Report of Dr Rodger Austin JCD STL

Canon Law

Prepared for submission to the
Royal Commission into Institutional Responses to Child Sexual Abuse

28 November 2016
Contents

THE STATE AND THE CHURCH.................................................................................................................. 2

CODIFICATION OF CANON LAW .......................................................................................................... 4

CANON LAW ......................................................................................................................................... 7

RELATIONSHIP BETWEEN CANON LAW AND THE CIVIL LAW ....................................................... 10

THE CHURCH’S STRUCTURES ............................................................................................................. 12

INTERPRETATION AND APPLICATION OF CANON LAW ................................................................. 17

THE PASTORAL GOVERNANCE OF A PARTICULAR CHURCH [DIOCESE] .................................. 21

THE ARCHIVES OF THE DIOCESE .................................................................................................... 26

THE SEXUAL ABUSE OF MINORS ..................................................................................................... 28

PRIVILEGE OF THE FORUM – 1917 CODE OF CANON LAW ......................................................... 29

THE OBLIGATION OF CLERICS TO OBSERVE CHASTITY & CELIBACY ...................................... 31

RESPONDING TO SEXUAL ABUSE OF MINORS BY CLERICS .......................................................... 32

REPAIRING THE HARM ....................................................................................................................... 44

LOSS OF THE CLERICAL STATE ...................................................................................................... 46

REPORTING SEXUAL ABUSE OF MINORS TO CIVIL AUTHORITIES ........................................... 49

SACRAMENT OF Penance .................................................................................................................. 52
THE STATE AND THE CHURCH

1 The Royal Commission into Institutional Responses to Child Sexual Abuse in Australia has investigated such responses within the Catholic Church in Australia and as such this involves the relationship between the State and the Church.

2 Within the historical and political context of the late nineteenth century, Pope Leo XIII [1878-1903] presented in his Encyclical Letter of 1 November 1885 the Church’s teaching on the relationship between the State and the Church as two independent and sovereign societies, each was a perfect society – societas perfecta. A perfect society is one that is complete in itself, a self-sufficient community which has the necessary resources, especially an independent ruling authority, to achieve its overall goal or purpose.¹

3 Leo XIII explained that “the Church no less than the State itself is a perfect society in its own nature and in its own right”² and is “distinguished and differs from civil society” for it is “a supernatural and spiritual society” founded by Jesus Christ.³ The Church “has for her immediate and natural purpose” the salvation of all peoples and the fulness of eternal life in the Kingdom of Heaven.⁴ By contrast the purpose for which the State exists is “the well-being of its citizens in “this mortal life” safeguarding not only “the well-being of the community” but also “the interests of its individual members”.⁵

4 As a societas perfecta “Jesus Christ gave to His Apostles unrestrained authority in regard to things sacred, together with the genuine and most true power of making laws, as also with the twofold right of judging and of punishing, which flow from that power”.⁶ The Church’s purpose is to lead all its members to their eternal salvation and the means for attaining that end include the scriptures, the sacraments and the authority Christ gave to the Church exercised by the Pope and the Bishops “who are not vicars of the Roman Pontiff because they exercise a power really their own”.⁷

5 Pope Pius X [1903-1914] said that, in accord with the Scriptures, the constitutional structure of the Church “is essentially an unequal society, that is, a society comprising two categories of persons, the pastors and the flock, those who occupy a rank in the different degrees of the hierarchy and the multitude of the faithful. So distinct are these categories that with the pastors rests the necessary right and authority for promoting the end of the society and directing all its members towards that end; the one duty of the multitude is to allow themselves to be led, and, like a docile flock, to follow the Pastors”.⁸

---

¹ Matthaeus Conte a Coronata, Institutiones iuris Canonicici Ius Publicum Ecclesiasticum, Editio Quarta (Romae: Marietti, 1959) 46-65.
² Pope Leo XIII, Encyclical Letter On the Christian Constitution of States [Immortale Dei], 1 November 1885:35. All quotations from Papal documents are from the Vatican website:http://w2.vatican.va/content/vatican/it.html.
³ Ibid., 10.
⁴ Ibid., 1.
⁵ Ibid., 6.
⁶ Ibid., 11.
Leo XIII taught that it was "a matter of justice and duty" incumbent on all members of the Church as citizens of the State to obey the civil law.\(^9\) It is the teaching of the Church that "citizens are bound in conscience to obey" the laws of the State.\(^10\) Notwithstanding, a "citizen is obliged in conscience not to follow the directives of civil authorities when they are contrary to the demands of the moral order, to the fundamental rights of persons or the teachings of the Gospel".\(^11\)

"The Church should enjoy that full measure of freedom which her responsibility for the salvation of all requires. The freedom of the Church is the fundamental principle in what concerns the relations between the Church and governments and the whole civil order. The Church and the political community in their own fields are autonomous and independent from each other".\(^12\)

---

\(^12\) Vatican II, *Declaration on Religious Liberty*, 13.
CODIFICATION OF CANON LAW

FIRST VATICAN ECUMENICAL COUNCIL 1869-1870

8 Although the first Ecumenical Council held at the Vatican was brought to a premature conclusion following the occupation of the Papal States by the armies of the Kingdom of Italy on 29 September 1869, there had been discussion about canonical discipline and many bishops asked that the reform of canon law be undertaken.

9 Over the centuries the laws of the Church had been gathered together in collections. By the end of the nineteenth century there were at least twelve collections which constituted the sources from which a knowledge of the law was obtained. Some laws were mutually contradictory, others had fallen into disuse, the laws lacked arrangement and some matters were in need of legislation. In the development of ecclesiastical law, Roman law had a most significant influence. For example, Roman law influence on matrimonial law was considerable as well as in the law on procedures.

10 Pius X in 1904 initiated this reform, the primary task of which was to arrange in a clear and orderly collection all the laws of the Church. Obsolete laws were to be abolished, other laws were to be adapted to the present needs and new laws were to be made as necessity or expediency required. In the process of reform it was decided to adopt a codified approach to canon law, a decision in large part influenced by the codification of civil legislation in Europe in the Eighteenth and Nineteenth Centuries.

11 Accordingly the first Code of Canon Law was not new legislation “because for the most part it retained the discipline hitherto in force” although it did introduce “some opportune changes.”

12 It was the understanding of the Church as a juridically complete society - societas perfecta - that provided the guiding image of the Church for the reform of canon law in 1904-1917.

FIRST CODE OF CANON LAW 1917

13 Pope Benedict XV promulgated the Code of Canon Law on 27 May 1917 and decreed that it come into force on 19 May 1918. The official text of the 1917 Code of Canon Law is in Latin. It was not permitted to reprint the Code of Canon Law or to translate it into another language without the permission of the Holy See.

14 The 1917 Code comprised five sections, called ‘books’: General Norms; Persons; Things; Procedures; and Crimes and Punishment. This systematic order adapted the legal principle of Roman law in the Institutes of Gaius and also Justinian: All our law relates either to persons or to things or judicial procedure. The 1917 Code of Canon Law remained in force until 27 November 1983.

15 Cicognani, 417-418.
18 Omne ius quo utimur vel ad personas pertinent vel ad res vel ad actiones. Cf. Gauthier, 12.
19
SECOND VATICAN ECUMENICAL COUNCIL 1962-1965

15 On 25 January 1959 when Pope John XXIII [1958-1963] convened the Second Vatican Council he said it would be accompanied by the revision of the 1917 Code of Canon Law. 20

16 The Second Vatican Council, “following faithfully the teaching of previous Councils”, presented its teaching on the “nature and universal mission” of the Church. 21 The Council, drawing on an ancient tradition, described the Church as the ‘People of God’ embracing all those who believe in Christ and accepting his call to holiness of life and eternal salvation.

17 The Council also brought to light the reality of the Church as a communion with its inseparable dimensions. Communion means the relationship of every Christian with God through Jesus Christ in the Holy Spirit. Communion also refers to the relationship between all the disciples themselves. 22 By virtue of their baptism, all Christ’s followers are united in a spiritual bond with Jesus Christ and, in and through him, with one another.

18 Communion, a spiritual reality, takes on historical and tangible form through a community.

19 It is within the Church, in communion with all the baptized, that each person fulfils one’s Christian vocation nourished by the scriptures and the sacraments. The People of God are called to live by “the law of Christ” 23 which includes the ten commandments - the Decalogue. The law of Christ provides the indispensable foundation for each one to nurture a faith-relationship with God and with one’s sisters and brothers within the People of God. It is the same law of Christ that guides and directs Christians in their lives as members of their civil society. 24

20 According to the teaching of Vatican II: “the spiritual community and the visible assembly form one interlocked reality which comprises a divine and a human element. The Church is a visible community through which Christ communicates truth and grace to all peoples”. 25 The Council spoke of the Church in terms of a mystery which in the words of Pope Paul VI [1963-1978] means “a reality imbued with the hidden presence of God”. 26

21 The Second Vatican Council taught that the Church is a communion of Churches 27 and is to be understood with her double dimension and reality: the universal Church and the particular Church, that is, a diocese which includes an archdiocese. As Paul VI said the universal Church is not “the sum of or an anomalous federation of essentially different individual Churches”. 28

REVISED CODE OF CANON LAW 1983

22 Paul VI formally inaugurated the work of revision of the first Code of Canon Law on 20 November 1965.

---

21 Vatican II, Dogmatic Constitution on the Church, 2.
22 Ibid., 1, 4, 6-7, 9.
24 Catechism of the Catholic Church, 2030.
25 Vatican II, Dogmatic Constitution on the Church, 8.
26 Pope Paul VI, Opening Address to the Second Session of Vatican II, 29 September 1963.
27 Vatican II, Dogmatic Constitution on the Church, 13, 23.
The systematic order of the revised Code of Canon Law was established on the teaching of Vatican II. Accordingly, the revised Code comprises seven books: General Norms; The People of God; The Teaching Office of the Church; The Sanctifying Office of the Church; The Temporal Goods of the Church; Sanctions in the Church; and Processes.


In the Apostolic Constitution whereby he promulgated the revised Code of Canon Law, John Paul II said that the "new Code can be understood as a great effort to translate the teaching of Vatican II on the Church into canonical terms". In this regard the Pope mentioned specifically the Church as "the People of God, a Communion and the mutual relationships between the particular and the universal Church".

It was the doctrinal teaching of Vatican II, not the legal concept of societas perfecta, that provided the guiding image of the Church for the revision of canon law.


THE LATIN CHURCH AND THE EASTERN CHURCHES

The universal Church traditionally has been distinguished as 'East' and 'West', such geographical designation used with reference to the division of the Roman Empire at the end of the third century. It was in the Christian East where the Church was born and in the course of time, as the Second Vatican Council stated, the Churches of the East "safeguarding the unique divine structure of the universal Church have [developed] their own discipline, liturgy and theological and spiritual heritage". The universal Church embraces twenty-three Eastern Churches and the one Latin Church.

The Code of Canon Law which came into effect on 27 November 1983 concerns only the Latin Church. The Eastern Churches are governed by the Code of Canons of the Eastern Churches promulgated by Pope John Paul II on 18 October 1990 and which came in to effect on 1 October 1991.

In Australia the majority of Catholics belong to the Latin Church. However five Eastern Churches have established eparchies for the members of their Churches living in Australia: the Ukrainian Church; the Maronite Church; the Melkite Church; the Chaldean Church; and the Syro-Malabar Church. In the Latin Church a particular church is called a diocese and in the Eastern Churches an eparchy.

---

30 Ibid.
31 Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus.
32 Secretariat of State, Norms for reprinting the Latin text of the Code of Canon Law and translating it into other languages, 28 January 1983.
33 Vatican II, Dogmatic Constitution on the Church, 23.
35 There is often a misconception when Catholics speak of their Eastern Churches as some people think they are referring to the Orthodox Churches.
CANON LAW

31 Canon law can be described as that system of laws promulgated by lawful ecclesiastical authority by which the constitution and governance of the Church is regulated and the actions of the members of the Church are directed towards its purpose.36

32 The first words of the 1983 Apostolic Constitution, promulgating the Code of Canon Law, Sacrae disciplinae leges - the laws of [the Church’s] sacred discipline - reflect a long tradition in which the laws of the Church were described as ius sacrum - sacred law. This title arose because the authority by which laws were promulgated was given to the Church by Jesus Christ, and the laws were concerned with people living out Christ’s call to eternal life and concerned the sacraments in particular.

33 In this Apostolic Constitution John Paul II said that “the purpose of the Code of Canon Law is not in any way to replace faith, grace and charisms and above all charity in the life of the Church or Christ’s faithful”.37

34 Nevertheless the very nature of the Church, the Pope said, requires law in order that: “its hierarchical and organic structure be visible; the exercise of the functions divinely entrusted to it, especially that of sacred power and of the administration of the sacraments, may be adequately organized; the mutual relations of the faithful may be regulated according to justice based upon charity, with the rights of individuals guaranteed and well-defined; and that common initiatives undertaken to live a Christian life ever more perfectly may be sustained, strengthened and fostered by canonical norms. Finally, canonical norms by their very nature demand observance”.38

35 In reference to the obligation upon all Catholics to obey canonical norms, John Paul II was repeating his predecessor Paul VI, who said that all members of the Church “have a duty in conscience to obey the law”.39

36 ‘Canon law – ius canonicum’ is ordinarily or commonly used to refer to the law of the Church. From the earliest times the Church used for its laws the Greek word κανών – canon, meaning a rod or ruler that came to mean a rule of conduct. With the codification of law, the term ‘canon law’ applies to the Code of Canon Law, but it also embraces the legislation promulgated by those who possess legislative authority within the Church.40

37 ‘Ecclesiastical law’ is the term used in reference to the law emanating from the human legislators within the Church. Such a designation is necessary since canon law is based on, and in part contains, divine positive law and natural law.

