

The Suspension of Priests: Procedures to Impose and Remove the Penalty

Brendan Daly*

"Suspension"¹ is described by Jose Bernal as "a censure that can affect only clerics and by means of which they are forbidden fully or partially to exercise the power of order, the power of governance or of office (canon 1333§1) or of all of those simultaneously (canon 1334§2) and in some cases, the right to receive any goods with economic value".² It is one of the most common penalties that can be imposed on a priest.

Historical development of the penalty

There are no references to "suspension" in the early Church. Only general words and concepts are used for penalties when priests or deacons were prohibited from functioning. The word "excommunication" included all other penalties,³ and no clear distinctions were made between the penalties of suspension, interdict and excommunication. Nevertheless, key aspects of today's understanding of "suspension" existed in the early Church. Gradually a distinction was made between suspension and other penalties. The holding of an office and holy orders were closely connected.⁴ The penalty of deposition took away one's office completely, while the penalty of suspension deprived the clerics of rights or functions associated with an office. The Council of Ancyra in 314 seemed to distinguish between a cleric being dismissed from the clerical state and a cleric being suspended. When priests had been found guilty of idolatry, they remained clerics but could not function as priests.⁵ Hefele states that priests guilty of idolatry "may neither sacrifice or preach nor fulfil any priestly office".⁶

* Monsignor Brendan Daly BTheol PG Dip Theol JCD PhD Lecturer in Canon Law Good Shepherd Theological College, Auckland and Judicial Vicar of the Tribunal of the Catholic Church for New Zealand.

¹ Suspension comes from the Latin "suspendere," meaning to hang, to shelve, to put in cold storage.

² Jose Bernal, in J. Arias in A Marzoa, J. Miras and R. Rodrigues-Ocana, *Exegetical Commentary on the Code of Canon Law*, (Montreal: Wilson & Lafleur Ltd, 2004), Vol. IV/1, 335.

³ Franciscus Wernz, *Ius Decretalium*, (Rome: Prati, Giachetti, 1912), Vol. IV, no. 144.

⁴ Eligius Rainer, *Suspension of Clerics: An Historical Synopsis and Commentary*, Canon Law Studies 111, (Washington D.C: The Catholic University of America, 1937), 11.

⁵ Rainer, 4.

⁶ Karl Hefele, *A History of the Councils from the Original Documents*, (Edinburgh: T & T Clark, 1883), Vol. I, 201: "Canon 1. Priests who sacrificed [during the persecution], but afterwards repenting, resumed the combat not only in appearance, but in reality, shall continue to enjoy the honours of their office, but they may neither sacrifice or preach, nor fulfil any priestly office."

Clerics could have restrictions placed on where they could exercise their ministry. Eligius Rainer refers to the penalty of *communio peregrine*.⁷ An example was Armentarius, who was illegitimately consecrated a bishop in 438. The Council of Riez, in 439, declared the ordination void and then allowed Armentarius restricted faculties.⁸

There is no doubt that "suspension" existed in the third and fourth centuries, although there is no specific terminology. Saint Cyprian (3rd Century, 200-258) wrote to Bishop Rogation advising him to suspend a deacon who had rebelled against his bishop.⁹ Saint Cyprian seemed to use the word "*abstinere*" as a synonym for "*suspendere*". The IV Synod of Carthage (398) decreed the deprivation of the stipend of clerics as a penalty.¹⁰

Suspension as a medicinal penalty¹¹ began in the 6th Century.¹² Prior to the 6th Century all penalties were expiatory¹³ to re-establish Church order and repair the scandal caused by the crime. The *Novellae of Justinian* (535) stated that for some offences clerics were unable to function for a year, and in other cases they could not function for three years.¹⁴ Medicinal penalties grew out of the expiatory penalties because clerical offenders, without reforming, could simply exercise their office again after serving out the term of their suspension. To remedy this, the Church instituted medicinal penalties that remained in force until the offender had repented and had given an assurance that the offence would not happen again.

The Fourth Council of Epaon (517) decreed that for a crime a bishop had to suspend himself from receiving the Eucharist for three months, while a priest could not receive

⁷ Rainer, 7.

⁸ Hefele, Vol. 3, 158: Canon 3 said he could receive the support of the Church "but must never offer the sacrifice in towns or in the absence of the bishop, or ordain any cleric, or, generally discharge any episcopal function in the church which is granted him. Only in his own church he may confirm the newly baptised".

⁹ Migne, *Patrologia Latina*, (Alexandria Va: Chadwyck-Healey Inc, 1995), IV, 347; Rainer, 6

¹⁰ IV Synod of Carthage, canon 49: "Clericus qui absque corpusculi sui inaequalitate vigiliis deest stipendiis privetur."; Mansi, III, 995 ; in Rainer, 10.

¹¹ Medicinal penalties, including excommunication and suspension, aim to bring about the reform of the offender. The medicinal penalty is meant to bring home to the offender the need to reform his life.

¹² Wernz, Vol. VI, no. 203.

¹³ Expiatory penalties specifically aim to re-establish Church order, repair scandal, remedy the damage done to the Church by the offender, as well as to deter other offenders.

