*, as required by *CIC*, c. 271, §1.

The purpose of this chapter is to investigate the juridical nature of this written agreement. Specifically, is the written agreement a binding contract or a simple agreement between the parties involved? Also, we shall carefully consider the canonical elements that need to be included in the written agreement. The extern priest is subject to two bishops, the bishop *a quo* and the bishop *ad quem*. In discussing the canonical elements to be considered for the content of the agreement, we shall identify the areas where the bishop *ad quem* is responsible and the areas where the bishop *a quo* continues to be responsible. The elements that will be discussed in this chapter are by no means exhaustive. They are universal canonical issues that affect the temporary service of a diocesan priest outside his diocese of incardination. Depending on the local circumstances, each diocese can include other elements that address their particular situations as long as they do not contradict universal law or divine law.

Before treating the nature and elements of the written agreements, we shall provide the Roman law, Civil law and Common law notions of agreement and contract. This will provide the historical foundation and legislative context of some of the terms

used in contract matters. Since canon law adopts the civil law (*ius civile*) of individual countries or regions in contract matters, it is important that the parties entering a contract understand clearly the meaning and type of the contract they are making. Of significant importance will be the difference between an agreement and a contract, and what elements are required for the validity of a contract as discussed below.

3.1 Roman Law Notion of an Agreement

Among the Romans, the word agreement or *pactum* or *conventio* was variously understood. The Roman Jurist Ulpian, who lived between A.D. 170 to 223, defined the word as “the consent of two or more persons about the same thing.”³⁸⁴ The same word was also used to mean an assembly or a coming together in one place of people from different places.³⁸⁵ Similarly, when two or more parties with different impulses of the mind agreed on one thing, that is to say, formed one opinion about something, they were said to have made a *conventio*.³⁸⁶ The word was, therefore, used in relation to everything that was agreed upon by those who made a promise or settlement with each other.³⁸⁷

3.1.1 Distinction between Agreement and Contract

In the early Roman law period, a promise was made in three ways: before the individual persons interested, before the gods or before the community.³⁸⁸ Agreements

³⁸⁴ “Est pactio duorum pluriumque in idem placitum et consensus” (D. 2.14.1.2, text and translation in A. WATSON [ed.], *The Digest of Justinian*, Latin text edited by T. MOMMSEN with the aid of P. KRUEGER, English translation by A. WATSON, Philadelphia, University of Pennsylvania Press, 1985, 4 vols).

³⁸⁵ D. 2. 14. 1. 3.

³⁸⁶ Ibid.

³⁸⁷ Ibid.

³⁸⁸ W.H. BUCKLER, *The Origin and History of Contract in Roman Law: Down to the End of the Republican Period*, Cambridge, Cambridge University Press, 1983, 4 (= BUCKLER, *The Origin and History of Contract in Roman Law*).

were, therefore, classified as one of the three kinds depending on how they were made. Firstly, there were private agreements (*conventiones privatae*), which were mere understandings concerning private matters made between individual persons or groups of persons who trusted each other's word. Such an agreement was called a naked or bare agreement (*nudum pactum*)³⁸⁹ and was protected by the good faith of the parties. If the good faith was violated, the offended party would pursue his own remedy, which could include revenge in the form of personal violence, the seizure of the other's goods or some other form of punishment.³⁹⁰ These kinds of agreements could not be enforced in courts of law because they lacked binding force.³⁹¹

Secondly, there were agreements made by oaths before the Roman gods, who served as witnesses. In making this agreement, each party would make an oath called *iurisiurandum*³⁹² or *sponsio*,³⁹³ placing the promise or the agreement under the guardianship of the gods.³⁹⁴ Thirdly, there were agreements made publicly in full view of the people. Publicity ensured the fairness of the agreement and made them enforceable in law. Examples of such agreements were peace treaties made between military leaders.³⁹⁵

³⁸⁹ “igitur nuda pactio obligationem non parit, sed parit exceptionem” (D. 2. 14. 7. 4).

³⁹⁰ BUCKLER, *The Origin and History of Contract in Roman Law*, 5-6.

³⁹¹ *Ibid.*

³⁹² *Iurisiurandum* was an oath (*iurandum*) taken before the Roman god Júpiter (Jóvis) as a witness to one's promise of good faith. See T. LYNCH, *Contracts between Bishops and Religious Congregations: A Historical Synopsis and Commentary*, Canon Law Studies, no. 236, Washington, DC, Catholic University of America, 1946, 1 (= LYNCH, *Contracts between Bishops and Religious Congregations*).

³⁹³ *Sponsio* was another form of oath, which involved a ceremonial pouring out of wine to appease the gods. See LYNCH, *Contracts between Bishops and Religious Congregations*, 1.

³⁹⁴ *Ibid.*, 7.

³⁹⁵ D. 2.14.5.

The above three methods of making agreements disappeared and gave way to other forms of binding agreements like the *nexum*, which was a bilateral transaction.³⁹⁶ It involved one party, the creditor, lending or loaning a commodity to another party, the debtor. The commodity being loaned had to be weighed on a scale.³⁹⁷ The debtor had to accept a specified quantity of the object with a promise to refund it on a set date. The debtor would concede to the creditor the right to capture him as a slave if the loans were not refunded by the agreed date.³⁹⁸ Thus, *nexum* was a type of agreement that was binding and enforceable in the courts of law. It, too, was later abolished by the 4th century B.C.E. because of the abuses it generated.³⁹⁹

Therefore, in Roman law, agreements could be either enforceable or unenforceable in law. The agreement enforceable in law was called a contract (*contractus*) and was given names such as a sale, hire, partnership, loan, deposit and other similar terms.⁴⁰⁰ Thus, in Roman law, before an agreement could be considered a true contract, two elements were necessary: 1) the contracting parties agreeing to do or not to do something, and 2) a reason (*causa*) why the parties were forming the contract.⁴⁰¹ The reason was called a ground or *causa*.⁴⁰² If no *causa* existed, the agreement was not

³⁹⁶ A. BERGER, *Encyclopedic Dictionary of Roman Law*, Philadelphia, American Philosophical Society, 1953, 603 (= BERGER, *Encyclopedic Dictionary of Roman Law*), 595.

³⁹⁷ F.P. WALTON, *Historical Introduction to the Roman Law*, Edinburgh, William Green & Sons Law Publishers, 1912, 191.

³⁹⁸ BERGER, *Encyclopedic Dictionary of Roman Law*, 595.

³⁹⁹ *Ibid.*

⁴⁰⁰ D. 2. 14. 7.1.

⁴⁰¹ LYNCH, *Contracts between Bishops and Religious Congregations*, 5.

⁴⁰² *Ibid.*

enforceable in law and was called a naked or bare agreement (*nudum pactum*).⁴⁰³ Although *nudum pactum* could not be enforced by law, it could be used in court as an *exceptio*, that is, as a defense of the natural obligation to not fulfill the contract.⁴⁰⁴ Thus, as W. Sloane rightly concludes, “while every contract is an agreement, not every agreement is a contract.”⁴⁰⁵

In a general sense, therefore, a contract was understood as a type of agreement which created an obligation recognized by the law.⁴⁰⁶ This means that a contract placed obligations on the parties to fulfill the promises they made in the contract. Paulus, one of the Roman Jurists of the later classical period, stated that, “We should consider that every obligation ought to be regarded as a contract, so that whenever anyone incurs an obligation, it is held that a contract is also formed, even if the debt is not the result of a loan.”⁴⁰⁷

⁴⁰³ “Sed cum nulla subest causa, propter conventionem hic constat non posse constitui obligationem: igitur nuda pactio obligationem non parit, sed parit exceptionem” (D. 2. 14. 7. 4).

⁴⁰⁴ For example, a plaintiff can claim that a defendant promised to pay him \$10,000 and that the defendant has not done so. The parties will go to court, and the plaintiff will ask the court to force the defendant to fulfill the promise he made to pay back the \$10,000. The defendant may deny that he owes the plaintiff the sum of money stated because he never made the promise as alleged. In this scenario, the defendant is saying that a contract (or a binding promise) was never made. He is, therefore, raising a *nudum pactum* as a defense not to fulfill the alleged contract. See B. NICHOLAS, *Introduction to Roman Law*, Oxford, Clarendon Press, 1979, 24.

⁴⁰⁵ T.W. SLOANE, “Contract,” in C.G. HERBERMANN, et al. (eds.), *The Catholic Encyclopedia: An International Work of Reference on the Constitution, Doctrine, Discipline, and History of the Catholic Church*, vol. IV, New York, Robert Appleton Company, 1922, 333 (= SLOANE, “Contract”).

⁴⁰⁶ D.C. LEAISH, “Contracts (Legal Aspect),” in *New Catholic Encyclopedia*, Vol. IV, New York, McGraw-Hill Book Co., 1967, 274 (= LEAISH, “Contracts”).

⁴⁰⁷ “Omnem obligationem pro contractu habendam existimandum est, ut ubicumque aliquis obligetur, et contrahi videatur, quamvis non ex crediti causa debeat” (D. 5.1.20).

3.1.2 Obligation as Contract

An obligation is defined in Justinian Institute as “a tie of law whereby we are put under the necessity of rendering something in accordance with the laws of our state.”⁴⁰⁸ Another definition taken from the Digest says that “the essence of obligations does not consist in that it makes some property or a servitude ours, but that it binds another person to give, do, or perform something for us.”⁴⁰⁹ Both definitions are not fully satisfactory, but they reflect the essential objections of obligation, which are to give to (*dare*), to do for (*facere*) and to perform (*praestare*) something for another person.⁴¹⁰ According to Gaius, “Obligations arise either from a contract or from wrongdoing or by some special right from various types of causes.”⁴¹¹ The main two categories were: 1) obligations that arose out of a contract (*ex contractu*), that is, “when one party or both parties assumed obligations through an agreement,”⁴¹² and 2) obligations that arose out of a crime (*ex delicto* or *maleficio*), that is, when the wrongdoer was obligated to pay a penalty or fine

⁴⁰⁸ “Obligatio est iuris vinculum, quo necessitate adstringimur alicuius solvendae rei, secundum nostrae civitatis iura” (*Inst.* 3. 13, text and translation with Notes in J.T. ABDY and B. WALKER [eds.], *The Institutes of Justinian*, Cambridge, University Press, 1876).

⁴⁰⁹ “Obligationum substantia non in eo consistit, ut aliquod corpus nostrum aut servitutem nostram faciat, sed ut alium nobis obstringat ad dandum aliquid vel faciendum vel praestandum” (D. 44. 7.3). Also, see A. GAUTHIER, *Roman Law and Its Contribution to the Development of Canon Law*, Ottawa, Saint Paul University, 1996, 37 (= GAUTHIER, *Roman Law and Its Contribution to the Development of Canon Law*).

⁴¹⁰ A. GAUTHIER, *Roman Law and Its Contribution to the Development of Canon Law*, 43. According to Gauthier, *dare* (to give) means transferring property or establishing some other right *in rem* for the benefit of a person who was not the owner. *Facere* (to do) means rendering the most varied services (working, providing the possession or the use of something, etc), which also included commitments to abstain from doing something. *Praestare* (to perform) means offering any kind of service that did not fall under another category.

⁴¹¹ “Obligaciones aut ex contractu nascuntur aut ex maleficio aut proprio quodam iure ex auriis causarum figuris” (D. 44. 7.1).

⁴¹² BERGER, *Encyclopedic Dictionary of Roman Law*, 603.

to the injured person.⁴¹³ Justinian later introduced two other obligation subdivisions: those that arose from quasi-contract (*quasi ex contractu*) and from quasi-delict (*quasi ex delicto*).⁴¹⁴ Obligations that arose from contractual obligation were further divided into four subdivisions based on how they were contracted: either by delivering something (*aut enim re contrahuntur*), by words (*aut verbis*), by writing (*aut litteris*) or by consent (*aut consensus*).⁴¹⁵

The first type of the contractual obligation was called a real obligation, and it was contracted when one party (a creditor) handed over something (*res*) to another party (debtor) in the form of a loan (*mutuus*).⁴¹⁶ The property handed over included things that could be weighed, numbered, or measured, such as money, wine, oil, corn, coin, brass, silver, or gold.⁴¹⁷ The things handed over by the creditor became the property of the debtor, who was obligated to refund them some time in the future. Although the repayment could involve items that were not identical to the ones handed over, they had to be similar in quality and quantity.⁴¹⁸

The second type of contractual obligation made by words was called verbal obligation.⁴¹⁹ This was created by means of questions and answers when someone wanted

⁴¹³ Ibid.

⁴¹⁴ *Inst.*, 3. 13. 2.

⁴¹⁵ Ibid.

⁴¹⁶ BERGER, *Encyclopedic Dictionary of Roman Law*, 413.

⁴¹⁷ *Inst.*, 3.14.

⁴¹⁸ Ibid.

⁴¹⁹ *Inst.*, 3. 15.

something to be given or done for another.⁴²⁰ The creditor stipulated the question to be answered accordingly by the debtor. For example, the creditor would ask, “Do you promise to pay one hundred X?” The debtor would respond, “I promise.” This kind of verbal obligation was called *stipulatio* and was governed by strict rules as outlined in the Institute of Gaius (3: 97-109).⁴²¹ For example, if the promised item does not exist at all, then the *stipulatio* would be void.⁴²² Similarly, if the answers given did not agree perfectly with the questions, the conditions attached were unrealistic, or if any of the parties was mute, deaf or mentally ill, then the *stipulatio* would be null and void.⁴²³

The third contractual obligation was literal obligation, which was created through the instrument of a letter (*litterae*). This involved making written entries in the account books of a professional banker or any private individual.⁴²⁴

The fourth was consensual obligation, which was formed by the mere consent of the parties.⁴²⁵ This was especially common in contracts involving the sale of something (*emptio venditio*), the leasing or hiring of something (*locatio conductio*), or the partnership between two or more persons (*societas*).⁴²⁶ In these cases, an *obligatio* was said to be made by the simple mutual consent of the parties because nothing needed to be in writing and the parties did not need to be present. Nothing needed to be given to make

⁴²⁰ Ibid., 3. 15. 1.

⁴²¹ *Gai Inst.* 3. 97-10, Text and Translation in F. de ZULUETA, *The Institutes of Gaius*, Part 1: Text with critical notes and translation, Oxford, Clarendon, 1958. Also, see *Inst.* 3. 15. 1-7.

⁴²² Ibid., 3. 97a.

⁴²³ Ibid., 3. 98-107.

⁴²⁴ Ibid., 3: 128. See also *Inst.*, 3. 21.

⁴²⁵ BERGER, *Encyclopedic Dictionary of Roman Law*, 413.

⁴²⁶ Ibid.

the contract binding, the mere consent between those making transaction sufficed.⁴²⁷ The consent was expressed either explicitly in spoken or written words or tacitly by a gesture or other behaviors and had to be free from any external influence like force (*vis*) or error (*metus*).⁴²⁸ Therefore, parties who were at a distance from each other could enter into these contracts by means of letters, for instance, or messengers.

Therefore, in Roman law, an agreement (*conventio* or *pactum*) was arrived at when one party offered something, and the other party accepted the offer. For example, if A promised to give B his watch and B accepted the offer, there would be an agreement. By itself, this kind of agreement could not be enforced by the law. However, if a third element was added, that is, the reason (*causa*) for the offer that was recognizable in law, then there would be an obligation or a contract (*contractus*).⁴²⁹ For example, if A gave B his watch for a payment of \$500 and B accepted the watch with a promise to pay the stated amount of money, then the two parties would have created an obligation or a contract. Moreover, Roman law required that the offer of the watch for \$500 and the promise for its payment had to be expressed in a particular manner. In the earliest period of Roman law before the introduction of money, *nexum* was one of the forms of contract.⁴³⁰ The offer and acceptance of the watch would have been done in terms of bronze or copper pieces, which would have been weighed on a scale. After the *nexum*

⁴²⁷ *Inst.* 3. 22. 1-3. See also *Gai Inst.* 33. 135-138. It is important to note here that although consent is the basic element of all agreements between two or more persons, consensual obligation was arrived at by the mere expression of consent by the parties as opposed to other obligations which required further elements like delivery of a thing, the use of words or a written document. See BERGER, *Encyclopedic Dictionary of Roman Law*, 408.

⁴²⁸ BERGER, *Encyclopedic Dictionary of Roman Law*, 408.

⁴²⁹ T.C. SANDARS, *The Institutes of Justinian with English Introduction, Translation, and Notes*, 6th ed., London, Longmans, Green, and Co., 1878, 321.

⁴³⁰ *Ibid.*

form of contract was abolished, other forms of contract gradually began to be recognized by the law.⁴³¹ The offer and acceptance of the watch for the prescribed amount of money would have been expressed in the following ways: 1) by handing it over as a loan (*mutuus*) (real obligation), 2) by making a verbal promise in the form of questions and answers (verbal obligation), 3) by writing the promise on a paper or in a book (literal obligation) or 4) by mutual consent of the parties (consensual obligation).

3.2 Civil Law Notion of a Contract

Roman law had an influence on the development of the civil law codes of many countries in Europe,⁴³² including France, Germany, Italy, Spain and others. The codification of civil law in Europe was, therefore, based on the core principles of Roman law. Today, many countries around the world have adopted the civil law tradition as their legal system.⁴³³ For example, in civil law, like in Roman law, a contract is understood as an agreement that creates obligations which are enforceable or recognizable in law.⁴³⁴ This definition of a contract is reflected in the French Civil Code, which defines a contract as “a concordance of wills of two or more persons intended to create, modify, transfer or extinguish obligations.”⁴³⁵ Similarly, according to the civil law of Spain, a “contract

⁴³¹ Ibid.

⁴³² G. MOUSOURAKIS, *Roman Law and the Origins of the Civil Law Tradition*, New York, Springer Cham Heidelberg, 2015, 296 (= MOUSOURAKIS, *Roman Law and the Origins of the Civil Law Tradition*).

⁴³³ G. Mousourakis describes the term “civil law system” as the legal systems historically derived from Roman law and transmitted to countries in continental Europe through the *Corpus Iuris Civilis* of Justinian. See MOUSOURAKIS, *Roman Law and the Origins of the Civil Law Tradition*, 296.

⁴³⁴ B.A. GARNER (ed.), *Black’s Law Dictionary*, 7th edition, St. Paul, MN, 1999, 318 (= GARNER, *Black’s Law Dictionary*).

⁴³⁵ *Réforme Du Droit Des Obligations: Un Supplément Au Code Civil*, Paris, Dalloz, 2016, art. 1101 (= *Code civil*). Art. 1101 states that, “Le contrat est un accord de volontés entre deux ou plusieurs personnes destiné à créer, modifier, transmettre ou éteindre des obligations.” Accessed online at

exists from the time when one or several persons consent to bind themselves in relation to another or others to give something or provide a service.”⁴³⁶

3.2.1 Elements of a Valid Contract

In addition to influencing the definition of the term “contract,” Roman law also influenced how a contract is validly formed in civil law. Four elements must be present for a contract to be considered valid. These elements are: the consent of the party who binds himself, the capacity to contract, a special object forming the substance of the agreement, and a licit cause for the obligation.⁴³⁷ Each of these elements is discussed in the paragraphs that follow.

<http://www.tribunauxdecommerce.fr/wp-content/uploads/2016/04>. See also A. GAUTHIER, *Introduction to Roman Law for Students in Canon Law*, Rome, Faculty of Canon Law, Saint Thomas University, 1994, 95 (= GAUTHIER, *Introduction to Roman Law*).

⁴³⁶ *Código civil*, edición oficial, sexta edición, Madrid: ministerio de justicia, comisión general de codificación, 1970, art. 1254. Accessed online at <http://galenet.galegroup.com/servlet/MLFP?dd=0&locID=otta77973&d1=LP5H0034900&srchtp=a&c=1&an=LP5H0034900&df=f&d2=373&docNum=GN2904236747&d7=375&h2=1&vrsn=1.0&af=RN&d6=373&d3=3&ste=10&d4=0.33&stp=Author&d5=d6&ae=GN104236375> on 5 July 2016. Article 1254 reads, “El contrato existe desde que una o varias personas consienten en obligarse, respecto de otra ú otras, a dar alguna cosa o prestar algún servicio,” English translation by J. ROMANACH, *Civil Law Code of Spain Translated into English, with An Introduction and Index*, 2nd ed., Baton Rouge, LA, Lawrence Pub. Co., 2011, 214, art. 1254 (= *Código civil*).

⁴³⁷ The Italian Civil Code lists the four elements as: agreement of the parties, cause, object and form, when prescribed by law, under penalty of nullity. See F. Izzo, *Codice civile: e leggi complementari*, editio minor, Napoli, Esselibri Simone, 1993, 460-461, art. 1325, English translation by M. BELTRAMO, G. E. LONGO, and J.H. MERRYMAN, *The Italian Civil Code*, Dobbs Ferry, NY, Oceana Publications, Inc., 1969, 343-344, art. 1325 (= *Codice civile*). The revised French Civil Code lists only three elements that are required for the validity of a contract: “Sont nécessaires à la validité d’un contrat: 1° Le consentement des parties; 2° Leur capacité de contracter; 3° Un contenu licite et certain.” See *Code civil*, art. 1128.

3.2.1.1 Consent of the Parties

The first of these elements is the consent of the parties, which means that both parties must freely arrive at an agreement on the same thing in the same way.⁴³⁸ The consent must be real, not feigned, and must clearly be manifested so that each party knows that the other party has consented.⁴³⁹ The manifestation is done through the process of offer and acceptance. An offer means each party or one of the parties makes a promise in specific words or actions that he or she is willing to do or abstain from the subject matter of the contract.⁴⁴⁰ Acceptance is “the act of assenting to an offer; in other words, the expression of a unity of intention with the person making the offer.”⁴⁴¹ It must also be expressed in unequivocal words or acts and must correspond to the offer made. The consent is not valid if it is made in error, or obtained in fraud or duress in such a way that, without them, one of the parties would not have contracted or would have contracted on substantially different terms.⁴⁴²

⁴³⁸ LYNCH, *Contracts between Bishops and Religious Congregations*, 64.

⁴³⁹ T. SLATER, “Contract,” in C.G. HERBERMANN et al. (eds.), *The Catholic Encyclopedia: An International Work of Reference on the Constitution, Doctrine, Discipline, and History of the Catholic Church*, vol. IV, New York, Robert Appleton Company, 1922, 332 (= SLATER, “Contract”).

⁴⁴⁰ Black’s Law Dictionary defines offer as 1) “The act or instance of presenting something for acceptance;” 2) “A promise to do or refrain from doing some specified thing in the future; 3) a display of willingness to enter into a contract on specified terms, made in a way that would lead a reasonable person to understand that an acceptance, having been sought, will result in a binding contract.” See GARNER, *Black’s Law Dictionary*, 1111.

⁴⁴¹ S. RAPALJE and R. L. LAWRENCE, *A Dictionary of American and English Law, with Definitions of the Technical Terms of the Canon and Civil Laws*, vol. I, Union, NJ, The Law Book Exchange, Ltd., 1997, 8 (= RAPALJE and LAWRENCE, *A Dictionary of American and English Law*).

⁴⁴² *Code civil*, art. 1130 reads as follows: “L’erreur, le dol et la violence vicient le consentement lorsqu’ils sont de telle nature que, sans eux, l’une des parties n’aurait pas contracté ou aurait contracté à des conditions substantiellement différentes. Leur caractère déterminant s’apprécie eu égard aux personnes et aux circonstances dans lesquelles le consentement a été donné.”

3.2.1.2 Legal Capacity of the Parties

In addition to consent, civil law⁴⁴³ also requires both parties to have the legal capacity to enter into a valid contract. This means that both parties must be competent adults, that is, they must have reached the age of majority as defined by the state's constitution or statute and they have not been legally declared mentally incompetent.⁴⁴⁴

3.2.1.3 Subject Matter of the Contract

The third element that must be present in civil law for a contract to be valid is the subject matter or purpose of the contract. The subject matter or purpose of the contract is usually a good or service that the parties bind themselves to give, to do or not to do.⁴⁴⁵ This may include anything within the law.⁴⁴⁶

3.2.1.4 Legal Cause of the Contract

Finally, in civil law, a valid contract must have a legal cause, which is the determinative reason why the parties are entering into a contract. It has its origin in the Roman law concept of *causa*, and it is the *causa sine qua non* (the cause without which

⁴⁴³ According to the *Civil Code of Quebec*, “A contract is formed by the sole exchange of consent between persons having capacity to contract, unless, in addition, it requires a particular form to be respected as a necessary condition of its formation, or unless the parties subject the formation of the contract to a solemn form.” See J.L. BAUDOIN, *Code civil du Québec annoté*, Montréal: Wilson & Lafleur, 2014, 348-349, art. 1385 (= BAUDOIN, *Code civil du Québec annoté*).

⁴⁴⁴ B. W. DUNHAM, *Introduction to Law*, 2nd ed., Albany, West Publishing, 1994, 138 (= DUNHAM, *Introduction to Law*).

⁴⁴⁵ *Code civil*, art. 1163 states that, “L’obligation a pour objet une prestation présente ou future. Celle-ci doit être possible et déterminée ou déterminable. La prestation est déterminable lorsqu’elle peut être déduite du contrat ou par référence aux usages ou aux relations antérieures des parties, sans qu’un nouvel accord des parties soit nécessaire.”

⁴⁴⁶ LYNCH, *Contracts between Bishops and Religious Congregations*, 64. According to *The Italian Civil Code*, “The object of the contract must be possible, lawful, determined, or determinable.” See *Codice civile*, 348, art. 1346.

the thing cannot be).⁴⁴⁷ This cause is not the party's motive for entering into the contract, but rather it is the objective and standard motive why both parties have entered a particular contract.⁴⁴⁸ It is very similar to the common law principle of consideration, which will be explained shortly.

3.3 Common Law Notion of an Agreement

In common law, like in Roman law and civil law, an agreement is understood to mean a union of two or more minds to do or to refrain from doing something.⁴⁴⁹ This kind of agreement existing by itself has no legal effect and is, therefore, not enforceable in law. However, if an agreement contains a promise enforceable in law, whereby one party makes a promise to another to do or refrain from doing certain specified acts, that agreement becomes a contract.⁴⁵⁰ The promise, which is offered by one party and accepted by another, constitutes a legal obligation. Therefore, in common law, like in civil law, a contract is defined as a type of agreement containing a promise that is enforceable in law.⁴⁵¹

For a contract to be valid and legally enforceable, four conditions must be met: mutual consent of both parties, contractual capacity, specific object or purpose, and

⁴⁴⁷ GARNER, *Black's Law Dictionary*, 211. According to the *Civil Code of Québec*, "The cause of a contract is the reason that determines each of the parties to enter into a contract." See BAUDOUIN, *Code civil du Québec annoté*, 354, art. 1410.

⁴⁴⁸ Ibid.

⁴⁴⁹ RAPALJE and LAWRENCE, *A Dictionary of American and English Law*, 41.

⁴⁵⁰ GAUTHIER, *Introduction to Roman Law*, 96.

⁴⁵¹ LA SALLE LAW LIBRARY, *A Systematic, Non-Technical Treatment of American Law and Procedure*, vols. 1-14, Chicago, La Salle Extension University, 1965, 7 (= LA SALLE LAW LIBRARY, *A Systematic, Non-Technical Treatment of American Law and Procedure*).

valuable consideration.⁴⁵² The first three conditions are exactly identical with those of civil law. The only difference between the two legal systems is found in the fourth condition. While in civil law the fourth condition is “lawful cause,” in common law it is “valuable consideration.”

Unlike legal cause, valuable consideration, which is only found in common law, did not originate from Roman law but rather from the judicial practice of the English common law.⁴⁵³ Countries that are governed by the civil law system do not have the principle of consideration in contract laws. Instead, they have the principle of legal cause as one of the conditions necessary for a valid contract. Consideration means “something of value received or given at the request of the promisor in reliance upon and in return for his promise.”⁴⁵⁴ In other words, it is the benefit received by a party in exchange for the party’s promise or performance.⁴⁵⁵ It is something bargained for and given in exchange for a promise. It is what the party pays for the promise.⁴⁵⁶ It may be an act, a return promise, a forbearance, or the creation, modification, or destruction of legal relation.⁴⁵⁷ The party who is supposed to receive the consideration must be able to reasonably determine its value, quantity and quality. This will allow the party to make an informed

⁴⁵² SLATER, “Contract,” 332.

⁴⁵³ W.W. BUCKLAND and A. D. MCNAIR, *Roman Law & Common Law: A Comparison in Outline*, Cambridge, England, The University Press, 1952, 223.

⁴⁵⁴ LA SALLE LAW LIBRARY, *A Systematic, Non-Technical Treatment of American Law and Procedure*, 32.

⁴⁵⁵ DUNHAM, *Introduction to Law*, 148.

⁴⁵⁶ LEAISH, “Contracts,” 275.

⁴⁵⁷ *Ibid.*

decision as whether to enter the contract.⁴⁵⁸ In common law, when there is no consideration, there is no contract.⁴⁵⁹

3.4 Kinds of Contracts

Roman law classified contracts into real contracts, verbal contracts, literal contracts and consensual contracts. Similarly, both civil law and common law have many different classes of contracts. The principal general kinds of contracts are the following: unilateral and bilateral; express and implied; written and oral; onerous and gratuitous; valid and invalid; and named and unnamed.⁴⁶⁰ Categories of contracts that are relevant to our study will be examined below.

3.4.1 Unilateral and Bilateral Contracts

Black's Law Dictionary defines a unilateral contract as “A contract in which only one party makes a promise or undertakes a performance.”⁴⁶¹ This kind of contract is created when only one party makes a promise or performs something to the other party.⁴⁶² This definition is mostly found in common law and focuses more on the promise that one of the contracting parties makes to the other. In civil law the emphasis is more on the obligation that the contract imposes on only one party, such as the contract involved in a last will or testament.⁴⁶³ According to article 1106 of the French Civil Code, a

⁴⁵⁸ DUNHAM, *Introduction to Law*, 148.

⁴⁵⁹ LEAISH, “Contracts,” 275.

⁴⁶⁰ For detailed definitions and explanations of the different kinds of contracts, see F. J. CONNELL, “Contracts (Moral Aspect),” in *New Catholic Encyclopedia*, vol. IV, New York, McGraw-Hill Book Co., 1967, 276 (= CONNELL, “Contracts”) and GARNER, *Black's Law Dictionary*, 318-326.

⁴⁶¹ GARNER, *Black's Law Dictionary*, 326.

⁴⁶² DUNHAM, *Introduction to Law*, 143.

⁴⁶³ CONNELL, “Contracts”, 276.

unilateral contract is created when one or more persons are bound towards one or more other persons without any engagement on the part of the latter.⁴⁶⁴

In contrast to the unilateral contract is a bilateral contract, which is defined as “an agreement between two or more persons in which each party promises to deliver a performance in exchange for the performance of the other.”⁴⁶⁵ Each party gives a promise in exchange for the other party’s promise.⁴⁶⁶ According to the revised French Code, “A contract is *synallagmatic* or *bilateral* when the contracting parties bind themselves reciprocally towards each other.”⁴⁶⁷ A bilateral contract is, therefore, sometimes referred to as a mutual or reciprocal contract, and it imposes an obligation on both or all parties, such as the contract of buying and selling.⁴⁶⁸

3.4.2 Written and Oral Contracts

On the one hand, a written contract is one in which the terms are all stipulated in writing.⁴⁶⁹ This may be done in the presence of the parties or in their absence through exchange of letters, whereby one party writes a letter offering a promise and the other party accepts it also through a letter. It is similar to the literal contract in Roman law and is sometimes referred to as a formal contract. A written contract is commonly signed by

⁴⁶⁴ “Le contrat est synallagmatique lorsque les contractants s’obligent réciproquement les uns envers les autres. Il est unilatéral lorsqu’une ou plusieurs personnes s’obligent envers une ou plusieurs autres sans qu’il y ait d’engagement réciproque de celles-ci.” (*Code civil*, art. 1106).

⁴⁶⁵ DUNHAM, *Introduction to Law*, 143.

⁴⁶⁶ *Ibid.*

⁴⁶⁷ “Le contrat est synallagmatique lorsque les contractants s’obligent réciproquement les uns envers les autres.” (*Code civil*, art. 1106).

⁴⁶⁸ CONNELL, “Contracts,” 276.

⁴⁶⁹ GARNER, *Black’s Law Dictionary*, 327.

both or all parties involved, but the signatures are not necessary for its validity.⁴⁷⁰ The writing must be done in legible characters and in a language that is understood by both or all parties.⁴⁷¹ On the other hand, an oral contract is one which is not in writing or is partially in writing and partially unwritten. It is also sometimes called a *parol*, informal or verbal contract.⁴⁷²

3.4.3 Onerous and Gratuitous Contracts

This is a civil law classification, and it relates to the benefit each party expects to receive from the contract. An onerous contract tends to benefit both or all parties and also imposes obligations on both or all, such as the contract of marriage.⁴⁷³ Article 1107 of the French Civil Code defined it in this way: “An *onerous* contract is one which binds each of the parties to give or do a certain thing.”⁴⁷⁴ In other words, if two parties enter a contract in which both parties expect to receive a benefit in exchange for the service or items they provide, then that contract is considered onerous. An onerous contract is always bilateral and enforceable in law.

Unlike the onerous contract, a gratuitous contract benefits only one of the parties, such as when a person agrees out of justice to give another person.⁴⁷⁵ The French Civil

⁴⁷⁰ Ibid.

⁴⁷¹ LYNCH, *Contracts between Bishops and Religious Congregations*, 71.

⁴⁷² GARNER, *Black's Law Dictionary*, 323.

⁴⁷³ CONNELL, “Contracts,” 276.

⁴⁷⁴ “ Le contrat est à titre onéreux lorsque chacune des parties reçoit de l'autre un avantage en contrepartie de celui qu'elle procure.” (*Code civil*, art. 1107).

⁴⁷⁵ CONNELL, “Contracts,” 276.

Code calls it a contract of beneficence,⁴⁷⁶ and it is created when two people enter a contract in which one party provides a benefit for the other party without receiving anything in return, such as a donation.⁴⁷⁷ Gratuitous contracts can be unilateral or bilateral. For example, the contract of a loan without interest is for the benefit of the borrower only, but it imposes on the lender the obligation to lend something and on the borrower the obligation to return it at the stipulated time.⁴⁷⁸

3.5 Incorporation of Civil Law into Canon Law

Canon law itself does not define the term *contractus*. The definition is left to canonists to formulate. When the *CIC/17* was promulgated, it contained c. 1529, which reads as follows.

Whenever the civil law of a country determines with regard to contract, general and specific, named and nameless, as well as payments, shall be observed also in ecclesiastical law and with same legal effects, unless the civil laws run contrary to divine law, and, unless the canons provide otherwise.⁴⁷⁹

Before the promulgation of this norm, the Church was being guided by Roman law on matters of contracts.⁴⁸⁰ So, there was really no universal church law on contracts, since Roman law was the accepted guide in this field.⁴⁸¹ The Church was eager to make its own

⁴⁷⁶ “Le contrat est à titre onéreux lorsque chacune des parties reçoit de l’autre un avantage en contrepartie de celui qu’elle procure. Il est à titre gratuit lorsque l’une des parties procure à l’autre un avantage sans attendre ni recevoir de contrepartie.” (*Code civil*, art. 1107).

⁴⁷⁷ CONNELL, “Contracts,” 276.

⁴⁷⁸ *Ibid.*

⁴⁷⁹ “Quae ius civile in territorio statuit de contractibus tam in genere, quam in specie, sive nominatis sive innominatis, et de solutionibus, eadem iure canonico in materia ecclesiastica iisdem cum effectibus servantur, nisi iuri divino contraria sint aut aliud iure canonico caveatur” (*CIC/17*, c. 1529, English translation in PETERS, *The 1917 Pio Benedectine Code*).

⁴⁸⁰ BOUSCAREN and ELLIS, *Canon Law: A Text and Commentary*, 810.

⁴⁸¹ LYNCH, *Contracts between Bishops and Religious Congregations*, 52.

law regarding contracts that would become part of its universal legal system.⁴⁸² In its effort to make a concise law on contracts, the Church decided to incorporate into its code of law the civil law of each territory on matters of contracts, but with some exceptions.⁴⁸³

It is important to point out here that the term *ius civile*, as used in *CIC/17*, c. 1529 and subsequently in *CIC*, c. 1290, means the laws of a secular state as opposed to canon law. It may also refer to the legal system derived from Roman law and transmitted to the countries of Europe through the *Corpus iuris civilis* of Justinian.⁴⁸⁴ By using the phrase *ius civile* instead of *leges civiles*, c. 1529 was referring not merely to the laws or statutes of a state enacted by a legislative authority but “to the entire legal framework that is established for a territory by civil authorities.”⁴⁸⁵ So, in this sense, civil law includes even common law, and it is in this sense that civil law will be understood in this section of our work.

Canon 1529 of the *CIC/17* was an important canon because, through it, the Church accepted or canonized civil legislation on contracts.⁴⁸⁶ Therefore, by virtue of this canon, the Church agreed that “whatever, therefore, the civil law determines as necessary

⁴⁸² Ibid.