38 ‘Disciplinary law’ is the term which occurs in canon 6 of the 1983 Code of Canon Law. This term refers to all ecclesiastical laws, that is, laws emanating from human legislators in the Church,

38 Ibid.
40 The relevant legislative authorities for Australia are mentioned under the heading “The Church’s Structures” see p.12 and following.
irrespective of whether the laws are within the Code of Canon Law. The phrase ‘ecclesiastical discipline’ that occurs on seven occasions in the 1983 Code of Canon Law is a general reference to disciplinary law but also includes liturgical law of the Latin Church. 

On the occasion of the promulgation of the 1983 Code of Canon Law John Paul II, reiterating the words of Paul VI, said canon law includes “the fundamental elements of the hierarchical and organic structure of the Church established by the Divine Founder”. Divine law is that which is known either from Scripture, which may be understood as normative, even legislative, and therefore is called ‘positive’ divine law, or known from nature, which the Creator has endowed with a certain unchangeable order, and is the natural law.

As the Church is inseparably a spiritual community and a visible assembly, John Paul II said “the social structure of the Church is at the service of the deeper reality of communion, and the law of the Church is unique in its means and its ends”. 

Given the nature and purpose of the Church, canon law is imbued with a pastoral character. Law is an instrument at the service of the Church in accomplishing the mission entrusted to her by Jesus Christ. The juridical life of the Church, and therefore her judicial activity as well, is by its nature pastoral: “The juridical life is one of the pastoral helps the Church uses in leading us to salvation”.

In his 1990 Address to the Roman Rota that he devoted to the pastoral nature of canon law, John Paul II said “any opposition between what is pastoral and what is juridical is misleading. The juridical and the pastoral dimensions are united inseparably in the Church because they serve a common goal – the salvation of the people. It is not true that, to be more pastoral, the law becomes less juridical for the demands of justice must be respected and never denied”.

In keeping with this traditional teaching, Pope Francis in his Address to the Rota in 2014 said: “The juridical dimension and the pastoral dimension of the Church’s ministry do not stand in opposition, for they both contribute to realizing the Church’s purpose and unity of action. In fact the judicial work of the Church, which represents a service to truth in justice, has a deeply pastoral connotation, because it aims both to pursue the good of the faithful and to build up the Christian community”.

The law and all juridical activity is directed towards the ultimate purpose for which the Church was founded - the salvation of all peoples. Drawing on a Roman law axiom salus populi suprema lex - the supreme law is the welfare of the people, the principle established in the Church in the twelfth century was salus animarum suprema lex - the supreme law is the salvation of souls. Canon 1752, the final canon of the 1983 Code of Canon Law, reiterates this principle to serve as a reminder that the ultimate purpose of the law of the Church "must contribute to its supernatural purpose."

---

41 1983 Code of Canon Law [hereafter CIC], canons 326 §1, 342, 436 §1 1°, 445, 305 §1, 392 §2, 1317 Canon 2 states that liturgical law determines “the rites to be observed in the celebration of liturgical actions”.
45 Pope Paul VI, Address to the Tribunal of the Roman Rota, 4 February 1977.
46 Pope John Paul II, Address to the Tribunal of the Roman Rota, 18 January 1990.
47 Pope Francis, Address to the Tribunal of the Roman Rota, 24 January 2014.
48 Pope John Paul II, Address to the Tribunal of the Roman Rota, 18 January 1990.
It is a misconception to think that “canon law exists and operates in a ‘purely juridical order’, and it is as autonomous there as civil law is independent in its own sphere. In truth, the nature of canon law is radically different from that of civil law because the nature of the Church is radically different from that of the State.” 49 “The correct conception of canon law places it into the order of salvation; it sees the whole legal system as part of the redeeming mission of the Church”. 50 There is a “dynamic relationship between theology and canon law”. 51 Theology provides the law with meta-juridical data and as Pope John Paul II said canon law translates the teaching of the Church into canonical terms. 52 Thus “theology and canon law are linked organically”. 53

“Since civil law is such a pervasive element of social life, it inevitably exercises a dominant influence on a person’s view of law itself. One is tempted to equate all law with one’s concept of law in civil society”. 54 This univocal approach to law can be misleading because it fails to take into account the specific nature and purpose of canon law. Looking at canon law through the lens of one’s civil law runs the risk of misunderstanding and misinterpreting canon law.

---

50 Ibid., 258.
51 Ibid., 249.
53 Örsy, 251.
Since the twelfth century the term ‘ius civile - civil law’ has been used to refer to law enacted by civil authorities and thus distinguish it from ‘ius canonicum - canon law’. Whilst the Code of Canon Law pertains to the Latin Church throughout the world, the relationship between canon law and the civil law will vary depending on what legal system is operative in respect of each place. The two dominant legal traditions are the common law and the civil law. The civil law tradition predominates in Europe and in Latin America in places colonised by Portugal and Spain.

In the 1983 Code of Canon Law, canon 22 is a general principle of the Church’s canonical system and states one aspect of the relationship between canon law and civil law:

When the law of the Church remits some issue to the civil law, the latter is to be observed with the same effects in canon law, in so far as it is not contrary to divine law, and provided it is not otherwise stipulated in canon law.

In canon 22 the phrase civil law is to be understood generically, referring to the laws that constitute the legal system of a particular state or nation or legislation enacted by civil authority. Canon 22 is the only canon in which the term ius Ecclesiae - the law of the Church - is used in the 1983 Code of Canon Law. The term includes not only the canons of the 1983 Code of Canon Law but also any ecclesiastical laws promulgated by those who exercise legislative power.

In canon 22 the verb remit means that whilst the Church has the power to promulgate norms on a particular matter it chooses not to do so and determines that it will adopt the relevant civil law. It requires that the civil law is to be observed in a canonical matter with the same effects as in the civil law. The civil law operates in the Church in the same way as it does in the secular society.

The interpretation and application of the civil law must be congruent with “the rules and standards of the civil law”, using the overall regulation of the institution as well as juridical and jurisprudential resources that it offers.

The process is referred to as the canonisation of civil law. Although the Church adopts the civil law it does not become an integral part of the canonical system. The civil law does not become ius Ecclesiae, because it is, and remains, civil law. The civil law is adopted by the Church “without losing its normative nature in the original system of law”. When the ius Ecclesiae remits a matter to the civil law, the matter remains a canonical matter regulated by the relevant civil law. There are five canons in the 1983 Code of Canon Law in which the civil law has been canonized or adopted.

58 Ibid., I:378-379.
The general principle enunciated in the first part of canon 22 is not absolute, and in its final component the canon imposes a two-fold limitation.

First, the civil law will apply “in so far as it is not contrary to divine law”. The teaching authority of the Church to which has been entrusted “the task of giving an authentic interpretation of the Word of God, whether in its written form or in the form of Tradition”\(^6\) is the source from which it is determined if the civil law is contrary to the divine law. In the five canons in which the civil law has been canonised, there is no conflict with the relevant civil law.\(^6\)

Second, the civil law will apply “provided it is not otherwise stipulated in canon law”. In one of the five canons in which civil law is canonised, canon law does make a specific different provision.\(^6\)

\(^6\) CIC canons 98 §2, 110, 197, 1290, 1500.
\(^6\) CIC canon 197 adopts the civil law relating to prescription. Canon 198 requires prescription to be based on good faith, even if good faith is not required by the civil law.
THE CHURCH’S STRUCTURES

56 The universal Church and the particular Churches [dioceses/archdioceses] are constituent elements of the hierarchical and organic structure of the Church. Other institutes exist in virtue of ecclesiastical law and those of relevance for Australia include Ecclesiastical Provinces and the Bishops Conference.

THE UNIVERSAL CHURCH

57 The universal Church, the People of God, is the entire Catholic community throughout the world. According to the Annual Statistics of the Church compiled by the Central Office of Church Statistics, as at 31 December 2014, the number of Catholics was 1.272 billion, 17.8 per cent of the world population, and the number of particular Churches was 2998.63

58 The Pope is the Bishop of the Diocese of Rome and as the successor of St Peter and the Vicar of Christ he is the Pastor of the universal Church. By virtue of his office the Pope “has supreme, full, immediate and universal ordinary power in the Church”.64 The Pope, the successor of Peter, and the bishops, the successors of the Apostles, constitute one college. This College of Bishops is also the subject of supreme and full power for the universal Church that it exercises in a solemn manner in an ecumenical council.65

59 In the exercise of his pastoral ministry for the service of the universal Church, the Pope “usually conducts the business of the universal Church through the Roman Curia which acts in his name and with his authority for the good and for the service of the Churches”.66 The Roman Curia, the origins of which are found in the Apostolic Constitution of Pope Sixtus V of 1588, is a complex of institutes among which are congregations, councils, secretariats, commissions and tribunals.

Legislative power of governance

60 The Pope, as well as the College of Bishops, exercise the legislative power of governance in respect of the universal Church. Laws come into existence when they are promulgated and the Code of Canon Law states explicitly the means by which universal laws are promulgated.67

61 Pope John Paul II promulgated both the Code of Canon Law for the Latin Church and the Code of Canons of the Eastern Churches. However these are not the only sources of universal laws. The Pope also promulgates ecclesiastical laws by way of Apostolic Constitutions and Apostolic Letters issued motu proprio, that is, on the Pope’s own initiative. The former constitute the most significant and the latter the more common means whereby the Pope exercises legislative power of governance.

---

65 Vatican II, Dogmatic Constitution on the Church, 22; CIC canons 336-337 §1.
66 CIC canon 360.
67 CIC canons 7-8.
62 Paul VI promulgated in his 1967 Apostolic Constitution new ecclesiastical laws pertaining to the reorganization of the Roman Curia. The respective competencies of the departments of the Roman Curia were further reformed in the 1988 Apostolic Constitution of John Paul II. Pope Francis has embarked on a further reform of the Roman Curia and has already introduced some significant new ecclesiastical laws. However the legislation pertaining to the Roman Curia does not bring about any changes in the ecclesiastical laws in the Code of Canon Law.

63 The reform of the law is applicable also to the Code of Canon Law. Since the Code of Canon Law came into effect on 27 November 1983 amendments to the law have been introduced by Pope John Paul II, Pope Benedict XVI and Pope Francis.


65 Pope Benedict XVI [2005-2013] introduced changes on 27 October 2009. Three canons were slightly amended of which one was not a law but a statement of Church teaching. The other two canons were amended in identical fashion by a clause being withdrawn from the text of the law. He also introduced on 21 May 2010 the new canonical offence in respect of child pornography.

66 Pope Francis promulgated on 15 August 2015 new legislation in respect of the processes concerning the declaration of the nullity of marriage that came into effect on 8 December 2015. In this instance four canons were partially amended and three were abrogated. Pope Francis on 31 May 2016 introduced some amendments to eleven canons of the Code of Canon Law so as to ensure their conformity with the comparable canons in the Code of Canons of the Eastern Churches. Whilst the new laws are promulgated in the manner required by law, they also become immediately available on the Vatican website, usually in a number of languages.

67 Furthermore, Pope Benedict XVI in 2008 spoke of the on-going reform of canon law. Among other parts of the Code, Book VI Sanctions in the Church has been under review and a draft text proposing the reform of this section of the Code is the subject of consultation throughout the Latin
Church. The definitive amendments to Book VI of the Code of Canon Law are yet to be promulgated.

THE PARTICULAR CHURCH – THE DIOCESE

Jesus Christ gave to the Church he established the mandate to proclaim the good news to all peoples. Consequently that portion of the People of God, constituting the particular Churches throughout the world, lives in a variety of cultural, social, human, political and legal realities. The Church takes on different external expressions and appearances in each part of the world.

A particular Church, in accord with the teaching of Vatican II, “is a portion of the People of God entrusted to a bishop to be shepherded by him with the cooperation of the priests.” The bishop is not the delegate of the Pope but governs the particular Church as “the vicar and ambassador of Christ”.

The bishop governs his diocese by his “counsel, exhortations and example, but also by his authority and sacred power” that he exercises “personally in the name of Christ”. Each diocesan bishop is immediately subject to the authority of the Pope and to whom he is accountable for the pastoral governance of the diocese.

The bishop of each diocese “has all the ordinary, proper and immediate power required for the exercise of his pastoral office, except in those matters which the law or a decree of the Supreme Pontiff [the Pope] reserves to the supreme or to some other ecclesiastical authority”.

Legislative power of governance

The bishop exercises the legislative power of governance in respect of his particular Church. Legislative power of governance is exercised within the diocesan synod which is “an event of communion and an act of governance”. The Synod not only manifests and actualizes ecclesial communion in a diocese, it also builds up and fosters that same unity. Canon law provides that the bishop is the sole legislator in the diocesan synod, but he can also exercise legislative power of governance apart from the synod.

---

79 Vatican II, Decree on the Bishops’ Pastoral Office in the Church, 11; CIC canon 369.
80 Vatican II, Dogmatic Constitution on the Church, 27.
81 Vatican II, Decree on the Bishops’ Pastoral Office in the Church, 11.
82 CIC canons 381 §1, 391 §1.
84 Congregation for Bishops and Congregation for the Evangelization of Peoples, Instruction on Diocesan Synods 1997: 1.3. All quotations from documents of the Roman Curia are from the Vatican website: http://w2.vatican.va/content/vatican/it.html.
85 CIC canon 466.
73 In accord with the principle established in canon law, the bishop cannot validly promulgate a law which is contrary to the universal law [namely the Code of Canon Law or other universal laws] or to the law of a Plenary or Provincial Council or Bishops Conference.\textsuperscript{86}

74 The Code of Canon Law, in accordance with the principle of subsidiarity, does not establish the method whereby each bishop is to promulgate laws for his diocese as that matter is to be determined by the bishop.