¹⁴ Rainer, 10; *Novellae*. (123.1) 2: "...Per unum annum separi a sacro ministerio;" *Novellae*, (1232.10) L: "...jubemus eum per tres annos ab omni religioso ministerio prohiberi et in monasterium immitti."

the Eucharist for two months for the same offence.¹⁵ It legislated that if a cleric stole from other priests or the Church, he was to be suspended from communion.¹⁶

The rights of suspended clerics became more clearly recognised, because the Council of Narbonne (589) legislated that suspended clerics were not to lose their income unless they were suspended for more than a year.¹⁷ The Council of Lerida (524), said that if a cleric was warned twice and did not amend his actions, he was to be deprived of his office until he reformed.¹⁸

A significant development was the suspension of a cleric, or the prohibition of a cleric to exercise certain rights or functions to prevent more scandal during an investigation into his behaviour.¹⁹ The first example was from the Council of Lerida (524). Gratian²⁰ cited the law which prescribed that if a priest had lost his reputation amongst his people and the bishop could not obtain proof, then the priest was to be suspended until he had made satisfaction. Later Popes, including Gregory the Great²¹ wrote to Bishop Januarius of Caralis in 600, implementing this law.

Around this time, the penalty of partial suspension was clarified. Suspensions were also divided into those that were *ferendae sententiae* (imposed) and those that were *latae sententiae* (automatic) penalties. *Latae sententiae* penalties were first instituted by the 13th Council of Toledo in 683. Canon 11 of this Council provided that those who harboured fugitive clerics were excommunicated for as long as they harboured them.²²

12th Century to Council of Trent

In the first few centuries of the Church someone could not be ordained unless they had already received some office. The Council of Chalcedon (451) had forbidden the

¹⁵ Canon IV: "Si Episcopus est, tribus mensibus se a Communionem suspendat duobus presbyter abstineat." Mansi, VIII, 559; Rainer, 6.

¹⁶ "Si quis re Ecclesiae debitas vel proprias sacerdotis horrendae cupiditatis occupaverit... tam diu a communion ecclesiastica suspendatur"; in Hefele, Vol. 2, 277.

¹⁷ Canon 10. "Non solum a stipendio sed uno anno a communion privetur"; Cabassutius, *Notitia Ecclesiastica*. 302, quoted by Rainer, 12.

¹⁸ Council of Lerida, 15th canon, "...post primam et secundam commotionem si emendare neglexerit, donec in vitio perseverat officii sui dignitate privetur; (quod in vitio perseverat officii sui dignitate privetur) quod si se De juvante correxerit, sancto ministerio restauretur,"; Mansi, VIII, 614.

¹⁹ Rainer, 12.

²⁰ Gratian, *Decretum*, C. 13, C. 11, q. 5.

²¹ *Liber 9, Epist. I*; Migne, P.L. LXXVII; quoted in Rainer, 13.

²² Council of Toledo, C. XI: "Transgressor institutonis paternae tanto tempore excommunicatum et remotum se a suis officiis noverit esse, quanto eium qui fugiit sub sua potestate contingerit remorasse." Mansi, IX, 17.

ordination of unattached clerics, i.e. without a title to support them.²³ Consequently, penalties were inflicted in a way that affected the offices that had been received.

Problems with itinerant clergy continued and the Third Lateran Council (1179) decreed:

If a bishop ordains someone as a 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 of 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 or family inheritance.²⁴

Ordination required a guaranteed income, or otherwise the ordination was at the bishop's expense. This was an incentive to make bishops keep the law. Implicitly, there was a separation of the reception of the sacrament of orders from holding an office. Henceforth, one could not be ordained without holding an office. Consequently, there was now a clearer distinction between the power of orders and the power of holding an office (jurisdiction). Clerics could be punished with a suspension from an office, a suspension from orders, a suspension from a benefice or from all of them. Pope Innocent III, in 1214, clarified the nature of penalties. He distinguished between censures and decreed that suspension, interdict and excommunication should be considered censures.²⁵

²³ Canon VI of the Council of Chalcedon: "No one, whether presbyter or deacon or anyone at all who belongs to the ecclesiastical order, is to be ordained without title, unless the one ordained is specially assigned to a city or village church or to martyr's shrine or a monastery. This sacred synod has decreed that the ordination of those ordained without title is null, and that they cannot operate anywhere, because of the presumption of the one who ordained them." English translation from Norman Tanner, *Decrees of the Ecumenical Councils*, (London: Sheed and Ward Ltd, 1990), Vol. 1, 90.

²⁴ English Translation in Tanner, Vol. 1, 214: "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 of 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 or family inheritance."

²⁵ Innocent III, C. 20, X, *de verborum significatione*, V, 40; cf. Rainer, 14; Kevin Knight. "Ecclesiastical Censures," in *Catholic Encyclopedia*: "Innocent III, who in 1200 (cap. 13, X De judicious, II, 1) had used the term for punishment in general, at a later date (1214), answering a query as to the meaning of ecclesiastical censure in pontifical documents, expressly distinguished (cap. 20, X De verb, signif. V, 40) censure from any other ecclesiastical penalty (respondemus quod per eam non solum interdicti, sed suspensionis et excommunicationis sententia valet inteligi), thereby authentically declaring that by ecclesiastical censure were meant the penalties of interdict, suspension and excommunication." <http://www.newadvent.org/cathen/03527a.htm>.

Council of Trent to the 1917 Code

The Council of Trent did not change the nature of the penalty of suspension and confirmed the previous law concerning suspensions such as clerics living in concubinage were to be suspended.²⁶ The Council added a new suspension for administering tonsure to those who were not the subjects of the prelate.²⁷ As well, the Council of Trent did enable a bishop, with knowledge of an occult crime, to prevent the perpetrator being promoted to higher orders. The bishop could also prevent someone from exercising orders if he learnt that an occult crime had been committed.²⁸

Pope Pius IX in his constitution *Apostolicae Sedis*,²⁹ confirmed the suspensions that had been introduced by the Council of Trent. Seven other *latae sententiae* penalties reserved to the Roman Pontiff were added,³⁰ including a penalty of suspension for bishops and abbots administering benefices or other acts of office without the correct apostolic letters.