⁴⁸³ Ibid., 53.

⁴⁸⁴ J.M. HUELS, *The Pastoral Companion: A Canon Law Handbook for Catholic Ministry*, Montréal, Wilson & Lafleur, 2016, 441.

⁴⁸⁵ F.G. ZERBI, *Resolving Contractual Disputes in Canon Law*, self-published, 2010, 28 (= ZERBI, *Resolving Contractual Disputes in Canon Law*). John Huels explains that “The Latin word *lex* is specific and means law as legislation, the norms enacted by a legislative authority. The word *ius* is generic, referring to law in a broad sense, and is used for any kind of normative rule: divine law, ecclesiastical law, customs, statutes, rules of order, norms issued by executive authority such as the norms contained in documents of the Roman Curia and individual administrative acts” (J.M. HUELS, “Introduction to the Introductory Canons [cc. 1-6],” in *CLSA Comm2*, 47).

⁴⁸⁶ BOUSCAREN and ELLIS, *Canon Law: A Text and Commentary*, 810.

for a valid and licit contract, holds also in canon law.”⁴⁸⁷ While canon law incorporates all secular laws regarding contracts, the canon contained two exceptions expressed in the phrase: “*nisi iuri divino contraria sint aut aliud iure canonico caveatur*” (unless they are contrary to divine law or some provisions of canon law).⁴⁸⁸

During the process of the revision of the *CIC/17*, c. 1529 became *CIC*, c. 1290, which reads as follows.

The general and particular provisions which civil law in a territory has established for contracts and their disposition are to be observed with the same effects in canon law insofar as the matters are subject to the power of governance of the Church unless the provisions are contrary to divine law or canon law provides otherwise, and without prejudice to the prescript of can. 1547.⁴⁸⁹

In this canon, we see the application of the more general principle of *CIC*, c. 22.⁴⁹⁰ The language used in the canon is almost identical with the language in *CIC/17*, c. 1529. For example, like its predecessor in the former Code, the canon uses the general term *de contractibus* without limiting it only to contracts concerning ecclesiastical goods.⁴⁹¹ This means that the scope of this canon is not limited only to contracts on ecclesiastical goods but extends to all contracts in canon law.⁴⁹² Therefore, as Federico G. Zerbi correctly points out, although *CIC*, c. 1290 is placed within Book Five of the *CIC*, its scope

⁴⁸⁷ Ibid.

⁴⁸⁸ LYNCH, *Contracts between Bishops and Religious Congregations*, 52.

⁴⁸⁹ “Quae ius civile in territorio statuit de contractibus tam in genere quam in specie et de solutionibus, eadem iure canonico quoad res potestati regiminis Ecclesiae subiectas iisdem cum effectibus servantur, nisi iuri divino contraria sint aut aliud iure canonico caveatur, et firmo praescripto can. 1547” (*CIC*, c. 1290).

⁴⁹⁰ *CIC*, c. 22 reads as follows: “Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.”

⁴⁹¹ J. MANTECÓN, “Contracts and Especially Alienation,” in *Exegetical Comm*, vol. IV/I, 128 (= MANTECÓN, “Contracts and Especially Alienation”).

⁴⁹² Ibid., 125.

extends well beyond the contracts involving the management of temporal goods to all matters affecting contracts created in canon law.⁴⁹³

Additionally, *CIC*, c. 1290, like *CIC/17*, c. 1529, contains the *nisi* clause: *nisi iuri divino contraria sint aut aliud iure canonico caveatur* (unless civil law is contrary to divine law or canon law provides otherwise). With this clause, canon law maintains that not every aspect of civil law is acceptable by the Church. There are some matters that may be legal in civil law but do not qualify to be subjects of contracts recognized in canon law.⁴⁹⁴ For example, even if civil law permits abortion in some countries, the Church cannot recognize it as a subject of its contract because it is against divine law. Similarly, there are instances when canon law adds its own requirements to the requirements of civil law for the liceity or validity of a contract. Canon law may require consultation, permission or consent in addition to the civil law requirements.⁴⁹⁵ For example, *CIC*, c. 1298 requires that administrators of temporal goods get permission from a competent authority before entering into alienation or lease contracts with relatives.⁴⁹⁶ Another instance where canon law prevails over secular law is found in the prescript of *CIC*, c. 1547.⁴⁹⁷ By making reference to the *CIC*, c. 1547, *CIC*, c. 1290

⁴⁹³ ZERBI, *Resolving Contractual Disputes in Canon Law*, 5-6.

⁴⁹⁴ W.W. BASSETT, "A Note on the Law of Contracts and the Canonical Integrity of Public Benefit Religious Organizations," in *CLSAP*, 59 (1997), 66 (= BASSETT, "A Note on the Law of Contracts and the Canonical Integrity of Public Benefit Religious Organizations).

⁴⁹⁵ R.T. KENNEDY, "Temporal Goods of the Church: [cc. 1254-1301]," in *CLSA Comm1*, 1493 (= KENNEDY, "Temporal Goods of the Church").

⁴⁹⁶ J.A. RENKEN, *Church Property: A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, Ottawa, Saint Paul University, 2009, 244. John Renken lists several other canons which impose special requirements upon administrators entering contracts.

⁴⁹⁷ *CIC*, c. 1547 states that "Proof by means of witnesses is allowed under the direction of the judge in cases of any kind."

allows an ecclesiastical judge in contractual disputes to admit proofs given by witnesses, even if civil law does not so permit.⁴⁹⁸

Therefore, in light of *CIC*, c. 1290, canon law adopts all the civil elements required for the validity of a contract. These elements, which have already been discussed earlier include: 1) the consent of the parties, 2) the legal capacity of the parties, 3) the presence of a subject matter or purpose of the contract, and 4) legal cause (in civil law systems) or consideration (in common law systems). Canon law and civil law differ only in the area of valuable consideration. In canon law, a contract is considered valid with or without valuable consideration,⁴⁹⁹ while in civil law and specifically in common law, it must always be present for the validity of a contract. However, in canon law, the *causa* or the reason for entering the contract is still maintained as a necessary element for the liceity of the contract. Consideration, which is essentially the benefit that a party expects to receive for entering the contract, is seen as an effect of the cause of the contract. The parties entering a contract in canon law do so not because they expect to receive some immediate benefit but because their ultimate aim is the salvation of souls (*CIC*, c. 1752). Thus, canon law omits consideration as a necessary element for the validity of a contract.

3.6 The Written Agreement for Temporal Service

Canon 271, §1 of *CIC* requires a written agreement for a priest to minister temporarily outside his diocese of incardination. There are a number of important issues to be addressed regarding this agreement, namely, is this agreement a contract or is it just a *nudum pactum*? Does it have a binding force, and are the bishops obligated to make one

⁴⁹⁸ J.J. MYERS, "Alienation of Ecclesiastical Goods," in *CLSA Comm1*, 879.

⁴⁹⁹ BASSETT, "A Note on the Law of Contracts and the Canonical Integrity of Public Benefit Religious Organizations," 66.

whenever they receive a foreign cleric in their dioceses? In addition, what canonical elements should constitute this written agreement? These are the major questions that will be dealt with in the sections below.

3.6.1 Contractual Nature of the Agreement

When a diocesan bishop grants permission to his priests to move to another diocese to exercise ministry temporarily, *CIC*, c. 271, §1 says that he “is also to make provision that the rights and duties of these clerics are determined through a written agreement with the diocesan bishop of the place they request.”⁵⁰⁰ It is categorically clear here that the canon speaks of an agreement. It does not necessarily speak of a contract. What, therefore, is the nature of this agreement? Is it contractual in nature and does it require the observance of the conditions and formalities of civil law on contracts, as canonized in *CIC*, c. 1290? These questions can be answered by examining whether this written agreement contains the required elements for the validity of a contract in civil law: the presence of a subject matter or purpose of the contract, the consent of the parties, the legal capacity of the parties, and legal cause. In the paragraphs that follow, we shall examine whether these elements are present in the written agreement for the temporary service of a priest outside his diocese of incardination.

3.6.1.1 The Subject Matter

As already discussed, for an agreement to qualify as a contract, it must contain a promise that can be enforced in courts of law. This promise, which constitutes the subject matter of the agreement, may be a good, a service or anything else within the law that the

⁵⁰⁰ “... prospiciat vero ut per conventionem scriptam cum Episcopo dioecesano loci, quem petunt, iura et officia eorundem clericorum stabiliantur” (*CIC*, c. 271, §1).

parties offer and accept to give, do or not do.⁵⁰¹ Firstly, in the case of *CIC*, c. 271, the bishops *a quo* and *ad quem* promise to protect the rights and obligations of the priest involved. By signing the agreement, the bishops commit themselves to honor the terms of the agreements. The canon itself is very clear that the bishops may terminate the ministry of the priest in the host diocese at any time “provided that the agreements are observed” (*dummodo servantur conventiones*). In order for an agreement to be observed, it must contain a promise or promises that the parties can observe or honor.

Clearly, the promises that are offered and accepted in this written agreement can be enforced by an ecclesiastical authority or court because failure to honor them can lead to some consequences. For example, the priest can be administratively recalled to his home diocese by his bishop or administratively dismissed from the host diocese by the bishop *ad quem*. On his part, the priest involved can also voluntarily terminate his ministry in the host diocese and return to his home diocese. If the priest is recalled or dismissed, and he feels dissatisfied, he can take an administrative recourse to the Congregation of the Clergy against the bishops’ decisions.⁵⁰² So, the subject matter of this agreement, which the parties are bound to honor, makes the agreement contractual in nature.

3.6.1.2 The Consent of the Parties

Canon 271, §1 stipulates that this agreement is to be or should be written as indicated by the use of the jussive subjunctive *prospiciat*.⁵⁰³ This means that all its terms

⁵⁰¹ LYNCH, *Contracts between Bishops and Religious Congregations*, 64.

⁵⁰² See *CIC*, cc. 1732-1739 on recourse against administrative decrees.

⁵⁰³ “... prospiciat vero ut per conventionem scriptam cum Episcopo dioecesano loci, quem petunt, iura et officia eorundem clericorum stabiliantur” (*CIC*, c. 271 §1).

and conditions should be put in writing.⁵⁰⁴ Whatever element is not written does not form part of the contract and does not bind the parties. It is important to note that the writing, which should be done in a language that is understood by all the parties, is for liceity only. According to *CIC*, c. 10, a requirement necessary for the validity of a juridic act must be expressly established in the law. Canon 271, §1 does not expressly state that the written form of the agreement is for validity. Therefore, an oral agreement entered into before two witnesses (*CIC*, c. 55) would be valid but would be difficult to fulfill and enforce. After the agreement has been drawn up and all its material elements clearly defined, copies of it are to be given to each party to examine. After all the parties have examined the contents of the agreement, they then manifest their consent by signing it. By appending their signatures on the written document, the parties attest that they freely and consciously consent to all of the terms and conditions that are stipulated in the agreement. Coercion by direct force of any of the parties to express consent would render the agreement null and void (*CIC*, c. 125, §1).

3.6.1.3 The Capacity of the Parties

Canon law presumes that a person reaches the age of majority when he or she turns eighteen years old (*CIC*, c. 97, §1). However, since, in contractual matters, canon law defers to the requirements of civil law, the age of majority will be determined by the law of a particular civil jurisdiction. Priests are ordained when they are at least 25 years old (*CIC*, c. 1031).⁵⁰⁵ So, in making this agreement, age will not be a factor of consideration since all the parties are of legal age. Similarly, both parties are presumed to

⁵⁰⁴ GARNER, *Black's Law Dictionary*, 327.

⁵⁰⁵ The diocesan bishop can dispense for not more than one year and ordain a 24-year-old man a priest. Dispensation beyond more than one year is reserved to the Apostolic See (c. 1031, §4).

have mental competence to make a contract unless it can be proven by medical or court records that any of the parties is mentally incompetent to manage his own affairs.

3.6.1.4 The Legal Cause of the Agreement

The ultimate reason or *causa* why the parties are entering into this agreement is to address the shortage of clergy in the diocese *ad quem*. The priest concerned is granted the permission by his bishop to move and serve in the diocese *ad quem*, which should be experiencing a need for more clergy. This is implied by *CIC*, c. 271, §1 when it states that “a diocesan bishop is not to deny permission to clerics [...] to move to regions laboring under grave lack of clergy where they will exercise sacred ministry.”⁵⁰⁶ Therefore, an existing or pending dearth of clergy in the diocese *ad quem* is necessary for the liceity of the *licentia transmigrandi*.⁵⁰⁷ The written agreement also has its immediate purpose, which is the protection of the rights and obligations of all the parties involved. The rights and obligations of the parties are to be protected so that they can serve the underlying need of more clergy in the diocese *ad quem*.

As can be seen from the preceding discussion, the written agreement for temporary service referred to in *CIC*, c. 271 is not just a *nudum pactum*. It is an agreement that bears all the elements of a contract and is, therefore, substantially contractual.⁵⁰⁸

⁵⁰⁶ “Extra casum verae necessitatis Ecclesiae particularis propriae, Episcopus dioecesanus ne deneget licentiam transmigrandi clericis, quos paratos sciat atque aptos aestimet qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi; prospiciat vero ut per conventionem scriptam cum Episcopo dioecesano loci, quem petunt, iura et officia eorundem clericorum stabiliantur” (*CIC*, c. 271, §1).

⁵⁰⁷ GARCIA, “The Assignment of Non-Diocesan Priests,” 102.

⁵⁰⁸ A number of commentators refer to it as a contract. William Woestman says that “Such a contract will spell things out in black and white so that all—the two bishops and the individual cleric—know exactly what has been agreed upon” (WOESTMAN, *The Sacraments of Orders*, 159). James Donlon

3.6.1.5 Why *Conventio Scripta* and not *Contractus*?

If the written agreement for temporary service of a priest outside his diocese of incardination is contractual in nature as discussed above, why did the legislator prefer to call it a written agreement rather than a contract? There is one plausible answer to this question. The written agreement of *CIC*, c. 271, §1 is an inter-diocesan and interpersonal agreement,⁵⁰⁹ which is meant to foster mutual and bilateral relationship between two dioceses. It is similar to the written agreements between bishops and religious institutes for entrusted diocesan works (*CIC*, cc. 520, §2; 681, §2 and 790, §1, 2°). These bilateral agreements are meant to promote harmonious relationships between diocesan bishops and religious institutes working within a particular diocese. This assertion that the written agreement is an inter-diocesan agreement meant to ensure mutual relationship between two dioceses can be supported by reviewing the intention of the legislator in promulgating *CIC*, c. 271. He intended to introduce a method, which does not require excardination and incardination, that would facilitate the movements of diocesan clerics from dioceses with abundant clerics to dioceses with a grave dearth of clergy. This fact is evident in the legislative history of this norm.

Pope Pius XII in his encyclical letter *Fidei donum* acknowledged that although there was an increase in the number of native clergy in Africa, it could not match the

says, “When reviewing this canon in light of the 1980 norms, it is evident that the contract does not in anyway alter the man’s diocese of incardination” (DONLON, “Incardination and Excardination, 140). Vincente Uy and John Coughlin refer to it as a contractual agreement. See UY, “The Principle of Equity in the Code of Canon Law, 89 and COUGHLIN, “Canonical Equity,” 423. Otto L. Garcia says, “The second step which ought to be followed is the preparation of an “agreement” or “contract,” in accord with the prescription of canons 271, §1 and 682, §2” (GARCIA, “The Assignment of Non-Diocesan Priests,” 104).

⁵⁰⁹ According to William Bassett, all contracts in canon law are express interpersonal and inter-institutional agreements, whether or not they are supported by consideration. See BASSETT, “A Note on the Law of Contracts and the Canonical Integrity of Public Benefit Religious Organizations, 66.

enormous growth in the number of the Catholic faithful, and so there was the need for assistance by foreign missionaries.⁵¹⁰ The Second Vatican Council called for the reform of the norms concerning incardination and excardination, in order to allow for a more equitable distribution of clergy to meet the pastoral needs of the universal Church.⁵¹¹ In his apostolic letter *Ecclesiae sanctae I*, Pope Paul VI proposed specific amendments to the norms governing incardination and excardination in order to facilitate the movement of clerics from one diocese to another.⁵¹²

When *CIC*, c. 271, §1 was promulgated, it read in part “... a diocesan bishop is not to deny permission to clerics, whom he knows are prepared and considers suitable and who request it, to move to regions laboring under grave lack of clergy where they will exercise the sacred ministry.” The written agreement is, therefore, an inter-diocesan agreement, which is meant to promote harmonious cooperation between dioceses in distributing priests to serve in regions with shortages of clergy. Since, in canon law, matters of contracts are guided by civil law, conflicts arising from contracts can be resolved by having recourse to civil courts of law, while conflicts arising from agreements cannot.⁵¹³

If the legislator had explicitly called the written agreement in *CIC*, c. 271 a contract, he would have promulgated a piece of legislation that creates the possibility of

⁵¹⁰ PIUS XII, *Fidei donum*, 234, English translation in *The Pope Speaks*, 302.

⁵¹¹ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 10, English translation in *FLANNERY I*, 882.

⁵¹² PAUL VI, *ESI*, no. 3, §§2,4, and 5, English translation in *FLANNERY I*, 594.

⁵¹³ S.E. KAIN, *Written Agreement between Bishops and Religious for Entrusted Diocesan Works*, Canon Law Studies, no. 550, Washington, DC, Catholic University of America, 1996, 196 (= KAIN, *Written Agreement between Bishops and Religious*).

one diocese suing another diocese in a civil court or a priest taking a diocese to a civil court. The legislator did not want to create space for this kind of scenario that would contradict the intention of the norm, which is to promote a harmonious distribution of clergy between dioceses. So, although the written agreement in *CIC*, c. 271 is substantially contractual, in order to exclude the possibility of a recourse to civil courts of law in case of a dispute between the parties, the legislator deliberately preferred to call it *conventio scripta* rather than *contractus*.⁵¹⁴

By not explicitly calling the written agreement in *CIC*, c. 271 a *contractus*, the legislator is not requiring it to fall under the scope of *CIC*, c. 1290, which governs contracts. This means that when drafting this agreement, it is not necessary to involve civil attorneys and to follow the provisions of the civil law on contracts of the state where it is being drawn up.

3.6.2 Binding Nature of the Agreement

Francis Schneider says that “The agreement is not particular law and does not bind the bishops.”⁵¹⁵ However, it is difficult to demonstrate how this written agreement does not bind the bishops. Firstly, *CIC*, c. 271, §3 gives the bishop *a quo* the power to recall his priest back to his diocese at any time, “provided the agreement entered into with the other bishop and natural equity are observed.” Similarly, the bishop *ad quem* also has the authority to administratively dismiss the priest from his diocese at any time “after observing these same conditions and for a just cause.” Clearly, the law requires both bishops to observe the agreement.

⁵¹⁴ *Ibid.*, 195-197, 292, footnote 514.

⁵¹⁵ SCHNEIDER, “The Enrollment, or Incardination, of Clerics: [cc. 265-272],” in *CLSA Comm2*, 340, footnote 70.

In addition, the bishops are bound by the principle of natural equity to strictly honor the terms and conditions of the agreement. Vicente Uy expresses this point in this way: “in the context of administrative recall, therefore, strict compliance to the written agreement entered into between the two contracting bishops is an important consideration, the neglect of which would be an indictment of natural justice and natural equity due to the clerics concerned.”⁵¹⁶ It would, therefore, be a violation of the canon which requires this compliance. The agreement is, therefore, not just a *nudum pactum*, but a contractual agreement, which binds not only the current bishops involved but also their successors. Each bishop commits himself to observe the things that are stipulated in the agreement. Thus, the binding force of the agreement arises from natural justice and equity and the requirement to honor its terms and conditions.

3.6.3 Obligatory Nature of the Agreement

The question that comes to mind here is this: is it mandatory for diocesan bishops to make this agreement when they receive extern priests into their dioceses? The answer to this question can be found by analyzing the words of *CIC*, c. 271 itself. According to *CIC*, c. 17, “Ecclesiastical laws must be understood in accord with the proper meaning of the words considered in their text and context.”⁵¹⁷

⁵¹⁶ UY, “The Principle of Equity in the Code of Canon Law,” 89. John Lynch agrees with Uy that if the two bishops concerned would disregard the agreement, natural equity is expressly violated and natural justice impaired. See J. E. LYNCH, “Inscription or Incardination of Clerics,” in *CLSA Comm1*, 197-198. F. Schneider also says that in case of an administrative recall or expulsion, “Any arbitrary decision is to be avoided by keeping to the terms of the agreement.” See SCHNEIDER, “The Enrollment, or Incardination, of Clerics: [cc. 265-272],” 341. Similarly, Dominique Le Tourneau says that in recalling the priest, the bishop *a quo* “should honor the terms of the agreement stipulated with the diocesan bishop *ad quem*.” See D. LE TOURNEAU, “The Enrollment or Incardination of Clerics,” in *Exegetical Comm*, vol. II/I, 321.

⁵¹⁷ “Leges ecclesiasticae intellegendae sunt secundum propriam verborum significationem in textu et contextu consideratam; quae si dubia et obscura manserit, ad locos parallelos, si qui sint, ad legis finem ac circumstantias et ad mentem legislatoris est recurrendum” (*CIC*, c. 17).

Canon 271, §1 states that the bishop *a quo* “is also to make provision (*prospiciat vero*) that the rights and duties of these clerics are determined through a written agreement with the diocesan bishop of the place they request.” The word *prospiciat* is in the jussive subjunctive mood, which the *CIC* uses frequently to express commands.⁵¹⁸ When commands in the present tense of the subjunctive mood are used in the main clause, they are best translated as “should.” So, the word *prospiciat* in this norm is best translated as “should make provision” or “should ensure.” The subjunctive mood used in this way expresses a milder command than certain verbs in the indicative mood such *debet* (must), *neccesse est* (it is necessary), *oportet* (is necessary), etc.⁵¹⁹ When used by the legislator, it indicates that all officeholders of a particular category, like the bishop, pastor or religious superior, as a general rule, are given the responsibility to do something. However, the legislator leaves it to the discretion of the officeholders to fulfill the duties in the best way they can. Therefore, in *CIC*, c. 271, §1 by using the jussive subjunctive “*prospiciat*,” the legislator is requiring (although mildly) diocesan bishops to make written agreements when they permit extern priests to exercise ministry in their dioceses temporarily.

The obligatory nature of the canon can also be evaluated by making reference to the legislative history of the norm.⁵²⁰ The written agreement was first explicitly introduced as a prerequisite for a cleric’s temporary service in another diocese by Pope Paul VI in his motu proprio *Ecclesiae sanctae I*. The pope in this motu proprio insisted

⁵¹⁸ J.J. O’ROURKE, “Expressions of Command in the New Law,” in *The Jurist*, 43 (1983), 385-386. See also KAIN, *Written Agreement between Bishops and Religious*, 199.

⁵¹⁹ *Ibid.*, 386.

⁵²⁰ KAIN, *Written Agreement between Bishops and Religious*, 200.

that the bishops *a quo* “are to see to it (*curent vero*) that by a written agreement with the Ordinary of the place in question the rights and obligations of their clerics are clearly determined.”⁵²¹ It is interesting that the Pope used the verb *curent*, which is also in a jussive subjunctive mood and, therefore, expressing an exhortation. The Directive Norms *Postquam apostoli* also uses the jussive subjunctive *definiantur* (should be defined) but strengthens it by the use of *neccesse est* (it is necessary) making it a strong positive command. This phrase, however, was integrally reordered by *CIC*, c. 271, §1, which uses only the jussive subjunctive *prospiciat* and is the only *ius vigen*s in this matter. It is, therefore, clear that *CIC*, c. 271 mildly obliges diocesan bishops to make a written agreement for a priest to serve temporarily outside his diocese of incardination. The written agreement is only required for liceity of the *licentia transmigrandi*.

3.6.4 Canonical Elements of the Agreement

The questions that arise at this point are: 1) what should constitute the content of the written agreement mentioned in *CIC*, c. 271 and 2) what are the canonical elements that need to be included in the agreement? The purpose of this section is to identify and discuss the possible content of the written agreement, with the focus on the canonical issues that need to be addressed by the agreement. While *CIC*, c. 271, §1 stipulates only in general terms that the diocesan bishop is to provide a written agreement in which the rights and obligations of the cleric ministering outside his diocese of incardination are protected, *Postquam apostoli*, outlines the following elements: 1) duration of the service; 2) duties to be performed, place of ministry and residence; 3) means of support to be received and from whom; 4) social security in case of sickness, disability or old age; and

⁵²¹ “§2: *curent vero, ut per conventionem scriptam cum Ordinario loci quem petunt iura et officia eorum clericorum stabiliantur*” (PAUL VI, *ESI*, 760).

5) provision for a time to visit home after a certain period of service.⁵²² These and other canonical elements that need to be considered when formulating the written agreement are discussed below.

3.6.4.1 Length of Time of the Permission

Pope Paul VI in *Ecclesiae sanctae I* states that “Ordinaries may give permission to their clerics to transfer to another diocese for a prescribed time, a permission which could be renewed many times, ...”⁵²³ *Postquam apostoli* identifies the length of time as one of the elements that should constitute the content of the written agreement.⁵²⁴ *CIC*, c. 271, §2, repeating similar words of *Ecclesiae sanctae I*, states that “A diocesan bishop can grant permission for clerics to move to another particular Church for a predetermined time [...]” Therefore, the written agreement must clearly specify the length of time that the priest will spend doing ministry in the host diocese. Otto L. Garcia suggests a time limit of three to five years.⁵²⁵ Both *Ecclesiae sanctae I* and *CIC*, c. 271, §2 do not give specific parameters for the duration but state generally that the permission can be renewed several times (*pluries renovandum*). The problem with leaving it open to multiple renewals is that it can result in an indefinite period of temporary service and lead to priests with a “questionable status.”

⁵²² “In hac conventionem definiantur oportet: a) spatium temporis servitii peragendi; b) officia a sacerdote obanda ac locus ministerii et habitationis, ratione tamen habita vitae condicionum in regione, quam sacerdos petit; c) subsidia quaelibet a quo et quanam praestanda; d) cautiones sociales in casu aegrotationis, inhabilitatis et senectutis. Addi utiliter poterit, si casus ferat, possibilitas patriam invisendi post certum quoddam temporis spatium” (SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 27).

⁵²³ “§4. Ordinarii licentiam ad aliam dioecesim transmigrandi concedere possunt suis clericis, ad tempus praefinitum, etiam pluries renovandum...” (PAUL VI, *ES1*, 760, English translation in *FLANNERY I*, 594).

⁵²⁴ SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 27.

⁵²⁵ GARCIA, “The Assignment of Non-Incardinated Priests,” 103.

In 1990 Lynn Jarrell reported on a survey done in United States dioceses concerning diocesan policies on incardination and excardination.

Several dioceses reported priests with questionable status. These priests have been absent from the diocese for a number of years but they have never formally requested excardination. It appears to be more comfortable for both the priest and local church to let the person drift off or to give him a “special assignment” in or out the diocese rather than move into the process of excardination.⁵²⁶

In the above quoted text, Jarrell is speaking about priests who are not *clerici vagi* in a technical sense because their place of incardination is known, but who are functionally similar to *clerici vagi* because they have stayed away from their dioceses of incardination for so long that they are not certain of their incardination status. To avoid such a scenario, it is better to specify the number of renewals permitted in the agreement. For example, it can be stated that the agreement will be renewable only twice after which the priest will be expected to return to his diocese of incardination or, if all parties are in favor, that a new written agreement be agreed upon at the end of that period. There should be no expectation on the priest’s part that he will receive permission to remain longer or to obtain incardination/excardination, except in accordance with the norm of law (*CIC*, cc. 267, 269-270).

Postquam apostoli clearly states that “This agreement cannot be changed except with the consent of those involved.”⁵²⁷ So, if the agreement is to be renewed, it must be done with the mutual consent of all the interested parties. In addition, the terms of renewal should be clearly stated, which could include putting the responsibility on the

⁵²⁶ L. JARRELL, “A Look at Current Practices Surrounding the Transfer of Clerics,” in *The Jurist*, 50 (1990), 316.

⁵²⁷ “Quae conventio mutari nequit, nisi accedat consensus eorum, quorum interest” (SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 27).

priest to make a formal request to have the contract renewed three to six months before its expiration date.

3.6.4.2 Termination of the Agreement

Number 27 of *Postquam apostoli* reads as follows: “The bishop *ad quem* retains the right of sending the priest back to his own diocese, after having notified the bishop *a quo* if the priest’s ministry turns out to be harmful, but, of course, natural and canonical equity must be observed.”⁵²⁸ This norm has been integrally reordered by *CIC*, c. 271, §3, which reads

For a just cause the diocesan bishop can recall a cleric who has moved legitimately to another particular church while remaining incardinated in his own church provided that the agreements entered into with the other bishop and natural equity are observed; the diocesan bishop of the other particular church, after having observed these same conditions and for a just cause, likewise can deny the same cleric permission for further residence in his territory.⁵²⁹

So, according to this canon, which is the current law in force in this matter, there are two ways through which the assignment of a priest serving temporarily outside his diocese of incardination can be terminated: firstly, through administrative recall by the bishop *a quo* and, secondly, through the denial of permission for continued residence in the host diocese by the bishop *ad quem*. It must be clearly stated in the written agreement that both the bishop *a quo* and the bishop *ad quem* have this right given to them by the law itself. In both cases, the law requires that three conditions must be present: a just cause, observance of the terms and conditions contained in the written agreement, and natural

⁵²⁸ “Firmum manet ius Episcopi ad quem sacerdotem in propriam dioecesim remittendi, praemonito Episcopo a quo, servata utique naturali et canonica aequitate, si ministerium eius noxium evaserit” (Ibid).

⁵²⁹ “Clericus qui legitime in aliam Ecclesiam particularem transierit propriae Ecclesiae manens incardinatus, a proprio Episcopo dioecesano iusta de causa revocari potest, dummodo serventur conventiones cum altero Episcopo initae atque naturalis aequitas; pariter, iisdem condicionibus servatis, Episcopus dioecesanus alterius Ecclesiae particularis iusta de causa poterit eidem clerico licentiam ulterioris commorationis in suo territorio denegare” (*CIC*, c. 271, §3).

equity. In this way, the bishops will not be required to follow the procedures for the removal or transfer of a pastor outlined in *CIC*, cc. 1740-1752.

In addition to the above two ways, the written agreement can also be terminated by the lapse of its predetermined time,⁵³⁰ that is, when it reaches the date when it was stipulated to expire and a formal request for its extension or renewal has not been made. In this case, it would be up to either the bishop *a quo* or bishop *ad quem* to inform the priest that the predetermined time of his assignment in the host diocese has expired.⁵³¹ If the renewal is to be made, it will again be up to the bishop *a quo* or *ad quem* to notify the other of the need to renew the agreement.

If the extern priest wishes to withdraw from the host diocese before the expiry of the written agreement, there should be a provision in the agreement itself, which gives him the freedom to do so. In this case, the priest would need a just cause like poor health, problems of a personal nature (stress, depression, frustration), uncomfortable or undesirable working conditions (for example, not getting along with workmates) or other similar factors. The agreement should also indicate how much advance notice the extern priest needs to give the bishop *ad quem* to find a replacement.

⁵³⁰ According to *CIC*, c. 184, §1, lapse of a predetermined time is one of the ways through which an ecclesiastical office is lost. The canon states that “An ecclesiastical office is lost by the lapse of a predetermined time, by reaching the age determined by law, by resignation, by transfer, by removal, and by privation.”

⁵³¹ Since the priest on loan exercises ministry in the host diocese and hence holds some ecclesiastical office, termination of his ministry is equivalent to him losing the office he was holding. For an office to be lost upon reaching the predetermined time, the competent authority must communicate this fact in writing to the officeholder. This is in accordance with *CIC*, c. 186, which states: “Loss of an office by the lapse of a predetermined time or by the reaching of a certain age takes effect only from the moment when the competent authority communicates it in writing.”

The written agreement is not terminated by the loss of office of any of the two bishops involved in making it, unless it is expressly stated as one of the conditions in the agreement itself.

3.6.4.3 Rights and Obligations of the Priest

As noted, *CIC*, c. 271, §1 says that the bishop *a quo* is “to make provision that the rights and duties of these clerics are determined through a written agreement with the diocesan bishop of the place they request.” The rights and obligations of priests, which they acquire at their diaconal ordination, are outlined in *CIC*, cc. 273-289.⁵³² When a priest moves to exercise ministry temporarily in another diocese, he continues to have these rights and obligations based on the fact that he is still a cleric in good standing with his bishop. In the sections that follow, we will discuss the rights and duties that the extern priest has in the host diocese. We shall also show how the bishops involved are to protect these rights and how the priest is to fulfill his obligations.

3.6.4.3.1 Assignment to Diocesan Offices

Canon 274, §1 of *CIC* states that only clerics can obtain offices which require the exercise of the power of orders and the power of governance. According to John Lynch, by placing this canon in the chapter of the Code, which deals with the obligations and rights of clerics, the legislator considered an ecclesiastical office to be a right of clerics.⁵³³ The extern priest has been judged by his bishop to be prepared and suitable, both mentally and physically, to exercise ministry in the host diocese. Similarly, by accepting him in his diocese, the bishop *ad quem* must have considered him to be useful

⁵³² In the *CCEO*, the rights and obligations of priests are found in cc. 367-393.

⁵³³ J.E. LYNCH, “The Obligations and Rights of Clerics: [cc. 273-289],” in *CLSA Comm2*, 347 (= LYNCH, “The Obligations and Rights of Clerics”).

for his local church.⁵³⁴ He, therefore, has a right to receive an office, and it is the responsibility of the bishop *ad quem* to provide it (*CIC*, c. 274, §2).⁵³⁵ The ecclesiastical office and other pastoral duties that the extern priest will be assigned to should clearly be stated in the agreement. For example, if the priest will be appointed a parochial vicar of a specific church, or a pastor, or a teacher, or a vicar general or an episcopal vicar, this should be stated in the written agreement. On his part, the priest, being the officeholder, has the obligation to faithfully fulfill all the requirements of the office entrusted to him (*CIC*, c. 274, §2).

3.6.4.3.2 Remuneration

The right of priests to remuneration is given to them by the universal law itself. The Second Vatican Council states that, “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.”⁵³⁶ This is repeated almost verbatim by *CIC*, c. 281, §1, which states that, “Since clerics dedicate themselves to ecclesiastical ministry, they deserve a remuneration which is consistent with their condition ...”⁵³⁷ This canon applies to all clerics who are exercising ministry in a diocese or any other ecclesiastical circumscription and not just incardinated priests. These would include all clerics who have received appointments to ecclesiastical offices in that diocese or ecclesiastical circumscription. Although the canon

⁵³⁴ *CIC*, c. 1025, §2 requires that no one should be ordained to holy orders unless the competent authority considers his ministry useful for the Church. Similarly, if the bishop *ad quem* does not consider the ministry of the extern priest to be useful for his diocese, he should not accept him in his diocese.

⁵³⁵ LYNCH, “The Obligations and Rights of Clerics,” 347.

⁵³⁶ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 20, English in *FLANNERY I*, 898.

⁵³⁷ “Clerici, cum ministerio ecclesiastico se dedicant, remunerationem merentur quae suae conditioni congruat, ratione habitatum ipsius muneris naturae, tum locorum temporumque condicionum, quaque ipsi possint necessitatibus vitae suae necnon aequae retributioni eorum, quorum servitio egent, providere” (*CIC*, c. 281, §1).

uses the word *deserve* instead of *right*, the Pontifical Council for Legislative Texts noted in 2000 that since *CIC*, c. 281 is situated in Book II of the Code, which deals with obligations and rights of clerics, it leads to the logical conclusion that remuneration is a cleric's right.⁵³⁸ Therefore, the extern priest, like the incardinated priests in that diocese, possesses the right to remuneration given to him by the law itself.

According to the Second Vatican Council's decree *Presbyterorum ordinis*, the remuneration for priests may come from some other source or from the Christian faithful who are duty bound to provide a decent and fitting livelihood for their priests.⁵³⁹ The decree adds that it is the responsibility of the bishops, either individually in their own diocese or together in a common territory, to instruct the faithful to fulfill this obligation. In addition, the bishops are bound to enact rules "by which due provision is made for the decent support of those who hold or have held any office in God's service."⁵⁴⁰ In his apostolic letter *Ecclesiae sanctae I*, Pope Paul VI reiterated the same view raised by *Presbyterorum ordinis* that bishops have the responsibility either individually or collectively to enact norms for the provision of a proper living for all clerics who are, or have been, engaged in ministering to the people of God.⁵⁴¹

Canon 384 of *CIC* further stipulates that a diocesan bishop is responsible for making sure that provisions are made for the decent support and social assistance of his

⁵³⁸ PONTIFICAL COUNCIL FOR LEGISLATIVE TEXTS, "Decree concerning a Recourse against Diocesan Norms on Priests' Remuneration Fund," 29 April 2000, in *Canon Law Society of Australia and New Zealand Newsletter*, no. 2 (2000), 42 (= PCLT, "Decree concerning a Recourse").