**OTHER INSTITUTES WITHIN THE CHURCH IN AUSTRALIA**

75 In his pastoral governance of the particular Church, the diocesan Bishop acts within “the reality of communion which is the basis of all intra-ecclesial relationships”\textsuperscript{87}. These other institutes exist by virtue of ecclesiastical law. Therefore the Bishop is cognizant of those which exercise in particular the legislative power of governance, namely the Provincial and Plenary Councils and the Bishops Conference.

**Provincial Council**

76 An ecclesiastical province is a grouping of a number of neighbouring dioceses under the presidency of one of the dioceses, as determined when the province is established.\textsuperscript{88} The diocese to which the presidency is ascribed is called an ‘archdiocese’ and the bishop an ‘archbishop’. The archbishop is called ‘the Metropolitan’ and the archdiocese is referred to as a ‘Metropolitan See’. The other dioceses which constitute the province are called ‘suffragan’ dioceses.

77 The purpose of an ecclesiastical province is “to promote, according to circumstances of time and place, a common pastoral action among the dioceses and foster more closely relations between the diocesan Bishops”.\textsuperscript{89} In Australia there are five provinces – Adelaide, Brisbane, Melbourne, Perth and Sydney.

78 The Provincial Council has the "power of governance especially legislative power".\textsuperscript{90} Any laws drawn up by a Provincial Council are only promulgated after they have been reviewed by the Apostolic See.\textsuperscript{91} Each Provincial Council in accordance with the principle of subsidiarity establishes the method whereby it promulgates its laws.

79 In a province each diocese preserves its own autonomy, and the Metropolitan has no power of governance in respect of suffragan dioceses other than as provided for in the three matters stated in canon law.\textsuperscript{92}

80 The Metropolitan is competent: to see that faith and ecclesiastical discipline are carefully observed in the province and to notify the Pope if there are any abuses; to conduct a canonical visitation if the suffragan bishop has neglected it, provided that the Apostolic See has given its prior approval; and

---

\textsuperscript{86} CIC canon 135 §2.
\textsuperscript{87} Pope John Paul II, Post-Synodal Apostolic Exhortation On the Bishop, Servant of the Gospel of Jesus Christ for the Hope of the World [Pastores Gregis], 56.
\textsuperscript{88} CIC canon 431 §1, §3.
\textsuperscript{89} CIC canon 431 §1.
\textsuperscript{90} CIC canon 445.
\textsuperscript{91} CIC canon 446.
\textsuperscript{92} CIC canon 436 §1.
to appoint a diocesan administrator when a suffragan diocese becomes vacant, if the college of
consultors has failed to do so as required by canon law.\(^{93}\)

81 Notwithstanding that a diocese which is designated a metropolitan see is called an archdiocese,
other dioceses are for specific reasons also established as an archdiocese and the diocesan bishop
an archbishop. In Australia there are two such archdioceses: the Archdiocese of Canberra-Goulburn
and the Archdiocese of Hobart. As archdioceses these two particular Churches do not constitute
part of an ecclesiastical province. Nevertheless, they are required by law to relate to a province.\(^{94}\)
The Archdiocese of Canberra-Goulburn relates to the Province of Sydney and the Archdiocese of
Hobart relates to the Province of Melbourne.

82 The Military Ordinariate, was established in 1986 and comprises all those Catholics who are
members of the Armed Forces and includes their spouses and children. The pastoral care of the
members of the Ordinariate is entrusted to an Ordinary appointed by the Pope. The Ordinariate is
not a particular Church although for the purposes of canon law it is equated with a diocese and the
Ordinary with a diocesan bishop.\(^{95}\)

Bishops Conference

83 The Bishops Conference has legislative power of governance to promulgate laws, called “general
decrees, only in cases where the universal law has so prescribed, or by special mandate of the
Apostolic See, either on its own initiative or at the request of the Conference itself”.\(^{96}\) Such general
decrees are reviewed by the Apostolic See before they are promulgated. The Bishops Conference,
in accordance with the principle of subsidiarity, determines the manner in which its general decrees
are to be promulgated and when they come into effect.\(^{97}\)

Plenary Council

84 Canon Law makes provision for a Plenary Council to be held “for all the particular Churches of the
same Episcopal Conference as often as the Bishops Conference, with the approval of the Apostolic
See, considers it necessary or advantageous”.\(^{98}\) The Australian Bishops Conference has
announced that a Plenary Council is to be held in 2020.

85 The Plenary Council has the “power of governance especially legislative power”.\(^{99}\) Any laws drawn
up by a Plenary Council are only promulgated after they have been reviewed by the Apostolic
See.\(^{100}\) In accordance with the principle of subsidiarity, each Plenary Council is to promulgate its
laws in the manner determined by the Council itself.

\(^{93}\) CIC canon 421 §1.
\(^{94}\) CIC canon 431 §2.
\(^{96}\) CIC canon 455 §1.
\(^{97}\) CIC canon 455 §§2-3.
\(^{98}\) CIC canon 439 §1.
\(^{99}\) CIC canon 445.
\(^{100}\) CIC canon 446.
INTERPRETATION AND APPLICATION OF CANON LAW

The application of canon law presupposes its correct interpretation. 101

INTERPRETATION

86 The Code of Canon Law addresses two types of interpretation of canon law.

87 First, there is “authentic interpretation which is presented by way of a law” and, as it “has the same force as the law itself, [it] must be promulgated”. 102 The person who holds the office of legislator and the one to whom the legislator entrusts the responsibility has the authority to interpret the law authentically. 103

88 “In the Middle Ages, the principle ad quem pertinent iuris constitutio, ad ipsum pertinent interpretatio - the one who makes the law is the one who is competent to interpret it - was received in canon law from Roman law and is at the basis of the rules governing authentic interpretation”. 104 Accordingly, the Pontifical Council for Legislative Texts is competent to publish, having obtained the approval of the Pope, authentic interpretations of universal laws of the Church. 105

89 Second, there is authoritative or official interpretation which occurs “by way of a court judgment or of an administrative act in a particular case”; such interpretation “does not have the force of law and binds only those persons and affects only those matters for which it was given”. 106

90 Therefore judicial decisions given by an ecclesiastical tribunal or by way of the executive power of governance, for example by diocesan bishops or by departments within the Roman Curia, do not create binding precedents.

91 A court judgement is required by law to state the facts, the relevant law and the argument in which the law is applied to the facts. 107 In like manner when a decision is given by way of an administrative act “it must be issued in writing [and] express at least in summary form, the reasons for the decision”. 108 The person issuing such a document must provide an explanation of the reasons for the decision, “which embrace the basis in law, the facts of the case and the reasons that led to the adoption of the particular decision rather than a different one”. 109

92 Therefore a person who seeks a judgement from an ecclesiastical tribunal or a decision from an authority exercising executive power of governance receives the response in which the reasons for the decision are explained.

102 CIC canon 16 §2.
103 CIC canon 16 §1.
104 Gauthier, 21.
106 CIC canon 16 §3.
107 CIC canon 1612.
108 CIC canon 51.
In order to interpret the canons in the Code of Canon Law it is necessary to understand the nature of each one. Canons may include a statement of belief or the doctrinal teaching of the Church. Some canons are exhortations or recommendations and therefore not binding obligations. In respect of the canons that are laws, the sources and resources of law must be brought into play. The rules for interpreting canon law are established in canon law\textsuperscript{110} and for those who have the responsibility of applying the law, for example diocesan bishops, they have at their disposal the interpretation provided by canon lawyers.

The Annual Addresses of the Pope to the personnel of the Roman Rota at the beginning of the judicial year are part of the Church’s official teaching. “The papal discourses to the Roman Rota are addressed to all engaged in the administration of justice in ecclesiastical tribunals”.\textsuperscript{111} Hence there is an obligation on the ministers of tribunals throughout the Church to study the teaching of the Popes as presented annually in these addresses.

\section*{INSTRUCTIONS}

Other than the Pontifical Council for Legislative Texts, the departments of the Roman Curia do not have the authority to provide authentic interpretations of the law. However they do have executive power of governance to issue instructions “which set out the provisions of a law and develop the manner in which it is to be put into effect” and as such they “are given for the benefit of those whose duty it is to execute the law, and they bind them in executing the law”.\textsuperscript{112}

It has been noted by canon lawyers that there are issues of clarification that need to be addressed in relation to documents and pronouncements coming from the Apostolic See as well as other ecclesial authorities.\textsuperscript{113}

Two Instructions issued by the Congregation for the Doctrine of the Faith are of relevance. The first was issued in 1922 and with slight amendment re-issued in 1962; it is known as \textit{Crimen Sollicitationis}, as it dealt with the crime of solicitation.

Another Instruction to be noted was issued by the Secretariat of State in 1974 and is known as \textit{Secreta continere}. It addressed the issue of maintaining the secrecy or confidentiality required in respect of the matters pertaining to the Roman Curia. It replaced a previous instruction of 24 June 1968.

\section*{JURISPRUDENCE}

The Roman Rota is “the ordinary tribunal established by the Roman Pontiff to receive appeals” and thus judges “in second instance, cases which have been adjudicated by the ordinary tribunals of first instance and brought before the Holy See through legitimate appeal”.\textsuperscript{114}

\begin{thebibliography}{11}
\bibitem{110} CIC canon 17.
\bibitem{111} Pope John Paul II, Address to the Roman Rota, 25 January 1989.
\bibitem{112} CIC canon 34 §1.
\bibitem{114} CIC canons 1443, 1444 §1 1”.
\end{thebibliography}
Pope John Paul II in his 1983 Address to the Roman Rota said: “the jurisprudence of the Rota has acquired, in the history of the Church, a growing authority, not only moral but juridical”. 115 Again, in his 1986 Address he said: “the jurisprudence of the Rota has always been and must continue to be a sure point of reference for regional and diocesan tribunals”. 116

Acknowledging that the judicial decisions of the Roman Rota, as provided for in canon law 117, are not binding on lower tribunals, John Paul II said “the application of canon law presupposes its correct interpretation” and in this context referred to “the principal function of the Roman Rota”. 118 In his 1988 Apostolic Constitution on the reform of the Roman Curia, the Pope said that the Roman Rota “fosters the unity of jurisprudence, and, by virtue of its own decisions, provides assistance to lower tribunals”. 119

In his 1992 Address to the Roman Rota John Paul II, in respect of cases dealing with the nullity of marriage, said: “It seems evident that, on the level of substantive law, i.e. in deciding the merit of the cases presented, jurisprudence must be understood exclusively as that which emanates from the Tribunal of the Roman Rota”. 120

The jurisprudence of the Roman Rota, as found in its judgements in respect of matrimonial cases, is a dynamic source in the interpretation of law and in particular the evolutionary interpretation of the law. It “was able to foresee and anticipate certain canonical regulations, e.g., in matrimonial law, which later were included in the present Code”. 121

The judgements of the Roman Rota are published annually [Sacrae Romanae Rotae Decisiones] commencing with volume 1 in 1909, such that the volume number lags eight years behind the year. Decisions are also published in canon law journals, including publications in English such as The Jurist [Catholic University of America], Studia Canonica [St Paul University Ottawa] and The Canonist [Canon Law Society of Australia and New Zealand]. These are often translations of the original decisions and are always published with the requisite approval. Judges of the Roman Rota also in their own name publish articles in academic journals which provide access to their interpretation of the law.

APPLICATION

A characteristic of the Code of Canon Law is that its laws in many instances remain on the level of principle. This is necessarily so because this Code is the universal law for the Latin Church throughout the world. Accordingly this Code relies upon the discretion of those whose duty it is to apply the law, in particular bishops, vicars general, episcopal vicars and parish priests, to apply the law in the specific and concrete circumstances pertaining to the people concerned within the realities of the diocese or the parish.
A fundamental principle of the Church enshrined in canon 1752 is that “the law is to be applied always observing canonical equity”. In the words of Henry of Segusio, an Italian canonist of the thirteenth century, canonical equity is “justice tempered with the sweetness of mercy”.\(^{122}\)

Equity means applying the law “taking into account the situation of persons and the concrete circumstances of the case, bearing in mind the ultimate purpose of the law, which is to promote the common good” and the eternal salvation of each person.\(^{123}\)

In canon law equity is “an attitude of mind and spirit that tempers the rigor of the law. It seeks a higher form of justice with a spiritual goal in mind. It softens the rigor of the law, but sometimes it also increases certain penalties”.\(^{124}\)

\(^{122}\) Pope Paul VI, Address to the Roman Rota, 8 February 1973.


\(^{124}\) Pope Paul VI, Address to the Roman Rota, 8 February 1973.
THE PASTORAL GOVERNANCE OF A PARTICULAR CHURCH
[DIOCESE]

109 Catholics by reason of their place of residence belong to a parish and a particular Church and it is within these communities that their lives and the law of the Church meet.

110 The bishop governs the diocese by his "counsel, exhortations and example, but also by his authority and sacred power" that he exercises "personally in the name of Christ". Accordingly, he "has all the ordinary, proper and immediate power of governance required for the exercise of his pastoral office, except in those matters which the law or a decree of the Supreme Pontiff reserves to the supreme or to some other ecclesiastical authority".

111 By contrast with civil society canon law does not contemplate a separation of powers. Although the power vested in the Pope and the bishops is one, canon law explicitly states the power of governance is distinguished in its exercise into legislative, executive and judicial.