In 1884 the Sacred Congregation for the Propagation of the Faith then issued an Instruction concerning a suspension concerning occult crimes by a bishop with confidential information and an informed conscience.³¹ This document gave a full explanation of the law concerning suspension, and formed the basis for the law on suspension included in the 1917 Code.

1917 Code

There were eight canons concerning suspension in the 1917 Code. (Canons 2278-2285).³² A suspension is described in canon 2278:

§1 Suspension is a censure by which a cleric is prohibited from office or benefice or both;

²⁶ Council of Trent, Session 25, chapter 14: "if after being warned by superiors they still have such relationships...they are automatically to be deprived of a third of the revenues...If they persevere in the same sin with the same or another woman...they are to be suspended from the administration of their benefices...If even when suspended they do not cast them out, or even return to them, they are to be deprived permanently of all ecclesiastical benefices..." Translation in Tanner, Vol. 2, 793.

²⁷ Session 23, de. ref. c. 10, Mansi 33, 144.

²⁸ Council of Trent, session 14, de reform., canon 1; John Carr. *The Suspension of a Cleric by the Administrative Procedure According to the 1983 Code of Canon Law* (Ottawa: Saint Paul University, 1989), 45.

²⁹ Pope Pius IX, constitution, *Apostolicae Sedis*. 12 October 1869; in Rainer, 35; *Fontes*, no. 552. Bernal, Vol. IV/1, 335.

³¹ Sacred Congregation for the Propagation of the Faith, Instruction, 20 October 1884, *Coll. S.C.P.F.* no 1628; *Fontes* 4907.

³² All translations of the 1917 Code from Edward Peters, *The 1917 Pio-Benedictine Code of Canon Law*, (San Francisco: Ignatius Press, 2001).

§2 The effects of suspension can be separated; but, unless otherwise provided, suspension generally imposed includes all the effects that are enumerated in the canons of this article; otherwise, suspension from office or from benefice contains only the effects specified in either.³³

The 1917 Code then explained the effects of general or partial suspension:

Canon 2279 §1: Simple suspension from office, with no limitations being added, forbids every act, whether of the power of orders and jurisdiction, or even merely of administration, of the involved office, except for the administration of the goods of one's own benefice.

Canon 2279 §2 Suspension:

- 1° From jurisdiction generally forbids every act of jurisdictional power in both fora, whether ordinary or delegated.
- 2° From divine things [restricts one] from every act of the power of orders, whether one has obtained it from ordination or through privilege;
- 3° From orders [restricts one] from every act of the power of orders received from ordination;
- 4° From sacred orders [restricts one] from every act of the power of orders received from sacred ordination;
- 5° From the exercise of a certain and definite order [restricts one] from every act of the designated order; one suspended is also prohibited from conferring that order and from receiving a higher order and from exercising one received after suspension.
- 6° From the conferral of a certain and definite order [restricts one] from conferring that order, but not from conferring an inferior or superior one;
- 7° From a certain and definite ministry, for example, hearing confessions, or office, for example one with the care of souls [restricts one] from every act of that ministry or office;
- 8° From pontifical orders [restricts one] from every act of the power of episcopal orders;
- 9° From pontificals [restricts one] from the exercise of pontifical acts according to the norm of Canon 337 §2.

³³ Rainer, 35: a suspension was a "penalty, either medicinal or vindictive [expiatory] in its nature, by which a cleric guilty of a crime is temporarily forbidden (prohibetur), in whole or in part, the use or exercise of rights which he possesses, either by reason of his orders, or by reason of his office or benefice considered separately, or by reason of his office and benefice taken conjointly".

One effect of the introduction of the 1917 Code was that all general penal legislation not contained in the 1917 Code was no longer binding. However, seven new suspensions had been added by the 1917 Code.³⁴

Revision of the 1917 Code

After Vatican II the Synod of Bishops in 1967 enunciated ten principles for the revision of the Code of Canon Law.³⁵ Principle 2 stated that the Code would "incorporate all such norms as are necessary for making clear the provisions of the internal forum in so far as the salvation of souls demands".³⁶ Principle 9 stated: "It is generally agreed that penal laws be *ferendae sententiae*, inflicted only *in foro externo*, and remitted likewise only *in foro externo*. As for penal laws *latae sententiae*, while the abolition of all of these has been proposed by not a few canonists, we suggest that they be reduced to the smallest possible number and concern only the gravest of crimes".³⁷

The Commission for the Revision of the Code voted to keep some *latae sententiae* penalties in order to punish occult crimes and safeguard the supreme goal of the Church to save souls.³⁸

The 1917 Code contained 8 canons concerning suspension, which could be either a medicinal or an expiatory penalty. The 1973 schema reduced them to three canons concerning suspension as a medicinal penalty. There were 16 *latae sententiae* suspensions in the 1917 Code.³⁹ The 1973 Schema in canon 28 preferred that suspension be inflicted by a judicial procedure unless there were grave reasons preventing this.⁴⁰ Some wanted only a judicial process to be used but the Commission decided that since the administrative procedure was quick and practical, it should be retained.⁴¹

³⁴ Canons CIC (1917), 2341, 2366, 2371, 2384, 2386, 2387, 2400, 2402.

³⁵ General Synod of Bishops 4 October 1967, "Principia quae codicis iuris canonici recognitionem dirigant." in Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Communicationes*, (Romae. Libreria Editrice Vaticana, 1(1969), 77-85; English translation in R. Schoenbechler, "Principles which Govern the Revision of the Code of Canon Law," in J. Hite et al. eds, *Readings, Cases, Materials in Canon Law*, (Collegeville: Liturgical Press, 1986), 70-78.