⁵³⁹ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 20, English in *FLANNERY I*, 899.

⁵⁴⁰ *Ibid.*

⁵⁴¹ PAUL VI, *ESI*, 762, no. 8, English translation in *FLANNERY I*, 596.

priests.⁵⁴² According to James Donlon, although the bishop may not be personally responsible for providing the support given to clerics in his diocese, he is ultimately responsible to see that it is in fact provided.⁵⁴³ Canon 1274, §1 requires each diocese to have a special institute “to collect goods or offerings for the purpose of providing, according to the norm of *CIC*, c. 281, for the support of clerics who offer service for the benefit of the diocese, unless provision is made for them in another way.” A bishop must keep this issue in mind when he accepts a man for ordination and/or incardination.⁵⁴⁴ This is consistent with *CIC*, c. 269, §1, which prohibits diocesan bishops from incardinating a cleric unless “the necessity or advantage of his own particular church demands it, and without prejudice to the prescripts of the law concerning the decent support of clerics.” Similarly, the bishop *ad quem* must keep this in mind before he accepts a priest from another diocese to work temporarily in his diocese by means of a written agreement.

Since the extern priest exercises ministry in the host diocese, it is the responsibility of the bishop *ad quem* to ensure that the priest is provided with the financial remuneration that befits his condition.⁵⁴⁵ *Postquam apostoli* makes it very clear

⁵⁴² “Episcopus dioecesanus peculiari sollicitudine prosequatur presbyteros, quos tamquam adiutores et consiliarios audiat, eorum iura tutetur et curet ut ipsi obligationes suo statui proprias rite adimpleant iisdemque praesto sint media et institutiones, quibus ad vitam spiritualem et intellectualem fovendam egeant; item curet ut eorum honestae sustentationi atque assistentiae sociali, ad normam iuris, prospiciatur” (*CIC*, c. 384).

⁵⁴³ J.I. DONLON, “Remuneration, Decent Support and Clerics Removed from the Ministry of the Church,” in *CLSAP* (2004), 96 (= DONLON, “Remuneration, Decent Support and Clerics Removed from the Ministry of the Church).

⁵⁴⁴ *Ibid.*, 100.

⁵⁴⁵ *CIC*, c. 281, §1 says that remuneration given to a cleric should be consistent with the nature of his office and in accord with the conditions of time and place of the cleric. This implies that the amount of remuneration given would vary for a bishop, pastor, assistant pastor, transitional deacon and so forth.

that, “Since the host bishop profits by the help of these priests, he is responsible for their material and spiritual needs, again according to the terms of the agreement.”⁵⁴⁶ This provision is to be regulated by the particular law of the host diocese.⁵⁴⁷ It should also include whatever the priest needs by way of health insurance for illness or incapacity and pension or retirement as well as living and housing expenses (*CIC*, c. 281, §2).

3.6.4.3.3 Vacations

Presbyterorum ordinis stated that “Priest’s remuneration should be such as to allow the priest a proper holiday each year.”⁵⁴⁸ In addition, it instructed bishops to ensure that priests are able to have a holiday.⁵⁴⁹ The Directive Norms *Postquam apostoli*, following the instruction of *Presbyterorum ordinis*, proposed that a priest serving temporarily outside his diocese of incardination should be given the opportunity to visit his homeland after a certain period of time.⁵⁵⁰ Canon 283, §2, repeats the words of *Presbyterorum ordinis* and grants all clerics a right to “a fitting and sufficient time of vacation each year as determined by universal or particular law.” Universal law gives the following holders of ecclesiastical offices one continuous or interrupted month (*CIC*, c. 202): diocesan bishops (*CIC*, c. 395, §2), auxiliary and coadjutor bishops (*CIC*, c. 410), pastors (*CIC*, c. 533, §2) and parochial vicars (*CIC*, c. 550, §3).⁵⁵¹ This time is in addition to those days which the priest may spend once a year in spiritual retreat or priests’ study

⁵⁴⁶ SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 28.

⁵⁴⁷ See *CIC*, c. 274, §3.

⁵⁴⁸ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 20, English translation in *FLANNERY I*, 899.

⁵⁴⁹ *Ibid.*

⁵⁵⁰ SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 27.

⁵⁵¹ J. OTADUY, “Commentary on canon 283,” in *Exegetical Comm*, vol. II/I, 373.

days (*CIC*, c. 533, §2). The particular law of a diocese sets the vacation time for the remaining priests serving in the diocese and prepares an adequate program of replacements (*CIC*, c. 533, §3). In many dioceses, in addition to the one-month annual holiday and the time for retreats, priests also enjoy, by custom, one or two days off each week. Therefore, like the incardinated priests of the diocese, the extern priest is entitled to the one-month vacation, time for annual retreats and the customary weekly day off. Given that he might be coming from a country which involves many hours of travel, particular law of the host diocese could grant additional days for vacation and possibly help pay for his return ticket to his home diocese.

3.6.4.3.4 Ongoing Formation

The Second Vatican Council decree *Presbyterorum ordinis* states that “priests are therefore urged constantly to strive to attain an adequate knowledge of things divine and human. In this way, they will be better equipped for dialogue with their contemporaries.”⁵⁵² The decree carefully encourages priests to constantly seek to advance their knowledge both in sacred and human sciences through continuous learning so as to be able to serve the people of God better. The decree enumerates some of the principal areas where priests need to continue further learning: reading and meditation of sacred scripture, study of the Fathers and Doctors of the Church, and study of other documents of the Tradition.⁵⁵³

In addition, the decree further proposes that the ongoing formation of clerics can be facilitated through “the organization of courses or congresses suited to the conditions

⁵⁵² SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 19, English in *FLANNERY I*, 897-898.

⁵⁵³ *Ibid.*

of each region, the setting up of centers for pastoral studies, the founding of libraries, and the proper direction of studies by suitable persons.”⁵⁵⁴ The necessity of the ongoing learning is also emphasized in the Dogmatic Constitution of Divine Revelation *Dei verbum*. “Therefore, all clerics, particularly priests of Christ and others who, as deacons or catechists, are officially engaged in the ministry of the word, should immerse themselves in scriptures by constant spiritual and diligent study.”⁵⁵⁵

Following the completion of the Second Vatican Council, several documents were issued which stressed the importance of the ongoing formation of the clergy. In his *motu proprio Ecclesiae sanctae I*, Pope Paul VI stated that

Bishops either individually or collectively should make provisions that all priests, even if engaged in the ministry, complete a series of pastoral lectures in the course of the year immediately after ordination and that they attend at specified times other lectures in which an opportunity is given to their priests both to acquire a fuller knowledge of pastoral methods and of theological, moral and liturgical science, and to strengthen their spiritual life and to share their apostolic experiences with their brother priests.⁵⁵⁶

The *CIC*, c. 279, clearly states that clerics are obliged to continue to grow in knowledge after their ordination. Paragraph one states that even after their ordination, clerics are to continue pursuing sacred studies and doctrines founded in sacred scripture, and handed down by their predecessors.⁵⁵⁷ Paragraph two establishes that particular law

⁵⁵⁴ Ibid.

⁵⁵⁵ “Quapropter clericos omnes, imprimis Christi sacerdotes ceterosque qui ut diaconi vel catechistae ministerio verbi legitime instant, assidua lectione sacra atque exquisito studio in Scripturis haerere necesse est” (SECOND VATICAN COUNCIL, Dogmatic Constitution on Divine Revelation *Dei Verbum*, 18 November 1965, in AAS, 58 [1966], 829, no. 25, English Translation in *FLANNERY* 1, 764, no. 25).

⁵⁵⁶ “Curent Episcopi aut singuli aut inter se coniuncti ut omnes Presbyteri, etiam si ministerio addicti sunt, seriem praelectionum pastoralium statim post ordinationem per annum perficiant, atque frequentent, statis temporibus, alias praelectiones, quibus ipsis Presbyteris praebeatut occasio cum ad pleniorum rationum pastoralium et scientiae theologiae, moralis et liturgicae cognitionem acquirendam, tum ad vitam spiritualem roborandam et experientias apostolicas inter se cum fratribus communicandas” (Paul VI, *ESI*, 1, no. 7).

⁵⁵⁷ “Clerici studia sacra, recepto etiam sacerdotio, prosequantur, et solidam illam doctrinam, in sacra Scriptura fundatam, a maioribus traditam et communiter ab Ecclesia receptam sectentur, uti

is to provide for the pastoral courses that are necessary for the cleric's post-ordination continuous formation.⁵⁵⁸ The same particular law is also to provide other courses, theological meetings or conferences, which will give clerics the opportunity to acquire more knowledge of the sacred sciences and pastoral methods. Paragraph three encourages ongoing education in other sciences which may be useful in the exercise of pastoral ministry.⁵⁵⁹ Many dioceses provide their clergy this ongoing formation through clergy education days, conferences, sabbatical programs and facilitation of clerics to attend short courses in pastoral institutes.

The *Directory for the Ministry and Life of Priests*, referring to *CIC*, c. 279, states that "Ongoing formation is a right-duty of the priest and imparting it is a right-duty of the Church."⁵⁶⁰ The same *Directory* indicates that "It is the priest himself who is the person primarily responsible for the ongoing formation."⁵⁶¹ The priest, however, needs to be given the opportunities and resources to fulfill this obligation by the particular Church under the guidance of the local bishop.⁵⁶² In the case of the extern priest, the responsibility falls on the bishop *ad quem* to enable him to receive this ongoing

documentis praesertim Conciliorum ac Romanorum Pontificum determinatur, devitantes profanas vocum novitates et falsi nominis scientiam" (*CIC*, c. 279, §1).

⁵⁵⁸ "Sacerdotes, iuxta iuris praescripta, praelectiones pastorales post ordinationem sacerdotalem instituendas frequentent atque, statutis eodem iure temporibus, aliis quoque intersint praelectionibus, conventibus theologicis aut conferentiis, quibus ipsis praebeatur occasio pleniorum scientiarum sacrarum et methodorum pastoralium cognitionem acquirendi" (*CIC*, c. 279, §2).

⁵⁵⁹ "Aliarum quoque scientiarum, earum praesertim quae cum sacris conecuntur, cognitionem prosequantur, quatenus praecipue ad ministerium pastorale exercendum confert" (*CIC*, c. 279, §3).

⁵⁶⁰ CONGREGATION FOR THE CLERGY, *Directory for the Ministry and Life of Priests*, Vatican City, Libreria Editrice Vaticana, 1994, 77, no. 72.

⁵⁶¹ *Ibid.*, 89, no. 87.

⁵⁶² JOHN PAUL II, Post-synodal Apostolic Exhortation *Pastores dabo vobis*, 25 March 1992, in *AAS*, 84 (1992), 795, art. 78, English translation in *Origins*, 21 (1992), 755.

formation.⁵⁶³ It is, therefore, to be included in the written agreement of temporary service that the priest will be expected, as well as given the necessary resources, to participate in diocesan clergy study days, conferences, annual retreats, spiritual direction, mentoring programs and other educational programs determined by the particular law.⁵⁶⁴

3.6.4.3.5 Continenence and Celibacy

Canon 277, §1 states that “Clerics are obliged to observe perfect and perpetual continence for the sake of the kingdom of heaven and therefore are bound to celibacy which is a special gift of God...”⁵⁶⁵ According to this canon, clerics are obliged to observe two obligations: the obligation of perfect and perpetual continence,⁵⁶⁶ and the obligation of celibacy.⁵⁶⁷ The use of conjunctive adverb *ideoque* (therefore or for that

⁵⁶³ The legal foundation of this is *CIC*, c. 279, §2, which says that particular law is to determine the specifics of the ongoing formation program. Therefore, if the particular of the host diocese is to determine the program of the ongoing formation, then it follows that it should also assist the extern priest with the opportunities and resources necessary to receive the education.

⁵⁶⁴ It should be included in the agreement because the purpose of the written agreement is to determine and protect the rights and obligations of the extern priest. So, if it is not included in the agreement this right of the extern priest may not be protected. Additionally, when rights and duties are clearly described in the agreement, it helps the priest and bishops involved to have a good understanding of what is and what is not expected of them.

⁵⁶⁵ “Clerici obligatione tenentur servandi perfectam perpetuamque propter Regnum coelorum continentiam, ideoque ad coelibatum adstringuntur, quod est peculiare Dei donum, quo quidem sacri ministri indiviso corde Christo facilius adhaerere possunt atque Dei hominumque servitio liberius sese dedicare valent” (*CIC*, c. 277, §1).

⁵⁶⁶ According to James H. Provost, “Continenence is in the order of physical behavior; it describes the non-use of sexual faculties. It can be either absolute (i.e., no intercourse with anyone) or relative (no intercourse with others besides one’s partner). It can be temporary (as when couples practice “periodic continence” or unmarried persons remain continent until they marry), or perpetual (that is, one never engages in sexual intercourse throughout life).” See J. H. PROVOST, “Offences against the Sixth Commandment: Toward a Canonical Analysis of Canon 1395,” in *The Jurist*, 55 (1995), 650 (= PROVOST, “Offences against the Sixth Commandment”).

⁵⁶⁷ “Celibacy is in the legal order; it describes the state of not being married. In the English language, it carries the connotation of an on-going state of not being married, and usually is not applied to those who are eventually contemplating marriage although at the moment are not yet married.” See PROVOST, “Offences against the Sixth Commandment,” 650.

reason) suggests that continence is the primary obligation.⁵⁶⁸ Canon 288 of the *CIC* exempts all permanent deacons in a general way from some obligations that are common to all clerics but the obligations of continence and celibacy are not among them. According to the Pontifical Council for Legislative Texts, this implies that some deacons are not exempted from the provisions of *CIC*, c. 277, §1.⁵⁶⁹ This is supported by *CIC*, c. 1037, which makes it clear that unmarried deacons are bound by the law of continence and celibacy. Also, according to *CIC*, c. 1087, those who are in holy orders cannot validly get married. This means that widowed deacons are bound to observe the obligations of continence and celibacy unless they have been dispensed from observing celibacy in order to enter into marriage.

The group that has not been covered by the canons mentioned above are the married men who have been ordained permanent deacons as allowed by *CIC*, c. 1031, §2. Since they are already married, it is obvious that they are not bound by the law of celibacy unless their wives die. However, the question that some canonists⁵⁷⁰ have raised is whether married permanent deacons are bound to observe continence. PCLT has

⁵⁶⁸ This is the view held by Edward Peters. See E.N. PETERS, “Canonical Considerations on Diaconal Continence,” in *Studia canonica*, (2005), 149-150 (= PETERS, “Canonical Considerations on Diaconal Continence”). See also A. K. W. MCLAUGHLIN, “The Obligation of Perfect and Perpetual Continence and Married Deacons in the Latin Church: Canonical Implications,” in *The Jurist*, 74 (2014), 91-92 (= MCLAUGHLIN, “The Obligation of Perfect and Perpetual Continence and Married Deacons in the Latin Church”).

⁵⁶⁹ PCLT, “Canon 277, §1: Married Permanent Deacons and Observance of Perfect and Perpetual Continence,” in *Roman Replies and CLSA Advisory Opinions 2012*, 13 (= PCLT, “Canon 277, §1: Married Permanent Deacons and Observance of Perfect and Perpetual Continence”).

⁵⁷⁰ Edward Peters seems to propose that married permanent deacons are bound by the obligation of perfect and perpetual continence prescribed for clerics in *CIC*, c. 271, §1. See PETERS, “Canonical Considerations on Diaconal Continence,” 147-180. Anthony Mclaughlin opines that this question is not resolved yet even though PCLT has pronounced itself on it. According to him the clarification given by the PCLT lacks force of law because it was not approved generally or specifically by the pope. See MCLAUGHLIN, “The Obligation of Perfect and Perpetual Continence and Married Deacons in the Latin Church,” 94-95.

pronounced itself in this matter, making it clear that married permanent deacons, as long as their marriage lasts, are not bound by the obligation of absolute and perfect continence.⁵⁷¹ It is outside the scope of this study to seek to offer resolution to this question. What is clear is that once a cleric is bound by *CIC*, c. 277, §1 to observe perfect continence, he is bound by it perpetually, that is, at all times throughout his life as a cleric. The obligation “does not cease on vacation, during a day off, or rest times in a cleric’s life.”⁵⁷² Similarly, it does not cease when a priest moves to serve temporarily in another diocese. Therefore, an extern priest continues to be bound by the law of continence and celibacy unless he was dispensed from observing them by the Holy See at the time of his diaconal ordination.

Canon 277, §2 of *CIC* encourages clerics to behave prudently by avoiding what could be a source of danger or could cause a wrong impression to the faithful. The *CIC/17*, c. 133 specifically mentioned that living with women whom the cleric is not related to in any way likely could be a cause of danger to the celibacy of a cleric or a scandal to the faithful. The current norm is more generic and only mentions “persons whose company can endanger” the observance of the obligation.⁵⁷³ These persons may include certain males, females, minors and persons with special needs. The canon encourages clerics “to behave with due prudence.” Clerical behaviors that would not be prudent and would cause scandal to the faithful include sexual intercourse with anyone, attempted marriage, obsession with pornography, suspicious physical contact with

⁵⁷¹ PCLT, “Canon 277, §1: Married Permanent Deacons and Observance of Perfect and Perpetual Continence,” 12-14.

⁵⁷² PROVOST, “Offences against the Sixth Commandment,” 652.

⁵⁷³ *Ibid.*

minors, sharing rooms with minors or allowing them to stay overnight in the rectory, or going on outings with minors without the presence of their parents or other adults.⁵⁷⁴

The responsibility falls first and foremost on the cleric himself to be careful about those with whom he associates and to avoid any occasion that might lead to the endangerment of his commitment to continence and celibacy, and consequently scandalizing the faithful. Canon 277, §3 gives the diocesan bishop authority to establish specific rules that can foster and protect clerical celibacy, and make sure that his norms are implemented. For the purpose of this study, it is the duty of the diocesan bishop *ad quem* to remind the extern priest of his obligation to observe perfect and perpetual continence and to conduct himself with due prudence in relations with persons whose company can endanger his fulfillment of such obligation or create scandal among the faithful. This can be done by stating in the written agreement that the extern priest is required to participate in a safe environment program designed by the host diocese and in acculturation workshops about the culture, pastoral conduct conditions and sensitivities in the host diocese.

3.6.4.3.6 Canonical Reverence and Obedience

Canon 273 of *CIC* states that “Clerics are bound by a special obligation to show reverence and obedience to the Supreme Pontiff and their own ordinary.” The most important phrase in this canon for our purpose is *suo quisque Ordinario* (his own ordinary). This phrase defines the extent of the cleric’s reverence and obedience in regard to the person whom he owes the reverence and obedience. So, the question that arises here is: does the extern priest owe reverence and obedience to the bishop *ad quem*?

⁵⁷⁴ LYNCH, “The Obligations and Rights of Clerics: [cc. 273-289]” in *CLSA Comm2*, 359.

In a canonical context, reverence implies the honor and respect that one pays to his or her superior, and it consists in external acts of respect, which may differ according to time, place and social convention.⁵⁷⁵ According to the Second Vatican Council Constitution *Lumen gentium*, the sacrament of orders is entrusted in varying degrees to various members of the Church who exercise it as bishops, priests and deacons.⁵⁷⁶ The same constitution teaches that “the fullness of the Sacrament of Orders is conferred by episcopal consecration, and both in the liturgical tradition of the Church and in the language of the Fathers of the church it is called the high priesthood, the summit of the sacred ministry.”⁵⁷⁷ This means that all bishops possess the highest degree of holy orders and occupy higher positions in the Church. They, therefore, deserve to be respected by all clerics, whether or not they belong to the bishops’ ecclesiastical jurisdiction.⁵⁷⁸ This is consistent with the Second Vatican Council decree *Presbyterorum ordinis*, which says that “Priests on their part should keep in mind the fullness of the sacrament of order which bishops enjoy and should reverence in their persons the authority of Christ the supreme Pastor.”⁵⁷⁹ Therefore, the extern priest has the obligation of showing reverence not only to the bishops *ad quem* and *a quo* but to all bishops.

⁵⁷⁵ W.H. WOESTMAN, *The Sacrament of Orders and the Clerical State: A Commentary on the Code of Canon Law*, Ottawa, Saint Paul University, 2006, 165 (= Woestman, *The Sacrament of Orders*).

⁵⁷⁶ SECOND VATICAN COUNCIL, *LG*, no. 28, English translation in *FLANNERY I*, 384. Also, see the Council of Trent, Session 23, On the Sacrament of Order, c. 6.

⁵⁷⁷ *Ibid.*, no. 21.

⁵⁷⁸ J.G. SHEEHAN, *The Obligation of Respect and Obedience of Clerics Toward Their Ordinary (Canon 127): A Historical Synopsis and a Canonical Commentary*, Canon Law Studies, no. 344, Washington, DC, Catholic University of America, 1954, 55.

⁵⁷⁹ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 7, English translation in *FLANNERY I*, 877. *LG*, no. 28, 836, also adds that, “By reason of this sharing in the priesthood and mission, priests should see in the bishop a true father and obey him with all respect.”

As for obedience, does the extern priest have to obey the bishop *ad quem*? According to Udalricus Beste, obedience in canonical terms consists of the submission and compliance which clerics are bound to show their superiors.⁵⁸⁰ The obedience which a secular or diocesan cleric owes his ordinary is called canonical obedience, distinguishing it from the religious vow of obedience which a religious man or woman owes his or her superior.⁵⁸¹ The obligation of the latter arises from a vow that the religious makes when he or she joins a religious institute.⁵⁸² Canonical obedience arises from several elements.⁵⁸³ For the purpose of this study, we shall only discuss two of them: the sacrament of holy orders and incardination.

The first basis of canonical obedience is the sacrament of holy orders. This is evident in the Second Vatican Council decree *Presbyterorum ordinis*, which states that “priestly obedience, inspired through and through by the spirit of co-operation, is based on that sharing of episcopal ministry which is conferred on priests by the sacrament of order and the canonical mission.”⁵⁸⁴ This obedience is expressed concretely in a

⁵⁸⁰ R.P.U. BESTE, *Introductio in Codicem quam in usum et utilitatem scholae et clerici ad promptam expeditamque canonum interpretationem pravit et edidit*, Naples, M. d’Auria Editore Pontificio, 1956, 187.

⁵⁸¹ LYNCH, “Obligations and Rights of Clerics,” in *CLSA Comm2*, 345-346.

⁵⁸² *Ibid.*, 346.

⁵⁸³ Francis Schneider identifies the promise of obedience at ordination, incardination, jurisdiction, ecclesiastical communion, the virtue of obedience and canonical mission as the bases of the obligation of canonical obedience. See F. J. SCHNEIDER, *Obedience to the Bishop by the Diocesan Priest in the 1983 Code of Canon Law*, Canon Law Studies, no. 533, Washington, DC, Catholic University of America, 1990, 239-253 (= SCHNEIDER, *Obedience to the Bishop by the Diocesan Priest*).

⁵⁸⁴ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 7, English translation in *FLANNERY I*, 877.

sacramental way when the presbyter promises obedience to his bishop, or legitimate superior if the presbyter is a religious, during the ordination rite.⁵⁸⁵

Another basis of clerical obedience is incardination to a diocese.⁵⁸⁶ This is because incardination attaches a cleric to a local church for the purpose of offering stable service to that particular Church. It establishes a binding relationship of service between the cleric and the local church. Through the bond of incardination, a priest commits himself to be available for the service of that particular church under the direction of the local bishop.⁵⁸⁷ The service that the priest provides in the diocese is based on the stable and lasting commitment that he has assumed, not with the physical person of the bishop, but with the diocese, through incardination.⁵⁸⁸ The cleric becomes a subject of the bishop's supervision and guidance when he exercises his ministry in that particular Church and is, therefore, obliged to obey the bishop of his diocese of incardination.

When a cleric changes his incardination to another diocese, his commitment to serve is also shifted to that new diocese. The cleric becomes a subject of the bishop of his new diocese. Consequently, his canonical obedience also changes to his new bishop under whose direction he now exercises his ministry.

⁵⁸⁵ SCHNEIDER, *Obedience to the Bishop by the Diocesan Priest*, 247. The promise of obedience is made by the candidates for both the diaconate and the presbyterate to their Ordinary during the ceremonies of ordination. See Woestman, *The Sacrament of Orders*, 166.

⁵⁸⁶ T. Rincón says that the bond of incardination is the immediate basis of the canonical obligations of obedience and availability to assume and faithfully fulfill the office conferred by the Ordinary. See T. Rincón, "Commentary on Canons 273-274," in *CCLA*, 229.

⁵⁸⁷ SCHNEIDER, *Obedience to the Bishop by the Diocesan Priest*, 245.

⁵⁸⁸ PCLT, "Explanatory Note: Elements to Establish the Area of Canonical Responsibility of the Diocesan Bishop on Clerics Incardinated within the Diocese and who Exercise their Ministry within It," in *Communicationes*, 36 (2004), 333-38, English translation by V.G. D'Souza; revised by A. Mendonça, in *Studies in Church Law*, 3 (2007), 31.

Similarly, when a cleric moves by means of *licentia transmigrandi* to minister temporarily in another diocese, he makes himself available to serve in that diocese under the direction of the bishop *ad quem*. Although it is not an incardination, the *licentia transmigrandi* establishes a temporary and stable relationship of service between the cleric and the host diocese under the leadership of the bishop *ad quem*. By his incardination, the priest continues to obey the bishop *a quo*. At the same time, by virtue of the *licentia transmigrandi*, he owes the bishop *ad quem* obedience in areas that are related to his ministry there as defined by universal and particular laws.⁵⁸⁹ *Postquam apostoli* clearly states that “Priests who have entered another diocese are to revere the local bishop and obey him, in accord with the convention.”⁵⁹⁰

3.6.4.3.7 Diocesan Particular Law

According to *CIC*, c. 391, §1, a diocesan bishop has the power to govern his diocese with legislative, executive and judicial power.⁵⁹¹ The bishop is given this power to enable him to serve the faithful in his diocese who are in communion with the universal Church unless the law explicitly provides otherwise.⁵⁹² Paragraph two of the same canon states that the diocesan bishop is the only one who has the authority to make laws in his diocese. He cannot validly delegate his legislative power to another person (*CIC*, c. 135, §2).

⁵⁸⁹ It is important to mention that the scope of canonical obedience extends to whatever is obligatory by universal and particular laws, as long as they are not contrary to divine law, for example, the prescriptions of the *Code of Canon Law*, liturgical laws and diocesan statutes. See WOESTMAN, *The Sacrament of Orders*, 167.

⁵⁹⁰ SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 29.

⁵⁹¹ “Episcopi dioecesani est Ecclesiam particularem sibi commissam cum potestate legislativa, exsecutiva et iudiciali regere, ad normam iuris” (*CIC*, c. 391, §1).

⁵⁹² J.A. RENKEN, “Particular Churches and their Groupings: [cc. 368-572],” in *CLSA Comm2*, 527 (= RENKEN, “Particular Churches and their Groupings”).

When a diocesan bishop makes a law, he makes it only for the Catholic faithful who have domicile or quasi-domicile (*CIC*, cc. 102-107) in his diocese and are actually residing within the boundaries of the diocese (*CIC*, c. 12, §3).⁵⁹³ Thus, diocesan particular law neither affects travelers (*peregrini*)⁵⁹⁴ nor those who are absent from the diocese. This is because diocesan particular law is presumed to be territorial (*CIC*, c. 13, §1).⁵⁹⁵ If the bishop wants a law to bind the Catholic faithful of his diocese living outside the boundaries of the diocese, he has to expressly state it in the general decree promulgating the law. In this case, the law becomes personal.⁵⁹⁶ Since the extern priest is domiciled in another diocese, he is not bound by the particular law of his home diocese, unless it was explicitly stated in the law that it would bind priests living outside the diocese. By virtue of his domicile in the host diocese, the extern priest is bound by the particular law of the host diocese. He is, therefore, obliged to respect and obey the particular law of the host diocese unless the law explicitly states that it excludes non-incardinated priests in that diocese. He is, however, also bound by the particular law of his home diocese when he returns to visit. He never loses his domicile there because he

⁵⁹³ J.M. HUELS, “Ecclesiastical Laws: [cc. 7-22],” in *CLSA Comm2*, 66 (= HUELS, “Ecclesiastical Laws”).

⁵⁹⁴ A person is said to be a traveler (*peregrinus*) if that person is outside his or her place of domicile or quasi-domicile, which the person still retains (*CIC*, c. 100).

⁵⁹⁵ According to Javier Otaduy, territoriality of the law can mean three things: 1) that the law originates from a legislative authority belonging to an ecclesiastical institution that is territorially based (like a diocese, or an ecclesiastical province); 2) the territorial *modus operandi* of the law, that is, the manner by which it captures its subjects (through their actual presence in the territory); 3) the manner of fulfillment or observance of that law (because it must be observed in a juridically determined location). Particular law of the diocese has the second of these meanings. See J. OTADUY, “Commentary on Canon 13,” in *Exegetical Comm*, vol. I, 298-299.

⁵⁹⁶ Personal laws are given for non-territorially defined groups of persons that are capable of receiving a law, such as institutes of apostolic life, personal prelatures, and various associations of the faithful. See HUELS, “Ecclesiastical Laws,” 65.

does not leave it “with the intention of not returning” (*cum animo non revertendi*).⁵⁹⁷ Indeed, he is obliged to return in keeping with the terms of the written agreement. He is, therefore, never a *peregrinus* when he is visiting his home diocese.

3.6.4.4 The Obligations of Bishops *a quo* and *ad quem*

The written agreement does not only determine the rights and obligations of the priest concerned, it also lays out the rights and obligations of the two bishops. According to *CIC*, c. 384, diocesan bishops are supposed to protect the rights of their clerics and ensure that the clerics correctly fulfill their obligations.⁵⁹⁸ In other words, diocesan bishops have the responsibility of supervising the public conduct and activities of the clerics in their dioceses.⁵⁹⁹

The extern priest is a subject of two bishops: the bishop *a quo*, who is his proper diocesan bishop, and the bishop *ad quem*, who is the local bishop of the host diocese in which he is serving temporarily. It is, therefore, important that the contents of the written agreement include the responsibilities of the diocesan bishop *a quo* and of the diocesan bishop *ad quem*. In the sections that follow, we will identify and explain the particular areas where the bishop *a quo* continues to be responsible over the extern priest and the areas where the bishop *ad quem* is responsible. This will be done by examining individual canons of interest.

⁵⁹⁷ “Domicilium et quasi-domicilium amittitur discessione a loco cum animo non revertendi, salvo praescripto can. 105” (*CIC*, c. 106).

⁵⁹⁸ “Episcopus dioecesanus peculiari sollicitudine prosequatur presbyteros, quos tamquam adiutores et consiliarios audiat, eorum iura tutetur et curet ut ipsi obligationes suo statui proprias rite adimpleant iisdemque praesto sint media et institutiones, quibus ad vitam spiritualem et intellectualem fovendam egeant; item curet ut eorum honestae sustentationi atque assistentiae sociali, ad normam iuris, prospiciatur” (*CIC*, c. 384).

⁵⁹⁹ DONLON, “Remuneration, Decent Support and Clerics Removed from the Ministry of the Church,” 132.

3.6.4.4.1 Grant of Permissions and Dispensations

A priest ministering outside his diocese of incardination has been given permission to move and exercise sacred ministry in the host diocese but not to actively participate in other non-ministerial activities like civil, political or commercial activity.⁶⁰⁰ However, during his ministry in the host diocese, he might need to undertake some activities that require permission or dispensation from a competent ecclesiastical authority. Depending on the nature of the activity, it is important to address in the written agreement which of the bishops *a quo* and *ad quem* is competent to grant the required permission or dispensation.

Granting permission or dispensation is an act of executive power of governance, which a diocesan bishop can exercise over his own subjects residing within the boundaries of the diocese and even over those living outside the territory of the diocese (*CIC*, c. 136).⁶⁰¹ He can also exercise it over travelers (*peregrini*) who are actually present in his diocese for as long as they are there (*CIC*, c. 136). In addition, he can exercise it personally or through his delegate unless the law expressly provides otherwise (*CIC*, c. 137). Since the extern priest has two domiciles and is subjected to two bishops, both the bishop *a quo* and the bishop *ad quem* are competent to give him the permission or dispensation he might require to do certain activities. However, there are some activities that the law allows only the proper diocesan bishop to permit or dispense from. In this case, only the diocesan bishop *a quo* would be competent to grant the permission

⁶⁰⁰ GARCIA, “The Assignment of Non-Incardinated Priests,” 103.

⁶⁰¹ “Potestatem exsecutivam aliquis, licet extra territorium existens, exercere valet in subditos, etiam a territorio absentes, nisi aliud ex rei natura aut ex iuris praescripto constet; in peregrinos in territorio actu degentes, si agatur de favoribus concedendis aut de executioni mandandis sive legibus universalibus sive legibus particularibus, quibus ipsi ad normam can. 13, §2, n. 2 tenentur” (*CIC*, c. 136).

or the dispensation. In the sections that follow, we will discuss specific activities that the extern priest might need to perform while temporarily serving in the host diocese and identify which bishop is competent to grant the required permission or dispensation.

3.6.4.4.1.1 Permission Granted Only by Bishop *a quo*

The extern priest is granted the *licentia transmigrandi* to temporarily serve in host diocese while he remains incardinated in his home diocese. The *licentia*, although placed in the section of the code that deals with incardination and excardination of clerics, is neither given for excardination and incardination nor meant to lead to them. However, *CIC*, c. 271 does not rule out the possibility of the priest requesting excardination and incardination during his ministry in the host diocese or at the end of it. If the extern priest wishes to excardinate from his home diocese and incardinate into the host diocese, he would have to follow either the formal process of incardination and excardination outlined in *CIC*, cc. 267, 269 and 270 or, if he has served there for five years, the *ipso iure* method of incardination could be applied (*CIC*, c. 268). In both methods, however, the extern priest would have to petition for a new *licentia* for excardination and incardination.

Canons 267 explicitly identifies the cleric's diocesan bishop as the competent authority to grant excardination and the diocesan bishop of the diocese where he wishes to be incardinated as the competent authority to grant incardination. Since the extern priest is still incardinated in his home diocese, only the bishop *a quo* has the competence to grant him permission to excardinate from his home diocese. The bishop *ad quem* does not have this competence and, therefore, cannot grant a priest working temporarily in his diocese permission to excardinate from his home diocese.

Secondly, when the extern priest is granted the *licentia* to move from his home diocese A to minister temporarily in the host diocese B, this *licentia* is given only for the individual act of moving from diocese A to diocese B.⁶⁰² If the extern priest desires to move from the host diocese B to minister temporarily in another diocese C, he would have to petition his diocesan bishop *a quo* for a new *licentia transmigrandi*. According to *CIC*, c. 271, §1, it is only the diocesan bishop *a quo* who has the competence to grant *licentia transmigrandi*. The bishop *ad quem* does not have the authority to grant the extern priest permission to move to another diocese.

Thirdly, if the extern priest wishes to serve as a chaplain in a military ordinariate, he would have to petition for a new *licentia* from the diocesan bishop *a quo*. This is because a military ordinariate is a different ecclesiastical structure, which is juridically comparable to a diocese governed by the special norms promulgated in the Apostolic Constitution of Pope John Paul II, *Spirituali militum curae*.⁶⁰³ A requirement similar to the written agreement in *CIC*, c. 271 would be needed for the extern priest to move to serve temporarily as a military chaplain in the army ordinariate. So, the bishop *ad quem* is not competent to grant the extern priest permission to move to serve in the military ordinariate. It is only the bishop *a quo* who can do this.

⁶⁰² For a detailed study of the juridic nature of Licentiae, See J.M. Huels, "Permissions, Authorizations and Faculties in Canon Law," in *Studia canonica*, 36 (2002), 4-10.

⁶⁰³ JOHN PAUL II, Apostolic Constitution *Spirituali militum curae*, 21 April 1986, in *AAS*, 78 (1996), 481-486, English translation in *The Pope Speaks*, 31 (1986), 284-288. This is different from joining and serving in the regular armed forces as a military officer. If the extern priest wishes to join the military of the particular country where he is temporarily ministering, he would have to be governed by *CIC*, c 289, §1, which states that "Since military service is hardly in keeping with clerical state, clerics and candidates for sacred orders are not to volunteer for military service except with the permission of their ordinary." Since the competent authority to grant permission for the military service is the cleric's ordinary, in the case of the extern priest, either the bishop *a quo* or bishop *ad quem* is competent to grant him the permission.

3.6.4.4.1.2 Permission Granted by Either Bishop *a quo* or *ad quem*

Both the bishop *a quo* and the bishop *ad quem*, have the right to grant the priest temporarily ministering outside his diocese of incardination the following permissions or dispensations.