112 When Pope John Paul II promulgated the revised Code of Canon Law in 1983 he said that one of the teachings of the Second Vatican Council that was of importance was the Church's "hierarchical authority as service". In the Church, authority is "a participation in the mission of Christ". It comes from God, not the law. Authority pre-exists the law and the law is the servant of authority. The law provides the framework for the exercise of Christ's authority. Ecclesiastical law establishes its parameters and regulates the conditions, circumstances and manner in which it is to be exercised. According to the Pontifical Commission for the Revision of the Code of Canon Law: "the arbitrary use of power in the Church is prohibited by natural law, divine positive law and ecclesiastical law".

EXECUTIVE POWER OF GOVERNANCE

113 Accordingly, canon law provides the essential personnel for the purposes of assisting the bishop in his ministry of governance. The bishop exercises his executive power of governance either personally or through his vicar(s) general and episcopal vicar(s).

114 Canon law describes an 'ecclesiastical office' as any position "which by divine or ecclesiastical disposition is established in a stable manner to further a spiritual purpose". The power of governance attached to an ecclesiastical office is designated "ordinary power" and it is either "proper or vicarious".

---

125 CIC canon 102.
126 Vatican II, Dogmatic Constitution on the Church, 27.
127 CIC canon 381 §1.
128 CIC canon 135 §1.
131 Pontificia Commissio Codici Iuris Canonici Recognoscendo, Communicationes 2 (1969) 82.
132 CIC canon 145 §1.
133 CIC canon 131.
The power of governance of the bishop is proper ordinary power for it is exercised in his own name. The power of governance of the vicars is vicarious power because it derives from the power of the bishop and is exercised in the name of the bishop.

In contrast to proper power attached to an ecclesiastical office, the exercise of the executive power of governance can be delegated to a person. The relationship between the bishop delegating the exercise of executive power and the person so delegated is to be formalised in a mandate establishing the terms and conditions of the delegation.

**Vicars General and Episcopal Vicars**

A vicar general is a priest freely appointed by the diocesan bishop. If a coadjutor bishop is appointed to a diocese, the bishop is required to appoint him as a vicar general; if an auxiliary bishop is appointed, he must be appointed at least as an episcopal vicar. The role of a vicar general is “to assist the bishop in the governance of the whole diocese”. A vicar general by virtue of his ecclesiastical office has the same executive power of governance throughout the whole diocese that belongs by law to the bishop, with the exception of those matters reserved to the bishop.

The bishop is obliged to appoint one vicar general unless pastoral circumstances suggest two or more. However the law leaves to the bishop’s discretion the appointment of episcopal vicar(s) whenever “the good governance of the diocese requires it” and for a limited purpose such as “a determined part of the diocese, or a specific type of activity or certain groups of people”.

An episcopal vicar by virtue of his ecclesiastical office has the same executive power of governance for his specific responsibility that belongs by law to the diocesan bishop, with the exception of those matters reserved to the bishop.

The primary focus of the tasks of both a vicar general and an episcopal vicar is pastoral, as “the diocesan Bishop has the responsibility of coordinating the pastoral action of the Vicars general and episcopal Vicars”. Canon law views the vicar(s) general and the episcopal vicar(s) as having, and taking, responsibility for “important matters” relating to the pastoral governance of the diocese, and reporting to the bishop. This is more than simple communication since vicars must act in unity with the bishop and not “against (his) will and mind”.

**Consultation**

“Ecclesial communion in its organic structure calls for personal responsibility on the part of the Bishop, but it also presupposes the participation of every category of the faithful, inasmuch as they share responsibility for the good of the particular Church which they themselves form”. Accordingly, canon law provides the essential consultative groups for the purposes of assisting the
These groups are not collegial decision-making entities, such as a Provincial or Plenary Council or Bishops Conference, of which the bishop is but one member who also acts as the chairperson. It is not comparable to a corporate governance structure such as a board of company directors. Rather they are a group of persons who come together to take counsel on particular matters and where one person makes the decision once the consultative process has reached a conclusion.

Consultation flows from the nature of the Church as a communion and is a process involving three stages: the provision of direct, real and opportune information which takes into account all relevant data that may impact upon an issue; the candid, honest and open discussion and free exchange of ideas by all those involved in the process so that agreement can be facilitated; and the formulation of a resolution that is proposed to the person whose responsibility it is to make the decision and see to its implementation.

Canon law requires that the bishop is to undertake a process of consultation, for example, with the council of priests, the college of consultors or the finance council in respect of certain matters specified in the law. The legal construct of consultation is presented in terms of advice and consent, such that the council or the college is required by law to give its advice or its consent to a proposed juridical act of the bishop.

If consent is not sought or if the bishop acts against the consent, the act is invalid. If advice is to be obtained, the act is invalid if the advice is not sought. Although the bishop is not bound to follow the advice even if it is unanimous, “nevertheless without what is in his judgement an overriding reason he is not to act against it, especially if it is unanimous.” It is evident that the responsibility for any decision made by the bishop after a process of consultation rests with him alone.

As consultation is an expression of the Church as communion, it cannot be limited only to those occasions when canon law specifically requires that the bishop obtain the consent or the advice of the above-mentioned structures of participation. Consultation is a fundamental characteristic of the pastoral governance of the diocese. Thus the norms of law apply also in those instances when a bishop at his own discretion consults any other structure established to assist him in the governance of the diocese.

**JUDICIAL POWER OF GOVERNANCE**

The bishop exercises his judicial power of governance personally and through a judicial vicar and judges. An ecclesiastical tribunal is the structure provided by canon law through which the judicial power of governance is exercised. As a rule, the tribunal of first instance is the diocesan tribunal but the law permits inter-diocesan tribunals to be established.

In Australia the five tribunals of first instance, established in 1953, are regional/provincial tribunals, that is, there is one tribunal for all the dioceses pertaining to each ecclesiastical province. Originally established only for cases of nullity of marriage, since 1975 the competency of these five tribunals of

---

144 CIC canons 461 §1, 494 §1, 515 §2, 531, 536 §1, 1215 §2, 1222 §2, 1263, 1277, 1281 §2, 1292 §1, 1305, 1310 §2.
145 CIC canon 127 §2 2°.
146 CIC canon 1423.
first instance is for “all cases, namely not only marriage cases, but also for cases of rights and for criminal cases”. 147

THE POWER OF GOVERNANCE IN THE INTERNAL FORUM

129 Canon 130 states:

*Of itself, the power of governance is exercised for the external forum; sometimes, however, it is exercised for the internal forum only, but in such a way that the effects which its exercise is designed to have in the external forum are not acknowledged in that forum, except in so far as the law prescribes this for determinate cases.*

130 The term ‘internal forum’ in the 1983 Code of Canon Law does not mean the conscience of an individual person which has been referred to in the Church’s tradition as the ‘forum of conscience’. 148

131 A person’s conscience, according to the teaching of the Church in the Second Vatican Council, “is the most intimate core and sanctuary of the human person, in which he or she is alone with God, whose voice echoes within their depths.” 149 This is the meaning of the word ‘conscience’ on the thirteen occasions it is used in the Code of Canon Law. 150

132 As canon 130 states without ambiguity the power of governance is to be exercised in the external forum, that is to say, the public life of the Church, the place or arena of observable, verifiable acts so as to provide for the necessary certainty of juridical acts. 151

133 Although the external forum is the proper field for the exercise of the power of governance, canon 130 establishes that in some specific circumstances established by the law the power of governance is exercised in the internal forum alone. These are the only instances when the exercise of the power of governance can be used in the internal forum.

134 The exercise of the power of governance in the internal forum is justified by the ultimate purpose of the law of the Church - *salus animarum* - the salvation of the people. It is also founded upon the fundamental right, enshrined in canon 220, of the protection of the good name of every member of the People of God. 152

135 The internal forum can be described as the private realm of a person’s life where the actions are not publicly known. In such cases the act of the power of governance is not manifested publicly and its effects are not acknowledged in the external forum, unless the law prescribes this for specific cases.

136 The distinction between the two fora in which the power of governance can operate has relevance in penal law and matrimonial law. In very general terms the exercise of the power of governance in the internal forum can be explained as follows.

---

150 Ochoa, 102.
152 Arrieta, 29.
The commission of a canonical offence and incurring a penalty for an offence are matters of the external forum, as is the remittance of a penalty. For some few canonical offences a penalty is incurred automatically. For example, abortion is a sin against the fifth commandment in accord with the teaching of the Church, and it is also constituted a canonical offence for which the penalty of excommunication is incurred automatically.\textsuperscript{153} If a person has incurred this penalty and goes to the sacrament of penance to be reconciled with Jesus Christ and the Church, the law provides for the confessor to remit the penalty in the internal forum. The law in this instance refers to the “sacramental internal forum.”\textsuperscript{154}

The other use of the power of governance in the internal forum is in regard to the dispensation of impediments for marriage.\textsuperscript{155} In canon law there are impediments to marriage that render it invalid unless a dispensation is granted. Impediments, as a rule, can be proven in the external forum, and the dispensation is granted by the bishop or vicar general by virtue of the executive power of governance.

However, it can occur that an impediment may not be known publicly and thus it is referred to as an occult impediment. Only in the specific circumstances stated in canon law, parish priests, other priests and deacons are empowered to grant a dispensation in the internal forum, should such an impediment be made known to them. Likewise, the law also empowers a confessor to grant such a dispensation. If he does so during the celebration of the sacrament of penance it is referred to as ‘the sacramental internal forum’.\textsuperscript{156} If it occurs apart from the sacrament of penance it is referred to as ‘the non-sacramental internal forum’.

\textsuperscript{153} CIC canon 1398: A person who actually procures an abortion incurs a \textit{latae sententiae} excommunication.
\textsuperscript{154} CIC canon 1357.
\textsuperscript{155} CIC canons 1073, 1074, 1078.
\textsuperscript{156} CIC canons 1079, 1080.
THE ARCHIVES OF THE DIOCESE

140 Canon law establishes the fundamental principle that all documents "concerning the spiritual and temporal affairs of the diocese are to be properly filed and carefully kept". Accordingly there is an obligation for the establishment of archives for each diocese. Canon law refers to the three categories of archive: general, secret, and historical. In the historical archive "documents which have an historical value" are to be preserved and the diocesan Bishop is to establish norms for access to this archive.

141 There must be in each diocesan curia a general archive where documents "concerning the spiritual and temporal affairs of the diocese are to be properly filed and carefully kept under lock and key". The custody of the general archive is the responsibility of the bishop and the chancellor, from whom permission must be obtained to access the general archive.

142 Canon law establishes the obligation that each diocese must have a 'secret archive' which is to be separate from the general archive, or by way of exception it can be located in a specially secured portion of the general archive. The nature of the secret archive is determined by reason of the documents which are to be preserved in it, the custody of and the access to the secret archive.

143 The custody of the secret archive is the responsibility of the bishop and only he has the right to access the secret archive; his permission is required for any other person, including the chancellor, to access the secret archive. The documents which are to be preserved in the secret archive are usually highly confidential and may include matters of conscience. The law determines certain documents are to be kept in the secret archive.

144 Canon law explicitly states that all the documentation pertaining to the preliminary investigation, in accord with canon 1717, into any alleged canonical offence including the sexual abuse of minors must be kept in the secret archive. "The acts of the investigation, the decrees of the bishop by which the investigation was opened and closed, and all those matters which preceded the investigation, are to be kept in the secret curial archive unless they are necessary for the penal process".

145 Therefore the documentation received by the bishop about the sexual abuse of a minor, that was considered, after the preliminary investigation, not to have provided sufficient information for the matter to progress further, must be retained permanently in the secret archive. Such documentation is not to be destroyed.

146 Moreover, the bishop has the authority to determine other documentation that is to be preserved in the secret archive. Canon 269 2" provides for a bishop, who is to incardinate a cleric, to obtain from the cleric's bishop or superior "under secrecy if need be, appropriate testimonials concerning..."
the cleric’s life, behavior and studies”. *Towards Healing* requires a bishop receiving a cleric into his diocese “to ask for a written statement from the cleric indicating whether there have been any substantiated complaints of abuse against him, or whether there are known circumstances that could lead to a complaint of abuse. Such statements shall be held as confidential documents”.

147 In both instances such documentation would be held in the secret archive so as to protect the cleric’s right to privacy and/or his good name. Any such information would be retained permanently.

148 Documents held in the secret archive does not mean that they cannot be accessed. On the contrary, it means that they can be accessed provided the permission of the bishop has been given. When a request is made, in accordance with the provisions of the civil law, in respect of documentation concerning child sexual abuse held in the secret archive, the bishop is obligated to comply with such a request.

149 Canon law regulates the retention of documents in the secret archive by way of identifying what, and when, certain documents are to be destroyed. The law provides that “each year documents of criminal cases concerning moral matters are to be destroyed whenever the guilty parties have died, or ten years have elapsed since the definitive judgement was issued and the trial concluded. A short summary of the facts is to be kept, together with the text of the definitive judgement”.

150 The only documents in the secret archive to which this norm of law applies are those pertaining to an ecclesiastical criminal trial concerning a moral matter that reached a definitive judgement, and this includes trials with regard to an offence of sexual abuse of a minor. In these instances not all the information is destroyed because a short summary of the facts is to be kept, together with the text of the definitive judgement. The judgment must set out the facts of the particular case, the law that is applicable, and the arguments and reasons by which the tribunal reached its decision.

---

166 *Towards Healing* 2010 Part Three, 45.6.
167 CIC canon 220.
168 CIC 489 §2.
THE SEXUAL ABUSE OF MINORS

151 For the Catholic Church the sexual abuse of minors is, in accordance with ‘the law of Christ’, a grave violation of the sixth commandment of the Decalogue. In addition, the Church has constituted such abuse as an offence [delictum in Latin] within its canonical system.