³⁶ English translation in Schoenbechler, 86.

³⁷ *Communicationes* 1(1969), 84-85; English Translation in Schoenbechler, 92.

³⁸ *Communicationes* 7(1975), 171.

³⁹ Christopher R Armstrong, *A Critical Appraisal of Latae Sententiae Penalties in the 1983 Code of Canon Law*, 351; including such things as hearing confessions without faculties and absolving from reserved sins canon 2366.

⁴⁰ Canon 28 §1. "Whenever there are grave reasons why a judicial process cannot take place, and there are evident proofs of a crime and the time for a criminal action has not run out, then the penalty may be inflicted or declared by an extrajudicial decree. On the other hand, penances and penal remedies may be imposed in any kind of case." English translation from Carr, 107.

⁴¹ *Communicationes*, 9(1977), 161.

The 1983 Code

Suspension in the 1983 Code⁴² is only a medicinal penalty and is no longer an expiatory penalty as it was in the 1917 Code. The 1983 Code has four types of suspensions: (1) total or partial suspension of orders; (2) total or partial suspension of governance; (3) total or partial suspension of office;⁴³ and (4) total suspension, which includes suspension of orders, governance and office.⁴⁴

These are spelt out in detail in canon 1333:

- §1 Suspension, which can affect only clerics, prohibits:
- 1° all or some of the acts of the power of order;
 - 2° all or some of the acts of the power of governance;
 - 3° the exercise of all or some of the rights or functions attaching to an office.
- §2 In a law or a precept it may be prescribed that, after a judgement which imposes or declares the penalty, a suspended person cannot validly perform acts of the power of governance.
- §3 The prohibition never affects:
- 1° any offices or power of governance which are not within the control of the Superior who establishes the penalty;
 - 2° a right of residence which the offender may have by virtue of office;
 - 3° the right to administer goods which may belong to an office held by a person suspended, if the penalty is *latue sententiae*.
- §4 A suspension prohibiting the receipt of benefits, stipends, pensions or other such things, carries with it the obligation of restitution of whatever has been unlawfully received, even though this was in good faith.

The suspension of clerics totally or partially restricts their ability to function liturgically and/or in ecclesiastical governance. A suspension does not mean the cleric has lost his

⁴² English translation in *The Code of Canon Law in English Translation*, new rev. ed, Prepared by The Canon Law Society of Great Britain and Ireland, in association with the Canon Law Society of Australia and New Zealand and The Canadian Canon Law Society, (London: Harper Collins Liturgical, 1997). All translations of the 1983 Code from this source.

⁴³ Canon 145 §1 An ecclesiastical office is any post which by divine or ecclesiastical disposition is established in a stable manner to further a spiritual purpose.

§2. The duties and rights proper to each ecclesiastical office are defined either by the law whereby the office is established, or by a decree of the competent authority whereby it is at one and at the same time established and conferred.

⁴⁴ Bernal, Vol. IV/1, 336.

office or place of residence. If the cleric has received a *latae sententiae* penalty, he can still administer the goods associated with his office, for example parish property if he is the parish priest.

Normally a suspension is a general suspension unless it is specified that the suspension is limited to certain acts. For example, a bishop ordaining a cleric without dimissorial letters would not be able to ordain again for another year.⁴⁵ A suspension can forbid all or some of the acts of the power of the sacrament of orders. For example, celebration of the Eucharist, anointing of the sick, and the sacrament of penance. If a suspended priest celebrated the Eucharist, it would be valid but illicit. A partial decree of suspension should make mention of the withdrawal of the faculty to officiate at weddings because the priest is an official witness of the Church, and the couple bestow the sacrament on themselves. The validity of any marriage could be in doubt.

Latae Sententiae penalties

It was recognised that automatic or *latae sententiae*⁴⁶ penalties are necessary to provide immediate punishment for serious crimes, as well as to deal with secret crimes.⁴⁷ Canon 1314 states that penalties are normally to be *ferendae sententiae*,⁴⁸ (imposed by an Ordinary or a tribunal) but can be *latae sententiae* if the law or precept determines this.⁴⁹

⁴⁵ Canon 1383. A Bishop who, contrary to the provision of canon 1015, ordained someone else's subject without the lawful dimissorial letters, is prohibited from conferring orders for one year. The person who received the order is ipso facto suspended from the order received.

⁴⁶ Josemaria Sanchis, in J. Arias in A. Marzoa, J. Miras and R. Rodrigues-Ocana, *Exegetical Commentary on the Code of Canon Law*, Vol. IV/1, (Montreal: Wilson & Lafleur, 2004), 238: "*Latae sententiae* penalties...are incurred ipso facto by the very fact of the offense having been committed." Once it is verified that the crime has in fact been committed, the legislator imposes the penalty on the offender by the law itself. This canon also allows for the fact that some crimes cannot be effectively punished by *ferendae sententiae* penalties.

⁴⁷ V. De Paolis, "De recognoscendo iure poenali canonico," in *Periodica* 63(1974), 54-58; Tom Green, "The Future of Penal Law in the Church," in *The Jurist* 35(1975), 224-227.

⁴⁸ Josemaria Sanchis, Vol. IV/1, 238: "*Ferendae sententiae* penalties...are applied by a sentence from a judge or a decree from a superior, following a penal procedure (judicial or administrative, depending on the case) to obtain juridical certainty that there was an offense and to ascertain the author's guilt."

⁴⁹ Canon 1314. "A penalty is for the most part *ferendae sententiae*, that is, not binding upon the offender until it has been imposed. It is, however, *latae sententiae*, so that it is incurred automatically upon the commission of an offence, if the law or precept expressly lays this down."