3.6.4.4.1.2.1 Involvement in Financial Activities

CIC, c. 285, §4 states:

Without the permission of their ordinary, they [clerics] are not to take the management of goods belonging to lay persons or secular offices which entail an obligation of rendering accounts. They are prohibited from giving surety even with their own goods without consultation with their proper ordinary. They are also to refrain from signing promissory notes, namely, those through which they assume an obligation to make payment on demand.⁶⁰⁴

According to this canon, with the exception of permanent deacons (*CIC*, c. 288), all clerics are not to manage the temporal goods of lay people without permission of their ordinary. For example, they need permission of their ordinary to be guardians of children, executors of wills or trustees of lay persons' funds.⁶⁰⁵ A good reason for them to be granted this permission is when they need to manage the temporal affairs of their close relatives and friends for whom they are responsible.⁶⁰⁶

In addition, clerics need permission to hold secular offices for which they are supposed to offer accountability, such as taking a leadership position in a savings or cooperative bank, or in a charitable organization.⁶⁰⁷ What is required here is permission, not a dispensation. As Edward Peters explains, "Dispensations, of course, are

⁶⁰⁴ "Sine licentia sui Ordinarii, ne ineant gestiones bonorum ad laicos pertinentium aut officia saecularia, quae secumferunt onus reddendarum rationum; a fideiubendo, etiam de bonis propriis, inconsulto proprio Ordinario, prohibentur; item a subscribendis syngraphis, quibus nempe obligatio solvendae pecuniae, nulla definita causa, suscipitur, abstineant" (*CIC*, c. 285, §4).

⁶⁰⁵ LYNCH, "The Obligations and Rights of Clerics," 378.

⁶⁰⁶ *Ibid.*

⁶⁰⁷ *Ibid.*

distinguishable from permissions in that dispensations recognize that certain states of affairs are at odds with the normal requirements of law, while permissions recognize that some activities could occur within the normal operation of the law.”⁶⁰⁸ Being a subject of two bishops, both the bishop *a quo* and *ad quem* are competent to give the extern priest the permission required to manage financial affairs of lay people or to accept any non-ecclesiastical office which involves accountability. For example, if the extern priest wants to be an executor of the last will of his parents or of a close family friend, he would have to get permission from either the bishop *a quo* or bishop *ad quem*.

The same canon quoted above also prohibits clerics from giving surety even with their own goods or signing a promissory note which involves the payment of money without consulting with their proper ordinary. The canon explicitly mentions the need to consult with the cleric’s proper ordinary. For the extern priest, the proper ordinary is the bishop of his diocese of incardination (*CIC*, c. 1016). So, according to this norm, if the extern priest is to give surety or sign a promissory note, he would have to consult the bishop *a quo*. Although only consultation is required and not permission, it is assumed that the cleric would not reject the prudent advice of his ordinary.⁶⁰⁹

3.6.4.4.1.2.2 Involvement in Business or Trade

CIC, c. 286 states that “Clerics are prohibited from conducting business or trade personally or through others, for their own advantage or that of others, except with the permission of legitimate ecclesiastical authority.” Permanent deacons are not bound by

⁶⁰⁸ E.N. PETERS, “Permission Given to Priest to Run for Political Office,” in *Roman Replies and CLSA Advisory Opinions 2007*, 61.

⁶⁰⁹ G. SHEEHY et al. (eds.), *The Canon Law: Letter & Spirit, A Practical Guide to the Code of Canon Law*, Prepared by the CLSGBI in association with the CCLS, Collegeville, MN, The Liturgical Press, 1995, 164 (= *CLSGBI Comm*).

this norm (*CIC*, c. 288). This same prohibition of clerics from conducting business or trade was enacted in *CIC/17*, c. 142. The only difference is that the probation in the *CIC/17* was absolute because there was no mention that an ecclesiastical authority may permit a cleric to conduct business or trade. Therefore, under the *CIC/17*, a cleric would have needed a dispensation to act contrary to this provision. In 1966, Pope Paul VI, in his motu proprio *De Episcoporum muneribus*, reserved to the Holy See the power to dispense a cleric “to practice business or commerce, personally or through others, for their own advantage or that of other persons.”⁶¹⁰ Under the current law, a lawful ecclesiastical authority may permit a cleric to trade or conduct commerce, but only in special circumstances. A cleric who violates this norm can be punished with a *ferendae sententiae* penalty (*CIC*, c. 1392).⁶¹¹ Since Pope Paul VI’s reservation is not contained in the *CIC*, it means that the legitimate authority to grant such permission is the cleric’s bishop. This means that the extern priest may be given permission to conduct business or trade by either bishop *a quo* or *ad quem*.

3.6.4.4.1.2.3 Permission to Publish Books

All Catholic faithful, whether clerics or not, are supposed to seek “permission or approval”⁶¹² of a competent ecclesiastical authority to publish a book or other writings

⁶¹⁰ “§IX. 3. d): exercendi per se vel per alios negotiationem aut mercaturam, sive in propriam sive in aliorum utilitatem” (PAUL VI, Apostolic letter *motu proprio De Episcoporum muneribus*, Norms for the Dispensing Power of Bishops, 15 June 1966, in *AAS*, 58 [1966], 470, English translation in *CLD*, vol. 6, 398).

⁶¹¹ *CIC*, c. 1392 states that “Clerics or religious who engage in trading or business contrary to the provisions of the canons are to be punished according to the gravity of the offence.”

⁶¹² The terms “permission” (*licentia*) and “approval” (*approbatio*) are used in *CIC*, c. 824, §1. According to J.M. González de Valle, these two concepts are different and give rise to different procedures. See J.M. GONZÁLEZ DE VALLE, “Catholic Education,” in *CCLA*, 534. This view is supported by the *CCEO*, which gives the definitions of the two terms. Canon 661, §1 states “Ecclesiastical permission, expressed only with the word *imprimatur*, means that the work is free from errors regarding Catholic faith and morals.” §2 states “Approval granted by competent authority shows that the text is accepted by the Church

concerning faith and morals (*CIC*, c. 823, §1). The permission or approval granted by an ecclesiastical authority to publish a book or other writings on faith and morals is commonly expressed by the Latin word *imprimatur* (let it be printed).⁶¹³ By granting the *imprimatur*, the competent ecclesiastical authority is declaring that the work contains no doctrinal or moral error.⁶¹⁴ The ecclesiastical authorities who are competent to grant the permission or approval are identified in *CIC*, c. 824, §1, which reads as follows.

Unless it is established otherwise, the local ordinary whose permission or approval to publish books must be sought according to the canons of this title is the proper local ordinary of the author or the ordinary of the place where the books are published.⁶¹⁵

This canon, which is based on the decree *Ecclesia pastorum*,⁶¹⁶ identifies two ecclesiastical authorities who are competent to grant permission or approval for the publication of a book or other writings on faith and morals.⁶¹⁷ The first is the local proper

or that the work is in accordance with the authentic doctrine of the Church.” However, according to James A. Coriden, the two terms are virtually indistinguishable. See J.A. CORIDEN, “Instruments of Social Communication and Books in Particular: [cc. 822-832]” in *CLSA Comm2*, 980. The 1992 Instruction of the CDF also indicated that the two terms have exactly the same effects. See CDF, Instruction on Some Aspects of the Use of the Instruments of Social Communication in Promoting the Doctrine of the Faith, 30 March 1992, in *Communicationes*, 24 (1992), no. 7, §2, 18-27, English translation in *Origins*, 22 (1992), 92-96 (= CDF, Instruction on Some Aspects of the Use of the Instruments of Social Communication).

⁶¹³ *CLSGBI Comm*, 448.

⁶¹⁴ *Ibid.*

⁶¹⁵ “Nisi aliud statuatur, loci Ordinarius, cuius licentia aut approbatio ad libros edendos iuxta canones huius tituli est petenda, est loci Ordinarius proprius auctoris aut Ordinarius loci in quo libri publici iuris fient” (*CIC*, c. 824, §1).

⁶¹⁶ SACRED CONGREGATION FOR THE DOCTRINE OF FAITH, Decree *Ecclesiae Pastorum* On the Vigilance of the Church’s Pastors Regarding Books, 19 March 1975, in *AAS*, 67 (1975), §1, 281-284, English translation in *CLD*, vol. 8, §1, 993.

⁶¹⁷ According to *CIC*, c. 824, §2, the prescriptions laid down for books apply to all writings on faith and morals that are intended for publication. The canon states that “Those things established regarding books in the canons of this title must be applied to any writings whatsoever which are destined for public distribution, unless it is otherwise evident.” This would not include private documents, such as class notes or other writings of limited circulation. See *CLSGBI Comm*, 449.

ordinary⁶¹⁸ of the author, that is, the ordinary of the place where the author has domicile or quasi-domicile (*CIC*, cc. 102-107). The second ecclesiastical authority competent to grant permission or approval is the ordinary where the books are to be published, that is, where the publisher is located.⁶¹⁹ Therefore, if the extern priest writes a book, he would need the permission for the publication of his book from the bishop *ad quem* or from the bishop where his book is going to be published. However, since he is also a subject of the bishop *a quo*, he can also get the permission from him.

3.6.4.4.1.2.4 Issuance of a *Celebret*

For a priest to be allowed to celebrate Mass in a church where he is not known, he needs permission from the rector or competent superior of that church (*CIC*, c. 903).⁶²⁰ Before granting the permission, the rector or competent superior of the church has to ascertain that the priest is in a good standing with his bishop. This is usually done by means of a *celebret*, which is a letter of introduction from a priest's ordinary or superior attesting to the priest's ordination and good standing and certifies that there is nothing to prevent him from celebrating Mass.⁶²¹ The *celebret* must not be more than a year old. *CIC*, c. 903 identifies the ecclesiastical authority competent to issue the *celebret* as the priest's ordinary. Secular priests incardinated in a diocese obtain it from their local

⁶¹⁸ According to c. 134, the term "local ordinary" includes vicars general, episcopal vicars as well as diocesan bishops.

⁶¹⁹ C.J. ERRÁZURIZ, "Commentary on Canon 824," in *Exegetical Comm*, vol. III/I, 304.

⁶²⁰ The term rector is defined in *CIC*, c. 556 as a priest to whom is committed the care of some church which is neither parochial nor capitular nor connected to a house of religious community or society of apostolic life which celebrates services in it. However, in *CIC*, c. 903, the term is understood as any priest who has the care of a church (defined in *CIC*, c. 1214) or an oratory (defined in c. 1223), such as a pastor or religious superior, and not only the rector mentioned in c. 556. See J.M. HUELS, "The Most Holy Eucharist: [cc.897-958]" in *CLSA Comm2*, 1099 (= HUELS, "The Most Holy Eucharist").

⁶²¹ HUELS, "The Most Holy Eucharist," 1099.

ordinary, who can be a diocesan bishop, a vicar general or an episcopal vicar. Priests who are religious or members of clerical societies of apostolic life may obtain it from their major superiors (*CIC*, c. 620) or local superiors (*CIC*, c. 636, §1).⁶²² A priest ministering outside his diocese of incardination can get it from the ordinary of the host diocese, who is his local ordinary, or from the ordinary of his diocese of incardination, who is his proper ordinary. So, both the bishop *a quo* and the bishop *ad quem* are competent to grant a *celebret* to a priest serving temporarily in another diocese.

3.6.4.5 Rights of Bishops *a quo* and *ad quem* Over the Extern Priest in Penal Matters

There should be a provision in the written agreement stating how the bishop *a quo* or bishop *ad quem* is to handle a scandal that may arise if the extern priest is accused of abusing his office or committing a canonical delict,⁶²³ whether in his home diocese or host diocese. Moreover, depending on the place where the delict is alleged to have been committed by the priest, the agreement needs to indicate which bishop has the competence to initiate a canonical trial.

However, it must first be mentioned here that in penal matters, a diocesan bishop is the judge in his diocese in all matters that are not expressly exempted by law (*CIC*, c.

⁶²² Ibid.

⁶²³ A canonical delict is an offence against the norm of ecclesiastical law to which a penal sanction is attached. In other words, a canonical delict is an external and morally imputable violation of a law or a precept to which a canonical penalty is attached. See Á. MARZOA, “Offences and Punishment in General,” in *Exegetical Comm*, vol. IV/1, 210. For a more detailed discussion of the notion of canon delict see J. DIRAVIAM, *The Judicial Penal Procedure for the Dismissal of a Diocesan Priest from the Clerical State According to the 1983 Code of Canon Law*, JCD diss., Ottawa, Saint Paul University, 2008, 69-77.

1419, §1).⁶²⁴ The bishop may exercise this right to judge either personally or through others like the judicial vicar or other diocesan tribunal judges appointed by him.⁶²⁵ Ultimately, since the diocesan tribunal is the tribunal of the diocesan bishop, when the law gives competence to the diocesan tribunal, the same competence is also given to the diocesan bishop.

If a priest is accused of having committed a canonical delict, the competent tribunal where he can be brought to answer for his alleged delictual behavior is the tribunal where he has a domicile or quasi-domicile (*CIC*, c. 1408) or where the offense was committed (*CIC*, c. 1412). In the first scenario, the competence of the diocesan bishop is established in accordance with the regular provisions of domicile or quasi-domicile of the extern priest (*CIC*, c. 102, §§ 1 and 2). The extern priest has a domicile in the host diocese, but he also has not lost his domicile in his home diocese. Although either bishop has the right to initiate a penal trial against the accused priest, whether judicially or administratively, there are good reasons to suggest that this should be done by the bishop *ad quem*.⁶²⁶ The bishop *a quo* ordinarily should not become involved in initiating a penal process against a priest living outside his diocese for an alleged offense, which he committed in the place where he is residing.

⁶²⁴ The principal cases that are expressly excepted by law are found in *CIC*, cc. 1400, §2, 1404, 1405, 1419, §2 and 1427, §§1 and 2. Similar norms are found in *CCEO*, cc. 1055, §2, 1058, 1060, 1061, 1066, §2, and 1069, §1.

⁶²⁵ Personally, a diocesan bishop can act by proceeding administratively in imposing or declaring certain penalties following the procedure established by *CIC*, c. 1720. The bishop can also determine that a trial is done through a judicial procedure by the tribunal judges. This determination is made through preliminary investigation (*CIC*, cc. 1717-1719).

⁶²⁶ Excluded are cases reserved to the Congregation of the Doctrine of the Faith (CDF), which the priest may be accused of committing while residing in the host diocese.

In the second scenario, the right of the bishops involved to initiate a canonical trial against an accused extern priest is established by the place where the alleged offense was committed. If the extern priest committed the alleged offense while he was on vacation in his home diocese or before he moved to the host diocese, the canonical trial can be initiated by either the bishop *a quo* in whose diocese the alleged crime was committed or by the bishop *ad quem* in whose diocese the accused priest currently resides. The preference would be the bishop *a quo* of the home diocese where the suspected delict was committed for three reasons. First, it is the place where the wounds inflicted by the delict allegedly committed by the extern priest are found.⁶²⁷ Secondly, as required by *CIC*, c. 1341, the bishop of the place of the alleged delict is in a better position than the bishop of the place of domicile to ascertain whether justice can be restored or the scandal sufficiently healed by fraternal correction, or rebuke or other means of pastoral solicitude.⁶²⁸ Thirdly, the bishop of the place of the alleged crime is in a better position to determine whether or not the delict is extinct due to prescription (*CIC*, cc. 1362-1363).⁶²⁹

If the extern priest is accused of committing two or more crimes, that is, if he is accused of committing a crime in his home diocese and other crimes in the host diocese, according to *CIC*, c. 1414 he would be brought to answer charges in only one of the tribunals. So, both the bishop *a quo* of the home diocese where the first crime was

⁶²⁷ L.G. WRENN, "Trials in General: [cc. 1400-1500]," in *CLSA Comm1*, 1621.

⁶²⁸ E.N. PETERS, *Penal Procedural Law in the 1983 Code of Canon Law*, Canon Law Studies, no. 537, Washington, DC, Catholic University of America, 1991, 271.

⁶²⁹ Prescription means a statute of limitations or a prohibition of pursuing a criminal action to impose or declare a penalty or a penal action to enforce a penalty after a certain period of time. See T.J. GREEN, "Delicts and Penalties in General: [1311-1312]," in *CLSA Comm2*, 1573.

allegedly committed and the bishop *ad quem* of his domicile where the other alleged crimes were committed would have the right to initiate a judicial penal process against the offending priest.

There are canonical delicts which cannot be tried by either the bishop *a quo* or the bishop *ad quem*.⁶³⁰ If the extern priest is accused of having committed any of the “more grave delicts” reserved to the CDF, the norm in article 16 of the 2010 revised norms would be applied. This norm reads as follows.

Whenever the Ordinary or Hierarch receives a report of a more grave delict, which has at least the semblance of truth, once the preliminary investigation has been completed, he is to communicate the matter to the Congregation for the Doctrine of the Faith which, unless it calls the case to itself due to particular circumstances, will direct the Ordinary or Hierarch how to proceed further, with due regard, however, for the right to appeal, if the

⁶³⁰ These delicts are called *delicta graviora* (more grave delicts) and can only be tried by the Supreme Tribunal of the CDF. The bishops can only carry out preliminary investigations and submit the results to the CDF. *CIC*, c. 1362, §1 refers to delicts reserved to the CDF but does not list them. Similarly, the Apostolic Constitution on the Roman Curia *Pastor bonus* while describing the role of the CDF in art. 52 also makes reference to the “offences against the faith and more serious ones” but does not name them (See JOHN PAUL II, Apostolic Constitution on the Roman Curia *Pastor bonus*, 28 June 1988, in *AAS*, 80 [1988], art. 52, 841-930, English translation in *CIC*, 709). On 30 April 2001, Pope John Paul II issued an apostolic letter *motu proprio Sacramentorum Sanctitatis Tutela*, in which he promulgated the substantive and procedural norms for the “more grave delicts” reserved to the CDF (See JOHN PAUL II, “Litterae apostolicae motu proprio datae quibus Normae de gravioribus delictis Congregationi pro Doctrina Fidei reservatis promulantur, *Sacramentorum Sanctitatis Tutela*,” in *AAS*, 93 [2001], 737-739, English translation in W.H. WOESTMAN, *Ecclesiastical Sanctions and the Penal Process: A Commentary on the Code of the Canon Law*, 2nd ed. revised and updated, Ottawa, Saint Paul University, 2003, 300-309 [= Woestman, *Ecclesiastical Sanctions*]). This unofficial translation is based on a translation of the *motu proprio* by USCCB and revised by J.R. Punderson and C.J. Scicluna. Another English translation can be found at

http://w2.vatican.va/content/john-paul-ii/en/motu_proprio/documents/hf_jp-ii_motu-proprio_20020110_sacramentorum-sanctitatis-tutela.html, accessed on 16 May 2016. The Pope, too, did not identify the norms in the apostolic letter. However, they were identified in a letter that the CDF issued three weeks later on 18 May 2001 to the world bishops and other ordinaries and hierarchs (See CDF, “Epistula a Congregatione pro Doctrina Fidei missa ad totius Catholicae Ecclesiae Episcopos aliosque Ordinarios et Hierarchas interesse habentes: de delictis gravioribus eidem Congregationi pro Doctrina Fidei reservatis,” 18 May 2001, in *AAS*, 93 [2001], 785-788, English translation in *Origins*, 31 [2002], 528-529). Another English translation can be found in Woestman, *Ecclesiastical Sanctions*, 310-313. These norms underwent several modifications by the CDF but on 21 May 2010, Pope Benedict XVI approved and ordered the promulgation of the revised norms for the “more grave delicts.” There are 31 revised norms, seven substantive and twenty-four procedural norms. See CDF, “Normae de delictis Congregationi pro Doctrina Fidei reservatis seu Normae de delictis contra fidem necnon de gravioribus delictis,” 21 May 2010, in *AAS*, 102 (2010), 419-434, English translation at http://www.vatican.va/resources/resources_norme_en.html, accessed on 16 May 2016.

case warrants, against a sentence of the first instance only to the Supreme Tribunal of this same Congregation.⁶³¹

The “ordinary” referred to here can be either the bishop of the diocese where the alleged crime was committed (*CIC*, c. 1412) or where the accused priest has domicile (*CIC*, c. 1408). So, depending on where the alleged crime was committed and where the accused priest has domicile, both the bishop *a quo* and the bishop *ad quem* have the right to carry out an investigation of the alleged crime.

3.6 Conclusion

The purpose of this chapter has been to show the contractual, binding and obligatory nature of the written agreement and more importantly to discuss in detail the canonical elements that need to be included as the content of the agreement. Before discussing these issues, the chapter presented the Roman law foundation of an agreement and a contract.

Roman law made a distinction between an agreement and a contract. Two or more people reach an agreement when they express consent about the same thing. In a contract, at least one of the parties must make a promise that can be enforced in law. For a contract to be recognized as legally valid, four conditions must be present: the consent of the parties, legal capacity of the parties, subject matter of the contract and legal cause or valuable consideration. In contract matters, canon law adopts the norms of civil law (*ius civile*) if they do not contradict divine or canon law. Therefore, in canon law, for a

⁶³¹ “Quoties Ordinarius vel Hierarcha notitiam saltem verisimilem habeat de delicto graviore, investigatione praevia peracta, eam significet Congregationi pro Doctrina Fidei quae, nisi ob peculiaris rerum adiuncta causam sibi advocet, Ordinarium vel Hierarcham ad ulteriora procedere iubet, firmo tamen, si casus ferat, iure appellandi contra sententiam primi gradus tantummodo ad Supremum Tribunal eiusdem Congregationis” (CDF, “Normae de gravioribus delictis,” art. 16, English translation at http://www.vatican.va/resources/resources_norme_en.html, accessed on 16 May 2016).

contract to be considered licit and valid, all of the civil law elements required for validity except for valuable consideration must be present.

Canon 271, §1 does not speak of *contractus* but of *conventio scripta* for temporary ministry of a priest outside his diocese of incardination. Although the agreement itself is substantially a contract, in the sense that it has all the elements of a contract, the legislator deliberately chooses not to call it a contract. By not expressly calling it a contract, the legislator did not require it to be governed by the provision of *CIC*, c. 1290, which governs contracts in canon law. However, the law does not prohibit calling this written agreement a contract. Dioceses can choose to explicitly call it a contract but doing so would put the agreement under the scope of *CIC*, c. 1290 and would make observing civil law provisions and involving civil attorneys in drafting the agreement necessary.

The agreement is made between the bishop *a quo* and bishop *ad quem*, who manifest their consent by signing it. According to the language used in *CIC*, c. 273, §3, the bishops *a quo* and *ad quem* are supposed to have a just cause, observe natural equity and honor the terms and conditions of the agreement if they decide to terminate the service of the extern priest before the agreement's date of expiry. This means that the written agreement, by the principle of natural justice and natural equity, binds both the bishop *a quo* and *ad quem*.

The law itself does not require the involvement of the priest concerned in making the agreement. *Postquam apostoli* had explicitly required his involvement for the agreement to have a juridic force. This requirement is no longer in force because it has been integrally reordered by the *CIC*. However, the extern priest is required to obey both

the bishop *a quo* and the bishop *ad quem*. Therefore, he is bound by canonical obedience to faithfully honor the terms and conditions of the agreement. There could be some consequences if he fails to respect the terms and conditions stipulated in the agreement. These consequences could include administrative recall by his bishop or administrative dismissal from the host diocese by the bishop *ad quem*. However, in case of a recall or dismissal, if the extern priest feels dissatisfied, he can take administrative recourse against the decisions of the bishops to the Congregation for the Clergy.

In requiring diocesan bishops to make written agreements to protect the rights and obligations of priests outside their dioceses of incardination, *CIC*, c. 271, §1 uses the word *prospiciat*, which is a mild form of the jussive subjunctive mood. The *CIC* often uses the jussive subjunctive mood to express command or obligation. This means that diocesan bishops are obliged by the provisions of *CIC*, c. 271 to make written agreements when granting permission to diocesan priests to minister temporarily outside their dioceses of incardination.

According to *CIC*, c. 271, §1, the purpose of the written agreement is to ensure that the rights and duties of diocesan clerics serving outside their dioceses of incardination are protected. It is, therefore, important that the rights and obligations of the priest as well as of the bishops concerned are clearly defined and clarified in the agreement. This can help avoid any misunderstandings and possible recourse to ecclesiastical or civil law courts. However, the formulation of *CIC*, c. 271 does not fully help in the fulfillment of this purpose. The canon is formulated in such way that it does not require the involvement of the priest concerned in the making of the agreement as was required by *Postquam apostoli*. If the priest concerned is not involved in the drawing

of the agreement, his needs, concerns and expectations may not be fully addressed in the agreement. Additionally, by not signing the agreement, the priest concerned is not given the opportunity to explicitly manifest his consent to the terms and conditions of the agreement.

Although *CIC*, c. 271 does not require the participation of the priest concerned in making the agreement, it does not prohibit his involvement. So, it would be advantageous for dioceses to include the priest concerned in the process of making the agreement. He should be given a copy of the agreement to read and explicitly express his consent to its terms and conditions by signing it.

4 THE DRAFTING AND IMPLEMENTATION OF THE AGREEMENT

The focus of the previous chapter was the elements that should be included in the written agreement for the temporary service of a diocesan priest outside his diocese of incardination. We also investigated its contractual, binding and obligatory nature. Canon 271, §1 stipulates the main purpose of the agreement, which is to determine and safeguard the rights and duties of the extern priest. In addition, the agreement also protects the rights and duties of the bishops involved. To meet this purpose, the agreement must be accurately drafted in conformity with the provisions of *CIC*, c. 271 and the sections of *Postquam apostoli* that have not been derogated from by the *CIC*. Our intention in this chapter is to show how this agreement fulfills this purpose. This will be done by discussing several elements that should be taken into consideration when it is drafted and comparatively analyzing sample agreements from selected dioceses. The chapter is divided into four parts.

The first part of the chapter will deal with the procedure for drafting the agreement. We shall begin by discussing the preliminary activities that need to occur before drafting the agreement. These activities include making initial communication and establishing the suitability and readiness of the priest in question to minister in the host diocese. Following the preliminary activities is the actual drafting of the agreement, which begins with the preamble, followed by the main body, and then concluding formalities.

After the agreement has been written and duly signed by the parties, the priest will then be ready to move and begin his ministry in the host diocese. Upon arrival in the host diocese, the extern priest will need faculties for ministry to enable him to perform a

variety of ministerial activities. The second section of the chapter will identify the faculties that the extern priest already has by the law itself. These can be exercised without the delegated faculties of the diocesan bishop.

The third section of the chapter will contain a comparative analysis of chosen sample agreements from selected dioceses in North America and Uganda. This analysis will add a practical dimension to our study and will provide examples for designing more accurate templates of the agreement, which can be used by dioceses around the world.

The fourth section of the chapter will include a comparative analysis of the written agreement involving international student priests. We shall discuss what needs to be taken into consideration when drafting an agreement for a student priest to study and minister in the host diocese.

4.1 Procedure for Drafting the Agreement

The written agreement is a central part of a canonical method, whereby a diocesan priest moves from his diocese of incardination to serve temporarily in another diocese while he remains incardinated to his home diocese. Since this agreement juridically binds the parties and the priest involved, several elements should be taken into consideration when it is drafted.

4.1.1 Preliminary Activities

Before the agreement for the temporary service of a priest outside his diocese of incardination is written, it is necessary to do some preparation. In this section, we will identify two activities that need to occur before embarking on the actual writing of the agreement. These two activities are: 1) initial communication and 2) assessment of the

suitability and preparedness of the priest who has been selected by his bishop and granted permission to move to the host diocese on a temporary basis.

4.1.2 Initial Communication

Canon 271, §1 states that “...a diocesan bishop is not to deny permission to clerics, whom he knows are prepared and considers suitable and who request it, to move to regions laboring under a grave lack of clergy where they will exercise the sacred ministry.”⁶³² This marks the starting point of the process of temporary ministry of a diocesan cleric outside his diocese of incardination. The starting point must be the existence of “a grave lack of clergy” or some evidence that it is beginning to be experienced in the host diocese.⁶³³ The Second Vatican Council in its decree *Christus Dominus* speaks about the role of the bishop in caring for the whole Church, not just the particular church entrusted to his immediate care.⁶³⁴ It encourages bishops to make arrangements for priests adequately prepared and suited to minister in regions where there are insufficient priests.⁶³⁵

Similarly, the Second Vatican Council in its decree *Presbyterorum ordinis* speaks about the role of priests in the mission of the Universal Church. Priests are to be solicitous for the whole Church, being prepared to offer themselves for service in those areas experiencing shortages of priests.⁶³⁶ It is in response to these calls and to fulfill the

⁶³² “... Episcopus dioecesanus ne deneget licentiam transmigrandi clericis, quos paratos sciat atque aptos aestimet qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi” (CIC, c. 271, §1).

⁶³³ GARCIA, “The Assignment of Non-Incardinated Priests,” 102.

⁶³⁴ SECOND VATICAN COUNCIL, *Christus Dominus*, no. 6, in *FLANNERY I*, 567.

⁶³⁵ *Ibid.*

⁶³⁶ SECOND VATICAN COUNCIL, *Presbyterorum ordinis*, no. 10, in *FLANNERY I*, 882.

need for more priests in the host diocese that the extern priest seeks to move from his diocese of incardination to the host diocese. The canon gives him the initiative to petition his bishop *a quo* for permission to move to the host diocese for temporary ministry. The presumption here is that the cleric will have initially made some contact with the diocesan bishop *ad quem* and established that there is indeed a grave need of clergy in his diocese.⁶³⁷

Even though *CIC*, c. 271, §1 stresses that the bishop cannot deny permission to clerics “who request it,” the bishop *ad quem* and the bishop *a quo* can also make the initial communication. The process of temporary service of priests outside their dioceses of incardination is designed to help in the distribution of priests between two dioceses and strengthen the relationship between the two dioceses. So, the bishop *ad quem*, having assessed the needs of his local church in comparison with other dioceses, can request help from the bishop of a diocese with more priests. Similarly, the bishop *a quo*, having seen the need of another diocese and seeing that he has more priests, can contact the bishop *ad quem* and offer to loan him a priest or priests on a temporary basis. This initial contact can be made either orally or in writing but for the sake of verification, it is preferable that it is done in writing.

According to Otto L. Garcia, once the diocesan bishop *a quo* has identified a suitable priest to whom he might give permission to minister elsewhere, he should be the person to write to the diocesan bishop *ad quem* to present this priest as a candidate.⁶³⁸ Even though the extern priest may have initially established some contact with the

⁶³⁷ GARCIA, “The Assignment of Non-Incardinated Priests,” 103.

⁶³⁸ *Ibid.*

diocesan bishop *ad quem*, he should be directed to have his own bishop *a quo* write an official letter.⁶³⁹

4.1.3 Statement of Suitability

After the two bishops have made the initial correspondence, the next step is the establishment of the suitability and preparedness of the priest in question to work in the host diocese. The law itself (*CIC*, c. 271, §1) requires that the bishop *a quo* sends a priest whom he knows is prepared and suitable to do ministry in the host diocese. It does not say that the bishop *a quo* must issue a statement of suitability, but this is the only way by which he can testify to his knowledge of the priest's suitability and preparedness. The canon states:

Apart from the case of true necessity of his own particular church, a diocesan bishop is not to deny permission to clerics, whom he knows are prepared and considers suitable and who request it, to move to regions laboring under a grave lack of clergy where they will exercise the sacred ministry.⁶⁴⁰

The requirement of the priest's preparedness and suitability is not for the validity of the *licentia transmigrandi* but for liceity only. Pope Paul VI in his apostolic letter *Ecclesiae sanctae I* also emphasized this requirement when he stated that

Apart from the case of true need in their own dioceses, ordinaries or hierarchs shall not refuse permission to clerics to emigrate to regions suffering from grave shortage of priests and exercise their ministry there, provided they know of their willingness to go and consider them suitable to work there.⁶⁴¹

⁶³⁹ Ibid.

⁶⁴⁰ “Extra casum verae necessitatis Ecclesiae particularis propriae, Episcopus dioecesanus ne denegat licentiam transmigrandi clericis, quos paratos sciat atque aptos aestimet qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi; prospiciat vero ut per conventionem scriptam cum Episcopo dioecesano loci, quem petunt, iura et officia eorundem clericorum stabiliantur” (*CIC*, c. 271 §1).

⁶⁴¹ “Extra casum verae necessitatis propriae dioecesis, Ordinarii seu Hierarchae ne denegent licentiam emigrandi clericis, quos paratos sciant atque aptos aestiment qui regiones petant gravi cleri inopia laborantes, ibidem sacrum ministerium peracturi” (PAUL VI, *ESI*, 760).

The 1980 Directive Norms *Postquam apostoli* repeats the words of *Ecclesiae sanctae I* almost verbatim: “In exercising discernment of spirits, superiors must, therefore, be very careful to select suitable and qualified candidates.”⁶⁴²

Preparedness means that an effort has been made by the bishop *a quo* to provide suitable formation for the priest in question, ensuring his readiness for ministry in the diocese *ad quem*. The priest’s preparation should include making sure that he is familiar with the cultural practices and manner of life of the people in the host diocese.⁶⁴³ He needs to learn how to speak their language and develop respect for their social conditions, customs and practices. It may be that the priest already has a good command of writing and reading the language of the people but may need help with oral fluency and pronunciation. To be an effective preacher of the Gospel, he needs to gain insight into the people’s moral system and the innermost ideas they have formed about God, the world and the human person in accordance with what they hold sacred.⁶⁴⁴

Suitability, on the other hand, means the actual state or condition in which the priest is emotionally, spiritually, psychologically, morally, and physically able to perform the duties that will be assigned to him by the bishop *ad quem*. *Postquam apostoli* enumerates the qualities that may assist the bishop *a quo* in judging the suitability of the priest he intends to grant permission to move to another diocese. It says “the men chosen should not only be possessed of sure sacred doctrine but they should also have strong faith, unwavering hope and zeal for souls, so that they may generate faith in others, as far

⁶⁴² “In discernendis igitur spiritibus Superiores magnam adhibeant curam ad aptos idoneosque candidatos reperendos” (SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 24).

⁶⁴³ *Ibid.*, no. 25.

⁶⁴⁴ *Ibid.*

as this is in their power.”⁶⁴⁵ Another element that the bishop *a quo* might need to consider is whether a change in location might be beneficial to the priest in question.⁶⁴⁶ As Otto L. Garcia rightly points out, in no way should the bishop *a quo* see the priest’s request for permission to move to another diocese as an opportunity to transfer a cleric who is a problem to him.⁶⁴⁷

The law leaves it to the bishop *a quo* to determine the means of evaluating the suitability of the priest whom he is considering sending to work temporarily in another diocese. He could be guided by the provisions of *CIC*, c. 521, §2, which lists the qualifications of a pastor. The bishop *a quo* could even examine the priest involved, as he can do in the case of a priest he wants to appoint as a pastor (*CIC*, c. 521, §3). An example of a question that the bishop *a quo* may ask is: “does the priest have any mental, emotional, psychological or physical conditions which might adversely affect the performance of his ministry in the diocese *ad quem*?”⁶⁴⁸ Moreover, *CIC*, c. 524 adds that in determining the suitability of a priest he intends to appoint a pastor, the diocesan bishop “is to hear the vicar forane and conduct appropriate investigations, having heard certain presbyters and lay members of the Christian faithful, if it is warranted.” Similarly, in determining the suitability of the priest he intends to send to another diocese, the diocesan bishop *a quo* can consult the vicar forane (*CIC*, cc. 553-555) of the vicariate

⁶⁴⁵ “Cum vero optandum sit ut Episcopi sacerdotes optimae notae ad hoc opus mittant, hi non solum secunda doctrina sacra optime instructi sint oportet, verum etiam fide robusta, spe indeficienti zeloque animarum excellere debent, ut fidem in aliis, quantum in ipsis est, revera gignere valeant” (Ibid., no. 24).

⁶⁴⁶ GARCIA, “The Assignment of Non-Incardinated Priests,” 102.

⁶⁴⁷ Ibid.

⁶⁴⁸ M. O’CONNELL, “International Priests Serving in U.S. Dioceses,” in *CLSAP*, 75 (2013), 271 (= O’CONNELL, “International Priests Serving in U.S. Dioceses”).

where the priest is exercising his ministry. Additionally, the bishop can consult the presbyters and lay persons with whom the priest served in ministry up to now.⁶⁴⁹

Postquam apostoli says that “The Ordinary from whose diocese they come must be sincere and open in informing the Ordinary to whose diocese they are going about the men being sent, especially if the motives for the change fall under suspicion.”⁶⁵⁰ In line with this, after accessing the suitability of the priest concerned, the diocesan bishop *a quo* can then issue a formal statement of good standing and send it to the bishop *ad quem*.

4.1.4 The Writing of the Agreement

After completing the preliminary activities, the parties are now ready to begin the actual writing of the document. There are three major parts of the document to take into consideration: the preamble or introduction, the main body, and the concluding formalities, such as the date and signatures. The content of the main body of the agreement was the focus of the previous chapter. In the sections that follow, we will discuss the other two parts of the agreement: the preamble and the concluding formalities.

4.1.4.1 The Preamble

Like any other legal document, the written agreement for temporary service of a diocesan priest in another diocese needs to have a preamble. The law itself does not require the preamble. Its purpose, therefore, is not for the validity or liceity of the agreement but the identification of the parties and the priest involved. In addition, the preamble states that the priest involved has been granted permission by both the bishop *a quo* and the bishop *ad quem* to exercise ministry temporarily in the diocese *ad quem*

⁶⁴⁹ J.A. RENKEN, “Parishes, Pastors, and Parochial Vicars,” in *CLSA Comm2*, 673.

