

***The Holy See and the Convention on
the Rights of the Child in Canada***

**An NGO Report
on how the Holy See's laws impact Canada's
Compliance with the Convention**

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Catholics for a Free Choice-Canada
P.O. Box 65179
Toronto, Ontario
M4K 1W2
416-463-0948

Introduction

In October 2002, Catholics for a Free Choice (CFFC) submitted a report to the Committee on the Rights of the Child, *The Holy See and the Convention on the Rights of the Child*. The purpose of the report was to assist the Committee in conducting a comprehensive review of the laws and policies of the Holy See, and an investigation into how it often compromises the laws of other States parties to the Convention on the Rights of the Child.

As a State party to the Convention, Canada is obligated to comply fully with the Convention. However, because there are laws of the Holy See that contradict Canada's child protection laws, Canada is in danger of not fulfilling its obligations to the Convention. Subsequently, Catholics for a Free Choice–Canada (CFFC–Canada), a partner organization with CFFC, is submitting this report to the Canadian government and to the Committee on the Rights of the Child to expose how the Holy See's laws and practices conflict with Canada's child protection laws, leaving children vulnerable to continued abuse and exploitation by Catholic clergy. It is the hope of CFFC-Canada that this report will assist the Committee and the Canadian government to acknowledge the implications of the Holy See's laws on child abuse and will thus hold the Canadian Catholic church accountable to Canadian law and the Convention to which the Holy See is a State party.

Finally, a copy of this report has been submitted to the Canadian Catholic church and the Holy See's permanent mission in Geneva, asking that they submit reports to the Canadian government and the Committee to respond to our shared concerns.

About this Report

This report provides a review of the Holy See's activities regarding the implementation of the Convention on the Rights of the Child within Canada. The focus of this report will be the sexual abuse and exploitation of children and adolescents by members of Canadian Catholic clergy and religious, the concealment of the abuse, and how the abuse has been dealt with once brought to light. The conclusion will be, that the Holy See knew that the abuse was occurring, and had the responsibility to comply with Canadian law and the Convention on the Rights of the Child, to ensure that Canadian children were protected from such abuse, and justly compensated for it.

The Holy See is a Non-member State that maintains a Permanent Observer Mission to the United Nations. It is a full member of some agencies, and a full state participant at major United Nations conferences with the right to ratify or accede to international treaties and to submit reservations to documents. The Holy See's status allows it to participate in United Nations' processes when it suits its purposes, but often removes it from the full accountability expected of Member States. We believe that it is essential that the Holy See be held accountable.

The Catholic Church hierarchy claims over 1 billion adherents worldwide, comprising one-sixth of the world's population. In Canada, 46% of Canadians are Roman Catholic, and many of the health care facilities and schools are directly run by the Catholic Church. The Holy See's compliance with the Convention of the Rights of the Child should be a serious concern to Canada, given the extent of its influence and effect on children in Canada and internationally.

Many thousands of cases of child abuse by Catholic clergy have been reported in the media since 1995 worldwide, and many of these are Canadian cases. One of the first extensive inquiries into such abuse took place in Canada, and resulted in a report by the Winter Commission in 1991.

Catholics for a Free Choice-Canada (CFFC-Canada) is uniquely suited to prepare this report on the Holy See's compliance with the Convention in Canada, as we are the Canadian partner of CFFC, which is an international non-governmental organization involved in Catholic social justice and human rights efforts. Additionally, CFFC enjoys special consultative status with the Economic and Social Council (ECOSOC) of the United Nations.

The Holy See and the Convention on the Rights of the Child

The Holy See was one of the first to accede to the Convention on the Rights of the Child in 1990, making it accountable to the world community for implementation of the Convention. By its accession, the Holy See accepted the responsibilities of the Convention, and agreed to implement its provisions to further the good of children throughout the world. A party is expected to comply with the Convention's obligations within a reasonable time after ratification; the Holy See has now had twelve years to comply.

After acceding to the Convention in 1990, the Holy See submitted its initial report in 1994, following the requirements of Article 44 of the Convention. However, its follow up reporting, due in 1997 and 2002, has not yet been submitted.

