



The Doctrine Commission of the Anglican Church of Australia

Confessions and Confidentiality – March 2016

Confession

The practice of confession needs to be shaped by our theological framework, especially the doctrines of creation, sin, and redemption, and their application to the understanding of human society. All people have been made in God's image and must be treated with dignity and respect. We are also all corrupted and affected by sin. The atonement tells us that God takes sin seriously – so seriously, in fact, that God became incarnate and Christ died so that our sins might be forgiven. God desires reconciliation and the restoration of broken relationships, both with God and with one another. Through Christ, forgiveness is freely offered to the sinner, calling for the acknowledgment of sin, true repentance and amendment of life, bearing 'fruits worthy of repentance' (Luke 3:8). This is the proper context for the practice of confession. First John 1:8-9 tells us 'If we say that we have no sin, we deceive ourselves, and the truth is not in us. If we confess our sins, he who is faithful and just will forgive us our sins and cleanse us from all unrighteousness.'

Similarly, the Risen Christ, in 'sending' the disciples into the world (as he was sent by his Father), and breathing the Holy Spirit on them, gave to his disciples the authority to pronounce, or withhold, God's forgiveness (see John 20:21–23; c.f. Matthew 16:19). The Church has continually exercised this ministry, part of the wider ministry given to it by its Lord. It is in this context that the 'Reconciliation of a Penitent' (c.f. APBA p. 773 ff), which entails the making (and hearing) of confession, and the pronouncing of absolution, arises. From this gospel imperative comes the clear sense that in this ministry we are dealing with matters of eternal salvation.

The New Testament recognises a corporate dimension to confession: 'confess your sins to each other and pray for each other so that you may be healed' (James 5:16). There is a basic human reluctance to confront our own sin, and the involvement of others can encourage repentance and provide an opportunity for pastoral care of the penitent. Although public confession is recorded in the Scriptures (e.g., Jer 29, Ezra 9-10) and was sometimes practised in the early church, there is often a reluctance to confess private sins in public.

Over time, the wisdom and experience of the church led to the principles of private confession, recognising the pastoral importance of 'the unburdening of conscience and [receiving] spiritual consolation and ease of mind' by the confession of 'secret and hidden sins'. While BCP provides for regular corporate confession and absolution in the context of public worship services, it also recognises that private confession may be helpful in some cases. This is articulated in the first exhortation in the Order for the Administration of the Lord's Supper.

[B]ecause it is requisite, that no man should come to the holy Communion, but with a full trust in God's mercy, and with a quiet conscience; therefore if there be any of you, who by this means cannot quiet his own conscience herein, but requireth further comfort or counsel, let

him come to me, or to some other discreet and learned Minister of God's Word, and open his grief; that by the ministry of God's holy Word he may receive the benefit of absolution, together with ghostly counsel and advice, to the quieting of his conscience, and avoiding of all scruple and doubtfulness.

The role of the minister in pronouncing absolution is to declare God's forgiveness to those who repent. As the service of Evening Prayer in BCP reminds us,

[God] hath given power, and commandment, to his Ministers, to declare and pronounce to his people, being penitent, the Absolution and Remission of their sins: He pardoneth and absolveth all them that truly repent, and unfeignedly believe his holy Gospel.

Therefore confession and absolution are of utmost significance. The context in which every confession is heard is the desire of the penitent to be reconciled to God, to the church, and to those who have been harmed by their sin.

Confidentiality of Confessions

It is for this reason that the church has guarded confessions with strict confidentiality. Otherwise, those whose consciences are burdened may be too afraid or ashamed to seek and find forgiveness for their sins. Just as legal professional privilege is necessary to enable a client to be completely open with his or her legal counsel, so also the confidentiality of confessions encourages full disclosure from a penitent.

The historic law of our Church regarding the confidentiality of confessions is as set out in the Proviso to Canon 113 of the Canons of 1603. In most dioceses in Australia, this has been replaced by the Canon Concerning Confessions 1989, which is a modernised version of the 1603 Canon that for the most part mirrors the 1603 version.¹

Proviso to Canon 113 of 1603	Canon Concerning Confessions 1989
Provided always, that if any man confess his secret and hidden sins to the minister, for the unburdening of his conscience, and to receive spiritual consolation and ease of mind from him; we do not in any way bind the said minister by this our Constitution, but do straitly charge and admonish him, that he do not at any time reveal and make known to any person whatsoever any crime or offence so committed to his trust and secrecy ...	If any person confess his or her secret and hidden sins to an ordained minister for the unburdening of conscience and to receive spiritual consolation and ease of mind, such minister shall not at any time reveal or make known any crime or offence or sin so confessed and committed to trust and secrecy by that person without the consent of that person.