⁶⁵⁰ “Ordinarius a quo notitias sinceras et apertas Ordinario ad quem exhibeat de mittendis, praesertim si motiva transitus in suspicionem veniant” (SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 26).

while he remains incardinated in the diocese *a quo*. Furthermore, the preamble should also state that the terms and conditions of the agreement cannot contradict the universal and divine laws.

4.1.4.2 Concluding Formalities

At the end of the written agreement, there should be an indication of the place, date and signatures of the concerned parties. This is not a requirement of *CIC*, c. 271. However, *CIC*, c. 484, 2° requires notaries to note the place, day, month, and year when a curial document is signed. Firstly, since by its nature, the written agreement is supposed to last for a predetermined period, it is important to clearly indicate the place, day, month and year that the agreement was signed by the parties. This is necessary for the computation of the duration of the agreement, which becomes effective on the date it is signed.⁶⁵¹ The indication of date is for liceity only, but omitting it or mistaking the date would lead to a misunderstanding in the determination of the duration of the agreement.⁶⁵² The time is to be computed in accordance with the provisions of *CIC*, cc. 200-203.

Secondly, the written agreement must be signed by the parties, that is, by the bishop *a quo* and the bishop *ad quem*. According to *CIC*, c. 10, a requirement which invalidates an act or disqualifies a person from placing an act must be expressly established in the law. Canon 474 explicitly establishes that “For validity, acts of the curia which are to have juridic effect must be signed by the ordinary from whom they

⁶⁵¹ C.F. WRZASZCZAK, *The Betrothal Contract in the Code of Canon Law*, Canon Law Studies, no. 107, Washington, DC, The Catholic University of America, 1954, 133 (= WRZASZCZAK, *The Betrothal Contract in the Code of Canon Law*).

⁶⁵² *Ibid.*

emanate.” The act of drafting or formulating the written agreement can be done by any member of the diocesan curia on behalf of the diocesan bishop. However, the act of signing the agreement must be done by the diocesan bishop himself or by someone whom he has delegated to sign it. Since the diocesan bishop is an ordinary,⁶⁵³ the written agreement is, therefore, an act of the curia, which requires the signatures of both the bishop *a quo* and the bishop *ad quem* for validity. The signatures must be in the bishops’ own hand. A rubber stamp, a typewritten signature, an electronic signature, an engraving or an imprint of any sort will not be legally sufficient.⁶⁵⁴ By signing the agreement, the bishops involved express their consent and bind themselves to observe the terms and conditions of the agreement. For liceity, the agreement should be counter-signed by the chancellor or another notary (*CIC*, cc. 474, 483, §1). Three copies of the agreement should be signed so that one original copy is given to the bishop *a quo* and another to the bishop *ad quem* to be preserved in their diocesan archives. The third copy should be given to the priest involved. The agreements should not be sent by e-mail attachments or fax, except during the drafting and writing phases.⁶⁵⁵ The final original copies should optimally be delivered in person or by registered mail.

⁶⁵³ John Huels explains that “The bishop is an ordinary (c. 134, §1). His juridic acts are part of the official administration of the diocese, and they must be treated in the same way as other official documents of the curia (cc. 482, §1; 484; 486-491). The requirement that they be signed by him, for validity, ensures the recipients that these acts do, in fact, emanate from him, that he is aware of their contents, and he takes ownership of them, even if drawn up by someone else.” See J.M. HUELS, “Signatures Required for Acts of the Bishop,” in *Roman Replies and CLSA Advisory Opinions 2006*, F.S. PEDONE and P.D. COUNCE (eds.), Washington, DC, Canon Law Society of America, 2006, 55.

⁶⁵⁴ WRZASZCZAK, *The Betrothal Contract in the Code of Canon Law*, 135.

⁶⁵⁵ J.M. HUELS, *Empowerment for Ministry: A Complete Manual on Diocesan Faculties for Priests, Deacons, and Lay Ministers*, Paulist Press, New York, 51 (= HUELS, *Empowerment for Ministry*).

When the agreement has been made, and signed by the parties, the priest then moves to begin his ministry in the host diocese. To be able to perform a variety of ministerial activities, he will need faculties for ministry as discussed in the section below.

4.2 Faculties for Ministry

A “faculty” (*facultas*) is not the same thing as permission to reside in the host diocese. Permission or *licentia* is the authorization that enables a person to lawfully perform an act either in the name of the Church or in one’s own.⁶⁵⁶ Therefore, permission to reside in the host diocese is the authorization given to the extern priest to move from his diocese of incardination to reside lawfully in the host diocese. This comes first during the initial correspondence and must be given by both the bishop *a quo* and the bishop *ad quem*. After the permission to move and reside in host diocese has been granted, the bishop *a quo* issues a statement of suitability about the priest involved and sends it to the bishop *ad quem*. Following the issuance of the testimonial of suitability and after it has been duly received by the bishop *a quo*, the written agreement for the temporary service is then drawn up and signed by the bishop *a quo* and bishop *ad quem* or by their delegates. Once the contractual agreement has been written and signed by the parties, and the extern priest has arrived in the host diocese to begin exercising sacred ministry, he should be given faculties for ministry to ensure that he has all the tools he needs to serve effectively.⁶⁵⁷

The word “faculty” (*facultas*), as it is most commonly used in canon law and ecclesial practice, may aptly be “defined as an ecclesiastical power or authorization

⁶⁵⁶ HUELS, “Permissions, Authorizations and Faculties in Canon Law,” 8.

⁶⁵⁷ O’CONNELL, “International Priests Serving in US Dioceses,” 271.

necessary for performing lawfully an act of ministry or administration in the name of the Church.”⁶⁵⁸ It may be given by the law itself (*a iure*) or by delegation from a person (*ab homine*) competent to grant it. This means that even before the extern priest is given faculties to exercise ministry in the host diocese by delegation from the bishop, there are instances where the universal law already grants him faculties through ordination to the priesthood or appointment to an ecclesiastical office.

4.2.1 Faculties Granted by Law

Let us first examine the faculties that are granted to the extern priest by the universal law itself at the time of his ordination. By virtue of valid ordination, the universal law of the Church grants clerics (deacons, bishops and presbyters) some faculties that can be exercised immediately after ordination. These are the faculties that neither the bishop nor his delegate can grant or restrict, unless as a penalty imposed by following the procedure prescribed by the universal law (*CIC*, cc. 1717-1731).⁶⁵⁹

The extern priest, like all other validly ordained priests in good standing with the Church, possesses these faculties given to him by the law itself at ordination. He can exercise them anywhere in the world provided that he was validly ordained a priest and remains in good standing with the Church. This means that as soon as he arrives in the host diocese, even before he is appointed to any ecclesiastical office, there are certain ministries that he can exercise right away, without the need for delegated faculties. For example, he has the faculty to preach anywhere in the world with at least the presumed

⁶⁵⁸ HUELS, “Permissions, Authorizations and Faculties in Canon Law,” 2.

⁶⁵⁹ *Ibid.*

consent of the rector⁶⁶⁰ of the church or the competent religious superior unless his bishop has restricted or removed this faculty, or the particular law requires express permission (*CIC*, c. 764).⁶⁶¹

Additionally, when presiding over the Eucharist,⁶⁶² and there are too many communicants, the extern priest can appoint a qualified person to distribute holy communion for single occasions.⁶⁶³ He can also bring Viaticum to a dying person with at least the presumed permission of the pastor or chaplain or religious superior (*CIC*, c. 911, §2). Furthermore, he can administer the sacrament of the sick to anyone validly baptized who is seriously ill anywhere with the presumed consent of the pastor or chaplain (*CIC*, c. 1003, §§1-2). If the person is not a Catholic, he needs to observe the provisions of *CIC*, cc. 844, §§3-4. If the oil is not blessed, he has the faculty to bless it but only within the actual celebration of the sacrament (*CIC*, c. 999, 2°). Moreover, he can remit in the

⁶⁶⁰ According to *CIC*, c. 556, rectors of churches are understood “as priests to whom is committed the care of some church which is neither parochial nor capitular nor connected to a house of religious community nor society of apostolic life which celebrates services in it.” In the context of *CIC*, c. 764, it refers to the priest in charge: pastor, chaplain, cathedral or shrine, religious superior, or other priests in charge. See HUELS, *Empowerment for Ministry*, 119.

⁶⁶¹ *Ibid.*, 118.

⁶⁶² *CIC*, c. 900, §1 states that “The minister who is able to confect the sacrament of the Eucharist in the person of Christ is a validly ordained priest alone.” In light of this canon, a validly ordained priest does not need a delegated faculty to celebrate the Eucharist validly or licitly. The law itself in this canon grants him the faculty to do so by virtue of his valid ordination to the priesthood. However, to celebrate Mass publicly in a parish church or rectory, a priest may require permission from either the bishop or the pastor of the parish. This permission is to be given “provided that either he presents a letter of introduction from his ordinary or superior, issued at least within the year, or it can be judged prudently that he is not impeded from celebrating.” See *CIC*, c. 903. So, since the extern priest already has permission to do ministry in the host diocese, he neither needs a faculty nor permission to celebrate Mass publicly in any parish within the host diocese.

⁶⁶³ *Ibid.*, 119. See *Institutio generalis Missalis romani: General Instruction of the Roman Missal*, Washington, DC, USCCB, 2003, no. 162 (= GIRM).

internal sacramental forum an undeclared *latae sententiae*⁶⁶⁴ censure of excommunication or interdict if it is burdensome for the penitent to remain in the state of grave sin during the time necessary for the competent superior to make provision (*CIC*, c. 1357, §1).

According to *CIC*, c. 1080, within the context of the sacrament of penance, he can dispense some marriage impediments in occult cases discovered after everything has already been prepared for the wedding, and the marriage cannot be delayed without probable danger of grave harm until a dispensation is obtained from the competent authority. The impediments that he cannot dispense in this kind of situation are: prior bond, impotence, consanguinity in the direct line and the second-degree collateral line, sacred orders, and a public perpetual vow of chastity in a religious institute of pontifical right.⁶⁶⁵

In addition to the above, there are faculties that the extern priest possesses by the law itself when a person is in danger of death.⁶⁶⁶ This means that he can confer those acts on someone who is in danger of death even if he has not been granted the diocesan faculties by delegation or appointment to an ecclesiastical office. For example, he may baptize any person, who is not yet baptized, including fetuses if they are still alive (*CIC*, cc. 864, 871).⁶⁶⁷ Additionally, he can confirm anyone validly baptized, including an infant or non-Catholic, who is in danger of death (*CIC*, cc. 883, 3°, 891).

⁶⁶⁴ A penalty is *latae sententiae* if it is incurred automatically upon the commission of an offense, if a law or prescript expressly lays it down (*CIC*, c. 1314).

⁶⁶⁵ HUELS, *Empowerment for Ministry*, 120.

⁶⁶⁶ *Ibid.*, 121.

⁶⁶⁷ According to *CIC*, c. 865, §2, “An adult in danger of death can be baptized if, having some knowledge of the principal truths of faith, the person has manifested in any way at all the intention to receive baptism and promises to observe the commandments of the Christian religion.”

He may also bring Viaticum to a person who is dying, with at least the presumed permission of the pastor, chaplain, or supervisor, who must be notified afterwards (*CIC*, c. 911, §2). Similarly, he may also give Viaticum to a baptized non-Catholic who is in danger of death, in observing the conditions of *CIC*, cc. 844, §§3-4. Moreover, he is allowed to absolve any penitent in danger of death from any sins or censures (*CIC*, c. 976) and any baptized non-Catholic in accordance with the provisions of *CIC*, cc. 844, §§3-4.⁶⁶⁸

Also, the extern priest by virtue of his ordination has the faculty by the law itself to grant a general absolution without previous individual confession when the danger of death is imminent and there is insufficient time to hear the confessions of the individual penitents (*CIC*, c. 961, §1, 1°).⁶⁶⁹ Within or outside the act of sacramental confession, the extern priest even before receiving faculties by delegation or office can dispense from occult marriage impediments for the internal forum (*CIC*, c. 1079, §3).⁶⁷⁰ Additionally, when one or both parties is in danger of death and when the local ordinary cannot be

⁶⁶⁸ John Huels comments that “The absolution from censures applies only to Catholics, since only they are subject to the penal laws of the Church. If the censure being remitted was imposed or declared in the external forum, or if its remission is reserved to the Apostolic See, you must inform the penitent that, after recovering, he or she must request the permanent remission of the penalty from the competent authority (*CIC*, c. 1357, §3). This should be done within a month, and normally you or another confessor should apply for the remission on the penitent’s behalf without mentioning the penitent’s name.” See HUELS, *Empowerment for Ministry*, 123.

⁶⁶⁹ Canon 962 requires penitents to be properly disposed and have the intention to confess within a suitable period of time each grave sin which at the time of danger cannot be confessed. If there is time, they are to be urged to make an act of contrition. See *ibid.*, 124.

⁶⁷⁰ Canon 1079, §3 grants the faculty to dispense from occult impediments for the internal forum to confessors with the faculty to hear confessions. Priests who lack the faculty are given it by the law in order to hear the confessions of people who are in danger of death. Therefore, since the extern priest may have habitually received the faculty to hear confessions in his diocese of incardination either by office or delegation, he can exercise that faculty everywhere (*CIC*, c. 967, §2). If, however, he has not received the faculty to hear confessions in his home diocese or if it was revoked (*CIC*, cc. 974, §§2 and 3), he can grant the dispensation only within the act of sacramental confession, because outside of this act he is not a confessor.

reached, the extern priest may dispense the parties to marriage both from the form to be observed in the celebration of marriage and from each and every impediment of ecclesiastical law, whether public or occult, except the impediment arising from the sacred order of the presbyterate (*CIC*, c. 1079, §2).

There are also certain faculties that the law gives the extern priest by virtue of appointment to an ecclesiastical office.⁶⁷¹ This means that if the extern priest arrives in the host diocese and he is immediately appointed a pastor, parochial administrator, parochial vicar, rector of a church, or chaplain, he would possess the faculties that the universal law attaches to the office that he holds. For example, by virtue of the universal law, pastors have the faculty to assist at a marriage involving at least one Catholic of the Latin church *sui iuris* within the territory of their parish (*CIC*, c. 1109). They also have the faculty by the law itself to hear confessions within the territory of their parish (*CIC*, c. 968, §1).⁶⁷² So, if the extern priest is appointed a pastor or to any office equivalent in law to a pastor, the bishop cannot give these faculties or remove them because they are given by the universal law itself to officeholders.⁶⁷³ The faculties are only lost when there is a loss of office, namely, by resignation, transfer, removal, or penal privation (*CIC*, cc. 184-196).⁶⁷⁴

⁶⁷¹ *Ibid.*, 24.

⁶⁷² For a list of special faculties that the universal law grants to priests who hold various ecclesiastical offices, see HUELS, *Empowerment for Ministry*, 127-156. These offices are of pastor, parochial vicar, rectors of churches, chaplains with full pastoral care of a community and other chaplains. Parochial administrators (*CIC*, c. 540) and priest supervisors of parishes without a pastor (*CIC*, c. 517, §2) are subsumed in the category of pastors since they have all the faculties of pastors. The extern priest may also be appointed to an office in the diocesan curia like vicar general, episcopal vicar, a finance officer, or a tribunal official. In this case, he would possess the special faculties granted by law to curial office he is holding. See HUELS, *Empowerment for Ministry*, 191-234.

⁶⁷³ *Ibid.*

⁶⁷⁴ *Ibid.* See also cc. 1740-1752.

4.2.2 Faculties Granted by Delegation

Besides the faculties that the universal law gives the extern priest by virtue of his ordination or appointment to an ecclesiastical office, there are faculties that need to be granted to him by delegation from the diocesan bishop or his delegate. In granting faculties, the bishop exercises his executive power of governance.⁶⁷⁵ He can freely delegate the power to grant the faculty to his vicar general or episcopal vicar or other officials of the diocesan curia in accordance with the provision of *CIC*, c. 137. He, therefore, needs to observe the prescripts of the norms that govern the exercise of the executive power outlined in *CIC*, cc. 136-144. Moreover, the bishop also needs to observe the pertinent provisions of the Code on singular administrative acts (*CIC*, cc. 35-47) and singular administrative degrees (*CIC*, cc. 48-58) because the granting of faculties is a singular administrative act, which is governed by those canons.⁶⁷⁶

According to *CIC*, c. 137, §1, faculties can be delegated *ad actum* for a single act or for several specified acts, which is commonly called special delegation; or they may be delegated *ad universitatem casuum*, which are commonly called habitual faculties or general delegation (*CIC*, c. 132).⁶⁷⁷ These are faculties that are meant to be used repeatedly on an ongoing basis and are usually granted to priests on the diocesan *pagella*.⁶⁷⁸ They can be granted for a determinate or an indeterminate period of time.

⁶⁷⁵ *Ibid.*, 44.

⁶⁷⁶ *Ibid.*, 44-49.

⁶⁷⁷ *Ibid.*

⁶⁷⁸ *Pagella* is a Latin word which means “little page.” It refers to a list of diocesan faculties given to priests, deacons and sometimes lay ministers, especially lay directors of parishes (*CIC*, c. 517, §2) or lay officials of the diocesan curia. See HUELS, *Empowerment for Ministry*, 27.

Since the extern priest is coming for a set period of time, a separate *pagella* can be prepared for him indicating the termination date of the faculties.⁶⁷⁹ However, if the extern priest's length of stay in the host diocese is renewable several times, it is preferable to grant him the faculties indeterminately, that is, "for as long as he remains in the diocese."⁶⁸⁰

The diocesan *pagella* mainly contains the faculties that are delegated to diocesan ministers by the bishop or his delegate.⁶⁸¹ The faculties that the universal law grants to priests by ordination or office may also be included in the *pagella* just for the information of the ministers, as some may not be aware of all the faculties that they have by virtue of their ordination or office.⁶⁸² Regarding the extern priest, a separate *pagella* or a separate section of the *pagella* could be prepared for him indicating the specific ministries which the bishop may want him to undertake. For example, in the standard *pagella* for all priests ministering in the diocese, there could be special faculties that the bishop may or may not want to extend to the extern priest.⁶⁸³ The bishop may not, for example, want to delegate the extern priest the faculty to absolve penitents in abortion cases or to grant the permission for mixed marriages.

⁶⁷⁹ O'CONNELL, "International Priests Serving in US Dioceses," 271.

⁶⁸⁰ Ibid.

⁶⁸¹ For a list of faculties that may be delegated by the bishop to priests doing ministry in a diocese, see HUELS, *Empowerment for Ministry*, 109-118.

⁶⁸² Ibid., 105.

⁶⁸³ Ibid.

4.2.3 Faculties to Hear Confessions

To validly absolve penitents from their sins, a priest, in addition to having the power of orders, needs to have the faculty to hear confessions (*CIC*, c. 966, §1). The faculty is given to priests either by the law itself by virtue of their office or by delegation from a competent ecclesiastical authority in accordance with the provisions of *CIC*, cc. 967-973.⁶⁸⁴ At the level of the universal Church, the pope and the cardinals have the faculty by law to validly and licitly absolve everywhere in the world without restrictions (*CIC*, c. 967, §1).⁶⁸⁵ Bishops, whether diocesan bishops or not, also have the faculty to validly absolve everywhere in the world but illicitly if a diocesan bishop has explicitly denied it in a particular case in his diocese (*CIC*, c. 967, §1).⁶⁸⁶ At the level of a parish, pastors and those who take the place of a pastor, in virtue of their office, possess the faculty to hear confessions validly within their jurisdictions (*CIC*, c. 968, §1). All priests, including those who have lost the clerical state or who have been excommunicated or suspended, have the faculty by law to absolve a person in danger of death (*CIC*, c. 976).⁶⁸⁷ Parochial vicars and all the other presbyters, who do not hold any ecclesiastical office that has the faculty to hear confessions attached to it, need the delegated faculty from their local ordinary (*CIC*, c. 969). According to *CIC*, c. 967, §2, those who possess the faculty to hear confessions habitually either by the law or delegation can exercise it everywhere in the world, unless in a particular case the local ordinary has refused to

⁶⁸⁴ HUELS, *Liturgy and Law*, 199.

⁶⁸⁵ F.R. MCMANUS, “The Sacrament of Penance: [cc. 959-997],” in *CLSA Comm2*, 1154 (= MCMANUS, “The Sacrament of Penance”).

⁶⁸⁶ *Ibid.*

⁶⁸⁷ HUELS, *Liturgy and Law*, 199.

allow it or it has been revoked from the priest in accordance with the provisions of *CIC*, c. 974, §§2-3.

Therefore, in the case of the extern priest, if he received the faculty to hear confessions in his home diocese and it was not revoked, he continues to possess it and can validly and licitly exercise it in the host diocese. He does not need to be delegated the faculty again. If, however, for some reason he was not granted the faculty to hear confessions in his home diocese, he will need the delegated faculty to hear confessions in the host diocese.⁶⁸⁸

4.2.4 Faculties Supplied by the Church

Some faculties only affect the liceity of the action but others may be required for the validity.⁶⁸⁹ So, the diocesan *pagella* of ministries needs to be given to the extern priest as soon as possible so that some of the ministerial actions that he performs may not be invalid or illicit.⁶⁹⁰ For example, if the extern priest has not been appointed a pastor or to an office that is equivalent in law to a pastor like a parochial administrator (*CIC*, c. 540) or a priest supervisor of parishes without a pastor (*CIC*, c. 517, §2), he needs to be delegated a faculty to assist at marriage (*CIC*, c. 1109).⁶⁹¹ If he has been appointed a parochial vicar and has not yet been granted the faculty to assist at marriages by the bishop *ad quem* or his delegate, the pastor can delegate him the faculty for a specific

⁶⁸⁸ John Huels mentions that some priests in various parts of the world reported to him that their bishops do not give them any faculties, thinking that faculties are superfluous under the new Code. In such places, parochial vicars and other priests who do not have the faculty to hear confessions cannot validly absolve apart from the danger of death except in a case of common error of law or of fact or positive and probable doubt of law or of fact (*CIC*, c. 144). See HUELS, *Liturgy and Law*, 199.

⁶⁸⁹ HUELS, *Empowerment for Ministry*, 29.

⁶⁹⁰ O'CONNELL, "International Priests Serving in US Dioceses," 271.

⁶⁹¹ HUELS, *Empowerment for Ministry*, 30.

marriage. For a general delegation to be used on ongoing basis, the pastor must do it in writing for validity (*CIC*, c. 1111, §2). However, in some limited situations, the Church can supply a lacking faculty to the extern priest to perform some ministerial actions before he receives the diocesan *pagella*. The lacking faculty is supplied by the Church through the provision of *CIC*, c. 144, §1.⁶⁹² Therefore, it is supplied by the law itself (*a iure*) for the benefit of the community.⁶⁹³ It is not supplied habitually but for a single act and it cannot be retained after it has been used.⁶⁹⁴

4.3 Analysis of Sample Written Agreements from Selected Dioceses

Having dealt with the drafting of the agreement and the faculties for ministry that concern the extern priest, it is now important to add some practical dimension to our study. In the sections that follow, we will comparatively analyze some sample agreements that are currently being used by selected diocesan chanceries in order to determine if they are drafted in conformity with the provisions of *CIC*, c. 271 and the sections of *Postquam apostoli* that have not been derogated from by the *CIC*.

⁶⁹² *CIC*, c. 144 §1. “In factual or legal common error and in positive and probable doubt of law or of fact, the Church supplies executive power of governance for both the external and internal forum. §2. The same norm is applied to the faculties mentioned in cann. 882, 883, 966, and 1111, §1.” The *CCEO* enacts a similar norm in two canons. Canon 994 reads: “In factual or legal common error and in positive and probable doubt of law or fact, the Church supplies executive power of governance for the external and internal forum.” Canon 995 adds that “The prescripts of law regarding the executive power of governance are valid, unless common law provides otherwise or it is evident from the nature of the matter, also regarding the power mentioned in cann. 441, §1 and 511, §1 and for the faculties required by law for the valid celebration and administration of the sacraments.”

⁶⁹³ R.A. KEARNEY, *The Principles of Delegation*, no. 55, Washington, DC, The Catholic University of America, 1929, 120 (= KEARNEY, *The Principles of Delegation*).

⁶⁹⁴ *Ibid.*, 121.

4.3.1 Methodology of the Comparative Analysis

On 14 March 2016, letters were sent to forty selected dioceses in North America requesting from them samples of the written agreement for the temporary service of a diocesan priest outside his diocese of incardination. Of the forty dioceses selected, twenty were from Canada and twenty were from the United States of America. These dioceses were chosen to represent the various provinces and states, as well as both larger and smaller dioceses. The letter was sent to the chancellor or an official in the diocesan curia. The letter requested for a copy of the written agreement for the temporary service used in their dioceses. The dioceses were asked to delete personal details in the agreements, including the names of the dioceses themselves, to protect the privacy of the parties involved.

Out of the forty dioceses contacted, seven dioceses (four from Canada and three from the United States) responded positively and sent copies of the agreements for temporary service that they use in their dioceses.

In addition to the sample agreements received from the seven selected dioceses in Canada and United States, a sample agreement from one selected diocese in Uganda was also obtained. Therefore, in total there are eight sample agreements from three different countries that will be analyzed in the sections that follow below. Since the dioceses contacted were asked to delete the names of the parties, all the names used in the comparative analysis are fictional. The dioceses themselves will be identified as follows:

Canada	United States	Uganda
1. Archdiocese C1	1. Archdiocese US1	2. Archdiocese Ug1
3. Archdiocese C2	2. Archdiocese US2	
3. Archdiocese C3	3. Archdiocese US3	
4. Diocese C4		

4.3.2 Titles of the Agreements

Out of the eight sample written agreements received, only the agreement of the Archdiocese Ug1 is explicitly titled a contract. Its title reads as follows: “Contract Between the Archdiocese of Ug1 and the Diocese of Y.” Archdiocese Ug1 is an archdiocese in Uganda and is the diocese *a quo* while Diocese Y is a diocese in Japan and is the diocese *ad quem*. The remaining seven sample agreements have different titles as shown in the table below:

Name of Diocese	Title of the Agreement
Archdiocese C1	Memorandum of Understanding for the Presbyters Who Come from Another Diocese to Provide Pastoral Care in the Archdiocese of C1
Archdiocese C2	Ministry Agreement Between: La Corporation Archiépiscope Catholique Romaine de C2 (hereinafter called the Archdiocese of C2) and (Arch) Diocese of XXXXX
Archdiocese C3	Agreement Entered into Between the Roman Catholic Archdiocese of C3 and the Diocese/Order/Society of _____
Diocese C4	Service of Agreement
Archdiocese US1	Memorandum of Understanding
Archdiocese US2	Agreement for Presbyters of the (Arch)Diocese of (Name) Rendering a Pastoral Service in Another (Arch)Diocese
Archdiocese US3	Memorandum of Understanding Between the Diocese of US3 and Fr. John Smith

The title given to the agreement for temporary service is very significant. Since in contract matters, canon law is guided by the civil law of a particular region, explicitly calling this agreement a contract means that it will fall under the provision of *CIC*, c. 1290, which governs contracts in canon law. Therefore, when drafting the agreement, the representatives of Archdiocese Ug1 and Diocese Y will need to acquaint themselves with the contract civil laws of Japan, where the agreement was drawn up. Any future dispute or misunderstanding that may arise from this agreement can end up being resolved in a

civil court of law. For example, Archdiocese US1 (diocese *ad quem*) made a written agreement with the Diocese of Michaela in Argentina (diocese *a quo*) for Fr. Carlos to work temporarily in the Archdiocese US1. The agreement states that “In the event that the Bishop of Michaela shall request that Fr. Carlos return to the Diocese of Michaela, he shall provide not less than twelve (12) months advance written notice to the Archdiocese US1, and upon conclusion of such twelve (12) month notice period, this agreement shall be null and void and of no further force or effect.”⁶⁹⁵ This agreement specifically requires a twelve-month prior written notice by the bishop *a quo* before the termination of the agreement. Even though *CIC*, c. 271 does not require giving prior notice before the withdrawal of the extern priest, since this is a condition specified in the agreement, it must be observed before its termination. If the bishop of Michaela decided to recall Fr. Carlos without giving this twelve-month prior notice, a dispute could arise that could end up in a civil court of law.

One advantage of not explicitly calling the written agreement a contract is that it will not fall under the scope of *CIC*, c. 1290, even though it is contractual in nature. This means that when drafting it, the parties do not need to follow the pertinent civil law. In case of a dispute or misunderstanding, it can be resolved in the ecclesiastical forum. However, irrespective of what it is called, once the agreement is signed, it binds both parties and the priest involved.

The agreement of the Archdiocese US1, although it is titled “Memorandum of Understanding,” specifically stipulates that the parties are bound by its terms and conditions. In its introductory section, it states that “NOW, THEREFORE, the parties

⁶⁹⁵ ARCHDIOCESE US1, “Memorandum of Understanding,” art. 5, b. See Appendix I (= ARCHDIOCESE US1, “Memorandum”).

hereto, intending to be legally bound, agree upon the following terms and conditions, including the foregoing recitals which are incorporated herein as substantive provisions of this Agreement.”⁶⁹⁶ It adds that “This agreement has been negotiated and executed in the State of MM, United States of America, and the laws of that State shall govern its construction and validity, without respect to conflict of laws principles.”⁶⁹⁷ Clearly the parties to this agreement are binding themselves to the provision of *CIC*, c. 1290 and the contract civil law of that particular state. Consequently, they would need to involve their civil attorneys when drafting the agreement.

4.3.3 Contracting Parties

Four sample agreements, namely, the agreements of the Archdiocese C1, Diocese C4, Archdiocese US1 and Archdiocese US2, identified the bishop *a quo*, the bishop *ad quem* and the priest involved as the parties to the agreement. Three agreements, namely, the agreements of the Archdiocese C2, Archdiocese C3 and Archdiocese Ug1, identified only the bishop *a quo* and the bishop *ad quem* as the parties to the agreement and excluded the involvement of the priest concerned as a third party. The remaining agreement, that is, the agreement of the Archdiocese US3, identified the diocese *a quo* and the extern priest as the parties to the agreement. However, it was signed by three people, namely, the extern priest, the pastor of the parish where the extern priest was assigned and the Bishop of the Archdiocese US3.

⁶⁹⁶ See the introductory section of ARCHDIOCESE US1, Memorandum.

⁶⁹⁷ *Ibid.*, art. 9.

Since entering into the written agreement for temporary ministry constitutes a juridic act (*CIC*, cc. 124-126),⁶⁹⁸ its validity depends on its being placed by persons who are capable of doing so (*CIC*, c. 124, §1).⁶⁹⁹ According to *CIC*, c. 271, §1, the parties to this agreement are: the diocesan bishop *a quo* representing the juridic person of the sending diocese and the diocesan bishop *ad quem* representing the juridic person of the receiving diocese.⁷⁰⁰ The 1980 Directive Norms *Postquam apostoli* had required that this agreement be made with the participation of the priest involved, in order for it to have a juridic force.⁷⁰¹ This requirement has since been integrally reordered by *CIC*, c. 271, §1.

The law in *CIC*, c. 271, §1 explicitly mentions the diocesan bishop *a quo* as the person responsible for entering the written agreement with the diocesan bishop *ad quem*. According to *CIC*, c. 134, §3, when an act is attributed to the diocesan bishop by name, it means that only the diocesan bishop and those equivalent to him in law (*CIC*, c. 381, §2) can perform that act. Anyone else, including vicars general and episcopal vicars would need a special mandate to perform the same act. It follows, therefore, that only the

⁶⁹⁸ “A juridic act is a human act, lawfully placed, by which a person capable in law manifests his/her intention to bring about a specific juridic effect or effects recognized in law” (HUELS, *Liturgy and Law*, 73). Huels further explains that a juridic act brings about specific juridic effects recognized in law. The law determines the juridic effects of the act. The effects may be new legal rights and/or obligations. By placing the act, a person takes on any legal obligations resulting from that act. Any rights acquired by the act must be respected by all subjects of law, and they can be vindicated in accord with the procedures of law. See *ibid.*, 75.

⁶⁹⁹ “Ad validitatem actus iuridici requiritur ut a persona habili sit positus, atque in eodem adsint quae actum ipsum essentialiter constituunt, necnon sollemnia et requisita iure ad validitatem actus imposita” (*CIC*, c. 124, §1). For a more detailed interpretation of this canon, see H. PREE, “On Juridic Acts and Liability in Canon Law,” in *The Jurist*, 58 (1998), 45-65. See also J.M. KUZIONA, *The Nature and Application of Juridical Acts according to Canon 124 of the Code of Canon Law*, JCD diss., Ottawa, Saint Paul University, 1998, 117-163.

⁷⁰⁰ A juridic person is an aggregate of persons or things, whether public or private, established by law or by a competent ecclesiastical authority and ordered toward a purpose congruent with the mission of the Church that transcends the purpose of the individuals who comprise it. See HUELS, *The Pastoral Companion*, 449. See also RENKEN, *Church Property*, 27-35.

⁷⁰¹ SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 26, 361.

diocesan bishop *a quo* and the diocesan bishop *ad quem* can enter this agreement. Vicars general and episcopal vicars would need to be delegated (*CIC*, cc. 137-142) by the diocesan bishop to enter the agreement. This delegation can be given for a single act or all cases (*CIC*, c. 137, §1). For example, the episcopal vicar for personnel or the vicar general can be delegated for all cases to enter this agreement on behalf of the diocesan bishop as part of his appointment.

In case an episcopal see falls vacant (*CIC*, c. 416), the law itself, in *CIC*, c. 272, disqualifies (*concedere nequit*) the diocesan administrator (*CIC*, cc. 421-428) from granting excardination, incardination and permission to transmigrate unless (*nisi*) the following two conditions have been fulfilled. Firstly, the see must have been vacant for at least one year (*CIC*, cc. 201 and 202). Secondly, the diocesan administrator must have received the consent of the diocesan college of consultors (*CIC*, c. 502) in accordance with *CIC*, c. 127. Therefore, the diocesan administrator cannot validly enter the written agreement unless the two conditions have been observed. Similarly, although c. 272 does not explicitly mention it, these same two conditions also apply to the bishop or presbyter who governs an impeded episcopal see (*CIC*, cc. 412-414).⁷⁰²

It is also important to note that there is a difference between discussing and formulating the terms of the agreement and the actual approving it by signing it. No delegation or specific mandate is needed for someone to negotiate the terms of the agreement on behalf of the concerned parties. In fact, it would be appropriate and at times preferable for the parties to turn over such preliminary tasks, including the drafting of the agreement, to an episcopal vicar, the vicar general or the chancellor, whose principal

⁷⁰² WOESTMAN, *The Sacrament of Orders and the Clerical State*, 161.

function is to see that the acts of curia are redacted (*CIC*, c. 482, §1).⁷⁰³ However, the actual approving of the agreement by signing it is a juridic act which can only be done by the competent parties or those who have been legitimately delegated or mandated to represent the parties.

The sample agreement of the Archdiocese US3, identified the diocese *a quo* and the extern priest as the parties to the agreement, although it was signed by the extern priest, the pastor of the parish where the extern priest was assigned and the archbishop. There is a problem with this agreement. Firstly, the written agreement is an inter-diocesan agreement made between two dioceses. The law does not forbid the priest from being involved as a party to the agreement, but certainly the two dioceses must both be involved as parties to the agreement. Secondly, the diocese *a quo* is a juridic person (*CIC*, cc. 113-123).⁷⁰⁴ Since a juridic person is an artificial person created by church law or authority, it can only act through a physical or natural person.⁷⁰⁵ The physical person can be either an individual or a group of individual persons.⁷⁰⁶ In order to represent or act in the name of a juridic person, a physical person needs to be designated by the law itself or by the statutes of the juridic person (*CIC*, c. 118). For a diocese, the diocesan bishop is the person legally designated by the law to represent it in all its juridic affairs (*CIC*, c. 393).

⁷⁰³ KAIN, *Written Agreements Between Bishops and Religious*, 262.

⁷⁰⁴ A juridic person is an aggregate of persons or things, whether public or private, established by law or by a competent ecclesiastical authority and ordered toward a purpose congruent with the mission of the Church that transcends the purpose of the individuals who comprise it (*CIC*, cc. 113-123). See HUELS, *The Pastoral Companion*, 449. See also RENKEN, *Church Property*, 27-35.

⁷⁰⁵ According to *CIC*, c. 96, someone is constituted a person and incorporated into the Church by baptism and acquires duties and rights, which are proper to Christians in keeping with their condition.

⁷⁰⁶ R.T. KENNEDY, "Juridic Persons: [cc. 113-123]," in *CLSA Comm2*, 164.

Therefore, when entering the agreement for the temporary service of a diocesan priest outside his diocese of incardination, the diocesan bishop *a quo* represents the juridic person of the sending diocese and diocesan bishop *ad quem* represents the juridic person of the receiving diocese. The diocesan bishops can be represented by the persons they specifically or generally delegate to enter the agreement on their behalf (*CIC*, c. 137).