Law of the Holy See

As Canada and the Committee members analyze the child protection laws of Canada, it is important that they consider the laws of the Holy See in order to ensure that those laws do not prevent Canada from being in compliance with the Convention. Furthermore, knowledge and understanding of the Holy See's laws will assist Canada in holding the Canadian Catholic church accountable to its laws.

The "Code of Canon Law" (the "code") provides the legal underpinning not only for the fundamental legislation of the Vatican City State (Vatican City is the physical or territorial base of the Holy See) but also spells out the constitutive and disciplinary scheme of the Roman Catholic church and is applicable to all members throughout the

world. Canon law has several sections that illustrate recognition of some rights of the child and repugnance for sexual abuse of children by clergy and religious.

First, the code, like the Convention, recognizes legal majority of individuals at age eighteen. The code provides that before the age of majority the child's exercise of his or her rights is subject to the authority of the child's parents or guardians (although there are some instances where the rights of the child must take precedence over the parents' authority, such as in instances of child abuse).

The code makes several assertions of basic rights that are applicable to the protection and defense of children. The code clearly states that Catholics have the right to defend their rights in a competent church forum, in accordance with the law.

The code also defines relationships between people in terms of their hierarchical relationship within the church. The pope holds supreme, full, immediate and universal power in the Catholic church. He alone approves changes to the law in the codes, and is the bishops' immediate superior.

The diocesan bishops oversee the conduct and life of the priests subject to them, even, in some cases, legislating where appropriate. These men are obliged to promote the observance of laws and to act in executive and judicial roles in accordance with the law. The code makes specific provision for the competence of diocesan bishops to issue norms and pass judgment on matters relating to the priests' obligations to their vows of celibacy and sexual continence. The bishop is the executive, legislator and judge for all matters in his diocese. In most cases, responsibility for handling cases of clerical sexual abuse of children lies first with the diocesan bishop, and ultimately with the Holy See.

The Holy See's legal code continues, in its section on criminal law, stating explicitly that clergy sexual activity with minors is a serious offence, to be dealt with in a serious manner, even including dismissal from the clerical state—considered the most severe penalty for a priest. The code then provides a detailed judicial process to investigate, confirm or repudiate claims, and punish criminal acts. This process includes several mechanisms for protecting the rights of the accused cleric as well as the accusing party, and provisions for due process before the law. The law guarantees the victims of the abuse the opportunity to participate in a judicial proceeding and to request and be awarded reparations. It even prescribes a penalty for negligence, which could be asserted in these cases when a superior has failed to investigate or punish instances of actionable offenses brought to his attention. In addition to these codified provisions, the legal system of the Holy See allows a superior to petition, directly to the Holy See in egregious cases, enabling a punishment to be inflicted swiftly, and without due process.

There are special laws for Catholics who are members of institutes of consecrated life, both secular and religious. We know many of these institutes as "religious orders" such as the Dominicans, the Franciscans, and the Jesuits, or the Christian Brothers, or religious institutes of women. For these people, the code determines that certain offences call for mandatory dismissal from the institute (but the code also provides that for the category of

sexual offences, the hierarchical superior need not dismiss the offender if the superior judges that justice can be restored and scandal repaired in another manner). Included in these offences are homicide, kidnapping, and sexual activity that involves force or threats or takes place in public or with a minor. In addition to the code, these organizations also have constitutions and rules of conduct specific to each. The superiors within these institutes are responsible for seeing that the law is followed by the members of the institutes. All these laws addressing clergy sexual abuse of a minor, and the local authorities charged with implementing them, are now directly subordinate to one office of the Holy See.

New Law Requires Secrecy and Centralized Review

In 2001, the Holy See issued a document entitled *Sacramentorum sanctitatis tutela*, instituting a little publicized but important change in the law. In this document, which supersedes the law in the codes, the Holy See directs all the bishops of the world to inform one of its offices, the Congregation for the Doctrine of the Faith, if they receive an allegation of child sexual abuse by a cleric. This same law prohibits the bishops or other church authorities from taking any action beyond a preliminary investigation of the allegation without further direction from the Holy See's delegate.