152 In the 1917 Code of Canon Law and in the 1983 Code of Canon Law, in keeping with canonical tradition, only clerics whether they be diocesan clergy who are incardinated in a diocese, or clerical religious who are members of a religious institute, commit the canonical offence of the sexual abuse of minors.

153 The relevant canon in the 1917 Code of Canon Law was canon 2359 §2 and in the 1983 Code of Canon Law it is canon 1395 §2 which states:

\[
\text{A cleric who has offended in other ways against the sixth commandment of the Decalogue, if the offence was committed by force, or by threats, or in public, or with a minor under the age of eighteen years}^{169} \text{ is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.}
\]

154 Notwithstanding that canon 1395 §2 does not apply to members of religious institutes who are not clerics, canon 695 §1 of the 1983 Code of Canon Law provides that if a religious sister or brother has sexually abused a minor s/he “must be dismissed unless the superior judges that dismissal is not absolutely necessary, and that sufficient provision has been made in some other way for the amendment of the member, the restoration of justice and the reparation of scandal”.

155 The procedure for the dismissal of a religious for the sexual abuse of a minor is established in canon 695 §2. This procedure is neither a penal process nor a judicial process.

156 The 1917 Code of Canon Law, in the context of the privilege of the forum, acknowledged explicitly that sexual abuse of minors was an offence in respect of which both the Church and the State had competency.

157 In regard to lay persons, the secular courts were competent to hear such matters and in the 1917 Code of Canon Law canon 2357 provided that a lay person, who had been legitimately declared guilty of sexual abuse of a minor in accordance with the civil law, was subject to a penalty to be declared by an ecclesiastical tribunal.

\[169\] The text as promulgated on 25 January 1983 stated “sixteen years” and this was amended to “eighteen years” by Pope John Paul II on 30 April 2001.
PRIVILEGE OF THE FORUM – 1917 CODE OF CANON LAW

158 From the eighth to the nineteenth century the Pope was not only the head of the Church but also a sovereign temporal ruler over the territories in the Italian Peninsula known as the Papal States. On 29 September 1870, during the first Vatican Council, the armies of the Kingdom of Italy occupied the Papal States. Ultimately, by reason of the Lateran Treaty ratified on 7 June 1929 the State of the Vatican City was created of which the Pope is the Head of State and holds legislative, executive and judicial power in respect thereof.

159 “The Catholic Church, through the Holy See understood as the organ of its government, is qualified as a subject enjoying sovereignty equal to that of the State” to enter into concordats, conventions or agreements. Such concordats are established “between two subjects of international law, each one sovereign in its own sphere: spiritual and political”.  

160 In the 1917 Code of Canon Law one of the privileges of clerics was the privilege of the forum. Canon 120 §1 stated:

All lawsuits against clerics, both civil and criminal, must be brought before an ecclesiastical court, unless for particular places provision is otherwise lawfully made.

161 Canon 120 §2 did provide otherwise, whereby a priest could be brought before the secular courts if the bishop granted permission. The law said that such permission was not to be refused without a just and serious reason.

162 The Holy See between 1852 and 1887 by way of concordats with Costa Rica, Nicaragua, Guatemala, Honduras, El Salvador, Ecuador and Colombia, agreed that clerics would be tried before the secular courts, subject to certain conditions.

163 For example, the Concordat with Colombia in 1887, and the subsequent Concordat in 1973, provided that with regard to clergy “civil and criminal cases are within the jurisdiction of the courts of the State, except for Bishops, whose criminal cases are judged by the Holy See [Art. XIX]. In criminal proceedings against clergy, exceptions to the common legal scheme are agreed: the trials will not be public and accused persons will not be detained in common prisons during the trial. However, if the final decision is that of guilty, the common penalty regime is applied [Art. XX]”.  

164 The Concordat with Latvia in 1922 was the first to be executed after the promulgation of the 1917 Code of Canon Law. It provided that if clerics were accused before the secular courts of crimes under the Code of Latvia, the Archbishop or his delegate was to be notified and he or his delegate could attend the court hearings and be present at the trial. The clerics sentenced to imprisonment were to serve their time in a monastery. In the other cases, the guilty clerics receive their


172 Professor Vicente Prieto, Religion and the Secular State in Colombia; http://www.iclrs.org/content/blurb/files/Colombia.
punishment like other convicted persons, after the Archbishop has deprived them of their ecclesiastical status. 173

165 In the 1927 Concordat with Lithuania clergy were to be tried before the secular courts for crimes committed under the penal laws of the Republic. It provided that “in the case of arrest or imprisonment the civil authorities shall proceed with due regard for their state and ecclesiastical rank”. 174

166 In the 1933 Concordat with Austria it was agreed that clerics would stand trial before the secular courts. In the case of arrest and retention in custody the cleric was to be treated with the consideration befitting his profession and his rank in the hierarchy. In the case of the criminal conviction of a cleric the State was immediately to inform the diocesan bishop and as soon as possible send the result of the preliminary hearing and, if applicable, the court’s final judgment in both the first instance and the court of appeal. 175

167 In some places the privilege of the forum did not apply by reason of a contrary custom. Such was the position in Germany 176 and in those places where English customs prevailed including the United States of America and Canada. 177

168 For the same reason, the privilege of the forum did not apply in Australia. Accordingly canon law has never prevented a person in Australia from taking her or his allegations that a cleric had committed sexual abuse of a minor directly to the civil authorities.

169 In Australia any charge of sexual abuse of a minor committed by a priest would be dealt with by the secular courts. In 1978 Michael Glennon a priest of the Archdiocese of Melbourne was found guilty of sexual abuse of a minor and jailed.

170 As a matter of law, the privilege of the forum was abolished on 27 November 1983 when the revised Code of Canon Law came into effect.

174 Cicognani, 472-474.
176 Secretariat of State, Concordat between the Holy See and German Reich, 20 July 1933: Art. 33; cf. Wernz-Vidal, 69.
THE OBLIGATION OF CLERICS TO OBSERVE CHASTITY & CELIBACY

For the Latin Church, “the law of ecclesiastical celibacy, whose first written traces pre-suppose a still earlier unwritten practice, dates back to a canon of the Council of Elvira, at the beginning of the fourth century.” It has been affirmed in the Church in the teaching of the Second Vatican Council and also of Pope Paul VI and Pope John Paul II.

Canon 132 of the 1917 Code of Canon Law spoke of the obligation incumbent upon clerics to observe chastity and celibacy. The Church has acknowledged from the earliest times that some clerics fail to observe this obligation. Moreover, some failures are of such a kind that they are also constituted canonical offences within the Church’s legal system. At the same time these offences may also be crimes in accordance with the civil law.

Canon 277 §1 of the 1983 Code of Canon Law sets out the theological foundation of the celibacy of clerics and the formulation of the law in precise juridical terms: “Clerics are obliged to observe perfect and perpetual continence for the sake of the Kingdom of heaven and are therefore bound to celibacy which is a special gift of God by which sacred ministers can more easily remain close to Christ with an undivided heart, and can dedicate themselves more freely to the service of God and their neighbour”.

In canon 277 §3 the law addresses the authority of the diocesan bishop to safeguard the observance of celibacy. It empowers the bishop “to establish more detailed rules” for the diocese as a means of assisting clerics living faithfully the celibacy they have freely undertaken. The law also empowers the bishop “to pass judgement on the observance of the obligation in particular cases”.

In accord with its predecessor, the 1983 Code of Canon Law identifies in canon 1394 and canon 1395 those failures to observe the obligation of clerical celibacy which also constitute canonical offences. Among the failures stated in canon 1395 §2 which constitute a canonical offence is the sexual abuse of a minor by a cleric.

---

RESPONDING TO SEXUAL ABUSE OF MINORS BY CLERICS

1917 CODE OF CANON LAW

176 Responding to the sexual abuse of minors by clerics can be addressed in the first instance in relation to the 1917 Code of Canon Law which was in force from 19 May 1918 until 27 November 1983.

177 The 1917 Code of Canon Law established the procedure to be followed should a bishop become aware that a cleric had or may have committed a canonical offence. The procedure was established in canons 1939-1959.

INSTRUCTION OF THE HOLY OFFICE 1922 AND 1962

178 Among the canonical offences in the 1917 Code of Canon Law was the offence or crime of solicitation. This offence occurs when 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.” In the 1917 Code of Canon Law there was an obligation upon the penitent who had been solicited to denounce, within one month to the bishop or the Holy See, the confessor who had committed the crime of solicitation.

180 On 9 June 1922 the Supreme Sacred Congregation of the Holy Office, now known as the Congregation for the Doctrine of the Faith, issued with the approval of Pope Pius XI an Instruction entitled On the Manner of Proceeding in Cases of Solicitation. This instruction was replaced by a slightly amended one issued with the approval of Pope John XXIII on 16 March 1962. Accordingly the Instructions had the force of law and were to be observed. The 1962 Instruction is commonly referred to as Crimen Sollicitationis.

182 Bishops were required to keep the Instruction in the secret archive of the diocesan curia for internal use only. It was not to be published or augmented with commentaries. Furthermore, all those

---

179 180 CIC canon 1387; cf. canons 904, 2368 §1, 1917 Code of Canon Law.
181 182 Canon 904 of the 1917 Code of Canon Law.
183 Ibid., 73.
associated in any way with a judicial trial in these matters were bound to observe the strictest confidentiality, known as the ‘secret of the Holy Office’. The person making the allegations against the cleric and any witnesses were required to take an oath to observe confidentiality. However these persons were "subject to no censure, unless they were expressly warned of this in the proceedings".\textsuperscript{184} The obligation to observe confidentiality commenced only from the time the allegation was made known to the bishop. At any time before, during or after the allegation was brought before the bishop and a canonical process was conducted, a victim had the right to take the matter to the secular courts.

The Instruction indicates that the reasons for such confidentiality are related to protecting the reputation of any person involved in the process and this would have particular importance if it was found that the allegations were untrue. It also enables those involved to speak openly, honestly and freely. In addition it seeks to prevent undermining or destroying the faith of the Catholic community in regard to the sacrament of penance in which penitents seek the forgiveness of their sins and reconciliation with God through the ministry of the priest.\textsuperscript{185}

\textsuperscript{184} Father Thomas Doyle OP JCD states that “there is no basis to assume that the Holy See envisioned this process to be a substitute for any secular legal process, criminal or civil”. Furthermore, he states that “it is incorrect to assume, as some have unfortunately done, that the 1922 and 1962 Instructions are proof of a conspiracy to hide sexually abusive priests or to prevent the disclosure of sexual crimes committed by clerics to civil authorities”.\textsuperscript{186} This is evident from the fact that, in all the places where the privilege of the forum was not operative, the sexual abuse of minors by a cleric was taken before and dealt with by the secular courts. Furthermore the matter of the pontifical secret was not of relevance if a matter was before the secular courts, as such confidentiality applied only to a matter being dealt with in accordance with the norms of canon law.

\textsuperscript{185} According to the Congregation for the Doctrine of the Faith “the 1922 Instruction was given as needed to bishops who had to deal with particular cases concerning solicitation … [and] the sexual abuse of children. Copies of the 1962 re-print were meant to be given to the Bishops gathering for the Second Vatican Council. A few copies of this re-print were handed out to bishops who, in the meantime, needed to process cases but most of the copies were never distributed”.\textsuperscript{187}

\textsuperscript{186} On the basis of this statement from the Congregation for the Doctrine of the Faith not every bishop obtained a copy of the 1962 Instruction and would have remained unaware of its existence. That situation is reflected in the information provided to this Royal Commission by Bishop Geoffrey Robinson who stated that he was not aware of the 1962 Instruction until about 2000.\textsuperscript{188}

\textsuperscript{184} Ibid., 11, 13.
\textsuperscript{185} The Roman Ritual, Rite of Penance, 6.
\textsuperscript{188} Transcript of G J Robinson, Case Study No 31, 24 August 2015, p.16054 L26-27.
INSTRUCTION OF THE SECRETARIAT OF STATE 1974

187 The Secretariat of State issued on 4 February 1974, with the approval of Pope Paul VI, a document dealing with pontifical secrecy. This means the document has the force of law and is to be observed. The document is known as Secreta continere.¹⁸⁹

188 As Latin is the official language for canon law, the noun secretum - secrecy and the adjective secretus - secret are used in the law and they derive from the verb secerno which means “to put apart, to separate”.¹⁹⁰ The word ‘secrecy’ in Latin and its use in canon law means what, in other contexts, is described as ‘confidentiality’.¹⁹¹ The English text of the 1962 Instruction Crimen Sollicitationis available on the Vatican website also uses the word ‘confidentiality’.

189 The document Secreta continere states that general official secrecy applies to the matters dealt with by the Roman Curia and that there is a moral obligation to observe this confidentiality. On the other hand it is recognised that in some matters of more serious consequence a greater degree of confidentiality is applicable and this is called ‘pontifical secrecy’.

190 The purpose of the Instruction was to present to the Roman Curia the matters subject to pontifical secrecy and those persons who were obliged to observe such confidentiality. As the Instruction pertained to the entire Roman Curia, the term ‘the secret of the Holy Office’, hitherto used to refer to the confidentiality relevant to matters within the competency of the Congregation for the Doctrine of the Faith, ceased to be used.

191 Secreta continere did not alter any of the procedural norms established in the 1962 Instruction Crimen Sollicitationis.

RESPONDING TO AN ALLEGED CANONICAL OFFENCE

192 There was a procedure established in the 1917 Code of Canon Law for dealing with any alleged canonical offence. Canon 1939 required that when information about an alleged offence came to the attention of the bishop an investigation was to be undertaken, unless the matter was notorious or the facts were certain, to enable the bishop to determine whether or not there was sufficient evidence to proceed with a penal process.

193 However, the procedure established in the Instruction Crimen Sollicitationis was to be followed in respect of the sexual abuse of minors by clerics.