There are six *latae sententiae* suspensions in the 1983 Code:

1. physically attacking a bishop;⁵⁰
2. a deacon attempting to celebrate the Eucharist;⁵¹
3. simulating absolution in the sacrament of penance⁵² e.g. a deacon or a priest without the faculty;
4. falsely accusing⁵³ a confessor of solicitation⁵⁴ the *Coetus* for the Commission was concerned to protect the priest;⁵⁵
5. unauthorised ordination, canon 1383;⁵⁶ and
6. cleric attempting to marry, canon 1394 §1.⁵⁷

⁵⁰ Canon 1370 §2. One who does this against a Bishop incurs a *latae sententiae* interdict and, if a cleric, he incurs also a *latae sententiae* suspension.

⁵¹ Canon 1378 §2. The following incur a *latae sententiae* interdict or, if a cleric, a *latae sententiae* suspension: 1° a person who, not being an ordained priest, attempts to celebrate Mass.

⁵² Canon 1378 §2 The following incur a *latae sententiae* interdict or, if a cleric, a *latae sententiae* suspension: 2° a person who, apart from the case mentioned in §1, though unable to give valid sacramental absolution, attempts to do so, or hears a sacramental confession;
N.B. There are exceptions with canon 976 and danger of death, or canon 144 and common error.

⁵³ Canon 1390 §1. A person who falsely denounces a confessor of the offence mentioned in Can. 1387 to an ecclesiastical Superior, incurs a *latae sententiae* interdict and, if a cleric, he also incurs a suspension.

⁵⁴ Canon 1387. A priest who in confession, or on the occasion or under the pretext of confession, solicits a penitent to commit a sin against the sixth commandment of the Decalogue, is to be punished, according to the gravity of the offence, with suspension, prohibitions and deprivations; in the more serious cases he is to be dismissed from the clerical state.

⁵⁵ *Communicationes* 9(1977), 313: "qua secus confessarius careret necessaria tutela."

⁵⁶ Canon 1383. A Bishop who, contrary to the provision of Canon 1015, ordained someone else's subject without the lawful dimissorial letters, is prohibited from conferring orders for one year. The person who received the order is ipso facto suspended from the order received.

⁵⁷ Canon 1394 §1. Without prejudice to the provisions of Canon 194 §1 n. 3, a cleric who attempts marriage, even if only civilly, incurs a *latae sententiae* suspension. If, after warning, he has not reformed and continues to give scandal, he can be progressively punished by deprivations, or even by dismissal from the clerical state.

§2. Without prejudice to the provisions of Can. 694, a religious in perpetual vows who is not a cleric but who attempts marriage, even if only civilly, incurs a *latae sententiae* interdict, also loses office. Cf. cc. 277, 194.

***Ferendae sententiae* suspensions**

There are three possible *ferendae sententiae* (imposed) suspensions in the 1983 Code:

- (1) simoniacal celebration of the sacraments;⁵⁸
- (2) solicitation;⁵⁹ and
- (3) Sexual Misconduct in an ongoing manner.⁶⁰

A bishop could also suspend a cleric for other offences using canon 1399.

Suspension of a Priest

Suspending a priest is a last resort in canon law.⁶¹ Canon 1347 requires that an offender must be warned to withdraw from contumacy or contempt for the authority of the Church.⁶² The warning should be recorded in a document kept in the secret archives.⁶³ The warning is necessary for *ferendae sententiae* penalties, because although the law is broken the priest might not be in contumacy. The offender could be in ignorance or have acted without realising the seriousness of what he was doing. For *latae sententiae* penalties, the law contains the warning. Ignorance is no excuse for clerics.

⁵⁸ Canon 1380. "A person who through simony celebrates or receives a sacrament, is to be punished with an interdict or suspension." i.e. buying and selling spiritual things for money.

⁵⁹ Canon 1387. "A priest who in confession, or on the occasion or under the pretext of confession, solicits a penitent to commit a sin against the sixth commandment of the Decalogue, is to be punished, according to the gravity of the offence, with suspension, prohibitions and deprivations; in the more serious cases he is to be dismissed from the clerical state." Igino Tarocchi, "Solicitation," Compiled under the direction of Francesco Cardinal Roberti, Pietro Palazzini, (ed.), Trans Henry Yannone, *Dictionary of Moral Theology*, (Westminster: The Newman Press, 1962), defines the crime of solicitation as "any act by which a confessor in the sacrament of penance either induces a penitent to sin seriously against chastity or accepts the inducements of a penitent against chastity (1917 canon 904)". Solicitation can be either active or passive. Therefore, solicitation leads another to commit sinful acts by means of explicit words, advice, promises, signs, actions or any other method that reveals the intention of the solicitor to solicit.

⁶⁰ Canon 1395 §1. A cleric living in concubinage, other than in the case mentioned in Can. 1394, and a cleric who continues in some other external sin against the sixth commandment of the Decalogue which causes scandal, is to be punished with suspension. To this, other penalties can be progressively added if after a warning he persists in the offence, until eventually he can be dismissed from the clerical state.

⁶¹ Canon 1341. The Ordinary is to start a judicial or an administrative procedure for the imposition or the declaration of penalties only when he perceives that neither by fraternal correction nor reproof, nor by any method of pastoral care, can the scandal be sufficiently repaired, justice restored and the offender reformed.

⁶² That is, a "rebellious inclination against authority and discipline." V. De Paolis, 69.

⁶³ Canon 1339 §3.

During the process for the revision of the Code of Canon Law, there was a request for more penalties for specific crimes, and these were increased to 36 penalties in the 1980 schema. "Grave cause" in the 1973 Schema was replaced with "just cause" in the 1980 schema making it easier to use the administrative process.

