

SCHEDULE:
PANEL 4.1: CANON LAW, SANCTIONS AND SECRECY

To what extent have any of the following issues contributed to the occurrence of child sexual abuse in Catholic institutions or affected the institutional response to this abuse?

- a. canon law
- b. the use of secrecy, including the practice of mental reservation.

I am able to respond only from my personal experience:

A. CANON LAW

- The Apostolic Letter issued *motu proprio* by Pope John Paul II on April 30, 2001, *Sacramentorum Sanctitatis Tutela*, made clear that the judgement in an allegation of a delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years is reserved to the Congregation for the Doctrine of the Faith [CDF].¹
- In three cases in which I have had involvement, following the completion of the preliminary investigation under can. 1717 (CIC), the matter was referred to the CDF. In two of these cases, the Diocese requested the advice of the CDF. The clerics concerned were invited to apply for laicisation or be dismissed from the clerical state. One applied for laicisation (his offences were with vulnerable adults); the other refused to do so and was dismissed (Royal Commission Case Study 14).

In the third case the cleric concerned was in his eighties, had a degree of dementia and had a serious alcohol problem. Were he to be laicised or dismissed he would have looked to his nieces and nephews for care. The Diocese judged this as unjust and requested that the cleric not be dismissed. The Diocese asked that he be unable to use the title, Father, or to wear clerical dress or insignia; be forbidden to have any involvement in ministry; and be accommodated in a high-security residence of the Bishop's choosing. This was granted by the CDF and the cleric was placed under penal precept. The facility in which the cleric was placed was told that he had served a gaol term for child sexual abuse when the Diocese approached it for a place. It was a very modest facility.

- In a fourth case the cleric had served a gaol term for child sexual abuse and had further charges pending. He was asked by the Bishop to apply for laicisation or be dismissed from the clerical state. He chose the former which the CDF granted.

¹ JOHN PAUL II, *Sacramentorum Sanctitatis Tutela*, Art. 4 §1. Most recent norms were issued by CDF on 21 May 2010.

- In a fifth case, following the investigation under can. 1717 CIC, the cleric was found to be guilty of sexual misconduct with a young boy and to have inappropriate relationships with others. He was asked by the Bishop to apply for laicisation or be dismissed from the clerical state and chose the former which the CDF granted.
- In each of these cases the careful application of canon law - substantive and procedural - led to a just response.

B. THE USE OF SECRECY, INCLUDING THE PRACTICE OF MENTAL RESERVATION

- Canon law requires each diocesan curia to have a “secret archive” in which “documents which are to be kept under secrecy are to be most carefully guarded” (cf. can. 489 §1 CIC). Access to the secret archive is limited to the bishop and those to whom he grants access (cf. can. 490 CIC). This archive is analogous to the highly confidential archives with restricted access held by other bodies such as government and legal firms.
- In my understanding and practice I concur with the opinion of Professor Ian Waters that: “Without prejudice to the norms of canon law regarding the inviolability of the secret of the sacrament of penance, the present canonical legislation has no provisions which prohibit a bishop or any other Church authority from reporting sexual abuse of minors to civil authorities even where such reporting is not mandatory.” Professor Waters goes on to cite Cardinal Sean O’Malley, President of the Pontifical Commission for the Protection of Minors, said on 20 February 2016: “... 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”.²
- The concept of mental reservation is not mentioned in Canon Law. I have never understood it to have been approved by the Catholic Church. I do not accept - and have not in practice – that the use of “mental reservation” is in any way justified in responding to allegations of child sexual abuse. Neither is there any justification to use “mental reservation” to protect the good name of the Church or of a known abuser.



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² IAN WATERS, MChA, JCL, MCL, JCD, PhD, The Law of Secrecy in the Latin Church, *The Canonist*. 7 (2016) 75-87