194 If a bishop in Australia was unaware of the 1962 Instruction and a complaint of the sexual abuse of a minor was brought to his attention, the norms of canon law could be followed and the complaint investigated with a view to determining the truth of what was being alleged to have occurred and then taking what he considered to be the appropriate action.

195 The bishop had to decide in the first instance whether or not a penal process was to be instigated.

196 In the 1917 Code of Canon Law if clerics committed sexual abuse of a minor, canon 2359 §2 provided that a penalty could be imposed upon them taking into account the facts of the case, but “in the more serious cases they shall be deposed”. Deposition meant that the cleric was suspended from the office he held and disqualified in the future from holding any office or ministry or position. However he retained the rights and privileges as well as the obligations arising from ordination. Deposition did not include dismissal from the clerical state.

197 In order to impose a penalty upon a cleric for committing the canonical offence of sexual abuse of a minor, it was required that a judicial trial be held in the diocesan tribunal. It would be acknowledged that in Australia a lack of qualified and experienced personnel in the area of penal law could have made this very problematic. In 1975 when the interdiocesan tribunals became competent to hear criminal cases, the situation was not significantly improved.

198 Also, in respect of penalties canon 2214 of the 1917 Code of Canon Law re-iterated the admonition of the Ecumenical Council of Trent [1545-1563] that urged bishops to try to bring about the reform of the offender by means other than the imposition of a penalty which, however, should be done when the seriousness of the offence required it.

199 Speaking to the personnel of the Roman Rota in 1979 Pope John Paul II said:

> in the vision of a Church which protects the rights of the individual faithful, but likewise promotes and protects the common good as an indispensable condition for the integral development of the human and Christian person, she also positively includes penal discipline. Even the penalty that is threatened by ecclesiastical authority - although in reality it is simply a recognition of a situation in which the subject has put himself or herself - is seen as a means of fostering communion, that is, as a means of repairing those deficiencies in the individual good and the common good that have come to light in the anti-ecclesial, criminal, and scandalous behavior of the members of the People of God.\(^\text{192}\)

1983 CODE OF CANON LAW

200 The revised Code of Canon Law came into force on 27 November 1983. Notwithstanding the promulgation of the revised Code of Canon Law, the Instruction *Crimen Sollicitationis* remained in force until 30 April 2001.\(^\text{193}\)

201 In the 1983 Code of Canon Law, canon 1395 §2 provides that a cleric who commits the canonical offence of sexual abuse of a minor “is to be punished with just penalties not excluding dismissal from the clerical state”.

202 The penalty of dismissal could only be imposed by way of judicial trial but other penalties could be imposed by an extra-judicial decree, that is, without a formal trial. In Australia, such a trial would be heard by the competent inter-diocesan tribunal.

192 Pope John Paul II, Address to the Roman Rota, 17 February 1979.

203 If, after 27 November 1983 when the revised Code of Canon Law came into effect, the 1962 Instruction was not known to a bishop, he was in a position to follow the norms of law in the Code of Canon Law. The procedure for dealing with offences was addressed under the title *The Penal Process* comprising canons 1717-1731.

204 As a prior step to the penal process, a bishop who “receives information, which has at least the semblance of truth, about an offence he is to enquire carefully either personally or through some other suitable person, about the facts and circumstances and the imputability of the offence, unless this enquiry would appear to be entirely superfluous”. 194 “Imputability is that property by virtue of which an act is attributable to the author of the act, with regard not only to the mechanical or physical cause, but also to the human cause, meaning the act is freely perpetrated”. 195

205 Whilst the penalty of dismissal from the clerical state could only be imposed by means of a judicial trial, canon 1718 §1 3° did permit the bishop to impose certain penalties by way of extra-judicial decree.

206 For those clerics found guilty of the sexual abuse of a minor in the courts of the civil law, such a preliminary investigation would be superfluous. In such circumstances the bishop would have to determine, in accordance with the norms of canon law, whether a penalty should be imposed and if so what penalty.

207 In regard to the manner in which some bishops in Ireland had dealt with matters of sexual abuse by clerics Pope Benedict XVI in 2010 said:

> It cannot be denied that some of you and your predecessors failed, at times grievously, to apply the long-established norms of canon law to the crime of child abuse. Serious mistakes were made in responding to allegations. I recognize how difficult it was to grasp the extent and complexity of the problem, to obtain reliable information and to make the right decisions in the light of conflicting expert advice. Nevertheless, it must be admitted that grave errors of judgement were made and failures of leadership occurred. All this has seriously undermined your credibility and effectiveness. I appreciate the efforts you have made to remedy past mistakes and to guarantee that they do not happen again. Besides fully implementing the norms of canon law in addressing cases of child abuse, continue to cooperate with the civil authorities in their area of competence. Clearly, religious superiors should do likewise… It is imperative that the child safety norms of the Church in Ireland be continually revised and updated and that they be applied fully and impartially in conformity with canon law. 196

208 Canon 193 provides for the removal from office of a diocesan Bishop “for grave reasons in accordance with the procedure defined by law”. On 4 June 2016 Pope Francis issued an Apostolic Letter *motu proprio* that came into effect on 5 September 2016 in which he promulgated a law that provided “among the grave reasons”, for which a bishop could be removed from office, is “the negligence of a Bishop in the exercise of his office, and in particular in relation to cases of sexual abuse inflicted on minors and vulnerable adults”. 197

---

194 CIC canon 1717 §1.
196 Pope Benedict XVI, Pastoral Letter to the Catholics of Ireland, 19 March 2010.
197 Pope Francis, Motu Proprio *As a Loving Mother*, 31 May 2016.
Given the above it can be said that the issue was not one of a crisis of canon law but “a crisis of living according to the law”\textsuperscript{198} that is to say a failure in not applying the law.

\textbf{TOWARDS HEALING}

\textit{Towards Healing Principles and Procedures in responding to complaints of abuse against personnel of the Catholic Church in Australia} ["Towards Healing"] was published jointly by the Australian Catholic Bishops Conference and Catholic Religious Australia, formerly the Australian Conference of Leaders of Religious Institutes.

Originally published in December 1996 and commencing on 31 March 1997, it was comprehensively revised in December 2000 and again in January 2010. In 1996 \textit{Towards Healing} addressed only the issue of sexual abuse of children, adolescents and adults by clergy and religious. From 2000 \textit{Towards Healing} addresses sexual, physical and emotional abuse\textsuperscript{199} of children, adolescents and adults by clergy, religious and other church personnel.

The Bishops Conference has legislative power of governance to promulgate general decrees, “only in cases where the universal law has so prescribed, or by special mandate of the Apostolic See.”\textsuperscript{200} These laws\textsuperscript{201} do not oblige until they have been reviewed by the Apostolic See and lawfully promulgated.\textsuperscript{202}

The Code of Canon Law does not prescribe that Bishops Conferences are to issue general decrees in respect of the matters dealt with in \textit{Towards Healing}, that is, the sexual, physical and emotional abuse of children, adolescents and adults by clergy, religious and other church personnel. Therefore, the only way in which the Bishops Conference could have issued \textit{Towards Healing} as a general decree was to have obtained a special mandate from the Apostolic See.

The sexual abuse of minors by clerics and religious in Australia was an issue for both diocesan Bishops and Religious Leaders especially. In accord with the teaching of Vatican II, Conferences of Major Superiors are called upon to collaborate and cooperate with Bishops Conferences.\textsuperscript{203} Accordingly, the Bishops Conference and Catholic Religious Australia determined that they should commit themselves to common principles and procedures that would be applicable throughout Australia. As a consequence \textit{Towards Healing} was published jointly by the two bodies.

In these circumstances, the Apostolic See could not issue a special mandate because only a Bishops Conference exercises legislative power\textsuperscript{204} and Catholic Religious Australia is an ecclesial structure which does not have the power of governance.\textsuperscript{205}

The overall purpose of \textit{Towards Healing} was “to strive for seven things in particular: truth, humility, healing for the victims, assistance to other persons affected, a just response to those who are accused, an effective response to those who are guilty of abuse, and prevention of abuse.”\textsuperscript{206}


\textsuperscript{199} \textit{Towards Healing} 2000 Part One: 1-4, 5; \textit{Towards Healing} 2010 Part Two: 1-4, 5.

\textsuperscript{200} CIC canon 455 §1.

\textsuperscript{201} CIC canon 29 states: “General decrees are true laws and are regulated by the provisions of canons on laws”.

\textsuperscript{202} CIC canon 455 §2.

\textsuperscript{203} Congregation for Religious and Secular Institutes, and Congregation for Bishops, \textit{Directives for the mutual relations between Bishops and Religious in the Church} 14 May 1978: 60-65; cf. CIC canon 708.

\textsuperscript{204} CIC canon 455 §1.

\textsuperscript{205} CIC canon 708.

Towards Healing was significant for it sought to address issues that were not previously considered or addressed. It established procedures to ensure that compassionate and effective care was provided for the victims and their families in particular. Also it established procedures relating to preventative strategies.

Towards Healing was significant in that it extended the definition of abuse to include physical and emotional abuse, thereby taking it beyond the sexual abuse dealt with in the Code of Canon Law. Moreover it extended the persons who could be responsible for such abuse to include the laity, again a matter not dealt with in the law.

Accordingly, Towards Healing established procedures for both dioceses and religious institutes to respond to complaints of sexual, physical and emotional abuse by clergy, religious and laity.

The sexual abuse of minors by a cleric, and in certain circumstances of adults as provided for in canon 1395 §2, is a canonical offence and canon law provides the procedure to be followed. Towards Healing provided that the norms of canon law with regard to penal procedures for clerics are to be observed. Although the sexual abuse of minors by a religious sister or religious brother is not a canonical offence, canon law provides a procedure when a religious is found to have committed the sexual abuse of a minor. The sexual abuse of minors by a lay person is not a canonical offence and hence there is no specific procedure established in canon law.

A Bishops Conference does not have the authority to promulgate laws in respect of the internal governance of religious institutes, including dealing with allegations of abuse made against its members. Therefore, the Bishops Conference could not issue a general decree binding religious institutes to the procedures established in Towards Healing. Accordingly, the Apostolic See could not issue a special mandate.

Given the comprehensive nature of Towards Healing, there were matters addressed that would not be the subject of canonical legislation. For this reason the Apostolic See could not issue a special mandate.

From 22 November – 12 December 1998, a Special Assembly of the Synod of Bishops was held for which the theme was ‘the Church in Oceania’. In his Apostolic Exhortation after this Assembly of the Synod of Bishops Pope John Paul II said:

In certain parts of Oceania, sexual abuse by some clergy and religious has caused great suffering and spiritual harm to the victims. It has become an obstacle to the proclamation of the Gospel. The Synod Fathers condemned all sexual abuse and all forms of abuse of power, both within the Church and in society as a whole. Sexual abuse within the Church is a profound contradiction of the teaching and witness of Jesus Christ. The Synod Fathers wished to apologize unreservedly to the victims for the pain and disillusionment caused to them. The Church in Oceania is seeking open and just procedures to respond to complaints in this area, and is unequivocally...

---

208 CIC canon 695 §2.
209 CIC canons 586 §1, 593, 594.
This statement of Pope John Paul II is one of support and encouragement for the efforts of the Bishops Conference and Catholic Religious Australia in establishing *Towards Healing*.

In 2011 the Congregation for the Doctrine of the Faith sent a letter to Bishops Conferences to assist them in developing guidelines for dealing with cases of the sexual abuse of minors by clerics. The letter, having recalled the applicable canonical legislation, states that the purpose of these guidelines is “to provide guidance” to bishops and religious superiors and this includes assistance to the victims as well as matters pertaining to the civil law. Given their specific purpose, it is evident that such guidelines do not constitute laws and therefore would not be issued as general decrees.

*Towards Healing* was not promulgated as law and therefore is not binding. Consequently the procedures of *Towards Healing* had to be authorised by each bishop for use in his diocese, and also by the superior for each religious institute.

The Archbishop of Melbourne, at the time Archbishop Pell, did not authorise the procedures established by *Towards Healing* for use in that Archdiocese. Instead he established procedures specifically for the Archdiocese of Melbourne. All other diocesan Bishops authorised the procedures established in *Towards Healing* for use in their respective dioceses.

The Provincial Superior of the Society of Jesus [the Jesuits] initially did not authorise the use of the procedures of *Towards Healing* but subsequently they were authorised for use in the Society.

It is the practice of the Church that ecclesiastical authorities, including the Apostolic See, issue documents which have a juridical character, in that they deal with matters that may be regulated by canon law, but the documents are drawn up and issued without any binding force. Although not juridically binding such documents have moral authority.

By virtue of the ecclesiastical office he holds, the diocesan bishop possesses the executive power of governance which is expressed in authoritative acts whereby he carries out his ministry of governance.

The bishop has the authority to issue or introduce for his diocese documents that have a juridical character, in that they deal with matters that may be regulated by law, but the documents are issued without any binding force, that is, they are not juridically binding. Such documents are lawful, have a formal and official existence within the diocesan Church and belong within the Church’s canonical system because they emanate from an authoritative act of governance by the bishop. *Towards Healing* is such a document.

The authorisation by the bishop for the procedures in *Towards Healing* to be used in the diocese constitutes an authoritative act of governance on his part. Although not juridically binding *Towards Healing* does have moral authority.

---

The procedures of *Towards Healing* have particular relevance in respect of the responsibility of the bishop, in accord with canon 277 §3, “to pass judgement concerning the observance of the obligation [of clerical chastity] in particular cases” when the failure does not constitute a canonical offence.