If the priest in question is to participate as a party to the agreement, he acts in his own name as a physical person in the Church (*CIC*, c. 113) and as a presbyter who is going to be juridically affected by the agreement. Since this written agreement is contractual in nature, like any other contract, it can be entered into by a proxy (*CIC*, c. 1105) or procurator (*CIC*, c.1481, §1). Therefore, if the priest involved cannot enter the agreement personally, he would have to do so through a proxy or procurator. Consequently, because the agreement entails serious obligations for the priest involved, the proxy needs a special written mandate signed by the priest himself in order to enter the agreement on his behalf. Only the priest can grant this authorization to the proxy, who in turn cannot subdelegate it to another person.

4.3.4 Preamble and Preliminary Communication

Only one sample agreement, namely, the agreement of the Archdiocese C1, had a section clearly labelled “Preamble.”

PREAMBLE

This Memorandum of Understanding, devised in accordance with the prescriptions of universal law and norms of the Congregation for Clergy published on 25 March 1980, is made between the Archbishop of YY and the Bishop of PP, Italy with the involvement and acceptance of the priest who intends to work in the Archdiocese of YY, Reverend John Doe.

Whereas

- a) Reverend John Doe, incardinated in the Diocese of PP, Italy, has manifested a desire to exercise the sacred ministry in the Archdiocese of YY for a period of three years, while remaining incardinated in his own particular Church;
- b) his proper Ordinary has been informed of this intention and has given his written permission for him to be absent from his Diocese and to accept an appointment in the Archdiocese of YY for a period of three years;
- c) his proper Ordinary considers him suitable to exercise the ministry in and for the Church of YY;
- d) the Archbishop of YY has received appropriate testimonials and information regarding Reverend John Doe and has manifested a need for priests to minister to the faithful of his particular Church.⁷⁰⁷

This preamble does several things: first, it identifies the title of the agreement as a “Memorandum of Understanding” and the parties involved as the Archbishop of C1, the bishop *a quo* and the extern priest. By clearly stating that the agreement was made with the involvement of all the parties concerned including the priest himself, the preamble indicates that the agreement follows the norm of *CIC*, c. 271 and it, therefore, has juridic value and binds all the concerned parties.

Secondly, the preamble indicates that it was the priest involved who made the initial request. By doing this, the preamble is indicating that the priest is simply exercising the right given to him by *CIC*, c. 271, §1 to request his bishop for permission to move and minister temporarily in another diocese with greater need of clergy. The right that is given to the priest by the canon is the right to petition for permission to move and not the right to be given the permission. The priest does not have the right to temporary movement to another diocese. He is free to make the initial petition for it, without waiting to be asked by his bishop or to be invited by the bishop *ad quem*. The canon leaves it to the discretion of the diocesan bishop *a quo* to judge whether to grant the permission depending on the true necessity of his diocese and the priest’s suitability to undertake ministry in the Archdiocese C1.

⁷⁰⁷ ARCHDIOCESE C1, “Memorandum of Understanding for Presbyters Who Come from Another Diocese to Provide Pastoral Care in the Archdiocese C1,” Preamble. See Appendix IV (= ARCHDIOCESE C1, “Memorandum”).

Thirdly, the preamble cited above contains a clear statement confirming that the priest has been given permission by his bishop of the diocese *a quo* to move to the Archdiocese C1 to exercise sacred ministry. It also indicates that the Archbishop of C1 has accepted to receive the extern priest for a period of three years. This is significant because it gives legitimacy to the priest's movement to the diocese *ad quem*.

Fourthly, the cited preamble contains a statement of need. It states clearly that there is a manifestation of need for more priests to minister in the Archdiocese. This justifies why the permission was granted to the priest by both his own bishop of the diocese *a quo* and the Archbishop of C1.

4.3.5 Testimonial of Suitability

Three of the sample agreements, namely, the agreements of the Archdiocese US1, Archdiocese C1, and Archdiocese C2, clearly state that a letter of suitability has been received from the priest's bishop or will be received before the priest begins ministry in the host diocese. The agreement of the Archdiocese US1 reads as follows:

Section 6. Attachments Incorporated by Reference Herein. The following documents are attached hereto and incorporated by reference herein:

- Copies of Fr. Carlos' relevant visa information, evidencing Fr. Carlos' lawful ability to reside in the United States of America throughout the Term; and
- A letter of suitability from Fr. Carlos' Ordinary, the Bishop of MM, indicating Fr. Carlos' approval for ministry within the Archdiocese of ZZ for the term of this agreement, description of Fr. Carlos' ministerial background, current status, faculties, character and any information regarding anything in Fr. Carlos' background that would or might render him unsuitable to work with minors or others in fulfillment of the responsibilities and duties contemplated hereunder.⁷⁰⁸

In its preamble, the agreement of the Archdiocese C1 states:

Whereas

- c) his proper Ordinary considers him suitable to exercise the ministry in and for the Church of C1;

⁷⁰⁸ ARCHDIOCESE US1, "Memorandum," art. 6.

- d) the Archbishop of C1 has received appropriate testimonials and information regarding Reverend John Doe and has manifested a need for priests to minister to the faithful of his particular Church.⁷⁰⁹

The sample agreement of the Archdiocese C2 says the following in no. 5:

5. For each priest to be assigned, (Arch)Bishop YYY of the (Arch)Diocese of XXX will forward a signed “*Declaration for Priestly Ministry*” form. The priest will also need to provide a Police Clearance Check (and if he has previously been in Canada, a Sexual Offender Registry Check). This is in accordance with the policy of the Archdiocese of C2 for all involved with ministry to the vulnerable as set out in its document “*Working Together for a Safe Church Environment*.”⁷¹⁰

The remaining sample agreements did not mention anything about the priest’s suitability. It is not clear from these five sample agreements whether the diocesan bishop *ad quem* obtained the statement of suitability from the diocesan bishop *a quo* prior to signing the written agreement.

Suitability and preparedness of the extern priest for ministry in the diocese *ad quem* is a requirement of the law. The bishop *a quo* is required by *CIC*, c. 271, §1 to select a priest who he knows is prepared and suitable. His knowledge of the priest’s preparedness and suitability should be manifested in a written form for the purpose of verification and future reference. It is also the responsibility of the priest involved to demonstrate his own suitability and preparedness for ministry in the host diocese. He can do this by subjecting himself to police background checks.

As Otto L. Garcia says, it is essential that before the written agreement is drafted and signed, the bishop *ad quem* obtains a statement of suitability of the priest involved from the bishop *a quo*.⁷¹¹ This testimony of suitability is particularly needed in the

⁷⁰⁹ ARCHDIOCESE C1, “Memorandum,” Preamble.

⁷¹⁰ ARCHDIOCESE C2, “Ministry Agreement Between La Corporation Archiépisopale Catholique Romaine de C2 AND (Arch)Diocese of XXX,” art. 5. See Appendix V (= ARCHDIOCESE C2, “Ministry Agreement”).

⁷¹¹ GARCIA, “The Assignment of Non-Diocesan Priests,” 104.

present-day situation of clergy sexual abuse of minors because it creates greater certainty concerning the priest's status.⁷¹²

4.3.6 Length of Term, Amendment and Renewal

Firstly, concerning the length of the agreement, all eight sample agreements examined provided a clear duration for the priest's temporary service. Three agreements, namely, the agreements US2, C2 and Ug1, indicated five years as the period of the priest's service in the diocese *ad quem*. Agreements of US1, C1 and C4 indicated three years. The agreement of US3 indicated only one year, while the agreement of C3 indicated six years. This is in compliance with the 1980 Directive Norms *Postquam apostoli*, which specifically demands that the agreement should include the length of time of the service to be rendered in the diocese *ad quem*.⁷¹³ Canon 271, §2 simply states that the priest being sent to another diocese is to be given permission for a predetermined time (*ad tempus praefinitum*). It does not give the precise limits of this length of time but leaves it to the bishops concerned to agree on the specific period of the agreement.

Secondly, regarding the amendment of the agreement, four sample agreements, namely, the agreements of Ug1, US1, C1 and C2 indicated how amendments to the terms and conditions of the agreement, before its expiry date, can occur. The sample agreement of the Archdiocese Ug1 states that "This agreement ... can be amended by mutual consent before the date of expiry."⁷¹⁴ Similarly, the agreement of the Archdiocese US1

⁷¹² Ibid.

⁷¹³ SACRED CONGREGATION FOR THE CLERGY, *Postquam apostoli*, no. 27, 362.

⁷¹⁴ ARCHDIOCESE UG1, "Contract Between the Archdiocese of Ug1 and the Diocese of YYY," art. VII, no. 5. See Appendix VIII (= ARCHDIOCESE UG1, "Contract").

states that “This agreement ... cannot be amended, modified or supplemented in any respect except by a subsequent written agreement entered into by both parties.”⁷¹⁵ In addition to the above, the agreement of the Archdiocese C1 states that “This Memorandum of Understanding ... cannot be changed unless there is the consent of all the interested parties without prejudice to the rights of the bishops and regulated in universal law.”⁷¹⁶ Furthermore, the agreement of the Archdiocese C2 says that “This agreement may be amended by the mutual written consent of both parties.”⁷¹⁷ All these are consistent with the provision of *Postquam apostoli*, which requires that the agreement be changed only with the consent of the interested parties. Although this particular requirement is not part of *CIC*, c. 271, it does not contradict it and can be read in light of the provision of the canon. When the bishop *a quo* and bishop *ad quem* express their consent to the terms of the agreement, it follows that if any changes are to be made to the agreement, the two bishops must express their consent again. It is important that this requirement be indicated in the agreement itself because it may help to prevent illicit review of the agreement, which in turn can lead to a misunderstanding in the future.

Finally, all the sample agreements clearly stated the conditions that should be observed if the agreement is to be renewed beyond the date of expiration. One such condition is the number of times that the agreement may be renewed. Canon 271, §2 states that the permission to move can be renewed several times (*etiam pluries renovandum*). It does not say that the permission is to be renewed or must be renewed; it says it can be renewed. This means that dioceses can choose to renew or not renew the

⁷¹⁵ ARCHDIOCESE US1, “Memorandum,” art. 10.

⁷¹⁶ ARCHDIOCESE C1, “Memorandum,” art. 5.

⁷¹⁷ ARCHDIOCESE C2, “Ministry Agreement,” art. 17.

agreement depending on the consensus of the parties. It is, therefore, important to indicate in the agreement whether it is open to renewal. If it is open to renewal, the number times it can be renewed should be indicated.

Out of the eight sample agreements we examined, the agreement of the Archdiocese US1 clearly limited the number of times it can be renewed. It stated that it can be renewed for an additional period of two years.⁷¹⁸ After this additional period has expired, the extern priest will be expected to return to his home diocese or seek incardination into the diocese *ad quem*. This provision is very important because it does not allow a situation whereby the agreement is open for renewal for an indefinite number of times. Similarly, the agreement of the Archdiocese C3 did not give any possibility of renewal, meaning that the agreement was valid only for one term of six years. It, however, states that at the end of the six-year term, the extern priest is to return to his home diocese and be replaced by another priest.⁷¹⁹

Three agreements, namely, the agreements of the Archdioceses C1, C2, and US2 did not limit the number of times the agreement can be renewed. Agreements C1 (art. 2) and US2 (art. 2, §2) stated generally that the agreement can be renewed several times. While Agreement C2 (art. 1) does not indicate the number of times it can be renewed. It simply declares that “consent of both parties is required for its renewal at the end of this five (5) year period.”⁷²⁰ The problem with leaving the agreement open to renewing several times, or not indicating the number of times it can be renewed, is that it can result

⁷¹⁸ ARCHDIOCESE US1, “Memorandum,” art. 2.

⁷¹⁹ ARCHDIOCESE C3, “Agreement Entered into Between the Roman Catholic Archdiocese of C3 and the Diocese/Order/Society of XXX,” art. 1. See Appendix VI (= ARCHDIOCESE C3, “Agreement”).

⁷²⁰ ARCHDIOCESE C2, “Ministry Agreement,” art. 1.

in an indefinite period of temporary service and lead to priests who are unsure of their incardination status. Canon 265 requires that every cleric must be incardinated in a particular Church, personal prelature or an institute with the faculty to incardinate. Consequently, there can be no non-incardinated clerics. Therefore, every cleric has the right to know clearly at any given moment his place of incardination and who his proper superior is.⁷²¹ To prevent or avoid a scenario of a priest who is unsure of his incardination status, it is important that the written agreement clearly states the specific number of times that it can be renewed. After that, the priest would be expected to return to his home diocese or to request excardination and incardination following the process outlined in *CIC*, cc. 267, 269-270.

In addition to the above, the sample agreement of the Archdiocese Ug1 indicated that the renewal will be considered to have taken place automatically for a further period of five years unless one of the parties expresses a contrary will in writing six months before the date of expiry.⁷²² The problem with leaving the agreement open to automatic renewal is that it can lead to the renewal of the agreement without the consent of one or both parties. It may happen that one of the bishops may not have the opportunity to express his opposition to the renewal in time but he would still be considered to have consented to it. For example, the bishop *a quo* may have planned to have his priest back at the end of the agreement but was unable to express his opposition in writing in time and ends up letting the priest serve another five-year term without his approval. The preferable thing to do is to seek the consent of the interested parties before the agreement

⁷²¹ DONLON, "Incardination and Excardination," 147.

⁷²² ARCHDIOCESE UG1, "Contract," art. VII, no. 2.

can be considered renewed. This is exactly what the sample agreement of the Archdiocese US1 stated: “This agreement shall be extended for an additional period of two (2) years, on the same terms and conditions set forth herein, upon mutual written agreement of all parties hereto.”⁷²³ Similarly, the agreement of the Archdiocese C1 contains a similar provision, which reads, “The period of service of Reverend John Doe in the Archdiocese of C1 will last for three years. Such permission can be renewed several times with the written consent of all parties.”⁷²⁴ Additionally, the agreement of the Archdiocese US2 declared that

The present agreement is valid for 5 years. Six months before the expiry of that period the Ordinary *a quo*, the Ordinary *ad quem* and the presbyter will contact each other either to confirm the expiry of this agreement or its renewal on the same conditions or subject to any possible variations which might be attached to it.⁷²⁵

4.3.7 Termination of the Agreement

Two of the sample agreements analyzed, namely, the agreements of the Archdiocese C1 and US3, did not indicate the conditions under which they can be terminated. This may leave room for potential misunderstanding and creation of bad feelings in resolving any conflicts that may arise among the parties during the time that the extern priest is ministering in the host diocese.⁷²⁶ Canon 271, §3 gives the bishops *a quo* and *ad quem* the power to recall the extern priest or deny him continued residence in the host diocese provided that (*dummodo*) the agreement entered into and natural equity

⁷²³ ARCHDIOCESE US1, “Memorandum,” art. 1.

⁷²⁴ ARCHDIOCESE C1, “Memorandum,” art. 2.

⁷²⁵ ARCHDIOCESE OF US2, “Agreement for Presbyters of the (Arch)Diocese of (Name) Rendering a Pastoral Service in Another (Arch)Diocese,” art. 9. See Appendix II (= ARCHDIOCESE OF US2, “Agreement for Presbyters”).

⁷²⁶ WOESTMAN, *The Sacrament of Orders and the Clerical State*, 159.

are observed. Here the law presumes that this recall or dismissal will be done in accordance with the terms and conditions stated in the agreement.

When the agreement does not state the conditions of its termination, then there is a conflict between the provision of *CIC*, c. 271, §3, which allows the bishops *a quo* and *ad quem* to recall or dismiss the extern priest from the host diocese, and the contractual agreement which does not. If the extern priest has been appointed to an ecclesiastical office and his term of office has not expired, and the recall or dismissal is done against his will, the bishops would have to follow the canonical procedure for the removal of pastors (*CIC*, cc. 1740-1747). If the extern priest willingly accepts being recalled or sent back to his home diocese, there would be no need to follow a canonical procedure. It is, therefore, essential that the written agreement for a temporary service of a cleric outside his diocese of incardination clearly indicate the terms and conditions for its termination.

The other remaining sample agreements clearly indicated the terms and conditions by which they can be terminated. The agreement of the Archdiocese Ug1 reads as follows:

1. Timely consultation will be held between the parties regarding the granting of permission to move to or recall from the Diocese Y.
2. For grave reasons, either party may request the withdrawal of a particular *Fidei Donum* Priest.⁷²⁷

This sample agreement sets two additional conditions for the recall of the extern priest from the host diocese. The first condition is consultation between the parties. If the bishop *a quo* wants to recall his priest back to the diocese, he must have prior consultation with the bishop *ad quem*. Similarly, if the bishop *ad quem* wants to terminate the service of the extern priest in his diocese, he must consult with the bishop *a quo*

⁷²⁷ ARCHDIOCESE UG1, "Contract," art. IV.

before the priest's dismissal. The agreement does not specify the time period when this consultation should be made. For example, it would have been clearer if the agreement had stated that the consultations will be made three or six months before the date of the priest's withdrawal. However, it is important to note that the law itself in *CIC*, c. 271, §3 gives both the bishop *a quo* and bishop *ad quem* the right to act freely without requiring any consultation or consent of either of the bishops. The second condition added by the sample agreement is grave reason. For the bishop *a quo* or bishop *ad quem* to withdraw the extern priest from the host diocese, he must have a grave reason to do so. It does not give examples of what a grave cause might be. The law itself does not require a grave cause, it simply requires just cause (*iusta causa*).

Furthermore, the same sample agreement of Ug1 states that "The *Fidei Donum* Priest will have the right to state his case."⁷²⁸ This is similar to the provision in the agreement of the Archdiocese US2, which states that in withdrawing the extern priest from the host diocese "the good of the presbyter will be the primary and overriding consideration rather than the interests of dioceses concerned."⁷²⁹ By stating this, the agreements recognize the right of the extern priest to be heard. According to *CIC*, c. 271, §3, the bishops involved are required to observe natural equity when withdrawing the extern priest from his ministry in the diocese *ad quem*. Hearing his concerns, and possibly warning him and giving him time to change his ways, constitute observing natural equity.

The agreement of the Archdiocese US1 reads as follows:

⁷²⁸ Ibid.

⁷²⁹ ARCHDIOCESE OF US2, "Agreement for Presbyters," art. 7.

- (a) **For Cause.** The Archbishop of US1 may discharge Fr. Carlos thereby terminating this agreement. The Bishop of Michaela and Fr. Carlos shall be notified, in writing, of the cause for discharge. If Fr. Carlos is discharged for cause, he shall not be entitled to receive any compensation beyond the effective date of discharge, and he shall return promptly to the Diocese of Michaela. Without limitation, any one of the following events or occurrences shall be considered cause for discharge and shall include:
 professional incompetence; professional malfeasance; inability or unwillingness to relate in an amicable and professional manner with parishioners, and others whom Fr. Carlos relates in performance of his duties; rejection of official doctrine or laws of the Roman Catholic Church in performance of duties; violation of the terms of this Agreement; conduct not in keeping with the duties of a priest; actions which are offensive to the community or tend to embarrass a parish or the Roman Catholic Archdiocese of US1 or violate any policy of the Archdiocese of US1 applicable to a priest; behavior that seriously and/or publicly violates the official teachings and canon law of the Catholic Church; or other conduct which substantially impairs the performance of his duties under this Agreement. Offensive actions and behavior are not limited to job-related conduct.
- (b) **For Convenience or other Reasons.** In the event that the Bishop of Michaela shall request that Fr. Carlos return to the Diocese of Michaela, he shall provide not less than twelve (12) months advance written notice to the Archdiocese of US1, and upon the conclusion of such twelve (12) month notice period, this Agreement shall be null and void and of no further force or effect. In addition, if Fr. Carlos shall become ill, incapacitated or otherwise unable to perform his duties hereunder for a period of ninety (90) days or more, any party hereto shall, in its/their discretion, be permitted to terminate this Agreement, whereupon the same shall be of no further force or effect.⁷³⁰

Canon 271 simply mentions the need for a just reason in order for either bishop *a quo* or *ad quem* to withdraw the extern priest from the host diocese. It does not offer specific examples of such causes. This sample agreement gives a clear and detailed list of examples of the just reason, any of which will suffice for the withdrawal or dismissal of the extern priest from the diocese. It is important to stress here that this list is not taxative but illustrative. Other similar reasons that are not mentioned in the agreement will produce the same effect.

It is interesting to note that this sample agreement requires prior written notice before its termination. If the bishop *ad quem* wants to deny the extern priest permission for continued residence in his diocese, he must notify (not consult) in writing both the bishop *a quo* and the extern priest. Similarly, if the bishop *a quo* wants to recall the priest concerned back to his diocese, he also must notify both the bishop *ad quem* and the

⁷³⁰ ARCHDIOCESE US1, "Memorandum," art. 5.

extern priest at least twelve months before the date of the withdrawal. The agreement does not require the bishop *ad quem* to observe the same time period when terminating the priest's service in his diocese. It must also be noted here that *CIC*, c. 271 does not mention the need for giving prior written notice of the withdrawal to the other parties. However, common courtesy demands such a notice. Advance notice before terminating the agreement gives the bishop *ad quem* enough time to find a replacement for the extern priest. Moreover, since this is a condition stipulated in this contractual agreement, it must be observed when terminating the agreement.

4.3.8 Remuneration and Other Benefits

Several things are common in all the sample agreements we analyzed. Firstly, all the agreements examined indicated that the extern priest will receive the same salary as the priests incardinated in the dioceses where they are working. This is an important declaration because the priests' right to remuneration is granted by the universal law itself (*CIC*, c. 281). In addition to *CIC*, c. 384, which puts an obligation on the diocesan bishop to ensure that the priests are properly remunerated, particular laws are to establish the scale upon which priests holding similar offices or offering similar pastoral services are paid a standard remuneration. The extern priest rightly deserves a remuneration that is consistent with the office he is holding or the pastoral service he is offering to the host diocese.

Secondly, all the agreements analyzed stated that the extern priest will be provided with the same medical insurance and disability benefits as are generally provided to all priests incardinated in the dioceses where they are ministering. This too is a requirement of the universal law itself (*CIC*, c. 281, §2).

Thirdly, six agreements indicated that the host dioceses will make annual contributions to the extern priest's retirement or pension fund. The agreements of the Archdiocese C1 states that the pension fund contribution will be retained in the host diocese and transferred to the priest's home diocese upon his return after the completion of his temporary ministry in the host diocese (no. 4, b). Two agreements, namely, the agreements of US1 (art. 4, b) and C4 (§ 4) stated that the host diocese will pay the equivalent of its contribution to a diocesan priest's pension plan to the extern priest's home diocese. The key issue here is that all the agreements are in compliance with the universal law, which requires that all clerics who dedicate themselves to ecclesiastical ministry be provided with insurance for health and social services in case of illness, disability, or old age (*CIC*, c. 281, §2).

In addition to the above, five agreements, namely the agreements US1, US3, C2, C4 and Ug1 indicated how the extern priest's living and housing expenses will be provided. Agreements US1, US3, and C4 simply declared that the extern priest shall be provided with room and board. They do not specify how this will be done. The agreements of the Archdioceses C2 and Ug1 declare that it is the responsibility of the extern priest to meet his own living and housing expenses. For example, the agreement of the Archdiocese Ug1 states that "other expenses, as meals, sickness, and clothes are to be shouldered by the *Fidei Donum* Priests."⁷³¹ The agreement of the Archdiocese C2 declares that

The assigned priest will pay monthly to the parish an amount for housing as determined by the Archdiocese of B for all priests living in a parish rectory. Payment of all other living expenses including food, personal long distance telephone calls, internet services other

⁷³¹ ARCHDIOCESE UG1, "Contract," art. V. no.1.

than that offered by the parish office, clothing, toiletries, and other personal or luxury items will be the financial responsibility of the individual priest.⁷³²

Four sample agreements indicated that the host diocese will pay for the extern priest's initial travel expenses to the diocese and his final return travel expenses to his home diocese. Expenses for other journeys will be met by the priest himself. However, the agreement of the Archdiocese US1 provides that the host diocese "will contribute up to \$2,000 on an annual basis to defray travel expenses incurred by Fr. C. for visits to his home diocese at appropriate times."⁷³³

Additionally, three sample agreements,⁷³⁴ mentioned that the extern priest will be responsible for the purchase and maintenance of his vehicle but he will be eligible to receive an appropriate car allowance under the policy of the host diocese. Indicating all these details in the written agreement gives the extern priest a clear understanding of what the diocese or parish will contribute to his income and what his responsibilities will be and, consequently, this may prevent unrealistic expectations.

Something that should be mentioned, but was neglected in all the agreements examined, is the extern priest's responsibility to report his income and pay appropriate taxes, as required by the law of the region.

4.3.9 Vacation

Only five out of the eight sample agreements we analyzed indicated the right of the extern priest to have an annual holiday. The agreement of the Archdiocese Ug1 states that "The *Fidei donum* priest shall be entitled to days off and an annual vacation in

⁷³² ARCHDIOCESE C2, "Ministry Agreement," art. 9.

⁷³³ ARCHDIOCESE US1, "Memorandum," art. 4, b, iv.

⁷³⁴ See Agreement of the Archdiocese US1, no. 4, (b), iii; Agreement C3, no. 10 and Agreement C4, §3.

accordance with the Diocesan regulations.”⁷³⁵ The same agreement added that “In case of his father’s or mother’s death, the *Fidei donum* priest will be allowed to travel from and to Japan for a period of one month. Other leaves of absence shall be negotiated between the *Fidei donum* priest and the Bishop of Y.”⁷³⁶ Vacation time is a right granted to clerics by the universal law itself. Pastors (*CIC*, c. 533, §2) and parochial vicars (*CIC*, c. 550, §3) are given one continuous or interrupted month (*CIC*, c. 202). Other priests in active ministry also have the same period for annual vacation. It is important, then, to indicate in the written agreement that the extern priest, like any other priest in active ministry in the host diocese, is entitled to a one-month annual vacation. Weekly days off are usually products of customs or diocesan particular laws. The extern priest might be coming from a different country, so particular law can grant him additional time for a vacation or to attend to his personal business. For example, in this case, the written agreement gives the extern priest a one-month leave of absence in case of his mother’s or father’s death.

According to the agreement of the Archdiocese US1, the extern priest will be entitled to a vacation in the following manner: “One week after Christmas, one week after Easter and three continuous weeks in the summer. An additional week is to be granted for retreat.”⁷³⁷ Particular law can regulate how priests serving in the diocese can take their annual vacations in order to find temporary replacements for them (*CIC*, c. 533, §3). However, dictating the specific times of the year when the extern priest can take his

⁷³⁵ ARCHDIOCESE UG1, “Contract,” art. VI.

⁷³⁶ *Ibid.*

⁷³⁷ ARCHDIOCESE US1, “Memorandum,” art. 4, b.

vacation may limit his freedom to choose the time that best suits his vacation and travel needs.

In addition to the above, the sample agreement of the Archdiocese US2 in article 5 repeats the provision of c. 283, §2. It states that “The presbyter has the right to have each year a sufficient period of vacation as established by the particular law of the diocese to which he is rendering his service.”⁷³⁸ It adds that “the presbyter has the right to establish suitable time for a spiritual retreat (cf. *CIC*, c. 276, §2) and for theological and pastoral formation.”⁷³⁹ This agreement simply recognizes the fact that the one-month period that the priest has for vacation does not include the time that he may spend on a retreat or participating in other diocesan events.

Furthermore, the agreement of the Archdiocese C2 says “The assigned priest is entitled to a four-week paid vacation leave per year and can participate in a weeklong annual retreat. The substitution during the period of absence should be cleared with the office of the Archdiocese of C2.”⁷⁴⁰ The key word here is “paid vacation.” When the extern priest goes for his annual vacation, he is still entitled to his monthly remuneration and all the other benefits like food allowance that he is supposed to receive. Secondly, the diocesan bishop or the chancery is to be informed about the substitute priest for the purpose of verifying that he has the faculties for ministry in the diocese.

⁷³⁸ ARCHDIOCESE OF US2, “Agreement for Presbyters,” art. 5, §1.

⁷³⁹ *Ibid.*

⁷⁴⁰ ARCHDIOCESE C2, “Ministry Agreement,” art. 13.

4.3.10 Pastoral Appointment

The principal reason why the extern priest is moving from his diocese of incardination to another diocese is to temporarily exercise sacred ministry. The kind of apostolate that the extern priest is going to exercise needs to be clearly stated in the agreement so that the priest leaves his home diocese with a clear understanding of the kind of assignment in which he is going to be involved. Six sample agreements did this. Some agreements mentioned the specific ministry; others indicated it generally. For example, both the agreements of the Archdiocese C2 in no. 4 and of the Archdiocese C3 in art. 2 generally state that the Archbishop may entrust the assigned priest with any type of apostolate he determines needed and fit. The agreement of Diocese C4 simply declares that “The Diocese of C4 will provide Fr. X with an assignment for pastoral ministry.”⁷⁴¹ While a diocesan bishop has the right granted to him by the law itself (*CIC*, c. 157) to freely confer ecclesiastical offices in his particular church, it would be more helpful to identify the specific ministry that the extern priest will be expected to do, just like the agreement cited below did.

The sample agreement of the Archdiocese C1 states specifically that “Reverend John Doe agrees to accept an appointment as an Associate Pastor and to exercise the ministry on a full-time basis for all the faithful in any parish to which he may be assigned by the Archbishop of C1 for a period of three years.”⁷⁴² This is specific enough because it helps the priest to know that he is going to be appointed as a parochial vicar in one or two parishes. However, it would have been better if the agreement was even more specific by

⁷⁴¹ DIOCESE C4, “Service Agreement,” §3. See Appendix VII (= DIOCESE C4, “Service Agreement”).

⁷⁴² ARCHDIOCESE C1, “Memorandum,” art. 3.

mentioning the name of parish where the extern priest will initially be appointed. The sample agreement of US3 does exactly this when it states in no. 3 that “Fr. Smith will be assigned to St. Mark’s Parish, as a parochial vicar. He will provide sacramental coverage while working under Bishop Johnson to establish a School for the New Evangelization and working with diocesan priests and parishes in this area of expertise.” Not only does this agreement name the specific parish of the extern priest’s initial appointment, it also mentions that because of his expertise in a certain area, he will have an additional responsibility in the diocese.

The sample agreement of the Archdiocese C3 declares that:

In terms of the initial ministry posting, every effort will be made by the Archdiocese of Z to appoint him to an urban parish, preferably in an associate pastor capacity with the occasion for mentorship being given by one of the priests of the Archdiocese of C3. Normally after a definite period as an associate pastor, the same priest will be appointed as Administrator of one or more parishes in the Archdiocese of C3.⁷⁴³

This agreement provides very helpful details to the extern priest. Firstly, it informs him that the Archdiocese of C3 is geographically divided into urban areas and non-urban areas. Secondly, he is initially going to be appointed in an urban parish probably as a parochial vicar. Thirdly, he is going to receive some mentorship to prepare him for a future parish administration in other areas of the Archdiocese. So, in accepting to move to the host diocese, the extern priest knows exactly what to expect as far as his pastoral assignments are concerned. This leaves no room for future expressions of dissatisfaction or surprise about his pastoral assignment.

⁷⁴³ ARCHDIOCESE C3, “Agreement,” art. 12.

4.3.11 Possibility of Incardination

Under this section, only three sample agreements pronounced themselves on the possibility of incardination. The sample agreement of the Archdiocese US3 reads as follows.

Fr. John Smith is seeking to incardinate into a diocese that is open to him continuing his work in the area of the New Evangelization. Archbishop Johnson has expressed interest to this endeavor. As the first step to possible incardination, Fr. Smith will receive a canonical parish assignment in the Archdiocese US3 and be permitted to conduct his ministry.... After the first year, if Fr. Smith and the Archdiocese US3 mutually agree to proceed with incardination, the initial year may be applied to the incardination process as determined by Archbishop Johnson.⁷⁴⁴

Firstly, it is clear from this agreement that Fr. Smith is seeking to excardinate from his home diocese and incardinate into another. He is, therefore, not requesting permission to move to temporarily minister in the Archdiocese US3 while maintaining incardination in his home diocese. He is seeking a more permanent attachment to the Archdiocese of US3. Secondly, Archbishop Johnson of the Archdiocese of US3 has accepted to receive him on an experimental basis (*ad experimentum*) for a period of one year. If at the end of this experimental period, Archbishop Johnson is satisfied with Fr. Smith, then the process of incardination would begin. Conversely, if during the experimental period or at the end of it, Archbishop Johnson is not satisfied, Fr. Smith would be bound to return to his home diocese.

Canon 271 is designed to deal with a situation whereby a cleric is allowed by his own diocesan bishop to move and serve in another diocese temporarily while he remains incardinated in his home diocese. During the one-year experimental period, Fr. Smith maintains incardination in his home diocese while serving temporarily in the Archdiocese of US3. His situation, therefore, falls under the provision of *CIC*, c. 271. Moreover, the

⁷⁴⁴ ARCHDIOCESE US3, “Memorandum of Understanding Between the Diocese of US3 and Fr. John Smith,” no. 1 (= ARCHDIOCESE US3, “Memorandum of Understanding”).

canon does not prohibit the extern priest from petitioning for incardination during or at the end of his temporary service in the host diocese.

However, a provision can be included in the written agreement for temporary service, which specifically forbids the extern priest from seeking incardination in the host diocese while the agreement is still in force. For example, the sample agreement of C3 in no. 9 explicitly states that the Archbishop undertakes not to incardinate the extern priest. In this particular case, the extern priest would not be open to request for incardination until after the agreement expires. He would be expected to either renew the agreement or return to his home diocese at the end of his temporary service in the host diocese. If the extern priest decides to petition for incardination, he would have to do it in accordance with the formal procedure outlined in *CIC*, cc. 267, 269 and 270.

It is important to note that the agreement of the Archdiocese US2 is open to allowing the extern priest to incardinate automatically (*ipso iure*) if he meets all the prerequisite conditions set out in *CIC*, c. 268, §1. The agreement reads as follows:

This agreement, by regulating the transfer of the aforementioned presbyter, does not by itself exclude the possibility of fulfilling the legal requirements and procedures in view of the future incardination of the presbyter in the Diocese of the Ordinary *ad quem*. However, such possibility is always subject to the prior fulfillment of all the norms set out in *CIC*, 268, §1 and a prior agreement among all concerned.⁷⁴⁵

While incardination *ipso iure* may have some advantages,⁷⁴⁶ it can also be a disadvantage to the bishops involved. If after five years of residency in the host diocese, the extern

⁷⁴⁵ ARCHDIOCESE C2, “Ministry Agreement,” art. 2, §3.

⁷⁴⁶ Incardination *ipso iure* as provided for in *CIC*, c. 268, §1 protects the rights of the clerics and dioceses involved. Every cleric has the right to clearly know his place of incardination (*CIC*, c. 265) and who is his superior and source of support. Canon 268, §1 helps to protect this right. After fulfilling the conditions set forth in the canon, when the cleric requests excardination and incardination, he maintains the right to know the minds of the bishops regarding his petition. He should not be left for a prolonged period of time uncertain of what their positions are. If either bishop objects, he must express his mind clearly and promptly to the cleric. Otherwise, the law itself may automatically affect the change of incardination. See DONLON, “Incardination and Excardination,” 147. On the side of the bishops, *CIC*, c. 268, §1 gives the bishop *a quo* an opportunity during the four-month period to oppose the movement of his priest to another

priest requests for incardination and both bishops *a quo* and *ad quem* do not write opposing his request within four months, the law itself may excardinate and incardinate him. In this way, the diocesan bishop *ad quem* may find himself having to support for a long time a priest, who he did not intend to incardinate in his diocese. Similarly, the diocesan bishop *a quo* can end up losing the services of his priest, who he did not intend to grant excardination from the diocese.

4.3.12 Ongoing Formation and Participation in Diocesan Events

Only four sample agreements indicated the need of the extern priest to receive ongoing formation and participate in diocesan events. The first agreement, that is, the agreement of the Archdiocese Ug1 in article III, no. 2 states that the extern priest will “participate in Diocesan meetings, workshops, retreats and ongoing formation of priests.”⁷⁴⁷ Secondly, the agreement of the Archdiocese US2 in article 5, § says that “the presbyter has the right to establish suitable time for a spiritual retreat (*CIC*, c. 276, §2, 4^o) and for theological and pastoral formation.”⁷⁴⁸ Thirdly, the agreement of the Archdiocese US3, no. III, declares that “Fr. Smith will be expected to participate in clergy gatherings in the Diocese, e.g. convocation, vicariate meetings, etc.”⁷⁴⁹ The fourth agreement, that is, the agreement of the Archdiocese C3, stipulates that “It is further accepted, that while under the jurisdiction of the Archdiocese C3, the priest commits himself to attend

diocese if, for the good of the diocese, he wants to retain him. Similarly, the bishop *ad quem* has an opportunity to reject the incardination of a priest whose services are not needed in that diocese. The four-month period of *CIC*, c. 268, §1 is basically designed to allow the bishops an appropriate amount of time and a last opportunity to evaluate the cleric before making a final decision without unduly prolonging the process. See O’CONNELL, *The Mobility of Secular Clerics and Incardination*, 250.

