

ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD SEXUAL ABUSE**9 FEBRUARY 2017****PANEL 4.1 - CANON LAW, SANCTIONS AND SECRECY****DR RODGER J AUSTIN JCD STL****CANON LAW****CHURCH LAW AND ITS CODIFICATION**

- First Vatican Council 1869-1870
- First Code of Canon Law 1917
- Second Vatican Council 1962-1965
- Revised Code of Canon Law 1983

CANON LAW

- The Church and its law
- Theology and law are organically linked
- The nature and purpose of canon law

RELATIONSHIP BETWEEN CANON LAW AND THE CIVIL LAW

- The civil law
- The adoption of provisions of the civil law for the canonical system

THE CHURCH'S STRUCTURES AND LEGISLATORS

- The universal Church
- The particular Churches (dioceses)
- Institutes of ecclesiastical law: Provincial & Plenary Councils, Bishops Conference

INTERPRETING AND APPLYING THE LAW

- By the legislator (authentic); court judgement or administrative act; canonists
- Instructions
- Jurisprudence
- Applying the law

THE PASTORAL GOVERNANCE OF A PARTICULAR CHURCH (DIOCESE)

- The components of governance
- The power of governance and its threefold exercise: legislative, executive, judicial
- The bishop's vicars
- Consultation
- The power of governance exercised in the internal forum alone

SANCTIONS

THE OBLIGATION OF CLERICS TO OBSERVE THE LAW OF CELIBACY

- The theological foundations and the law of celibacy
- The failure to observe the obligation
- Failures to observe the obligation which also constitute canonical offences
- The sexual abuse of minors

THE CANONICAL OFFENCE OF CHILD SEXUAL ABUSE AND PENALTIES

- Provisions of 1983 Code of Canon Law, canon 1395 §2 as amended
- This canonical offence applies to clerics only, not to religious sisters or brothers
- The penal process can be judicial or administrative
- A penalty imposed is to be according to the gravity of the offence
- The penalty can include dismissal from the clerical state

RESPONDING TO SEXUAL ABUSE OF MINORS BY CLERICS

- 1917 Code of Canon Law
- Privilege of the forum
- Instruction *Crimen sollicitationis* 1922, 1962
- 1983 Code of Canon Law
- Procedural norms amended in 2001 and 2010

REPAIRING THE HARM

- Integral to the response of sexual abuse of minors is repairing the harm done
- Obligation is not only a moral obligation but also a juridical obligation
- The means to arrive at a resolution should be other than a judicial process
- Judicial proceedings should be the last resort

LOSS OF THE CLERICAL STATE

- Ordination, like baptism, is permanent but not the canonical state of a cleric
- Declaration of invalidity of ordination
- Dismissal from the clerical state – penalty imposed for canonical offence
- Dispensation from obligations arising from ordination

REPORTING SEXUAL ABUSE OF MINORS TO CIVIL AUTHORITIES

- The relationship between the State and the Church
- Church teaching on the obligation to observe the civil law
- Compliance with the requirements of the civil law to report sexual abuse

SECRECY

THE LAWS OF SECRECY IN THE CATHOLIC CHURCH

- The Latin word *secretum* – secrecy, confidentiality
- Categories of secrecy
- Pontifical secrecy – Instruction *Secreta continere* 1974
- Diocesan secret archive