*Towards Healing* was not issued as a general decree and therefore its procedures were not legally binding. Nevertheless, statements such as: *Towards Healing* is not canon law; *Towards Healing* lacks authority under canon law; *Towards Healing* has no canonical status; and *Towards Healing* is not part of canon law, are incorrect or misleading.

**POPE JOHN PAUL II – 30 APRIL 2001**

By virtue of his Apostolic Letter issued *motu proprio*, entitled *Sacramentorum Sanctitatis Tutela* - *Safeguarding of the Sanctity of the Sacraments*, Pope John Paul II promulgated new laws in regard to the more serious canonical offences reserved to the Congregation for the Doctrine of the Faith.

The competency of the Congregation for the Doctrine of the Faith is to promote and safeguard the doctrine on faith and morals and to examine offences against faith and more serious ones - *graviora delicta* - in regard to moral behavior or the celebration of the sacraments.\(^{213}\)

The norms were promulgated on 30 April 2001 and came into force on the same day. Consequently, the Instruction *Crimen Sollicitationis* was abrogated. The new law contained both substantive and procedural norms that the Prefect of the Congregation for the doctrine of the Faith [Cardinal Joseph Ratzinger] communicated, with a covering letter of 18 May 2001, to all bishops and superiors of clerical religious institutes.\(^{214}\)

Pope John Paul II in Article 4 §1 of the substantive norms extended the competency of the Congregation for the Doctrine of the Faith to include:

> the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.

Also in Article 4 §2 of these norms Pope John Paul II provided that a cleric who commits such a canonical offence “is to be punished according to gravity of his crime, not excluding dismissal or deposition”. For the most serious penalty in such cases, the Code of Canon Law uses the term ‘dismissal’ and the Code of Canons of the Eastern Churches ‘deposition’.

In respect of sexual abuse of minors, Article 5 §§1-2 stated that prescription ran for ten years from the time the minor turned eighteen.

As provided for in Article 17 of the procedural norms “the more grave delicts reserved to the Congregation for the Doctrine of the Faith are to be tried in a judicial process”.

---


The level of confidentiality that applies to these procedures is that of pontifical secrecy without prejudice to the matter being taken to the civil authorities and dealt with in the secular courts; and also without prejudice to an obligation imposed by the civil law that such matters are to be reported to the civil authorities.

POPE JOHN PAUL II – FURTHER AMENDMENTS

Pope John Paul II made two amendments to the 2001 norms.

First, in 2002 the faculty to derogate from the period of prescription of 10 years was granted to the Secretary of the Congregation for the Doctrine of the Faith “on a case by case basis after having considered the request of the Bishop and the reasons for such a request.”

Second, in 2003 the Congregation for the Doctrine of the Faith was granted the faculty to permit certain cases to be dealt with administratively, that is extra-judicially and thus not through the judicial process. This was a significant step because it established that the more grave delicts reserved to the Congregation for the Doctrine of the Faith could be dealt with by way of an administrative process and not always through a judicial process. In particular, it meant that the penalty of dismissal from the clerical state could be imposed by way of an administrative decree, whereas the only means of imposing that penalty in the Code of Canon Law is by way of a judicial trial.

POPE BENEDICT XVI – 21 MAY 2010

Nine years after the original norms came into force, the Congregation for the Doctrine of the Faith conducted a review. As a consequence some amendments were proposed to Pope Benedict XVI and with his approval these norms were promulgated on 21 May 2010.

Included among the more serious offences reserved exclusively to the Congregation for the Doctrine of the Faith in accordance with Article 6 2° of the revised substantive norms is:

the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology.

In accordance with Article 7 §1 of the revised norms:

A criminal action for delicts reserved to the Congregation for the Doctrine of the Faith is extinguished by prescription after twenty years, with due regard to the right of the Congregation for the Doctrine of the Faith to derogate from prescription in individual cases.

---

216 Ibid., 7.
217 CIC canon 1342 §2.
219 Ibid. Art. 7 §1.
As in the original norms in regard to the offence committed with a minor below the age of eighteen years, prescription begins to run from the day on which a minor completes his or her eighteenth year of age. A victim under the age eighteen has until the age of thirty-eight to make a complaint or allegation about sexual abuse. However, in individual cases the Congregation for the Doctrine of the Faith has the right to derogate the time limit to make an allegation.

The reservation of the offence of sexual abuse of minors to the Congregation for the Doctrine of the Faith on 30 April 2001, means that the diocesan bishop or the superior of a clerical religious institute is no longer competent to deal with the matter.

The procedure a diocesan bishop must follow if he receives information, which has at least the semblance of truth about alleged sexual abuse of a minor by a cleric, is established in Article 16 of the procedural norms.

He is to conduct a preliminary investigation, in accordance with the norms of law in canon 1717, and when the preliminary investigation has been completed, he is to forward the matter to the Congregation for the Doctrine of the Faith.

Having examined the documentation, the Congregation for the Doctrine of the Faith determines what action is to be taken. There are four courses of action available.

First, the Congregation for the Doctrine of the Faith “may decide that the facts of the case do not require any further penal action and propose, or confirm, some non-penal administrative provisions for the sake of the common good of the Church, including the good of the denounced cleric”.

Second, the Congregation for the Doctrine of the Faith “may decide to present the case directly to the Pope for a *dismissio ex officio* - *ex officio dismissal* of the accused cleric. This is reserved for particularly grave cases in which the guilt of the cleric is beyond doubt and well documented”. In these cases the cleric may be asked if he would prefer to present a petition requesting a dispensation from the obligations undertaken at his ordination.

Third, the Bishop may be instructed to conduct a penal administrative process which is established in canon 1720. The process is conducted by the Bishop or his delegate. It must ensure that the cleric, having been notified of “the allegation and the proofs”, has the possibility of exercising his right of defence. The Bishop or his delegate, “together with two assessors”, must examine the proofs and the arguments, and then determine if “the offence is certainly proven” and impose a penalty. A decree is issued “stating at least in summary form the reasons in law and in fact” for the decision. The cleric has the right to propose administrative-hierarchical recourse to the Apostolic See against the decree.

---

220 Ibid. Art. 7 §2.
221 Ibid. Art. 16.
222 Scicluna, 7.
223 Ibid.
224 Ibid.
225 CIC canon 1720 1°.
226 CIC canon 1720 2°-3°.
227 CIC canon 1270 3°.
Fourth, the Bishop may be instructed that the matter is to be dealt with through a penal judicial process. A judicial process means the truth of the allegation that the cleric has committed sexual abuse of a minor is determined by the judges following the full procedure for a penal trial established in canon law. The judges must issue a definitive judgment in which they also impose the penalty. The cleric has the right to lodge an appeal against the judgement before the competent tribunal of second instance or the Roman Rota.

In the exercise of judicial power of governance the judge in an ecclesiastical trial, in accordance with the norms of canon law, “must have in his mind moral certainty about the matter to be decided in the judgement”. This applies to all matters be they nullity of marriage, nullity of ordination, contentious cases such as defamation, or penal trials.

Therefore in order to impose a penalty an ecclesiastical judge must have moral certainty that the accused has committed a canonical offence. Accordingly this principle applies to the canonical offence of the sexual abuse of a minor committed by a cleric.

As canon law provides for penalties to be imposed on a cleric also by way of an extra-judicial decree, it is evident that in an administrative penal process the bishop must have moral certainty that the cleric has committed the canonical offence of sexual abuse of a minor.

According to the teaching of Pope Pius XII, “between the two extremes of absolute certainty and quasi-certainty or probability is moral certainty”. Absolute certainty is that “in which all possible doubt is entirely excluded”. Quasi-certainty or probability “does not exclude all reasonable doubt, but leaves a foundation for the fear of error”. Moral certainty, by contrast with probability, “is characterized by the exclusion of well-founded or reasonable doubt”. By contrast with absolute certainty “it does admit the absolute possibility of the contrary”. Moral certainty “is understood to be objective, that is, based on objective motives; it is not a purely subjective certitude”.

---

228 Scicluna, 7-8.
229 Canon 1689 1917 Code of Canon Law; CIC canon 1608 §1.
231 Ibid.
232 Ibid., 608
REPAIRING THE HARM

262 Canon 128 of the 1983 Code of Canon Law states:

   Whoever unlawfully causes harm [damnum] to another by a juridical act, or indeed by
   any other act which is malicious or culpable, is obliged to repair the damage
   [damnum] done.

263 The obligation to repair the harm unlawfully caused to a person is “a principle founded in the natural
law”.233 Therefore, it is evident that the obligation to repair the harm caused “is not only a moral, but
also a juridical obligation”.234

264 Canon 128 establishes the fundamental norm of ecclesiastical law on the “responsibility for harm
and on compensation throughout the legal order of the Latin Church”.235

265 The term ‘damnum - harm’ in canon 128 means all kinds of harm as “the unanimous interpretation of
canonists” attests, and therefore, “in addition to financial harm one might mention damage to the
physical, intellectual, spiritual, ethical, social, and psychic integrity of the person”.236 Hence in
respect of the nature of the reparation “moral and spiritual measures are also to be taken into
consideration”237 According to canon 128 the responsibility for repairing the harm rests with the
person who actually caused the damage.

266 A minor who has been sexually abused by a cleric has a right to reparation for the harm she or he
has suffered from the abuse. It is recognised that in such circumstances “to undo the damage
normally is impossible as a matter of principle”.238

267 In respect of the harm arising from the commission of a canonical offence, canon law provides
norms for taking an action for damages before an ecclesiastical tribunal.239 Judicial trials within the
Church are by nature investigative not adversarial, they are an “inquiry for truth”.240

268 Canon law in keeping with the teaching, originating in the New Testament241, and the canonical
tradition of the Church reiterates the Christian obligation to avoid judicial disputes and to seek
reconciliation by means other than a judicial sentence.

269 Accordingly, canon 1446 §1 states:

   All Christ's faithful, and especially Bishops, are to strive earnestly, with due regard for
   justice, to ensure that lawsuits among the people of God are as far as possible
   avoided, and are settled promptly and without rancour.

233 Jozef Krukowski, “Responsibility for Damage Resulting from Illegal Administrative Acts in the Code of Canon
235 Ibid., 495.
236 Ibid., 509.
237 Ibid., 511.
238 Ibid., 510.
239 CIC canons 1729-1731.
It is evident that the duty to strive to avoid litigation rests on all the baptised, but above all it is a duty incumbent upon bishops. The obligation “to strive earnestly” is an obligation to do everything one can to avoid litigation and bring about a resolution.\footnote{Chiappetta, III, 52.}

In doing whatever can be done either to avoid disputes or to ensure they are resolved as quickly as possible and in a peaceful manner, canon 1446 §1 requires that the demands of justice are to be observed.
LOSS OF THE CLERICAL STATE

272 Vatican II in its teaching on the nature of the Church emphasised the essential equality among all Christ’s faithful, that is, all those who are baptised and are constituted the People of God. By virtue of the sacrament of baptism all Christ’s faithful are called to share in the life of Christ and participate in the mission he entrusted to his Church.  

273 From among Christ’s faithful there are those who by virtue of the sacrament of orders are ordained to the diaconate, priesthood and episcopacy and are constituted ‘sacred ministers’. In canon law, these sacred ministers are also called ‘clerics’ and those who are not ordained are called ‘lay persons’. Accordingly canon law speaks of two canonical or juridical states, the lay state and the clerical state.

274 Just as one’s baptism is permanent so also is a person’s ordination permanent. However, canon 290 of the 1983 Code of Canon Law, as did its predecessor in the 1917 Code of Canon Law, provides for the three ways in which the juridical state of the cleric can be lost.

275 The first way in which a cleric can lose the clerical state is “by a judgement of a court or an administrative decree declaring the ordination invalid”. This juridical activity be it judicial, by way of an ecclesiastical trial, or administrative “is directed towards proving that there did not exist a valid ordination because of some substantial defect in the administration or reception of the sacrament”. 

276 In accordance with the reform in 1988 of the Roman Curia by Pope John Paul II, the Congregation for Divine Worship and the Discipline of the Sacraments “is competent to examine, in accordance with the law, cases concerning the nullity of sacred ordination.” Canons 1708-1712 establish norms specifically for cases concerning the declaration of nullity of sacred ordination.

277 The second way in which a cleric can lose the clerical state is by the penalty of dismissal lawfully imposed as a result of the commission of a canonical offence, for which the penalty of dismissal is explicitly provided for in the universal law. The penal process has as its purpose the reformation of the cleric who has offended, the restoration of justice and the reparation of scandal.

278 The Congregation for the Doctrine of the Faith alone is competent to deal with two canonical offences committed by clerics. First, “the delict against the sixth commandment of the Decalogue committed with a minor below the age of eighteen years; in this case, a person who habitually lacks the use of reason is to be considered equivalent to a minor.” Second, “the acquisition,
possession, or distribution of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology".  

279 The third way in which the clerical state is lost is essentially different. It is by way of an administrative process whereby a dispensation from the obligations arising from ordination, including the obligation of celibacy, is granted to the cleric. Canon law states that such dispensations will be granted to "deacons for only grave reasons and to priests only for the gravest of reasons".  

280 Pope Paul VI issued in 1967 an Encyclical Letter On Priestly Celibacy in which he addressed the issue of bishops dealing with priests who had violated their obligation of clerical celibacy. He emphasized the importance of taking the measures necessary to assist them to fulfil faithfully the obligation freely undertaken.  

281 On 31 January 1971 the Congregation for the Doctrine of the Faith issued procedural norms for the documentation to be presented to the said Congregation by a priest spontaneously requesting a dispensation from the obligations connected with ordination.  