While canons 1342 §1⁶⁴ and 1720⁶⁵ provide for an Ordinary to suspend using an extra-judicial decree by a bishop, canon 1342 §3⁶⁶ requires the ordinary to "hear" the person upon whom he proposes to impose the penalty. There must always be due process involved in any penal case. There should always be a preliminary investigation (canons 1717-1719).⁶⁷

⁶⁴ Canon 1342 §1. Whenever just causes preclude a judicial process, a penalty can be imposed or declared by extrajudicial decree; penal remedies and penances, however, can be applied by decree in any case whatsoever.

⁶⁵ Canon 1720. If the Ordinary believes that the matter should proceed by way of an extra-judicial decree:

- 1° he is to notify the accused of the allegation and the proofs, and give an opportunity for defence, unless the accused, having been lawfully summoned, has failed to appear;
- 2° together with two assessors, he is accurately to weigh all the proofs and arguments;
- 3° if the offence is certainly proven and the time for criminal proceedings has not elapsed, he is to issue a decree in accordance with Canons 1342-1350, stating at least in summary form the reasons in law and in fact.

⁶⁶ Canon 1342 §3. What a law or precept states about the imposition or declaration of a penalty by a judge in a trial must be applied to a superior who imposes or declares a penalty by extrajudicial decree unless it is otherwise evident or unless it concerns prescripts which pertain only to procedural matters.

⁶⁷ Canon 1717 §1. Whenever the Ordinary receives information, which has at least the semblance of truth, about an offence, he is to enquire carefully, either personally or through some suitable person, about the facts and circumstances, and about the imputability of the offence, unless this enquiry would appear to be entirely superfluous.

- §2. Care is to be taken that this investigation does not call into question anyone's good name.
- §3. The one who performs this investigation has the same powers and obligations as an auditor in a process. If, later, a judicial process is initiated, this person cannot take part in it as a judge.

Canon 1718 §1. When the facts have been assembled, the Ordinary is to decree:

- 1° whether a process to impose or declare a penalty can be initiated;
 - 2° whether this would be expedient, bearing in mind Can. 1341;
 - 3° whether a judicial process is to be used or, unless the law forbids it, whether the matter is to proceed by means of an extra-judicial decree.
- §2. The Ordinary is to revoke or change the decree mentioned in §1 whenever new facts indicate to him that a different decision should be made.
- §3. In making the decrees referred to in §§1 and 2, the Ordinary, if he considers it prudent, is to consult two judges or other legal experts.

The penal trial is the preferred process to impose a suspension.⁶⁸ It has the objects of repairing scandal, restoring justice and reforming the offender.⁶⁹ In an Australian penal case, the Congregation for Clergy found that the archbishop violated canons 221, 51, 39 and 1717 and 483 §2 by using civil procedures.⁷⁰ This Congregation also pointed out in a Canadian case that a bishop should carry out a preliminary investigation and follow the procedures in canons 1717-1720 before withdrawing faculties, or imposing any penalty.⁷¹ This means that the facts of the case and the imputability of the cleric have been properly documented.⁷² This documentation is important whether there is a penal trial or an administrative process.

Since a suspension is a medicinal penalty, it cannot be imposed for a specified period, but it can only apply “for as long as the scandal continues in the community”, or “until the priest ceases the affair”.⁷³

Effects of suspension

Suspension does not prevent reception of the sacraments. A suspended priest can receive the sacraments so long as he is not in grave sin. When a cleric is suspended

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

Canon 1719. The acts of the investigation, the decrees of the Ordinary by which the investigation was opened and closed, and all those matters which preceded the investigation, are to be kept in the secret curial archives, if they are not necessary for the penal process.

⁶⁸ Canon 221 §1. Christ's faithful may lawfully vindicate and defend the rights they enjoy in the Church before the competent ecclesiastical forum in accordance with the law.

§2. If any members of Christ's faithful are summoned to trial by the competent authority, they have the right to be judged according to the provisions of law, to be applied with equity.

§3. Christ's faithful have the right that no canonical penalties be inflicted upon them except in accordance with the law.

⁶⁹ Canon 1341. “An ordinary is to take care to initiate a judicial or administrative process to impose or declare penalties only after he has ascertained that fraternal correction or rebuke or other means of pastoral solicitude cannot sufficiently repair the scandal, restore justice, or reform the offender.”

⁷⁰ Congregatio pro Clericis, 23 August 2001, Prot. No. 2001/1099, quoted in Augustine Mendonça, *The Bishop as the Mirror of Justice and Equity in the Particular Church: Some Practical Reflections on Episcopal Ministry*, unpublished paper.

⁷¹ Congregation for the Clergy, Decree, Prot. No. 37937/05 CA. June 23, 2007, quoted in Francis Morrisey OMI, “Violations of Canon 277 (with an Adult) Appropriate and Just Responses,” *The Canonist* 1(2010), no. 2: 55-67.

⁷² Pat Lagges, “The Penal Process: The Preliminary Investigation in Light of the Essential Norms of the United States.” in P. Cogan, ed., *Sacerdotes iuris*, (Ottawa: Saint Paul University, 2005), 255-296. It must be ascertained if canons 1323 and 1324 apply.