⁷⁴⁷ ARCHDIOCESE UG1, “Contract,” art. III, no. 2.

⁷⁴⁸ ARCHDIOCESE OF US2, “Agreement for Presbyters,” art. 5, §1.

⁷⁴⁹ ARCHDIOCESE US3, “Memorandum of Understanding,” no. III.

regularly scheduled presbyterate meetings, diocesan workshops, study days, annual diocesan priests' retreat, etc.”⁷⁵⁰

The remaining four sample agreements do not mention anything regarding the extern priest's need to receive ongoing formation and participate in diocesan events. Ongoing formation after ordination is one of the rights of clerics given to them by the law itself in *CIC*, c. 279. The diocese of incardination or domicile is obligated by *CIC*, c. 279, §2 to provide the priest with the opportunities and resources to fulfill this obligation. It is, therefore, necessary to include in the written agreement that the extern priest will be expected, as well as given the necessary resources, to receive post-ordination ongoing formation and participate in diocesan clergy study days, conferences, annual retreats, spiritual direction, mentoring programs and other educational programs determined by the diocesan particular law.

4.3.13 Acculturation, Mentoring and Safe Environment Programs

Three of the sample agreements said something in relation to the extern priest's participation in acculturation, mentoring and safe environment programs. The other five sample agreements were silent on this issue. The agreement of the Archdiocese C3, stated that “In terms of the initial ministry posting, every effort will be made by the Archdiocese of C3 to appoint him to an urban parish, preferably in an associate pastor capacity with the occasion for mentorship being given by one of the priests of the Archdiocese of C3.”⁷⁵¹ The same agreement added in no. 14 that “The Archdiocese of C3 will provide

⁷⁵⁰ ARCHDIOCESE C3, “Agreement,” art. 4.

⁷⁵¹ *Ibid.*, art. 12.

orientation and mentorship for the same priest upon arrival to the Archdiocese.”⁷⁵²

Additionally, the agreement of the Archdiocese Ug1 stated that

It is agreed that on arrival on the Diocese of Y, the *Fidei donum* priest will be expected to spend two years studying Japanese language.... It is agreed that on arrival to the Diocese of Y, the *Fidei donum* priest will be inducted into the life and affairs of the Diocese of Y and into the culture of the people for a specific period of time before he is given an official assignment within the Diocese of Y.⁷⁵³

Furthermore, the agreement of the Archdiocese US1 declared:

Fr. C agrees to exercise good faith efforts to improve proficiency in written and spoken English language skills, and accordingly, the Archdiocese shall arrange and incur tuition costs and expenses for up to two years of English language instruction and appropriate cultural immersion training. The Archdiocese shall provide, and Fr. C agrees to participate in and complete SMART, the Archdiocese’s safe environment training program.⁷⁵⁴

Participation in acculturation, mentoring and safe environment programs is not a requirement of the law. However, since the extern priest is moving to a new diocese with a new culture, he needs support in the form of induction to be able to fit into the life and practices of the new diocese and parish.⁷⁵⁵ An area where the extern priest would need induction is an overview of the terms of his assignment in the host diocese. In some cases, the priest might need a work visa to minister in the new diocese. He, therefore, would need to be told what he can and cannot do based on the visa issued, and he should understand exactly the period he has been given the permission to serve.⁷⁵⁶ The priest also needs to clearly know the extent and limitations of his ministerial role in the diocese and parish.

⁷⁵² Ibid.

⁷⁵³ ARCHDIOCESE UG1, “Contract,” art. II, no. 3.

⁷⁵⁴ ARCHDIOCESE US1, “Memorandum,” art. 4, b, iv.

⁷⁵⁵ O’CONNELL, “International Priests Serving in U.S. Dioceses,” 272.

⁷⁵⁶ Ibid.

Secondly, most dioceses require their priests, employees and volunteers to train and become familiar with policies that protect children and young people and prevent abuse or harassment in workplaces. If the extern priest has not recently received this kind of training in another diocese, the diocese needs to ensure that he undergoes the necessary training before he begins ministry in the host diocese. It is, therefore, necessary to include in the written agreement that the extern priest will be expected to undergo mentoring for a specific period before he is given his own canonical appointment. In addition to undergoing the mentoring, it is important to emphasize that the extern priest will be required to attend an acculturation workshop on the diocese, diocesan offices, culture, and pastoral conditions and sensitivities.

4.4 Agreement for International Priest-Students

In this chapter so far, we have been dealing with writing the agreement for the temporary service of a diocesan priest outside his diocese of incardination and comparatively analyzing sample agreements from selected dioceses. The written agreement mentioned in *CIC*, c. 271 is for diocesan priests who want to move from their dioceses of incardination for the specific purpose of exercising sacred ministry in another diocese that has a grave shortage of priests. However, in writing this agreement, consideration must be given to diocesan priests, especially those from mission dioceses, who move from their dioceses of incardination for the purpose of studying in a university located in another diocese. It sometimes happens that while they are studying, they request or are requested to offer pastoral assistance in the diocese *ad quem*. This can be a useful arrangement because it may help both the diocese *ad quem* to meet some of its

pastoral needs and the student priest to receive financial remuneration to be applied to the cost of his studies.

It must be noted that the situation of the student priest is different from that of the priest who moves to another diocese with the sole purpose of doing pastoral work. Therefore, some elements of the written agreement concerning the student priest will be different. In the sections that follow, we will analyze the agreement for a student priest to engage in pastoral activity while he is studying in the host diocese. We shall point out its similarities and differences with the agreement for temporary service.

In writing the agreement involving a diocesan student priest, the guiding document should be the “Instruction on Sending Abroad and Sojourn of Diocesan Priests from Mission Territories” issued by the Congregation for the Evangelisation of the Peoples on 25 April 2001.⁷⁵⁷ The document was approved in a general form (*in forma communi*) by Pope John Paul II on the 24 April 2001. This means that it is not a law but an act of the executive power of the Congregation for the Evangelization of Peoples, yet it juridically binds those for whom it was issued.⁷⁵⁸ Since the document is not legislative in nature, it does not derogate from the law (*CIC*, c. 33, §1). Similarly, it does not

⁷⁵⁷ CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Instruction on Sending Abroad and Sojourn of Diocesan Priests from Mission Territories *De vitanda quorundam clericorum vagatione*, 24 April 2001, in *AAS*, 93 (2001), 641-647, English translation in *CLSGI*, no. 126 (June 2001), 22-27 (= CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Instruction *De vitanda quorundam clericorum vagatione*).

⁷⁵⁸ The document was intended for diocesan bishops or their equivalents in law whose ecclesiastical circumscriptions are dependent on the Congregation for the Evangelization of Peoples. It was also sent, in agreement with the Congregation for Bishops, to the Episcopal Conferences of Western Europe, North America and Australia. Furthermore, the document also pertains to other countries, not cited above, where priests go to study. See *ibid.*, no. 5, 23. Although this document is called an instruction and it is addressed to bishops, the norms it contains are best classified as “independent general administrative norms.” This is because instructions, according to *CIC*, c. 34 §1, “clarify the precepts of laws and elaborate on and determine the methods to be observed in fulfilling them,” but this norm is not based on any legislation. See HUELS, “Independent General Administrative Norms in Documents of the Roman Curia,” 92.

derogate from the norms of the 1980 Directives Norms *Postquam apostoli* because it emanates from a different branch of the Roman Curia. Therefore, the norms of this document are to be read in the context of the provisions of *CIC*, c. 271 and the norms of *Postquam apostoli*.

The document contains seven norms, listed as articles, which govern sending abroad ordained priests for further studies.

4.4.1 Field of Study

Article one reads as follows:

The diocesan bishop of a Mission Country, after having ascertained the actual diocesan needs and sought counsel of his collaborators, should choose the most able priest, after having asked his consent, to pursue further studies. He is to designate the field of study in which the priest must specialise, the Faculty in which he must enrol and the date of his definitive return.⁷⁵⁹

This article stresses the main purpose of the permission given to the priest involved to move to another diocese. This is in line with *CIC*, c. 271, §1 except that in this document the permission is given to the priest to pursue further studies and not to engage in pastoral work as stated in the *CIC*. To engage in pastoral work, the priest will need to obtain separate permission. The bishop *a quo* chooses the institution of study, field of study and fixes the date when the priest will return to his home diocese. This is a valuable provision because it emphasises the responsibility of the bishop *a quo* to ensure that the student priest receives all the support he needs financially and spiritually.

The bishop selects the priest based on his ability to undertake the chosen field of study.⁷⁶⁰ What matters here is the ability to study and not the suitability and preparedness

⁷⁵⁹ CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Instruction *De vitanda quorundam clericorum vagatione*, 645, art. 1.

⁷⁶⁰ J. JUKES, “Comments on the Instruction on Sending Abroad and Sojourn of Diocesan Priests from Mission Countries,” in *CLSGI*, no. 126 (June 2001), 31 (= JUKES, “Comments on the Instruction on Sending Abroad”).

to perform pastoral work in the diocese *ad quem* as required by *CIC*, c. 271. In selecting the priest, the bishop takes into consideration the needs of the diocese and consults his collaborators, like the vicar general (*CIC*, c. 475), episcopal vicars (*CIC*, c. 476), vicars forane (*CIC*, cc. 553-555), and the college of consultors (*CIC*, c. 502). Unlike *CIC*, c. 271, which does not require consultation or the priest's consent, the article says that the bishop is to ask for the priest's consent. This means that the priest can decline the offer of pursuing the further study, especially if he feels that he is unable to undertake the particular field of study chosen by the bishop.⁷⁶¹ However, once the priest agrees to go and study, he is not at liberty to change the institution of study, the field of study and the date of return to the home diocese without prior permission from his bishop.

4.4.2 Parties to the Agreement and Financial Support

Articles two and four read as follows:

Art. 2 Agreement is then sought in writing with the diocesan Bishop and with the proposed institute where he has decided to send the priest, including the question of his financial support.⁷⁶²

Art. 4 The diocesan Bishop who receives a priest student from mission territories into his own Diocese should make sure that a precise agreement has been reached, as specified above with the Bishop who is sending the priest for further studies.⁷⁶³

Like *CIC*, c. 271, §1, art. 2 requires a written agreement for a student to engage in pastoral work in the diocese where he is studying. However, the article adds the institution of study as a party to the agreement.⁷⁶⁴ So, there are three parties to the

⁷⁶¹ In light of *CIC*, c. 271, §1, which recommends continuing studies for clerics after ordination, a priest is free to petition his bishop to allow him to go for further studies. Moreover, *CIC*, c. 384 lays down the obligation of the diocesan bishop to facilitate the post-education studies of his clergy. See *ibid*.

⁷⁶² CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Instruction *De vitanda quorundam clericorum vagatione*, 642, art. 2.

⁷⁶³ CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Instruction *De vitanda quorundam clericorum vagatione*, 646, art. 4.

⁷⁶⁴ JUKES, "Comments on the Instruction on Sending Abroad," 32.

agreement for a student priest to study and work outside his diocese of incardination: the bishop *a quo*, the bishop *ad quem* and the institution of study. While the main initiative for making arrangements for the priest lies with the diocesan bishop *a quo*, art. 4 places the responsibility on the diocesan bishop *ad quem* to ensure that a precise agreement is in place with the diocesan bishop *a quo* and the institution of study. In *CIC*, c. 271, §,1, the responsibility is placed on the diocesan bishop *a quo* to ensure that a written agreement is made with the diocesan bishop *ad quem*. Article 2 emphasizes that the question of financial support must be settled. It should be clearly stated in the agreement who is responsible for providing the financial support to the student priest.

4.4.3 Assignment for Pastoral Work

Article three reads:

Some arrangement is then made with this Bishop concerning the pastoral work which shall be undertaken by the priest only, however, for the duration of his course and in such a fashion that it is not too burdensome so as to prevent him from completing his studies in the allotted time span, nor that he be required to assume an office or position as laid down by law.⁷⁶⁵

The article speaks of “some arrangement” to be made between the bishop *a quo* and *ad quem* for the student priest to engage in pastoral work in the diocese *ad quem* where he is studying. This arrangement involves the priest getting permission from both the bishop *a quo* and *ad quem*. The permission that was given to him earlier was to pursue studies. If he is to get involved in pastoral activity, he must get additional permission for this. Once the permission is granted, the agreement referred to in articles two and four is then made between the bishop *a quo*, the bishop *ad quem* and the institution of study. The agreement has to indicate that the pastoral work is to last only for the duration of his study. When

⁷⁶⁵ CONGREGATION FOR THE EVANGELIZATION OF THE PEOPLES Instruction *De vitanda quorundam clericorum vagatione*, 645-646, art. 3.

the student priest finishes his studies, he will be required to return home. If he is to extend his stay, he would have to get additional permission and the agreement for temporary service would have to be made between the bishops *a quo* and *ad quem*.

The article places some restriction on the pastoral assignment of the student.⁷⁶⁶ The pastoral assignment should not impede the priest's studies. The priest should not be asked to undertake an ecclesiastical office or duty that requires full-time responsibility. A footnote cited in the article quotes the office of pastor as an example of an inappropriate office to assign a student priest.⁷⁶⁷ Clearly any ecclesiastical office that requires the full pastoral care of souls and the possibility of numerous calls from the laity would conflict with the duty of study. So, when writing the agreement for the student priest to work and study in the diocese *ad quem*, it must be made clear that he should not expect to be appointed to a full-time ecclesiastical office or ministry. Consequently, he should not expect a full-time salary.

4.4.4 Participation in the Life of the Presbyterate

Article five says:

The Bishop who is accepting priest students into his Diocese is obliged to provide spiritual assistance for them by inserting them into the diocesan pastoral plan, ensuring that they participate in the life of the presbyterate and accompanying them with fatherly care.⁷⁶⁸

This article reminds the diocesan bishop *ad quem* that a student priest who is present in his diocese under these arrangements can participate on a limited basis in the life of the

⁷⁶⁶ JUKES, "Comments on the Instruction on Sending Abroad," 32.

⁷⁶⁷ Ibid.

⁷⁶⁸ CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Instruction *De vitanda quorundam clericorum vagatione*, 646, art. 5.

presbyterium.⁷⁶⁹ The general duty of care as set out in the *CIC*, especially under *CIC*, c. 279, §2,⁷⁷⁰ applies to student priests doing pastoral work in the diocese. “Naturally, the demands of the priest’s studies have to be respected.”⁷⁷¹ However, having taken this into consideration, it would be appropriate for the priest student to be able to participate in deanery meetings, conferences or courses arranged for the clergy, diocesan retreats or days of recollection.⁷⁷²

4.4.5 Termination of the Agreement

Article six declares:

In the eventuality of grave problems, this same Ordinary, after having discussed them with Bishop of the said priest, must take adequate measures that may even result in the termination of permission to remain in that Diocese.⁷⁷³

This norm indicates the course of action to be taken by the bishop *ad quem* should there be grave problems associated with the student priest.⁷⁷⁴ This is in line with *CIC*, c. 271, §3, which gives both the bishop *a quo* and bishop *ad quem* the power to terminate the permission for the extern priest to remain in the host diocese. However, there are three new additions here. Firstly, “grave problems” must exist, which are not defined by the norm. It is left to the judgement of the bishop *ad quem* to determine what those grave problems are. Canon 271, §3 requires the existence of a just cause. Secondly, unlike *CIC*,

⁷⁶⁹ JUKES, “Comments on the Instruction on Sending Abroad,” 32.

⁷⁷⁰ “According to the prescripts of particular law, priests are to attend pastoral lectures held after priestly ordination and, at times established by the same law, are also to attend other lectures, theological meetings, and conferences which offer them the opportunity to acquire a fuller knowledge of the sacred sciences and pastoral methods” (*CIC*, c. 279, §2).

⁷⁷¹ JUKES, “Comments on the Instruction on Sending Abroad,” 33.

⁷⁷² *Ibid.*, 33.

⁷⁷³ CONGREGATION FOR THE EVANGELIZATION OF PEOPLES, Instruction *De vitanda quorundam clericorum vagatione*, 646, art. 6.

⁷⁷⁴ *Ibid.*

c. 271, which does not require any discussion or consultation between the two bishops, if any grave problems arise, the bishop *ad quem* is to discuss them with the bishop *a quo*. Thirdly, after discussing the problems with the bishop *a quo*, the bishop *ad quem* can take some appropriate measures, which may include a warning, or revocation of the faculties for ministry, or denial of residence in a parish. Since these measures can disrupt the studies of the student priest, there needs to be a grave cause for them to be applied.

In addition to the above, the norm indicates that the adequate measures “may even result in the termination of the permission to remain in that Diocese.” The bishop *ad quem* certainly has the power to deny the student priest permission to continue engaging in pastoral activity or residing in a parish in the diocese.

4.4.6 Disciplinary Action for Disobeying Bishop’s Order

Article seven stipulates:

Any priest who, after having been warned as prescribed by law, obstinately refuses to abide by his Bishop’s decision and return to his Diocese, will be punished with an appropriate penalty as decreed by law. Before proceeding, however, the Ordinary ought to inform the overseas Bishop of his intention.⁷⁷⁵

The norm indicates the action the bishop *a quo* should take in case there is a grave problem with the student priest. The bishop must first warn the priest as prescribed by *CIC*, c. 1347 and give him suitable time to amend his ways. If he refuses to respond to his bishop’s command to return to the home diocese, an appropriate penalty is to be prescribed.⁷⁷⁶ However, before proceeding, the bishop *a quo* is required to inform the bishop *ad quem* of his intention.

We have seen that the main purpose for the student priest to leave his diocese of incardination is to study. He can, however, do pastoral work in the host diocese to earn

⁷⁷⁵ *Ibid.*, art. 7.

⁷⁷⁶ JUKES, “Comments on the Instruction on Sending Abroad,” 33.

some remuneration. This must be arranged in such a way that it does not distract him from completing his studies within the required time. The best way of making this arrangement is by means of a well-written agreement for him to study and work in the host diocese. The writing of the agreement must be guided by the norms of *CIC*, c. 271, the 1980 Directive Norms *Postquam apostoli* and the 2001 “Instruction on Sending Abroad and Sojourn of Diocesan Priests from Mission Territories.” Unlike the written agreement called for in *CIC*, c. 271, which has only two parties, there are three parties to this agreement: the diocesan bishop *a quo*, the diocesan bishop *ad quem* and the priest’s institution of learning. In drafting this agreement, the academic discipline that the priest has been granted permission to study and the source of financial support must be clearly indicated in the agreement itself. In addition, the terms of his ministry in the host diocese and his participation in the priestly life also need to be indicated. Furthermore, the conditions of the termination of the agreement and disciplinary action that can be taken in case of a violation of lawful orders must be stated in the agreement itself. Indicating these elements unequivocally in the agreement will help the student priest balance his study and ministry, as well as help safeguard the interests of the priest and of the host diocese.

4.5 Conclusion

In the first part of this chapter we discussed the procedure for drafting the written agreement called for by *CIC*, c. 271. Before the actual drafting starts, it is necessary to do some preparation, which involves initiating communication between the diocesan bishop *a quo* and diocesan bishop *ad quem*. Prior preparation also involves assessing the suitability and readiness of the priest concerned to minister in the host diocese. Through prior preparation, it is important to ensure that all the documents provided, like the letter

granting the priest permission to move and the testimonial of suitability, are clearly verified for accuracy and authenticity to rule out any possibility of fraud. Presentation of any false documents or information should be grounds for cancelling the agreement.

The written agreement is a juridically binding document, which is meant to protect the rights and obligations of the extern priest as well as of the bishops involved. To fulfill this purpose, the agreement must be carefully drafted using clear and concise language that all the parties understand. It must be dated and signed by those who are required by law to sign it.

The second section of the chapter dealt with faculties that an extern priest needs to lawfully perform some of his ministerial and administrative duties in the host diocese. Faculties in canon law are ecclesiastical authorizations necessary for lawfully performing an act of ministry or administration in the name of the Church. They may be given to an individual by the law itself or by delegation from a competent authority. This means that the extern priest possesses some faculties granted to him by the universal law, which he can exercise as soon as he arrives in the host diocese without delegation from the bishop. We identified those faculties, which the extern priest possesses by virtue of his ordination to the priesthood or appointment to an ecclesiastical office or in danger of death situations. Some faculties, like the general faculty to witness marriages habitually, need to be delegated in writing. This is usually done by means of a diocesan *pagella* of faculties. Since faculties may be required for the liceity or validity of a ministerial or administrative action, it is very important for the extern priest to know the instances where the universal law grants him faculties and the areas where he requires delegated faculties. To avoid a situation where he might perform a ministerial act illicitly or

invalidly, he needs to be given the diocesan *pagella* of faculties as soon as possible. This will equip him with all the tools that he needs to do his ministry effectively. The *pagella* of faculties is a separate document from the written agreement but can be given as an attachment to the agreement.

The third section of the chapter contained a comparative analysis of some chosen sample agreements from selected dioceses in Canada, the United States of America and Uganda. In the fourth part of the chapter, we analyzed the elements that need to be considered when drafting an agreement for a student priest to study and minister in the host diocese as provided in the 2001 “Instruction on Sending Abroad and Sojourn of Diocesan Priests from Mission Territories.” This analysis added a practical dimension to this study and provided examples that can help other dioceses in designing more accurate templates of the agreement.

Analyzing the sample agreements highlighted the need to carefully draft the agreements to clearly state the major canonical elements that pertain to temporary service of a diocesan priest in another diocese. They must be drafted in conformity with the provisions of *CIC*, c. 271 and the pertinent norms of the 1980 Directive Norms *Postquam apostoli*, that is, those norms which have not been integrally reordered by the *CIC*. In the case of the agreement involving a student priest, the norms of the 2001 “Instruction on Sending Abroad and Sojourn of Diocesan Priests from Mission Territories” must be observed. This is because any element in the agreement that contradicts canon law or divine law is ineffective. The particular law, customary practice and current needs of the diocese must also be taken into consideration when drafting the agreements. A carefully written agreement helps define and clarify the rights and obligations of the priest and

bishops involved. When rights and duties are clearly described, it helps the priest and bishops involved have a good understanding of what is and is not expected of them. This in turn helps to improve their relationships and prevent any possible future conflicts between them.

GENERAL CONCLUSION

The primary purpose of this dissertation was to carry out an in-depth study and investigation of the written agreement required by *CIC*, c. 271 between the bishops *a quo* and *ad quem* for the temporary service of a diocesan priest outside his diocese of incardination. *Postquam apostoli* provides some of the juridical elements that should constitute the content of such an agreement. This study has analyzed those elements provided by *Postquam apostoli* and proposed additional canonical elements that need to be included in the agreement to make it reflect the current situation faced by the priests and bishops involved. Also, the contractual, binding and obligatory nature of the agreement was investigated, and some conclusions were arrived at that help to clarify the necessity and juridic significance of the agreement.

The first chapter explored the history of the law regarding the movement of clerics from the early church period up to the *CIC*. By examining the various juridic norms that existed before the *CIC*, it was observed that throughout its history, the Church has regulated the ministry and movement of clerics from one diocese to another by formulating stringent laws that forbade clerics from moving unnecessarily. One of these laws required a cleric to obtain written permission from his proper bishop allowing him to work in another diocese. Another law required a cleric first to possess a title of ordination before he could be accepted in a different diocese. Still another law involved a more detailed process of moving clerics from one diocese to another, known as incardination and excardination, which required a formal exchange of letters between the bishop *a quo* and the bishop *ad quem*.

There was also a law in the *CIC/17* (c. 144) that allowed diocesan clerics to move

and temporarily serve in another diocese while maintaining incardination in their home diocese. This helped promote the universal aspect of the priestly vocation and a priest's obligation to respond to the missionary needs of the universal Church. Consequently, to enable secular clerics to move more easily from one diocese to another to participate in the universal mission of the Church, the Second Vatican Council called for the renewal of the laws governing the institutes of incardination and excardination. The Council further urged bishops to share priests either perpetually or temporarily with dioceses that did not have enough clergy to meet the pastoral needs of the faithful.

Up to this point, there was not yet any mention of a requirement of a written agreement. It was only in 1966 that Pope Paul VI in his *motu proprio Ecclesiae sanctae* introduced, for the first time, a written agreement as a prerequisite for a cleric to move from one diocese to another to offer temporary service. The main purpose of the agreement is twofold. Firstly, it controls the unnecessary movement of diocesan clerics because, before a cleric moves to work in another diocese, this agreement must be made. Secondly, the agreement safeguards not only the rights and obligations of diocesan clerics working outside their dioceses of incardination but also of the bishops and dioceses involved. This written agreement became the subject matter of *CIC*, c. 271.

In the second chapter, the law on the temporary service of clerics outside their dioceses of incardination as stipulated in *CIC*, c. 271 was systematically analyzed to determine the juridic aspects of the agreement. This analysis included tracing the textual development of the canon and critical analysis of its norm. The textual analysis helped provide the reason why the law regarding the temporary service of a diocesan cleric in another diocese was placed in the section of the *CIC* dealing with incardination, although

the norm itself does not deal with any aspect of incardination or excardination. The reason is that the legislator intended to promulgate a norm that allows clerics to move from one diocese to another in a way that differs from, and does not require, excardination and incardination, while at the same time respects the stability and permanence of the institutes of incardination and excardination. Such stability ensures that clerics can steadily meet the spiritual needs of the Christian faithful and are not just always moving from one diocese to another.

The issue of removing the extern priest from an ecclesiastical office in the diocese *ad quem* was also addressed in chapter two. If the extern priest has been appointed to an office in the diocese *ad quem*, can he be removed by the bishop *ad quem* or be recalled by the *bishop a quo* before his tenure of office expires without following the procedure outlined in *CIC*, cc. 1740-1752? Through an examination of *CIC*, c. 271, it was observed that, if the written agreement was made and clearly sets the conditions of its termination, then bishops *a quo* and *ad quem* would not need to follow the canonical process of the removal of a pastor. As in the case of a pastor who is a religious priest, the law here makes a special provision for the termination of the service of a priest ministering outside his diocese of incardination by the use of a contractual agreement. However, if the extern priest was validly appointed to an office in the host diocese for a fixed term, and there was no agreement made, or the agreement was made and does not clearly identify the conditions of its termination, the recall or dismissal of the extern priest against his will would be tantamount to a removal from an ecclesiastical office. The bishop would, therefore, need to follow the canonical procedure for the removal of pastors (*CIC*, cc. 1740-1747).

The content of the third chapter contributed to the core issue of this study, where the contractual, binding and obligatory nature of the agreement was investigated, and the canonical elements that need to be included in the written agreement were carefully examined. Before these issues were discussed, the chapter presented the Roman law foundation of agreements and contracts, which helped to highlight the difference between these two terms. While an agreement is reached when two or more people express consent about the same thing, a contract is a type of agreement that is enforceable in law. For a contract to be recognized as valid, four conditions must be present: the consent of the parties, the legal capacity of the parties, the subject matter of the contract and legal cause or valuable consideration. In contract cases, canon law adopts the norms of civil law (*ius civile*), if they do not contradict divine or canon law (*CIC*, c. 1290). Although, the agreement (*conventio*) of *CIC*, c. 271 is not called a contract (*contractus*), it is enforceable in canon law.

The fourth chapter contained a comparative analysis of some sample written agreements from selected dioceses in Canada, the United States of America and Uganda. This analysis added a practical dimension to this study and provided examples that other dioceses can use for drafting their own agreements. Since this agreement juridically binds the parties and the priest involved, several elements that should be considered when drafting it were also examined in the final chapter. Additionally, the chapter identified the faculties for ministry that the extern priest possesses by the law itself; he can, therefore, exercise them in the host diocese before receiving delegated faculties from the diocesan bishop. Furthermore, the chapter discussed the elements that need to be considered when drafting an agreement involving student priests.

This study has resulted in the several specific observations. Firstly, the written agreement called for in *CIC*, c. 271, §1 for the temporary ministry of a diocesan priest outside his diocese of incardination is substantially a contract, in the sense that it has all the elements of a contract as understood in civil law. The legislator deliberately chose not to call it a contract, which means that he did not require it to fall under the scope of *CIC*, c. 1290, which governs contracts in canon law. Therefore, dioceses do not need to observe civil law provisions and involve civil attorneys in drafting the agreement.

Secondly, diocesan bishops are obligated by the provisions of *CIC*, c. 271, §1 to make written agreements when permitting diocesan priests to minister temporarily outside their dioceses of incardination. This is because the canon uses the word *prospiciat*, which is a mild form of the jussive subjunctive mood often utilized in the *CIC* to express command or obligation. An oral agreement would be valid but illicit and difficult to enforce.

Thirdly, the written agreement binds both the bishop *a quo* and *ad quem*. This is in accordance with the language used in *CIC*, c. 273, §3, which requires the bishops involved to observe natural equity and honor the terms and conditions of the agreement if they decide to terminate the service of the extern priest before the agreement's date of expiry. The extern priest is bound to observe the terms and conditions of the agreement by canonical obedience because making the agreement is an act of the bishops and the priest is canonically required to obey the bishops.

Fourthly, the participation of the extern priest in making the agreement is not required by the law. *Postquam apostoli* had explicitly required his involvement in order for the agreement to have a juridic force. This requirement is no longer in force because it

has been integrally reordered by *CIC*, c. 271. So, in entering this agreement the signature of the extern priest is no longer necessary for the agreement to have juridic force. For validity, only the bishops *a quo* and *ad quem*, or those whom they delegate, must sign it. This, however, does not mean that the extern priest is prohibited from participating in the making of the agreement. The law does not require him to participate but does not prohibit him from participating in drafting it.

Therefore, it is the proposal of this dissertation that dioceses need to involve the extern priest in the process of making the written agreement. This requirement can be included as one of the conditions of the written agreement itself. In the future revision of the *CIC*, the participation of the priest involved needs to be made a requirement for the juridic force of the agreement as it was previously required by *Postquam apostoli*. The priest can be made to participate not as an equal to the two bishops involved but by seeking his consent to the agreement because this is not a trilateral agreement. It is a bilateral agreement between two dioceses represented by the two diocesan bishops. However, the priest's signature can be made as an additional requirement in order for the agreement to have a juridic force. He should be given a copy of the agreement to read and explicitly express his consent to its terms and conditions by signing it. This will be advantageous to both the dioceses and priest concerned because it will give the priest an opportunity to express any expectations and concerns he might have regarding his rights and obligations before the agreement is signed.

This dissertation also proposes that each diocese needs to design a precise and accurate template of the written agreement for the temporary ministry of extern priests. Each diocese has its unique situations that must be taken into consideration when

drawing up the template. However, the content of such a template should contain the canonical elements discussed in chapter three of this work, which include: length of time of the permission; amendment and termination of the agreement; assignment of the extern priest to diocesan offices; remuneration; vacations; ongoing formation and participation in diocesan events; continence and celibacy; obedience of the bishop and particular law of the diocese; permissions that can be granted by the bishop *ad quem* and bishop *a quo*; and the rights of the bishops *ad quem* and *a quo* over the extern priest in penal matters.

Every diocese may also need to designate a diocesan official or a committee consisting of diocesan officials, who are specifically responsible for dealing with issues regarding the temporary ministry of extern priests. Most dioceses already have chancellors, vicars general, episcopal vicars for the clergy, personnel boards or incardination committees that can perform this role. These diocesan officials would ensure that all the documents provided by the extern priest, like the letter granting him permission to move and the testimonial of suitability are verified for accuracy and authenticity. They would also be responsible for formulating the template of the agreement and updating it annually to reflect the diocese's current situations and any possible changes in the pertinent laws governing the temporary ministry of diocesan priests outside their dioceses of incardination.⁷⁷⁷

⁷⁷⁷ In appendix IX, we have proposed a sample agreement template that can be used as a reference by the diocesan officials in formulating their own templates.

APPENDIX I
AGREEMENT OF THE ARCHDIOCESE US1
MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (hereinafter referred to as the “Agreement”), is made effective as of the 14th day of January 2014, by and between the Roman Catholic Archbishop US1, a corporation sole (hereinafter referred to as “RCA”) and the Diocese of Michaela, Argentina (hereinafter referred to as the “Michaela”) and Rev. Carlos Antonio (hereinafter referred to as “Fr. Carlos”).

WHEREAS, RCA has invited Fr. Carlos to exercise priestly ministry within the Archdiocese of US1; and

WHEREAS, the Bishop of the Diocese of Michaela, the Most Rev. Edwardo Alberto Fernandez and Fr. Carlos hereby accept this engagement subject to the following terms and conditions.

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree upon the following terms and conditions, including the foregoing recitals which are incorporated herein as substantive provisions of this Agreement.

1. **Engagement.** RCA hereby invites Fr. Carlos, and Fr. Carlos hereby accepts, with the approval of the Bishop of the Diocese of Michaela, RCA’s invitation for Fr. Carlos to exercise priestly ministry within the Archdiocese of US1, effective January 14, 2014, upon the understanding that Fr. Carlos will, throughout the term provided in Section 2 below, devote his best efforts and pastoral and professional abilities to the responsibilities assigned or delegated to him by or under the auspices of the Archbishop of US1.
2. **Term.** Subject to provisions of this Agreement, the term of this Agreement shall begin on January 14, 2014, and shall end on January 13, 2017 (the “Term”). This agreement shall be extended for an additional period of two (2) years, on the same terms and conditions set forth herein, upon mutual written agreement of all parties hereto.
3. **Responsibilities and Duties.** Fr. Carlos shall exercise priestly ministry and those responsibilities and duties as described on *Exhibit A* attached hereto and incorporated by reference herein, as well as any other responsibilities or duties as delineated by the Archbishop of US1 and/or the pastor of any parish to which Fr. Carlos may be assigned from time to time during the Term of this Agreement.
4. **Compensation.**
 - (a) **Salary.** For all services to be performed by Fr. Carlos in any capacity hereunder, he shall receive a gross salary of \$25,524 per annum, which shall be adjusted from time to time in accordance with the salary scale for the priests of the Archdiocese of US1. Fr. Carlos’ salary shall be payable in equal installments every two (2) weeks. He shall also receive the standard professional expense

allowance for priests as part of his compensation which will be \$9,137 in the first year of the agreement and will be adjusted according to the Archdiocesan policy.

(b) **Benefits.** Fr. Carlos shall be entitled to the following benefits:

- (i) **Vacation.** One week after Christmas, one week after Easter and three continuous weeks in the summer. An additional week is to be granted for retreat.
- (ii) **Lodging.** Fr. Carlos shall be provided room and board, at such location as the Archbishop of US1 may determine from time to time, in his discretion.
- (iii) **Other Benefits.** Fr. Carlos shall be entitled to all medical and disability benefits as generally provided for priests of the Archdiocese US1 in effect during the Term of this Agreement.

Pension. In addition, RCA shall make an annual contribution to Fr. Carlos' retirement or pension fund in the Diocese of Michaela, in an amount commensurate with the then-current contribution made to the pension fund for a priest of the Archdiocese of Michaela which is currently \$870 annually. Fr. Carlos shall receive proper credit for this contribution within the priest pension system of the Diocese of Michaela.

Personal Automobile. Fr. Carlos shall supply his own means of vehicular transportation, but he shall also be entitled to participate in the RCA's group automobile insurance program upon timely payment of applicable insurance premiums as the same may be adjusted from time to time. He is also eligible to receive an appropriate car allowance under Archdiocesan policy.

- (iv) **Travel Expenses.** RCA will contribute up to \$2,000 on annual basis to defray travel expenses incurred by Fr. Carlos for visits to Michaela at appropriate times.
- (v) **Disability.** If Fr. Carlos sustains injury or medical condition arising out of and which is in the course of his engagement, he shall be entitled to receive full pay for up to the next ninety (90) days of his incapacity. He will also be covered under the Archdiocesan short term disability policy and the Workman's Compensation Program for the State of MM as per MM's law.
- (vi) **Educational Advancement and Training.** Fr. Carlos agrees to exercise good faith efforts to improve proficiency in written and spoken English language skills, and accordingly, RCA shall arrange and incur tuition costs and expenses for up to two (2) years of English language instruction and appropriate cultural immersion training. RCA shall also provide, and Fr.

Carlos agrees to participate in and complete SMART, the RCA's safe environment training program.

5. Termination.

(a) **For Cause.** The Archbishop of US1 may discharge Fr. Carlos thereby terminating this Agreement. The Bishop of Rafaela and Fr. Carlos shall be notified, in writing, of the cause for discharge. If Fr. Carlos is discharged for cause, he shall not be entitled to receive any compensation beyond the effective date of the discharge, and shall return promptly to the Diocese of Michaela. Without limitation, any one of the following events or occurrences shall be considered cause for discharge and shall include:

Professional incompetence; professional malfeasance; inability or unwillingness to relate in an amicable manner with parishioners, and others with whom Fr. Carlos relates in performance of his duties; rejection of official doctrine or laws of the Roman Catholic Church in the performance of his duties; violation of the terms of this Agreement; conduct not in keeping with the duties of a priest; actions which are offensive to the community or tend to embarrass a parish or the Roman Catholic Archdiocese of US1 or violate any policy of the Archdiocese of US1 applicable to a priest; behavior that seriously and/or publicly violates the official teachings and canon law of the Catholic Church; or other conduct which substantially impairs the performance of his duties under this Agreement. Offensive actions and behavior are not limited to job-related conduct.