According to the new law, this office of the Holy See may, at its discretion, conduct an inquiry itself, or transmit norms to the local ecclesiastical authority explaining how to proceed. These cases, the law states, are "subject to the pontifical secret". This is the Holy See's highest level of confidentiality—just short of the absolute secrecy required by sacramental confession—and provides that the Holy See reserves the right to punish any party who reveals information about clerical sexual abuse of children. Furthermore, the document mandates that no one but a priest may be involved in the proceedings concerning clergy sexual abuse of minors. These provisions raise questions about the integrity of the internal processes as well as questions of how this law might conflict with laws of the geographically defined jurisdictions in which the subjects of the Holy See find themselves.

The new legal requirements make clear two facts: (1) the Holy See has overtly claimed responsibility for managing these cases, and (2) the Holy See does not intend to comply fully with the Convention on the Rights of the Child (by skirting reporting requirements of Article 44 through its secrecy requirements and by frustrating legitimate efforts of other State parties to the Convention by advocating circumvention of their laws in favour of the Holy See's new secret procedures).

Overall, the Holy See's law does provide redress and some protection for children in cases of sexual abuse and also provides for punishment of clergy and religious who sexually abuse children. The existence of law, however, is of little use if the law is not enforced. The canon laws which touch on this issue are many and have been consistently ignored, inadequately applied, or wrongly applied in favour of the church authorities and its institutional image.

Does Canon Law comply with Canadian Law on Child Sexual Abuse?

In addition to the prohibition against sexual assault which is found in the *Criminal Code of Canada*, all Canadian provinces and the territories have child protection laws, which would apply to the issue of sexual abuse of children by clergy members. As an example, in Ontario the *Child and Family Services Act*, R.S.O. 1990 specifies in s. 72 that a person has the obligation to immediately report to the Children's Aid Society any suspicion that a child has been abused, sexually molested or sexually exploited. The obligation to report overrides any privilege which might otherwise be claimed (s. 72 (7)). Failure to report such child abuse is an offence if the person who knew about the abuse was a person who performs professional or other official duties with respect to children, including a "member of the clergy" (s. 72 (5) (b)).

Clearly there is a legal obligation under Canadian law to report this sexual abuse. However, the Canon law now specifies that the Congregation for the Doctrine of the Faith now has total authority over the investigation and resolution of allegations of sexual abuse of children by clergy members. This should be a matter of grave concern to Canada, when assessing the Holy See's compliance with the Convention within Canada.

The Failure of the Holy See to Deal with Clergy Abuse of Children

In its report of 1994, the Holy See did not make any reference to the clergy abuse of children which was increasingly a scandal in the Catholic Church. Given the evidence of a long standing problem of clergy and religious physical and sexual abuse around the world, it is troubling that the Holy See omitted any mention of the crisis in its 1994 report to the Committee. The only conclusion to be drawn is that the Holy See has been at least willfully ignorant, if not culpably negligent, in regard to sexual abuse of children by its representatives, preferring instead to maintain an institutional silence at the peril of those very children they purport to protect.

In fact, in Canada, the Canadian Conference of Catholic Bishops (CCCCB) had been struggling with this problem, which became impossible to ignore after the horrendous findings of clergy abuse of children by the Christian Brothers at Mount Cashel orphanage in Newfoundland. The Canadian Bishops issued, in 1992, a document entitled "From Pain to Hope" as a response to this scandal. In the report, it is noted as a "contributing factor" to the abuse "a church that too readily shields its ministers from having to account for their conduct; that is often tempted to settle moral problems behind a veil of secrecy which only encourages their growth". In the document, the Bishops stated their intent to "support those who with great difficulty, struggle to allow a painful truth to be heard, despite the conspiracy of silence which develops so readily as a way of self protection against the fear of scandal".

The Mount Cashel scandal had itself been the occasion for a Special Commission of Enquiry in 1990. The commission was established by the Archdiocese of St. John's, but to ensure credibility and to answer accusations that the church was investigating itself, the Archbishop appointed a former Lieutenant Governor, the Honourable Gordon A. Winter, an Anglican, as the Chair of the Commission.