⁷³ James Provost. *Roman Replies and CLSA Advisory Opinions 1995*. Washington D.C. Canon Law Society of America. 1995. 99-100.

with a *latae sententiae* penalty that has not been declared, any acts contrary to the suspension are valid but illicit. However, when the suspension *latae sententiae* or *ferendae sententiae* is declared, the law may establish that acts of governance contrary to the suspension are invalid. A marriage officiated at by a suspended priest is always invalid.⁷⁴

However, if the suspension of the cleric has not been declared,⁷⁵ the cleric may celebrate a sacrament, administer a sacramental, and issue an act of governance for any just reason. Even when another priest is available who is not suspended, the suspended priest can celebrate the sacraments at the request of the faithful for any just reason. This reason could be simply for the spiritual benefit of the member of the faithful. Because the supreme law of the Church is the salvation of souls (canon 1752), the faithful have a right to the sacraments and the cleric has an obligation to celebrate them.⁷⁶ Also, the cleric has no obligation to dishonour himself and say that he is suspended.⁷⁷ When a member of the faithful is in danger of death, the suspended cleric can and must celebrate the sacraments for them whether the suspension is a declared *latae sententiae* or *ferendae sententiae* suspension.⁷⁸

Authority to Remove the Penalty of Suspension 1354-1358

To have a suspension removed the suspended person must have withdrawn from contumacy i.e. a "rebellious inclination against authority and discipline."⁷⁹ Once the person has withdrawn from contumacy, the suspension must be remitted and remission

⁷⁴ Cf. Bernal, 337; Canon 1109. Within the limits of their territory, the local Ordinary and the parish priest by virtue of their office validly assist at the marriages not only of their subjects, but also of non-subjects, provided one or other of the parties is of the Latin rite. They cannot assist if by sentence or decree they have been excommunicated, placed under interdict or suspended from office, or been declared to be such.

⁷⁵ Canon 1335. If a censure prohibits the celebration of the sacraments or sacramentals or the performance of an act of governance, the prohibition is suspended whenever this is necessary to provide for the faithful who are in danger of death. If a *latae sententiae* censure has not been declared, the prohibition is also suspended whenever one of the faithful requests a sacrament or sacramental or an act of the power of governance; for any just reason it is lawful to make such a request.

⁷⁶ Juan Arias, in E. Caparros, M. Theriault and J. Thom, eds., *Code of Canon Law Annotated*, (Montreal: Wilson & Lafleur Ltd, 1993), 835.

⁷⁷ Canon 1352 §2. The obligation of observing a *latae sententiae* penalty which has not been declared, and is not notorious in the place where the offender actually is, is suspended either in whole or in part to the extent that the offender cannot observe it without the danger of grave scandal or loss of good name.

⁷⁸ Canon 976. Any priest, even though he lacks the faculty to hear confessions, can validly absolve any penitents who are in danger of death, from any censures and sins, even if an approved priest is present.

⁷⁹ De Paolis, 69.

cannot be refused.⁸⁰ "Withdrawal from contumacy" includes repentance for committing the crime and reparation for damages or the promise to make reparations.⁸¹ Canon 1354 §3 allows for the Apostolic See to reserve penalties to itself and these reservations are to be interpreted strictly.⁸²

Non-reserved suspensions

Those suspensions not reserved to the Apostolic See, according to canon 1355 §1,⁸³ can be remitted by the Ordinary⁸⁴ who initiated the trial, or the Ordinary where the offender lives. Remission is normally made in writing,⁸⁵ unless it needs to be public to protect the reputation of the offender or to repair scandal.

⁸⁰ Canon 1358 §1. The remission of a censure cannot be granted except to an offender whose contempt has been purged in accordance with Canon 1347 §2. However, once the contempt has been purged, the remission cannot be refused.

§2. The one who remits a censure can make provision in accordance with Canon 1348, and can also impose a penance.

⁸¹ Canon 1347 §1. A censure cannot validly be imposed unless the offender has beforehand received at least one warning to purge the contempt, and has been allowed suitable time to do so.

§2. The offender is said to have purged the contempt if he or she has truly repented of the offence and has made, or at least seriously promised to make, appropriate reparation for the damage and scandal.

⁸² Canon 1354 §3. If the Apostolic See has reserved the remission of a penalty to itself or to others, the reservation is to be strictly interpreted.

⁸³ Canon 1335. If a censure prohibits the celebration of the sacraments or sacramentals or the performance of an act of governance, the prohibition is suspended whenever this is necessary to provide for the faithful who are in danger of death. If a *latae sententiae* censure has not been declared, the prohibition is also suspended whenever one of the faithful requests a sacrament or sacramental or an act of the power of governance; for any just reason it is lawful to make such a request.

⁸⁴ Canon 134 includes the Roman Pontiff, diocesan bishops, diocesan administrators, vicars general, some episcopal vicars, major superiors of clerical religious institutes of pontifical right and major superiors of clerical societies of apostolic life of pontifical right.

⁸⁵ Canon 1361 §1. A remission can be granted even to a person who is not present, or conditionally.

§2. A remission in the external forum is to be granted in writing, unless a grave reason suggests otherwise.

§3. Care is to be taken that the petition for remission or the remission itself is not made public, except in so far as this would either be useful for the protection of the good name of the offender, or be necessary to repair scandal

Any Ordinary and any confessor under specific circumstances can usually remit the penalty of suspension even when it has been declared.⁸⁶ All who can dispense from a law including a penalty and all who can exempt one from a precept giving a penalty can remit the penalty.⁸⁷

⁸⁶ Thomas J. Green, "Delicts and penalties in General", in *New Commentary on the Code of Canon Law*, John P. Beal, James A. Coriden, Thomas J. Green (eds), (New York: Paulist Press, 2000) 1567-1569.

Canon 1355 §1 Provided it is not reserved to the Apostolic See, a penalty which is established by law and has been imposed or declared, can be remitted by the following:

- 1° the Ordinary who initiated the judicial proceedings to impose or declare the penalty, or who by decree, either personally or through another, imposed or declared it;
- 2° the Ordinary of the place where the offender actually is, after consulting the Ordinary mentioned in n. 1, unless because of extraordinary circumstances this is impossible.