While the 1603 Canon strongly urges confidentiality for what is revealed in a confession, this confidentiality was not absolute. The Proviso to Canon 113 recognised that confidentiality had to be maintained unless 'they [the sins confessed] be such crimes as by the laws of this realm his own life may be called into question for concealing the same'. For example, a 17th century minister who heard a confession of treason was not required to keep that confession confidential. This single exception is

¹ An important difference between the two canons is that the 1603 Canon allowed an exception to the principle of absolute confidentiality (as further discussed below).

very important, because it establishes both that confidentiality is of the utmost importance, and also that exceptions could be made under extraordinary circumstances. At this point, the Anglican understanding of the confessional is markedly different to the Roman Catholic understanding, in which the so-called ‘Seal of the Confessional’ allows no possible exceptions.² The single exception in the 1603 Canon demonstrates that, in a particular historical circumstance, it was not considered contrary to the doctrine of our Church for there to be an exception to the principle of strict confidentiality in certain extreme circumstances. As indicated above, however, that understanding of our doctrine was not articulated in the wording of the Canon of 1989.

An Exception for Confessions of Criminal Abuse of the Vulnerable?

To be authentic in character, a confession of thoughts, words or actions needs to include a concern for any who might have been hurt or harmed by the matters confessed. In some cases it is a first step whereby the needs of others are addressed, and refusal to do so may bring the genuineness of the confession into question, and, in the view of some, thereby remove the obligation of confidentiality. We cannot separate our relationship with God from our relationship with others. Human existence is innately multi-dimensional, so sin is multi-dimensional, as is forgiveness.

The Biblical principle of love and the call to promote fullness of life calls us to do everything in our power to further the welfare of all, especially the vulnerable. In addition to the pastoral responsibility to minister to those who come in genuine repentance and seeking forgiveness, there is also an obligation to victims of past and present actions and potential victims of future actions. Where there is an irreconcilable tension between these two responsibilities, the pastoral priority must lie with the vulnerable in matters of abuse. Here we can identify an exception to the high calling of confidentiality in the confessional which is different in context but not unrelated in principle to the exception provided in the 1603 canons. It remains a limited and relatively specific provision and aligns with the priority that Jesus consistently gave to the vulnerable. There remains a lack of clarity as to whether the 1989 canon, in the current historical circumstances, pays sufficient attention to this priority of the vulnerable.

The Commission recognises that difficulties are posed by the lack of consistency in the civil law across Australia in relation to the priest-penitent privilege. Furthermore, the Church is subject to mandatory reporting rules which are in partial conflict with the 1989 Canon, and ministers may be compelled to give evidence before a Royal Commission, which may be subject to different evidentiary rules. While we are grateful that the civil law protects ministers from civil prosecution for non-disclosure of confessions in some jurisdictions, we believe that it will be sometimes be appropriate not to rely on these legal privileges, out of a consideration of the welfare of the vulnerable.

At the same time, we also recognise that the practice of confession depends on the expectation of confidentiality, and that to undercut confidentiality in a substantive way is likely to put an obstacle in the path of those who are in deep spiritual need. Ministers should keep in strictest confidence all that has been ‘committed to them in trust’ and should not reveal pastoral information to others or gossip. The national code of conduct, *Faithfulness in Service*, in para. 4.8 establishes confidentiality in

² According to Canon 983.1 of the Code of Canon Law, “[t]he sacramental seal is inviolable; therefore it is absolutely forbidden for a confessor to betray in any way a penitent in words or in any manner and for any reason.”

pastoral relationships as a standard of ministerial behaviour. This expectation should only be relieved in exceptional cases involving 'grave criminal offences involving the abuse of the vulnerable'.

As noted above, the Proviso to Canon 113 of 1603 recognised that confidentiality had to be maintained unless 'they [the sins confessed] be such crimes as by the laws of this realm his own life may be called into question for concealing the same'. This establishes both that confidentiality is of the utmost importance, and also that exceptions could be made under extraordinary circumstances. We now recognise that grave criminal offences involving abuse of a vulnerable person or persons may constitute such extraordinary circumstances as to override the pastoral imperative of confidentiality.

Recommendations

The Doctrine Commission supports the March 2016 resolution of the national bishops,

that a new form of the Canon Concerning Confessions Amendment Bill be promoted as a special bill at the 2017 session of General Synod, which addresses the concerns raised in relation to the 2014 Amendment Canon and takes into account subsequent discussions and the following recommendations. We recommend that the special bill be drafted in such a way as to give expression to the following key principles.

- *The context in which every confession is heard is the desire of the penitent to be reconciled to God, to the church, and to those who have been harmed by their sin. We are therefore dealing with matters of eternal salvation.*
- *Priests are required to keep all matters disclosed in the context of a confession strictly confidential, except in cases of **grave criminal offences involving the abuse of a vulnerable person or persons**. After appropriate consideration, the strong imperative of confidentiality may be overridden in these exceptional circumstances.*
- *The decision as to what constitutes a **grave criminal offence involving the abuse of a vulnerable person** rests with the judgment of the priest who has heard the confession. If a priest is uncertain as to whether disclosure is permissible or appropriate, they should seek counsel from the bishop or a person appointed by the bishop for this purpose. This may be in the form of general advice, without the disclosure of identity or other particulars.*
- *The canon should be permissive ('may reveal'), not coercive ('must reveal') - E.g. '... that priest may reveal the contents of a confession to the civil and/or church authorities.'*

The Doctrine Commission of the Anglican Church of Australia
March 2016.