Both the CCCB and the Winter Commission established policies or made recommendations on how the church should deal with allegations of clergy abuse of children, and try to prevent the abuse from happening in the future. In "From Pain to Hope" the bishops established a policy of immediate removal from office of any priest accused of child abuse, and of reporting this abuse to the police. The Winter Commission, with a wide mandate to examine the factors which may have contributed to the sexual abuse of children by members of the clergy and to determine why the abuse went undetected and unreported for so long, went even further in its recommendations. Some of the 55 recommendations are:

1. That the power of the clergy be reduced, and lay members of the local church become empowered to initiate changes;
2. That convicted priests never be assigned to pastoral responsibilities in a parish unless the parish council is informed and consulted, and that a convicted priest never be given a pastoral responsibility for children;
3. That the bishops across Canada address fully, directly, honestly and without reservation questions relating to the problematic link between celibacy and the priesthood.
4. That reasonable monetary compensation be provided to victims of abuse by clergy and religious.

Implementation of "The Winter Commission Report" and "From Pain to Hope" by the Holy See in Canada

The Holy See has not ensured that the rights of the child are protected from clergy abuse in Canada. There are still many instances of allegations of abuse of children by Catholic clergy or religious, which are not dealt with in the manner mandated by the CCCB. Priests who have been accused of and even convicted of child abuse continue to hold positions of trust in parishes. The Catholic church has hidden behind corporate law in order to evade financial responsibility for compensation, especially in the case of allegations by native people of abuse at residential schools. Allegations of past abuse continue to be made yet charges are not laid.

Priests Shuffled into new positions of trust

Following are some examples of clergy child abuse which have been either unaddressed, or not dealt with in accordance with the CCCB procedures.¹ No one knows the extent of the problem in Canada because church records are not public. It would require every diocese to open its files to piece together a total picture of the extent of abuse by priests.

1. Father James Kneale of Ft. Erie, Ontario, was convicted of child sexual abuse, and later relocated to a parish in Alberta. In 1999, the Bishop of Calgary, Frederick Henry, had to apologize to his parishioners for failing to tell them that the priest he had hired was a convicted child abuser.
2. In Hamilton, Ontario, Father Douglas Stamp was removed as head of pastoral services at a local hospital when it was revealed that he had been convicted in 1997 of sexually assaulting two 12 year-old boys.
3. In Manitoba, it was recently revealed that Martin Houston, a man convicted of sexual abuse in the 1960s, was ordained in 1990 and is now working as a priest.
4. Father Joseph Lang, a priest accused of having sexual relations with a minor in the U.S. was sent to work in a remote village in British Columbia in 1988. He withdrew in 2002, when his past was revealed.
5. A group of men who say they were sexually assaulted at church-run orphanages in Quebec continue to demand that charges be laid against three former staff members. The men said that they tried to launch a court action against the Brothers of Mercy in 1992, but were unable to gain assistance in tracking down the clergy members.²

Claimants go uncompensated

About 12,000 former students have filed almost 5,000 lawsuits alleging physical or sexual abuse in residential schools operated by three national churches and Catholic church organizations. The Anglican and Presbyterian national churches reached cost-sharing agreements with the federal government in which the churches agreed to pay 30 per cent of the compensation awarded to former students with validated claims.³ The Catholic church has so far refused to enter into such agreement; on the contrary, it has spent millions in legal fees, trying to escape legal responsibility. In 2001, the Alberta Court of Appeal ruled in favour of the institutional Catholic Church and held that there is no corporate legal entity known as the “Roman Catholic church”; therefore, any actions

¹ *The Guardian*, May 20, 2002

² *Canadian Press*, Nov 12, 2002

³ *Western Catholic Reporter*, Jan. 27, 2003

for compensation would have to be brought against the order for which the priest worked, or specific Catholic dioceses, and not the church as a whole. Most of the residential schools at which the abuse took place are located in northern Canada, and the orders which ran them have few assets. The Oblates of Mary Immaculate in Manitoba are seeking bankruptcy protection. The Manitoba Oblates operated 12 residential schools until the early 1970s; they are expecting to be named in about 2,500 law suits and their potential liability is estimated at \$270 million. Oblates in Alberta have said that they also may be forced to seek bankruptcy protection: they are directly named in about 1,200 lawsuits from native people claiming that they were sexually, physically and emotionally abused at residential schools.⁴

If the Holy See was complying with its obligations under the Convention on the Rights of the Child, the Catholic Church in Canada would assume financial responsibility for its fair share of compensation payments. In Ireland, the Catholic Church has chosen to acknowledge that it exists as an “entity” and therefore accepts responsibility as a total church for abuses committed by members of its clergy.⁵ In Canada, too, the Catholic Church should not hide behind a corporate veil in the fight against compensating children who have been abused by clergy.