§2. Provided it is not reserved to the Apostolic See, a *latae sententiae* penalty established by law but not yet declared, can be remitted by the Ordinary in respect of his subjects and of those actually in his territory or of those who committed the offence in his territory. Moreover, any Bishop can do this, but only in the course of sacramental confession.

Canon 1356 §1. A *ferendae* or a *latae sententiae* penalty established in a precept not issued by the Apostolic See, can be remitted by the following:

- 1° the Ordinary of the place where the offender actually is;
- 2° if the penalty has been imposed or declared, the Ordinary who initiated the judicial proceedings to impose or declare the penalty, or who by a decree, either personally or through another, imposed or declared it.

§2. Before the remission is granted, the author of the precept is to be consulted, unless because of extraordinary circumstances this is impossible.

Canon 1357 §1. Without prejudice to the provisions of Canons 508 and 976, a confessor can in the internal sacramental forum remit a *latae sententiae* censure of excommunication or interdict which has not been declared, if it is difficult for the penitent to remain in a state of grave sin for the time necessary for the competent Superior to provide.

§2. In granting the remission, the confessor is to impose upon the penitent, under pain of again incurring the censure, the obligation to have recourse within one month to the competent Superior or to a priest having the requisite faculty, and to abide by his instructions. In the meantime, the confessor is to impose an appropriate penance and, to the extent demanded, to require reparation of scandal and damage. The recourse, however, may be made even through the confessor, without mention of a name.

§3. The same duty of recourse, when they have recovered, binds those who in accordance with Canon 976 have had remitted an imposed or declared censure or one reserved to the Apostolic See.

⁸⁷ Canon 1354 §1. Besides those who are enumerated in Canons 1355-1356, all who can dispense from a law which is supported by a penalty or exempt from a precept which threatens a penalty, can also remit the penalty itself.

§2. Moreover, a law or precept which establishes a penalty can also grant to others the power of remitting the penalty.

§3. If the Apostolic See has reserved the remission of a penalty to itself or to others, the reservation is to be strictly interpreted.

Conclusion

Unfortunately, penalties such as suspension are necessary in the Church. Priests do not always, in Saint Paul's words, lead a "life worthy of their vocation." (Eph. 4:1). There was once little distinction made between expiatory and medicinal penalties, but careful distinctions are now made between them. For some offences, expiatory penalties, such as dismissal from the clerical state, are imposed primarily to repair scandal, and remedy the damage done to the Church by the offender.

Suspension is a medicinal penalty with the primary aim to reform the offending priest. The suspension is imposed after the priest has been warned and when all other actions such as fraternal correction have failed. There are just the two canons 1333 and 1334 dealing with suspension in the 1983 Code. Once the suspension has been imposed, it can have other benefits of repairing the scandal, and reducing the harm to the Church community. The specific details of the suspension are determined by the precept that the priest was given or by the decree that imposed the suspension.

Suspensions continue until they are remitted by a competent Ordinary, or in specific circumstances a priest in the sacrament of Penance. A suspension that prohibits the celebration of a sacrament is suspended when a member of the faithful is in danger of death and wishes to receive a sacrament. Also, a member of the faithful can receive a sacrament from a priest suspended by a *latae sententiae* (automatic) suspension that has not been declared, provided the member of the faithful is in good faith when he/she requests the sacrament.

A priest who has received a *latae sententiae* suspension can still administer the ecclesiastical goods associated with the office that he holds, for example, a parish priest could still administer the ecclesiastical goods of the parish. Furthermore, any suspended priest retains the right to use the dwelling associated with the office that he holds.



The Canonist

Journal of the Canon Law Society of Australia and New Zealand

Vol 9 No 1 2018

Contents

Address of His Holiness Pope Francis to the Officials of the Tribunal of the Roman Rota for the Inauguration of the Judicial Year Pope Francis	3
Reflections on Pope Francis' Allocution to the Roman Rota 2018 Anthony Malone	7
The Assessor in a Marriage Nullity Trial Michael-Andreas Nobel	11
The Suspension of Priests: Procedures to Impose and Remove the Penalty Brendan Daly	40
Synodality: "Walking Together" A Constitutive Element of the Church - Reflections in Preparation for a Plenary Council John Renken	57
Looking again at the Laity Marcus Francis	74
Comparing the Roles of the Promoter of Justice in the Judicial Penal Trial and of the Queensland Director of Public Prosecutions Patrick Mullins	88
Reflections on <i>Amoris Laetitia</i> Anthony Malone	112

The Canonist

**Journal of the Canon Law Society of Australia and New Zealand
published twice yearly**

Editorial Board

Rodger Austin JCD STL Chairman

Peter Blayney BA(Hons) BTh MA(Hons) STL Grad Dip Past Guid, JCL

Brendan Daly BTheol PG Dip Theol JCD PhD

Elizabeth Delaney SGS BSc MA MEd JCD PhD

Brian Sweeney FMS MA(Hons) MEd Admin DipTh DipRE JCD

The Editorial Board referees all articles submitted for publication.

The annual subscription for non-members of the Canon Law Society of Australia and New Zealand is \$AUD44.00 (GST included).

Single copies \$AUD 22.00 (GST included).

All communications concerning articles and subscriptions should be addressed to:

The Chairman

CLSANZ Editorial Board

PO Box 1

LISMORE NSW 2480

Email: publications@clsanz.catholic.org.au

Copyright © Canon Law Society of Australia and New Zealand

ISSN 1837-7025