282 This process involves the priest making a formal request for a dispensation. It requires that he provide all the information available so as to establish that there exists a justified reason for the dispensation to be granted. However, the 1971 norms required that before proposing a petition for a dispensation the bishop or the superior for a religious priest, “must attempt for an appropriate period of time and with every means available to help the petitioner to overcome the difficulties which he experiences (cf. Paul VI, Encyclical Letter On Priestly Celibacy, 87), for example, transferring him from the place in which he is exposed to the danger and, according to the nature of the case, giving him the help of brother priests, friends, relatives, doctors, or psychologists”.  

283 Provision was made also for cases to be processed ex officio, namely cases in which the priest should be granted a dispensation “because of a perverse lifestyle, doctrinal errors, or another grave cause”.  

284 On 14 October 1980, at the direction of Pope John Paul II, the Congregation for the Doctrine of the Faith issued new norms regarding the dispensation of priests from celibacy. In the letter in which bishops and superiors were informed of the norms it was stated: “With the exception of cases dealing with priests who have left the priestly life for a long period of time and who hope to remedy a state of affairs which they are not able to quit” the Congregation shall “accept for consideration the cases of those who should not have received priestly ordination because the necessary aspect of freedom of responsibility was lacking or because the competent superiors were not able within an appropriate time to judge in a prudent and sufficiently fitting way whether the candidate really was suited for continuously leading a life of celibacy.”

---

251 Cf CIC canon 290 3°.
252 Congregation for the Doctrine of the Faith, Norms for preparing petitions for reducing priests to the lay state with a dispensation from all the obligations arising from Sacred Orders, 31 January 1971: I: 1-2.
253 Ibid., VII.
254 Congregation for the Doctrine of the Faith, Letter to all local Ordinaries and General Moderators of clerical religious communities regarding the dispensation of priests from celibacy, 14 October 1980.
When the Congregation examines the documentation it decides "whether to present the petition to the Pope or to ask for a more thorough instruction of the case or to reject the petition as unfounded." 255

Following the reform in 1988 of the Roman Curia by Pope John Paul II, the competency for processing petitions for a dispensation from the obligations arising from ordination was transferred from the Congregation for the Doctrine of the Faith to the Congregation for Divine Worship and the Discipline of the Sacraments. 256

Pope Benedict XVI on 1 August 2005 further reformed this matter by the transfer of competency to the Congregation for the Clergy. Therefore this Congregation now has competency for all matters relating to the loss of the clerical state other than by way of a declaration of nullity of ordination or by the penalty of dismissal for the offences reserved to the Congregation for the Doctrine of the Faith. On 30 January 2009 Pope Benedict XVI gave special faculties to the Congregation for the Clergy to resolve grave violations of clerical celibacy or situations where clerics have freely and illicitly abandoned ministry for an extended period. 257

---


REPORTING SEXUAL ABUSE OF MINORS TO CIVIL AUTHORITIES

288 According to Pope Leo XIII in his teaching on the relationship between the State and the Church, it is a matter of justice and duty incumbent on all members of the Church to obey the civil law. As expressed in the teaching of the Church “citizens are bound in conscience to obey” the civil law, unless the laws are “contrary to the demands of the moral order, to the fundamental rights of persons or the teachings of the Gospel.”

289 As was acknowledged with the promulgation of the 1917 Code of Canon Law the sexual abuse of a minor was a matter both for the State and for the Church. Other than in those places where the privilege of the forum was recognized and operative, the secular courts were competent to hear cases of sexual abuse of minors by clerics. And as has been stated in this submission the privilege of the forum was not operative in many countries including Australia and was abolished in 1983.

290 It is evident that the competent civil authorities have the right and duty to enact legislation in respect of the crime of the sexual abuse of minors. Civil authorities also have the right to enact legislation requiring that an allegation of sexual abuse of a minor, or the fact that a minor has been sexually abused, be reported to the relevant civil authority.

291 It is evident that insofar as legislation obliges a bishop or religious superior to report such matters they are obliged, in accordance with the teaching of the Church, to comply with that legislation.

292 There is no norm of canon law which prohibits a bishop or religious superior from complying with the civil law if it requires that allegations or crimes of sexual abuse of minors be reported to civil authorities.

293 The 1962 Instruction Crimen Sollicitationis required the strictest confidentiality to be observed in the matters which it regulated, including the sexual abuse of minors. Likewise, the present law promulgated by Pope John Paul II on 30 April 2001 provides that cases of the sexual abuse of minors reserved to the Congregation for the Doctrine of the Faith are subject to the pontifical secret, in accordance with the Instruction Secreta Continere.

294 However, the 1962 Instruction Crimen Sollicitationis did not prohibit or prevent compliance with the civil law requiring that a crime of sexual abuse of minors, or any allegation of such a crime, be reported to the civil authorities.

295 Likewise, the present norms of law according to the 2001 Apostolic Letter of Pope John Paul II issued motu proprio, entitled Sacramentorum Sanctitatis Tutela - Safeguarding of the Sanctity of the Sacraments, do not prohibit or prevent compliance with the civil law requiring that a crime of sexual abuse of minors, or any allegation of such a crime, be reported to the civil authorities.

296 In 2011 the Congregation for the Doctrine of the Faith stated:

   Sexual abuse of minors is not just a canonical delict but also a crime prosecuted by civil law. Although relations with civil authority will differ in various countries,

---

259 Vatican II, Pastoral Constitution on the Church in the Modern World, 74.
260 Catechism of the Catholic Church, 2242.
nevertheless it is important to cooperate with such authority within their responsibilities. Specifically, without prejudice to the seal of the sacrament of penance, the prescriptions of civil law regarding the reporting of such crimes to the designated authority should always be followed. This collaboration, moreover, not only concerns cases of abuse committed by clerics, but also those cases which involve religious or lay persons who function in ecclesiastical structures.

297 Cardinal William Levada, the then Prefect of the Congregation for the Doctrine of the Faith, in 2012 said:

Certainly no less important than any of the other elements, the cooperation of the Church with civil authorities in these cases recognizes the fundamental truth that the sexual abuse of minors is not only a crime in canon law, but is also a crime that violates criminal laws in most civil jurisdictions. Since civil laws vary from nation to nation, and the interaction between Church officials and civil authorities may be different from one nation to another, the manner in which this cooperation takes place will necessarily differ in various countries as well. The principle, however, must remain the same. The Church has an obligation to cooperate with the requirements of civil law regarding the reporting of such crimes to the appropriate authorities. Such cooperation naturally extends also to accusations of sexual abuse by religious or lay who work or volunteer in Church institutions and programs. In this regard, Church officials must avoid any compromise of the seal of the sacrament of penance, which must remain inviolable.

298 Cardinal Seán O’Malley, the President of the Pontifical Commission for the Protection of Minors, together with all the Commission Members, issued on 15 February 2016 the following statement on the obligation to report suspected sexual abuse to civil authorities:

As Pope Francis has so clearly stated: ‘The crimes and sins of the sexual abuse of children must not be kept secret for any longer. I pledge the zealous vigilance of the Church to protect children and the promise of accountability for all’. We, the President and the Members of the Commission, wish to affirm that our obligations under civil law must certainly be followed, but even beyond these civil requirements, we all have a moral and ethical responsibility to report suspected abuse to the civil authorities who are charged with protecting our society.

299 There is no doubt whatsoever that, whenever the civil law requires the reporting of allegations or crimes of the sexual abuse of minors to the civil authorities, the relevant Church officials, for example bishops or religious superiors, are obliged to comply with the requirements of the civil law. There is no law or other provision within the Church’s canonical system that prohibits Church officials from complying with such requirements of the civil law.

300 Similarly there is no doubt whatsoever that, if the civil law does not require the reporting of allegations or crimes of the sexual abuse of minors to the civil authorities, bishops, religious superiors and other Church officials are not under any legal obligation to report.

---

262 Congregation for the Doctrine of the Faith, Circular Letter to assist Episcopal Conferences in developing guidelines for dealing with cases of sexual abuse of minors perpetrated by clerics, 3 May 2011.
Notwithstanding, the Bishops have a responsibility to condemn the sexual abuse of minors and support the civil authorities in the exercise of their duties in regard to this most heinous of crimes.

In keeping with Papal teaching from Pope Leo XIII [1878-1903] to Pope John XXIII [1958-1963], the Second Vatican Council reiterated that an integral element of the mission of the Church is the promotion and defence of the dignity and fundamental rights of the human person. The recognition of these rights is essential to the pursuit of the common good which "embraces the sum of those conditions of the social life whereby human persons, families and associations more adequately and readily may attain their own perfection".

The sexual abuse of minors is the gravest violation of their rights and the gravest injustice, with consequent harm to them as well as their families and the community. In reference to child abuse in all its forms, Pope Francis said on 1 May 2016, "This is a tragedy! We must not tolerate the abuse of minors! We must protect minors and we must severely punish their abusers." If the Church is to fulfil its responsibility to promote and defend the human dignity and rights of minors, she must give witness that such is the reality within her own community. Whilst acknowledging the failures within the Church, Bishops are called upon to collaborate, insofar as is possible, with the civil authorities within the specific circumstances prevailing in the local secular society.

---

265 Vatican II, Pastoral Constitution on the Church in the Modern World, 26; Declaration on Religious Liberty, 14.
266 Vatican II, Pastoral Constitution on the Church in the Modern World, 74.
267 Pope Francis, Address in St. Peter's Square, Sunday 1 May 2016.
SACRAMENT OF Penance

305 The canons in the 1983 Code of Canon Law in respect of the sacraments in general and each sacrament individually are founded upon the doctrinal teaching of the Church in accord with Scripture and Tradition. These sources are essential for understanding the meaning of the canons.

306 The sacraments are actions of Christ and of the Church. It is by baptism that people are brought into the People of God. In the sacrament of penance, also called the sacrament of reconciliation and confession, those who, after examining their conscience, confess the sins they have committed and express sorrow for those sins and have a purpose of amendment, receive forgiveness from God through the absolution given by the priest and are reconciled with the Church.

THE CELEBRATION OF THE SACRAMENT

307 The law of the Church provides the regulations as to where, by whom and the ritual in accord with which the sacrament of penance may be celebrated.

308 As the celebration of the sacraments is an act of worship the usual place for their celebration is a church. Within the church the place set apart for the sacrament of penance is the confessional. The Bishops Conference is empowered to issue norms in respect of confessionals, provided that they are so constructed that there is an open space and also a space with a fixed grill between the penitent and the confessor, either of whom may choose which option they wish to use.

309 By reason of his ordination to the priesthood, a priest is empowered to absolve sinners of their sins, but he requires authorisation from the bishop, that is given the faculty, to act as the minister of the sacrament. Prior to granting a priest this faculty the bishop must determine that he is suitable to exercise this ministry of reconciliation.

310 The liturgical law of the Church establishes the ritual for the liturgy and the sacrament of penance is regulated by the Rite of Penance revised in accordance with the Second Vatican Council and published on 2 December 1973. The manner in which the confessor fulfils his ministry is a subject dealt with by the teaching of the Church. The Apostolic Exhortation On Reconciliation and Penance in the mission of the Church of Pope John Paul II, issued on 2 December 1984, is essential reading for understanding the four parts of the sacrament: contrition, confession, satisfaction and absolution.

311 “If the confessor is in no doubt about the penitent’s disposition and the penitent asks for absolution, it is not to be denied or deferred”. These are issues dealt with in moral theology.

THE SACRAMENTAL SEAL

312 Canon 983 §1 states:

*The sacramental seal is inviolable. Accordingly, it is absolutely wrong for a confessor in any way to betray a penitent, for any reason whatsoever, whether by word or in any other fashion.*

---

269 CIC canon 840.
270 CIC canon 984 §2.
271 CIC canon 966.
272 CIC canon 980.
"The legislator formulates and determines in this norm a very grave obligation ex iure divino: the absolute, permanent and inviolable secret - sigillum seal – that the confessor must keep forever regarding all the sins that the penitent confesses to him". \(^{273}\) The foundation of the obligation arises from the divine law, as Pope John Paul II explains, when Jesus gave his power to forgive sins to the Apostles to be handed on to their successors. \(^{274}\) In addition, the obligation also finds a basis in the natural law since the right to privacy and the right to one’s good name are, as the Second Vatican Council stated, among the universal and inalienable rights of the human person. \(^{275}\)

The seal of confession means that a confessor cannot reveal any sin of any kind that a penitent has confessed to him in the sacrament of penance. The sacramental seal relates to this information only. Nor can the confessor reveal that he deferred or denied the penitent absolution because the sins were confessed in the sacrament of penance.

The violation of the seal of the sacrament of penance is one of the more serious canonical offences reserved to the Congregation for the Doctrine of the Faith. A confessor who directly violates the sacramental seal automatically incurs the penalty of excommunication whose remittance is reserved to the Apostolic See. \(^{276}\)

"The obligation of the priest to uphold the seal of confession is one of the strongest obligations that the priest has. The seal of confession is based on natural law, divine law and ecclesiastical law. The secrecy as a result of the seal of confession is necessary for Catholic faithful to be able to freely practise their religion. If the faithful have committed serious sins, they are required to go to confession at least once a year and to receive the sacrament of penance. Confessions are not just a special form of counselling but an act of worship in which the penitent receives God’s forgiveness. Catholic people require confidence in the requirement of canon law to keep their confessions secret. The penalty of automatic excommunication for breaking the seal of confession demonstrates the seriousness with which the Catholic Church and its members take the seal of confession. Catholics believe that the priest acts in the person of Christ as he grants forgiveness in the prayer of absolution. Without the secret of the seal of confession, the relationship of the penitent with the confessor is compromised and the freedom of Catholics to worship and perform ministry is removed". \(^{277}\)


\(^{276}\) CIC canon 1388 §1.

\(^{277}\) Brendan Daly, Canon Law in Action (Sydney: St Pauls Publications, 2015) 263-264.