On occasion, the Catholic Church has responded to claims for compensation by counter-claiming against the victim. John Caruso, of Ft. Erie, Ontario, sued Father James Kneale for sexual abuse which he alleges took place in 1985. Father Kneale responded with a counter-suit against the parents of Caruso, on the grounds that the parents were negligent for allowing their son to spend time with the priest.⁶

The Catholic Church held “World Youth Day” in Toronto during July 2002. It held itself out as a legal entity when it requested and obtained millions of dollars of grants from the City of Toronto and Province of Ontario. And when there was a \$38 million deficit even with those grants, the Catholic Church in Canada asked its parishioners across Canada to pitch in and contribute to pay off the debt. In complying with its obligations under the Convention, the Canadian Catholic church should also ensure that its assets across Canada are available to make the compensation claims.

Recommendations

To the Committee on the Rights of the Child

When Canada reports to the Committee in September 2003, the Committee should inquire about instances of clergy sexual abuse in Canada, and ask that the Canadian government explain how Canadian law holds the Canadian Catholic church officials and other religious leaders accountable in cases of clergy sexual abuse and exploitation. The

⁴ *The B.C. Catholic*, April 15, 2002

⁵ *Indian Residential School Survivors Society, News Release*, February 8, 2002

⁶ *The Globe*, May 13, 2002

Canadian government should be asked what measures it has taken to investigate the magnitude of such abuses and to prevent it from happening in the future.

To the Canadian Government

When reporting to the Committee, Canada should include information about the scope of clergy sexual abuse in Canada, and what measures the Canadian government has taken to protect children from future clergy sexual abuse and exploitation.

Canadian authorities should carry out an analysis of the Holy See's laws and the laws of Canada and determine areas where the Canadian Catholic church may not be in compliance with Canada's child protection laws. Canada should hold officials of the Canadian Catholic church accountable to its laws.

To the Holy See

The Holy See, a State party to the Convention on the Rights of the Child, is delinquent in its obligations, as it has not yet submitted its 1997 report to the Committee. It should do so immediately, and include a full report on the magnitude of child abuse by clergy and religious and with a concrete plan for ensuring that future abuse does not occur. It should also submit a report to the Canadian government to reveal the magnitude of cases of abuse in Canada, and measures the Holy See is taking to prevent future abuses.

To the Canadian Catholic Church

- The Catholic Church in Canada should cooperate with government officials to ensure that in handling cases of clergy sexual abuse, the Canadian Catholic church complies with the national laws of Canada.
- The Canadian Catholic church should work in conjunction with the Canadian government to ensure both Canada's and the Holy See's compliance with the Convention on the Rights of the Child.
- The Catholic Church in Canada should reach a cost-sharing agreement with the federal government's Office of Indian Residential Schools Resolution of Canada (OIRSRC) as have the Anglican and Presbyterian national churches.
- The Catholic Church in Canada should not evade financial responsibility by claiming that it is not a legal entity, but should, like the Catholic Church in Ireland, accept financial responsibility for any financial obligations arising from claims or judgments for child abuse by members of Catholic clergy or religious.
- The Catholic Church in Canada should assist claimants who are trying to locate clergy members whom they allege have abused them.

- If the Canadian Catholic bishops intend to “support those who, with great difficulty, struggle to allow a painful truth to be heard” (statement in “*From Pain To Hope*”) then the church should instruct its legal counsel not to employ aggressive legal tactics, such as the use of counter-suits; and should never require that the victim agree to a “confidentiality agreement” preventing the publication of any settlements.
- The Canadian Catholic Church should implement the “Winter Commission Report”, and in particular, should immediately both set up structures to empower Catholic laity.
- All church committees established to deal with problems of child abuse by clergy and religious should include victims and members of their families, in order to promote accountability and protection of children.

We are pleased to have had the opportunity to present our concerns about the Catholic Church in Canada and its compliance with the Convention of the Rights of the Child, and look forward to answering any questions which may arise from this report.

Submitted by Catholics for a Free Choice-Canada
P.O. Box 65179
Toronto, Ontario
M4K 3Z2