(b) **For Convenience or Other Reasons.** In the event that the Bishop of Michaela shall request that Fr. Carlos return to the Diocese of Michaela, he shall provide not less than twelve (12) months' advance written notice to RCA, and upon the conclusion of such twelve (12) month notice period, this Agreement shall be null and void and of no further force or effect. In addition, if Fr. Carlos shall become ill, incapacitated or otherwise unable to perform his duties hereunder for a period of ninety (90) days or more, any party hereto shall, in its/their discretion, be permitted to terminate this Agreement, whereupon the same shall be of no further force or effect.

6. **Attachments Incorporated by Reference Herein.** The following documents are attached hereto and incorporated by reference herein:

- Copies of Fr. Carlos' relevant visa information, evidencing Fr. Carlos' lawful ability to reside in the United States of America throughout the Term; and
- Letters of suitability from Fr. Carlos' Ordinary, the Bishop of Michaela, indicating Fr. Carlos' approval for ministry within the Archdiocese of US1 for the Term of this Agreement, description of Fr. Carlos ministerial background, current status, faculties, character and any information regarding anything in Fr. Carlos' background that would or might render him unsuitable to work with minors or others in fulfillment of the responsibilities and duties contemplated hereunder.

The Diocese of Michaela and Fr. Carlos warrant that all of the above-referenced and attached information and data concerning qualifications, background, character, faculties and fitness for service submitted to RCA is complete, correct and accurate. Failure to provide complete, correct and accurate information constitutes grounds for termination of this Agreement.

7. **Severability.** If any of the provisions of this agreement shall be held invalid or unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect. If any provision is held invalid or unenforceable with respect to particular circumstances, it shall nevertheless remain in full force and effect and all other circumstances.
8. **Waiver.** The failure of either party to insist to any one or more instances upon the performance of any terms or conditions of this Agreement shall not be construed a waiver of future performance of any such term, covenant or condition but the obligations of either party with respect thereto shall continue in full force and effect.
9. **Governing Law.** This agreement has been negotiated and executed in the State of MM, United States of America, and the laws of that State shall govern its construction and validity, without respect to conflict of laws principles.
10. **Entire Agreement.** This Agreement supersedes any previous agreements between the parties hereto and contains the entire understanding and agreement between the parties with respect to the subject matter hereof and cannot be amended, modified or supplemented in any respect except by a subsequent written agreement entered into by both parties.

Signatures to follow

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

ATTEST:

ROMAN CATHOLIC ARCHBISHOP OF US1,
A CORPORATION SOLE

By: _____

Most Rev. James E. Brady
Archbishop of US1

ATTEST

DIOCESE OF MICHAELA

By: _____

Most Rev. Edwardo Alberto Fernandez
Bishop of Michaela

Acknowledge he has been informed of this Agreement:

By: _____

Rev. Carlos Antonio

APPENDIX II

AGREEMENT OF THE ARCHDIOCESE US2

AGREEMENT FOR PRESBYTERS OF THE (ARCH)DIOCESE OF (NAME) RENDERING A PASTORAL SERVICE IN ANOTHER (ARCH)DIOCESE

(TITLE), as (POSITION) (called here Ordinary *a quo*), sending the presbyter (NAME) to the sister Church of US2 in the United States of America would like to realize with His Excellency, Most Reverend (NAME) Ordinary of the Diocese (called here Ordinary *ad quem*) activities for the communion and the cooperation among the Churches, according to the principles and criteria established by the Decree of the Second Vatican Council *Presbyterorum ordinis*, the *Code of Canon Law* as well as the Instruction of the Congregation for the Clergy *Postquam apostoli*.

ART. 1

The Ordinary *a quo*, accepting the request from the aforementioned sister Church, sends her presbyter to this (NAME OF CHURCH, CITY) born on (DATE) in (TOWN) (with citizenship in (COUNTRY) ordained on (DATE). And incardinated at present moment in the (Arch)diocese of (NAME).

ART. 2

§1. This presbyter will co-operate with the Ordinary *ad quem* for the period of 5 years, from the date this agreement is stipulated.

§2. This period can be renewed once or more times, either by a new agreement or by the common prolonging of the validity of this agreement, according to article 9.

§3. This agreement, by regulating the transfer of the aforementioned presbyter, does not by itself exclude the possibility of fulfilling the legal requirements and procedures in view of the future incardination of the presbyter in the Diocese of the Ordinary *ad quem*, However, such possibility is always subject to the prior fulfillment of all the norms set out in canon 268, §1 of *CIC*.

ART. 3

The presbyter will put himself at the disposal of the Ordinary *ad quem* in the spirit of obedience and collaboration, honoring faithfully the duty entrusted to him, in complete communion with the clergy and the local community.

ART. 4

To provide indispensable and adequate sustenance for the security of the presbyter as displayed in the canon 281, §§1 and 2 of *CIC*, the following requirements will be taken into consideration:

- a) The Ordinary *ad quem* undertakes to pay a wage according to the diocesan standards, in view of the pastoral service entrusted to him.
- b) The Ordinary *ad quem* undertakes to provide the presbyter with health care insurance in a public or private health care insurance company, according to the civil as well as the ecclesial requirements of the particular place, accepting responsibility to cover all the expenses concerning aforementioned issues.
- c) The Ordinary *a quo* undertakes to pay the old age pension insurance for the presbyter who takes up service out of (the country of origin of the presbyter), according to the national rules concerning contributions for this purpose.

ART. 5

§1. The presbyter has the right to have each year a sufficient period of vacations as established by the particular law of the place to which he is rendering service (canon 283, §2)

§2. In addition, the presbyter has the right to establish suitable time for a spiritual retreat (cf. canon 276, §2, n. 4) and theological and pastoral formation.

ART. 6

In the spirit of the Instruction of the Congregation for the Clergy *Postquam apostoli* (n. 28), the Ordinary *a quo* will assume special care and responsibility for the sent presbyter; the Ordinary *ad quem* will be the responsible one for both the material as well as physical life of the presbyter, throughout his entire stay *in loco*.

ART. 7

The Ordinary *ad quem* and the Ordinary *a quo* by mutual agreement and for just cause (cf. canon 271, §3) will be able to dissolve this agreement earlier, with the consequent return of the presbyter to the diocese of his incardination. The following situations can be considered as a just cause: the psychological conditions of the presbyter himself; conduct unbecoming the presbyteral life; serious difficulties aroused during the fulfillment of his priestly ministry which make his return to the diocese of incardination appropriate and convenient, *et similia*. In all such cases, the good of the presbyter will be the primary and overriding consideration rather than the interests of the dioceses concerned.

ART. 8

The Ordinary *a quo*, considering the presbyter's pastoral service abroad, observing the directives of the Instruction *Postquam apostoli* (n.30) and the directive of canon 271, §2 of *CIC*, undertakes to reinstate the presbyter to the (Arch)diocese of (NAME) upon his return on the expiry of the period set by this agreement or for another proper cause.

ART. 9

The present agreement is valid for 5 years. Six months before the expiry of that period the Ordinary *a quo*, the Ordinary *ad quem*, and the presbyter will contact each other

either to confirm the expiry of this agreement or its renewal on the same conditions or subject to any possible variations which might be attached to it.

With the consent of the undersigned presbyter, the Ordinary *a quo* and the Ordinary *ad quem* sign and seal this agreement, drawn up in three copies, which be respectively handed in to:

Chancellery of

Chancellery of

Presbyter concerned (NAME)

Seal

The Ordinary *a quo* date

The Ordinary *ad quem* date

The Presbyter date

APPENDIX III

AGREEMENT OF THE ARCHDIOCESE OF US3

Memorandum of Understanding Between The Diocese of US3 And Fr. John Smith

I. Purpose

Fr. John Smith was ordained a priest of the Archdiocese of Elsewhere in 1996. He has been a priest for 20 years, 14 of which he pastored multiple parishes and a school. In 2008, he became the founder and director of a lay association of seventy people. In 2011, Fr. John Smith was released by Archbishop Jones for full-time, specialized ministry. Fr. John has conducted Parish Missions, Retreats and Conferences throughout the United States and around the world.

Fr. John Smith is seeking to incardinate into a diocese that is open to him continuing his work in the area of the New Evangelization (canon 270). Bishop Johnson has expressed interest to this endeavor. As the first step to possible incardination, Fr. Smith will receive a canonical parish assignment in the Diocese of US3 and be permitted to conduct his ministry (canon 271).

After the first year if Fr. Smith and the Diocese of US3 mutually agree to proceed with incardination, the initial year may be applied to the incardination process as determined by Bishop Johnson.

II. MOU Term

The term of this agreement is from April 17, 2016 to April 17, 2017

III. Relationship between the Diocese of US3 and Fr. John Smith

Fr. Smith will be assigned to St. Mark Parish, as a parochial vicar (canon 545). He will provide sacramental coverage while working under Bishop Johnson to establish a School for the New Evangelization and working with diocesan priests and parishes in this area of expertise.

Fr. Smith must be present in the Diocese of US3 for a minimum of 26 weeks during the year. Ordinarily, Fr. Smith will be expected to participate in the clergy gatherings in the diocese, e.g. convocations, vicariate meetings, etc. Fr. Smith will reside at the parish rectory (canon 550).

IV. Compensation

Fr. Smith will be entitled to the following:

- a. A salary of \$20,000 will be paid by the Diocese of US3.
- b. Priest Health (Medical and Dental) Insurance will be paid by the Diocese of US3.
- c. Fr. Smith will pay auto insurance.
- d. Professional Expenses Reimbursed by the Diocese of US3
- e. Retirement Contribution will be paid by the Diocese of US3
- f. The parish will pay room and board.

Rev. John Smith

Rev. Francisco Gonzalez
Pastor, St. Mark Parish

Most Rev. Chuck Johnson
Bishop of US3

APPENDIX IV

AGREEMENT OF THE ARCHDIOCESE C1

MEMORANDUM OF UNDERSTANDING FOR PRESBYTERS WHO COME FROM ANOTHR DIOCESE TO PROVIDE PASTORAL CARE IN THE ARCHDIOCESE C1

PREAMBLE

This Memorandum of Understanding, devised in accordance with the prescriptions of universal law and the norms of the Congregation for Clergy published on the 25 March 1980, is made between the Archbishop of C1 and the Bishop of PPP, Italy with the involvement and acceptance of the priest who intends to work in the Archdiocese of C1, Reverend John Doe.

Whereas

- a) Reverend John Doe, incardinated in the Diocese of PPP, Italy, has manifested a desire to exercise the sacred ministry in the Archdiocese of C1 for a period of three years, while remaining incardinated in his own particular Church;
- b) his proper Ordinary has been informed of this intention and has given his written permission for him to be absent from his Diocese and to accept an appointment in the Archdiocese of C1 for a period of three years;
- c) his proper Ordinary considers him suitable to exercise the ministry in and for the Church of C1;
- d) the Archbishop of C1 has received appropriate testimonials and information regarding Reverend John Doe and has manifested a need for priests to minister to the faithful of his particular Church.

It is agreed that:

1. The preceding narrative is an integral part of this contract;
2. the period of service of Reverend John Doe in the Archdiocese of C1 will last for three years. Such permission can be renewed several times with the written consent of all parties.
3. Reverend John Doe agrees:
 - a) to accept an appointment as an associate pastor and to exercise the ministry in a full-time basis for all the faithful in any parish to which he may be assigned by the Archbishop of C1 for a period of three years;
 - b) to reside, according to the norms of law, within any parish to which he may be assigned;
 - c) to respect and pay obedience, in accordance with this Memorandum of Understanding, to the Archbishop of C1.

4. The Archdiocese of C1 agrees:
 - a) to provide for the support of Reverend John Doe according to the current Archdiocesan Regulations so long as he is lawfully exercising the functions of office to which he is legitimately assigned;
 - b) to provide the same medical insurance and benefits as are applicable to all priests incardinated in the Archdiocese of C1. The retirement benefit monies will be retained in the Shepherd's Trust to be transferred to his Archdiocesan pension fund upon his return to his home diocese.
5. The Bishop of Reverend John Doe agrees:
 - a) to accept Reverend John Doe at such time as he returns, with all the rights which he would have enjoyed if he had ministered in his own particular Church.

This Memorandum of Understanding becomes effective on January 1, 2016 and will be reviewed one year from the date of its approval by the Archbishop of C1 and cannot be changed unless there is the consent of all the interested parties without prejudice to the rights of the bishops as regulated in universal law.

For the Archdiocese of C1: _____

Dated: _____

For the Diocese of PPP, Italy: _____

Dated: _____

Reverend John Doe: _____

Dated: _____

APPENDIX V

AGREEMENT OF THE ARCHDIOCESE C2

**MINISTRY AGREEMENT
BETWEEN**

**La Corporation Archiépiscope Catholique Romaine de C2
(hereinafter called Archdiocese of C2)**

AND

(Arch)Diocese of XXX

The Archdiocese of C2, represented by Archbishop Luis McAlister, and the (Arch)Diocese of XXX, represented by (Arch)Bishop YYY, accept the following terms of the agreement between them relating to the service of priests of the (Arch)Diocese of XXX in the Archdiocese of C2.

Term and Renewal

1. This Agreement will be in effect from ____ to ____ (dates). Consent of both parties is required for its renewal at the end of this five (5) year period. Either (Arch)Dioceses must inform each other of their intention to renew or not renew this Agreement at least three (3) months prior to ____ (date).

Assignment of Priests

2. Because of the pastoral needs of the Archdiocese of C2, both the Archdiocese of C2 and the (Arch)Diocese of XXX are willing to respond to these needs by the assignment of priests of the (Arch)Diocese of XXX to serve in the Archdiocese of C2, subject to the approval of the Archbishop of C2.
3. The (Arch)Diocese of XXX will assign one or more priests to serve in the Archdiocese of C2 throughout the term of this agreement. If an assigned priest finishes his term of service or if the service of an assigned priest is terminated for any reason, the (Arch)Diocese of XXX will make best efforts to assign another priest to replace him. The terms of assignment will be five (5) years and may be renewed upon mutual consent between the Archbishop of XXX and the (Arch)Bishop of the (Arch)Diocese of XXX.
4. The Archbishop of C2 may entrust the assigned priest with any type of apostolate he determines needed and fit. For all practical purposes, the priest of the (Arch)Diocese of XXX will serve him as any diocesan priest and the Archbishop of C2 will treat the priest of the (Arch)Diocese of XXX as he treats his own diocesan priests.
5. For each priest to be assigned, (Arch)Bishop YYY of the (Arch)Diocese of XXX will forward a signed "Declaration of Suitability for Priestly Ministry" form. The priest will also need to provide a Police Clearance Check (and if he has previously been in Canada, a Sexual Offender Registry Check). This is in accordance with

the policy of the Archdiocese of C2 for all involved with ministry to the vulnerable as set out in its document “*Working for a Safe and Respectful Church Environment.*”

6. The assigned priest will serve the Archdiocese of C2 and carry out the apostolate entrusted to them with pastoral sensitivity and with a missionary heart and spirit. He will respect all laws, both ecclesiastical and civil, in order not to jeopardize their service to the Archdiocese of C2 or their presence in Canada. They will accept and follow the norms, policies and practices of the Archdiocese of C2 in carrying out their service to the Archdiocese and the apostolate entrusted to them.
7. At the end of his term, the priest after having served the number of years that was mutually determined beforehand by the Archdiocese of C2 and by the (Arch)Bishop of his diocese, or by the superior of his congregation, shall return to his diocese. It is understood that the Archdiocese of C2 may ask another priest of this diocese or congregation to come and replace the priest that has returned to his country.
8. The Archbishop of C2 may ask (Arch)Bishop YYY of the (Arch)Diocese of XXX to withdraw any assigned priest for any reason he deems fit. Except when the reason demands urgency, at least three (3) months’ notice will be given to the other party.

Remuneration

9. The Archdiocese of C2/Parish will pay the assigned priest an amount equivalent to the monthly salary paid to a diocesan priest for each month or portion of a month in which the assigned priest is in the service of the Archdiocese of C2.

The assigned priest will pay monthly to the parish an amount for housing as determined by the Archdiocese of C2 for all priests living in a parish rectory. Payment of all other living expenses including food, personal long distance telephone calls, internet services other than that to a parish office, clothing, toiletries and other personal or luxury items will be the financial responsibility of the individual priest.

Travel and Transportation.

10. For each assigned priest, the Archdiocese of C2 will pay for his initial travel expenses to C2 and for their return to their country of origin.
11. The Archdiocese of C2/Parish will reimburse the mileage at a predetermined rate to priests in ministry who are required to own a vehicle in order to accomplish their ministry. Please refer to the attached policy regarding the reimbursement of mileage. The expenses such as gas, oil change and maintenance and repair costs will be the responsibility of the priest.

Health Benefits

12. The Archdiocese of C2 offers all priests in active ministry a comprehensive life, health/dental and disability plan. The Archdiocese of C2 will pay 50% of the costs of insurance. Participation in the plan is mandatory for all employees of the Archdiocese of C2. The health care plan is effective at the start of employment.

If an assigned priest is prevented from fulfilling the duties of his office by reason of a continuing illness, the Archdiocese of C2 will pay a maximum of one (1) month's salary in a calendar year in sick benefits. If the illness continues past the one month period, the priest will need to apply for the sick benefits as offered by the Canada Employment Insurance Program. Furthermore, if the illness continues past 120 days the diocesan long term disability program would cover 60% of the priest's salary until he returns to active duty or until the age of 65. The priest receives health benefits immediately at the start of ministry.

Vacation Leave and Spiritual Retreat Leave

13. The assigned priest is entitled to a four-week paid vacation leave per year (from August 1st to July 31st) and can participate in a weeklong annual retreat. The substitution during the period of absence should be cleared with the office of the Archbishop of C2.

Stipends

14. An assigned priest will retain Mass intention stipends for weekday Masses. All other stipends and stole fees for Sunday Mass, funerals, weddings and other special occasions will be paid to the parish or mission for help with its expenses. \$100 shall be paid by the parish to the priest for each wedding or funeral that he will celebrate. Please find attached the policy regarding offerings received from the celebrations of weddings and funerals.

Parishes and Missions

15. Diocesan policy and practices and terms of this Agreement also apply to parish or mission support of assigned priests. An assigned priest will not seek or accept further contributions or payment or reimbursement of expenses from parish or mission funds.

Evaluation

16. A ministry evaluation will be conducted after the first year and then every two years thereafter or upon the request of either party.

Amendments

17. This Agreement may be amended by mutual written consent of both parties. Further agreements require written form.

Termination of the Agreement

18. The agreement takes effect from the date it is concluded for an indefinite period of time. Both parties can fundamentally terminate it. The notice of termination should have the written form; termination is possible only at the end of the year after having completed a one-year period of notice.

Interpretation

19. The assigned priest engaged in pastoral work in the Archdiocese of C2 carries out his duties according to Canon Law, the directions of the Canadian Bishops Conference and the diocesan laws and regulations.
20. The interpretations or application of any part of this Agreement is to be made in conformity with the Universal Law of the Church and with the norms, policies and practices of the Archdiocese of C2.

In faith and witness whereof, we have affixed our signatures hereto, in the presence of our witnesses:

THE ARCHDIOCESE OF C2

Archbishop Luis McAlister

Witness

Date

THE (ARCH)DIOCESE OF XXX

(Arch)Bishop YYY

Witness

Date

APPENDIX VI

AGREEMENT OF THE ARCHDIOCESE C3

AGREEMENT ENTERED INTO BETWEEN THE ROMAN CATHOLIC ARCHDIOCESE OF C3 AND THE DIOCESE/ORDER/SOCIETY OF XXX

The Roman Catholic Archdiocese of C3, represented by the Most Reverend Bob Dole, Archbishop of C3 AND the XXX (hereinafter referred to as the 'Society/Order/or Diocese), represented by ZZZ, Bishop/Provincial Superior, do hereby accept the following terms of the Agreement between them relating to the service of the members of the Diocese/Order/Society in the Archdiocese of C3.

1. The Diocese/Congregation/Society agrees to place _____ at the disposal of the Archdiocese beginning from _____. The Diocese/Order/Society is agreeable to continue providing priests to the Archdiocese of C3 on a six-year period at a time, depending on the need of the Archdiocese and availability of priests in the Diocese/Order/Society. When a priest finishes his six-year term of service in the Archdiocese, the Diocese/Order/Society will provide another to replace him.
2. The Archbishop can entrust the priests any type of apostolate he judges needed and fit. For all practical purposes, the priests of the Diocese/Order/Society would serve him as his own diocesan priests and the Archbishop would treat the priests of the Society as he treats his own diocesan clergy.
3. The Archbishop has the right to ask the Diocese/Order/Society to withdraw any of the priests for a special reason. So also, the Superior of the Society has the right to recall any priest for a special reason. But except when the reason demands urgency, a six months' notice shall be given to the other party. In either case, the Society shall replace the priest with another suitable one.
4. The priest who is officially accepted to serve in the Archdiocese of C3, will be governed by the Archdiocesan Policy for Remuneration of priests, the Priest Pension and Health Benefit Plan, Personal and Administrative Policies and the Sexual Abuse Policies and Procedures of the Archdiocese of C3. It is further accepted, that while under the jurisdiction of the Archbishop of C3, the priest commits himself to attend regularly scheduled presbyterate meetings, diocesan workshops, study days, annual diocesan priests' retreat, etc. As in accordance with canon 533, §2, each priest may each year be absent on holidays from his parish for a period not exceeding one month, continuous or otherwise. For an absence from the parish of more than a week, however, the parish priest is bound to advise, by written notice, the Archbishop through the Chancellor and the Personnel Director as well as his Dean.
5. The Archdiocese will provide medical insurance for the priest in the same manner and degree as is given to the priests of the Archdiocese. The Archdiocese agrees to pay the premium to the Pension Plan of the Diocese/Order/Society for its priests on par with the premium paid for diocesan priests.
6. In addition, the Archdiocese agrees to pay the air fare of the priests to the Archdiocese the first time they are coming to serve the Diocese.

7. As long as the priest serves in the Roman Catholic Archdiocese of C3, there will be a special annual collection for his Diocese/Order/Society in the parish the priest/priests serves/serve. The collection will be coordinated by the Mission Representative of the Diocese/Order/Society.
8. The Archdiocese agrees to support a broad-based program among Catholics throughout the diocese seeking sponsorship of projects in the priest's diocese/order/society.
9. The Archbishop undertakes not to incardinate any of the priests of the Diocese/Order/Society sent to serve in the Archdiocese.
10. The Archdiocese will provide a loan of \$7,000.00 to help the priests purchase a car or vehicle for transportation. He will be required to pay back this loan by making monthly payment of \$500.00. This can be taken out from his transportation allowance he receives from parish he is serving.
11. The interpretation of application of any part of the Agreement is to be made in accordance with, and without prejudice to, the General Law of the Church, diocesan norms, regulations and practices.
12. In terms of the initial ministry posting, every effort will be made by the Archdiocese of C3 to appoint him to an urban parish, preferably in an associate pastor capacity with the occasion of mentorship being given by one of the priests of the Archdiocese of C3. Normally after a definite period as an associate pastor, the same priest will be appointed as Administrator of one or more parishes in the Archdiocese of C3.
13. That the Archdiocese of Regina will assume the costs incurred with Immigration Canada (application and visa fee, medical checkup, etc.)
14. That upon acceptance of the priest for priestly ministry in the Archdiocese of C3, the Archbishop's delegate will coordinate the required documents for the same priest coming to work as a minister of religion, (i.e. visitor's record, Social Insurance Number and other government regulated forms). The Archdiocese of C3 will provide orientation and mentoring for the same priest upon arrival to the Archdiocese.

This agreement between the Archdiocese of C3 and the Diocese/Order/Society shall be binding for a period of six years. It can be terminated any time with the consent of both parties. Consent of both parties is required for its renewal at the end of the period agreed upon. At least six months prior to the expiry of this agreement, the Archdiocese or the Diocese/Order/Society shall inform the other party of its intention, in case it decides not to renew the agreement. Should either party desire any addition, deletion, or modification in any of the provisions of this agreement, the change may be effected with the consent of both parties to the agreement.

For the Catholic Archdiocese of C3

Sd./

Date:

For the Society of Heralds of Good News:

Sd.....Date.....

APPENDIX VII
AGREEMENT OF THE DIOCESE OF C4

Service Agreement

This agreement is between the Roman Catholic Bishop of C4 and the Roman Catholic Bishop of _____, who has assigned Father _____ to work in the Diocese of C4 beginning _____.

Period of Agreement

The term of this agreement is three years, renewable upon the agreement of parties. This agreement may be terminated by the mutual consent of the parties or by either party providing the other party ninety day's written notice.

Terms

The Diocese of C4 will Father _____:

- an assignment to pastoral ministry
- accommodation
- a vehicle and payment of maintenance costs
- the regular annual priest's salary, according to diocesan policy, which includes a food allowance
- payment for medical insurance premiums, effective the first of the month following arrival (if possible, Father should obtain out-of-country medical insurance before leaving _____, as there is a three-month residency requirement for the British Columbia provincial plan)
- payment for initial transportation to C4 and return flight to his home diocese after three years

Further to this agreement

- fundraising for individual/personal projects and other non-approved or non-diocesan purposes is not permitted
- expenses of a personal nature, such as long-distance telephone calls, are the individual's responsibility
- Father _____ should obtain a British Columbia's driver's license
- Father _____ may be absent from the Diocese of C4 for vacation for a period not to exceed five weeks
- Each year of agreement, the Diocese C4 will pay the equivalent of its contribution to a diocesan priest's pension plan to the Diocese of _____ (home diocese of priest)

- Each year of the agreement, the Diocese of C4 will include the Diocese of _____ (home diocese of priest) in its plan for missionary cooperation

Most Reverend JJJ
Diocese of C4

Most Rev. SSS
Diocese of _____

Date

Date

Rev. _____ (Vicar General)
(visiting priest)

Rev. _____

Date

Date

APPENDIX VIII

AGREEMENT OF ARCHDIOCESE Ug1

CONTRACT BETWEEN THE ARCHDIOCESE OF Ug1 AND THE DIOCESE OF YYY

I. Contracting Parties

Most Rev. Larry Kato, Archbishop of Ug1
Most Rev. Gabriel Mushihoma, Bishop of YYY, Japan

II. Objective of the Contract

1. The Archbishop of Ug1 and the Bishop of YYY agree that diocesan priests belonging to the Archdiocese of Ug1 are assigned to the Diocese of YYY, to engage in the work of evangelization for an initial period of five (5) years; i.e. two years studying Japanese Language and three years working. Such priests will be referred to as *Fidei donum* priests.
2. It is agreed that initially one *Fidei donum* priest will be seconded to the Diocese of YYY with a possible increase in the future, by mutual agreement between the two contracting parties.
3. It is agreed that on arrival on the Diocese of YYY, the *Fidei donum* priests will be inducted into the life and affairs of the Diocese of YYY and into the culture of the people for a specific period of time before he is given an official assignment within the Diocese of YYY.

III. Mission and Way of Life

1. *Fidei donum* priests shall abide by the statutes, directives and policies of the Diocese of YYY.
2. They shall participate in diocesan meetings, workshops, retreats, recollections and ongoing formation of priests.

IV. Secondment to and recall from the Diocese (cf. c. 271, §3)

1. Timely consultations will be held between both parties regarding secondment to and recall from the Diocese of YYY
2. For grave reasons, either party may request the withdrawal of a particular *Fidei donum* priest. The *Fidei donum* priest will have the right to state his case.

V. Temporalities

1. *Fidei donum* priests will receive the same salary as the diocesan priests of YYY. Lodging, the expenses for health insurance and the expenses for the study of the Japanese language will also be supported by the Diocese of

YYY. All other expenses such as meals, sickness, and clothes are to be shouldered by the *Fidei donum* priests.

2. *Fidei donum* priests will acquire their own means of transportation from the salary given, but the parish will maintain the vehicle and provide fuel for pastoral work.
3. The Diocese of YYY will pay for the first journey to Japan and for the journey to Uganda at the end of the agreement. Other journeys will be shouldered by the *Fidei donum* priests.

VI. Vacation and Other Leaves

1. The *Fidei donum* priests shall be entitled to days off and an annual vacation in accordance with the Diocesan regulations
2. In case of his father's or mother's death, the *Fidei donum* priests will be allowed to travel from and to Japan for a period of one month.
3. Other leaves of absence shall be negotiated between the *Fidei donum* priests and the Bishop of YYY.

VII. General Points

1. This agreement will be valid for a period of five (5) years from the date of signing, but can be amended by mutual consent before the date of expiry.
2. It will be considered renewed for a further period of five years from the date of expiry, unless either party has given notice in writing expressing its wish to terminate the agreement six months before the expiry date, or for a grave reason the *Fidei donum* priests wishes to be withdrawn from the Diocese.
3. The *Fidei donum* priests will engage with the Bishop of YYY or his representative in annual evaluation of his involvement in the activities of Diocese and send a copy of the evaluation to the Archbishop of Ug1

This agreement is approved, dated, signed and sealed by:

Date: 24 September 2009 Place: YYY, Japan

Date: 11 September 2009 Place: Ug1

+ Gabriel Mushihoma
Bishop of YYY

+ Larry Kato
Archbishop of Ug1

SEAL

**APPENDIX XI
SAMPLE AGREEMENT TEMPLATE**

**AGREEMENT BETWEEN THE ARCHDIOCESE/DIOCESE OF AAA
AND THE ARCHDIOCESE/DIOCESE OF BBB
FOR THE TEMPORARY MINISTRY OF FR. CCC
IN THE ARCHDIOCESE/DIOCESE OF BBB**

- 1. Preamble:** This agreement is between the Archdiocese/Diocese of AAA and the Archdiocese/Diocese of BBB for Fr. CCC to exercise ministry temporarily in the Archdiocese/Diocese of BBB while he remains incardinated in the Archdiocese/Diocese of AAA. (Cf. canon 271, §1 of the 1983 *Code of Canon Law* and the 1980 Directive Norms *Postquam apostoli* n. 26). The Archdiocese/Diocese of AAA, the diocese of incardination of Fr. CCC, is represented by the Most Reverend DDD, Archbishop/Bishop of AAA. The Archdiocese/Diocese of BBB, the host diocese, is represented by the Most Reverend EEE, Archbishop/Bishop of BBB

- 2. Permission to Move:** Due to the grave need of priests in the Archdiocese/Diocese of BBB, the Most Reverend EEE has requested the Most Reverend DDD for the temporary service of one of his priests. In the spirit of the Decree of the Second Vatican Council *Christus Dominus*, n. 6, Archbishop/Bishop DDD has granted Fr. CCC permission to move temporarily to the Archdiocese/Diocese of BBB to exercise sacred ministry. This permission has been granted for _____ years beginning on _____

- 3. Testimonial of Suitability:** As required by canon 271, §1, the archbishop/bishop of AAA has provided the archbishop/bishop BBB with a testimonial of suitability for the priestly ministry of Fr. CCC⁷⁷⁸ (See appendix X for a sample of the testimonial of suitability).

- 4. Duration and Renewal of the Agreement:**
 - a) The bishops of AAA and BBB agree that the term of this agreement will be for _____ years beginning on _____ (date) and expiring on _____(date).

 - b) It can be renewed only once [or _____ times] with the mutual written consent of Archbishop/Bishop DDD and Archbishop/Bishop EEE. Six months before the date of its expiry, the chancellor or another designated diocesan official of the host diocese will remind all the concerned parties that the agreement is about to expire. Consultations will then be made either to renew the agreement or to allow it to expire.

⁷⁷⁸ See Appendix X for a sample of the testimonial of suitability.

5. Amendment and Termination of the Agreement:

- a) The content of this agreement may be changed or amended only with the mutual written consent of Archbishop or Bishop DDD and Archbishop or Bishop EEE.
- b) In accordance with the provision of canon 271, §3, the archbishop/bishop of AAA can terminate this agreement at any time and recall Fr. CCC for a just cause, observing natural equity and the conditions stipulated in this agreement. Similarly, the archbishop/bishop of BBB, observing the same conditions, can terminate the agreement at any time, requiring Fr. CCC's return to AAA. In addition to the above, this agreement can also be terminated by the withdrawal of Fr. CCC for a just cause. To the extent possible, Fr. CCC should inform both the archbishop/bishop of AAA and the archbishop/bishop of BBB three months (ninety days) prior to the date of his intended departure.

6. Assignment to Diocesan Offices: After undergoing induction into the life and practices of the Archdiocese/Diocese of BBB, Fr. CCC will be appointed parochial vicar of _____ (name of the parish) for a period of one to two years. During this time, Fr. CCC will receive mentorship concerning parish ministry and administration in the Archdiocese/Diocese of BBB. After this period of serving as a parochial vicar, Fr. CCC may receive another canonical appointment depending on the need of the Archdiocese/Diocese and the discretion of Archbishop/Bishop EEE.

7. Remuneration and Other Benefits:

- a) In accordance with the provision of canon 281, §1, the Archdiocese/Diocese of BBB will pay Fr. CCC a monthly salary in the amount of _____, which is the standard for all priests in parish ministry in the Archdiocese/Diocese of BBB.
- b) Fr. CCC will be provided with the same health, dental and disability insurance as the other priests serving in the Archdiocese/Diocese of BBB.
- c) In addition to the above, the Archdiocese/Diocese of BBB will contribute monthly payments of _____ to the priest's retirement fund in the Archdiocese/Diocese of BBB for the benefit of Fr. CCC. This money will be transferred to the home archdiocese/diocese at the end of Fr. CCC's ministry in the Archdiocese/Diocese of BBB.
- d) Regarding accommodation, food, telephone bills, car and travel allowances, the archdiocesan/diocesan policies will be applied.
- e) Fr. CCC will be responsible for filing and paying his income taxes.

8. Vacations and Annual Retreats:

- a) Fr. CCC will be entitled to an annual vacation of one month each year whether continuous or interrupted.
- b) In addition, Fr. CCC will be entitled to have five days for an annual retreat and time for other activities as determined by the diocese or as permitted by the bishop. To be absent from the parish for more than a week, Fr. CCC must inform the archbishop/bishop in advance
- c) Fr. CCC will enjoy one day off each week.

9. Acculturation and Safe Environment Programs:

- a) On arrival in the Archdiocese/Diocese of BBB, Fr. CCC will be required to attend an induction or acculturation workshop on the life, culture, pastoral, liturgical and administrative practices and conditions of the Archdiocese/Diocese of BBB.
- b) Fr. CCC will also be required to participate in the Safe Environment Training Program of the Archdiocese/Diocese BBB for children and vulnerable people.

10. Signatures and Dates:

Most Reverend DDD, Archbishop/Bishop of AAA

Date

Most Reverend EEE, Archbishop/Bishop of BBB

Date

APPENDIX X:
TESTIMONIAL OF SUITABILITY

Archbishop's Office

P. O. Box _____

Date:

To: The Most Rev. _____

Archdiocese of _____

TESTIMONIAL OF SUITABILITY FOR PRIESTLY MINISTRY OF FR. CCC

As required by canon 271, §1 of the 1983 *Code of Canon Law*, I am happy to provide you with the testimonial of suitability for Fr. CCC's priestly ministry in the Archdiocese of _____. Fr. CCC was born on _____ and ordained to the priesthood on _____ for the Archdiocese of _____

Having carefully reviewed pertinent records and personnel files, and having made appropriate inquiries and consultations, I am able to affirm to the best of my knowledge that Fr. CCC:

- is a priest in good standing in the Archdiocese of _____;
- is not under any censures or other canonical penalties;
- has not been charged with any crimes under the civil law;
- has given no evidence of any violations of the obligation of priestly celibacy;
- has given no evidence of inappropriate behaviour or relationships;
- has given no evidence of alcoholism or other substance abuse;
- has given no evidence of a mental, moral, emotional or physical condition which might adversely affect the performance of his priestly ministry;
- has given no evidence of involvement in any incident or behaviour which might adversely affect his reputation or ministry as a priest;
- has given no evidence of any difficulty with the management of his personal finances.

Based on my inquiries and on my personal knowledge, I testify that the above-mentioned priest is a man of good moral character and reputation and has the required qualities needed in his priestly ministry in the Archdiocese of _____.

Signature _____

Most Reverend _____ (name)

Date

Archbishop of _____

SEAL

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BIOGRAPHICAL NOTE

Andrew Kinarah Obel was born on 10 October 1973 in Tororo, Uganda. He attended Alokolum National Major Seminary in Gulu, Uganda and received a Bachelor of Arts degree in Philosophy and Religious Studies in 1999. He proceeded with his priestly formation at Notre Dame Seminary in New Orleans, LA, USA, where he graduated with a Master's degree in Theology. Andrew was then ordained a priest for the Archdiocese of Tororo on 3 July 2004 at Uganda Martyrs' Cathedral in Tororo. He served in various parishes as parochial vicar and pastor, and in different diocesan offices including that of chancellor, archbishop's secretary and vocations' director. In September 2009, he began his canon law studies at St. Paul University in Ottawa, Canada and was awarded a Licentiate degree in 2011. He enrolled for the Ph.D. program at the same university in 2012.