

Kieran Tapsell: Summary of Response to Dr Rodger Austin and Sr Moya Hanlen

Dr Austin in par 293 of his Report states that 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*.”

Then in par 299 of his Report, Dr Austin claims that “There is no law or other provision within the Church’s canonical system that prohibits Church officials from complying with” civil law requirements for reporting child sexual abuse.

There is a prohibition in canon law: the pontifical secret, the Church’s highest form of confidentiality. Confidentiality, whether in civil or canon law, requires not telling anyone, unless the law itself provides for exceptions.

Art 11 of *Crimen Sollicitationis* imposed a permanent silence over all information obtained through Church investigations of child sexual abuse. There was no exception either in it or in any other Church law, including the *1917 Code* for reporting to the civil authorities. Art. I (4) and III (1) of *Secreta Continere* imposes a permanent silence not only on that information, but on the “extrajudicial denunciation”, that is the complaint by a victim or the parents of a victim to a priest’s superior. The confidentiality was imposed not only on the staff of canonical tribunals but on:

“Cardinals, bishops, prelate superiors, major and minor officials, consultors, experts and ministers of lower rank who are concerned with the treatment of questions which are subject to papal or pontifical secrecy.”

Art. II (4) provides that even those who come across that information by accident are bound by the pontifical secret.

Secreta Continere provided only one exception – the accused could be told about the allegation if it were necessary for his defence.

There was no exception for reporting to the civil authorities until 2010 when the Vatican first announced that bishops should obey civil laws on reporting. In making that announcement, the Vatican spokesman, Fr Lombardi, stated that such reporting should not take place during or subsequent to a canonical trial. This restriction on reporting was confirmed by the Congregation for the Doctrine of the Faith in 2015 in the Fr Inzoli case. It also seems to have been confirmed by that Congregation in response to a request by this Royal Commission for documents in relation to a particular priest when it said it could not provide them because it would “compromise the integrity of the canonical proceeding.”

That there is a prohibition on reporting to the civil authorities was confirmed by Dr Austin himself in his evidence to the Cunneen Special Commission in 2013. He was asked about oaths of secrecy taken by Church officials.

- Q. So, for example, anyone who had previously taken an oath of secrecy and who was then required to give evidence in a civil court - tell me if this is wrong as a proposition - would not be restrained by canon law or church law from giving full evidence?

A. I think that if it was a matter where the law clearly said that - I'm thinking, for example, of tribunal work where this confidentiality is involved, if it was said that what you learned in that process had to be given under civil law, my view would be that one would seek to be dispensed from that obligation in that particular case.

If you need a dispensation (which would have to come from the Vatican under Canon 85) to answer questions in a civil court, it has to have been prohibited by canon law.

What this means in practice is that if a priest is being investigated under a canonical procedure for one instance of child sexual abuse, but in the course of the inquiry there is evidence of another 20, the pontifical secret prevents reporting those 20 cases to the police, even if there are civil reporting laws. A canonical trial is an investigative process, like this Royal Commission, and it is highly likely that such further offences will be revealed, particularly since many of the perpetrators are serial offenders. In the Nestor and Gannon cases, that is precisely what happened.

Sr Hanlen told the Royal Commission in Case No. 14 (Nestor) that the Congregation for the Doctrine of the Faith had given a dispensation from the pontifical secret to allow Bishop Ingham to publicly state the outcome of the case against Fr Nestor (Submission fn 272). If a dispensation was needed, there was a prohibition on publication.

Emasculating Canon Law as a Legal System

Dr Austin then raises an argument, which if correct, emasculates canon law, the oldest continuous legal system in the Western world, from being a legal system at all. He says that because the *Catholic Catechism* states that just civil laws should be obeyed (and reporting sexual abuse is one of them), then this provides an exception to the pontifical secret.

In other words, a moral obligation as stated in the *Catechism* effects a change to the plain words of canon law. If that were true, adultery, which is prohibited by the *Catechism*, would be a canonical crime. It isn't.

To illustrate the point about prohibitions in both civil and canon law: A "No Parking" sign means no parking for everyone in any coherent legal system. If you want to create an exception for that (for example, police or ambulance vehicles) it is stated in the sign or the exception is contained in some other part of the civil law that allows police and ambulances to park where they like.

The moral obligation of the State to look after the disabled does not create a legal exception for disabled people to park in a "no parking" zone. If they are to be exempt from that general prohibition, the exemption must be found in the law itself and not some moral obligation outside of it. The *Catholic Catechism* is not part of and has never been part of canon law, and authorities for that proposition are found in my written Response to Dr Austin's report. Dr Austin's assertion is not supported by his fellow canon lawyers, and for understandable reasons – canon law would cease to be a legal system.

Statements of moral obligations do not create laws or exceptions to laws, either in canon or civil law.

Sr Hanlen quotes Professor Ian Waters in a recent article in *The Canonist*, speaking about the pontifical secret imposed by *Secreta Continere*.

“Amongst these procedural norms is Art 30 which states, “Cases of this nature are subject to the pontifical secret.” This is the only reference to the law of secrecy in the present norms. Given the context in which this norm appears, it is evident that the obligation to observe secrecy, albeit in its strongest form, obliges only those tribunal officials who are involved in respect of a particular case being heard in an ecclesiastical tribunal. 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.”

The “context” which Professor Waters cites is that secrecy is only mentioned once in the current norms. A legal system only has to say something once to make it binding.

In canon law, as in civil law, it is customary for lawyers to cite authorities to support one’s opinions, particularly if you want to derive a meaning from a “context”. Professor Waters cites none, and neither does Sr Hanlen. The context is set out in my book published almost 3 years ago and in 40 pages of my submission which the Truth, Justice and Healing Council has had since November 2015, in which I set out statements from the Church’s highest authorities in the Roman Curia and elsewhere confirming the prohibitions on reporting and its current limitations. None of those authorities has been challenged.

But most significantly, Professor Waters has ignored the plain words of Art III (1) of *Secreta Continerere* that the pontifical secret binds “Cardinals, bishops, prelate superiors, major and minor officials, consultants, experts and ministers of lower rank who are concerned with the treatment of questions which are subject to the pontifical secret.” The “questions” in this case are the allegations of child sexual abuse and any information arising from investigating those allegations. The pontifical secret also binds those who come across the information accidentally.

There is nothing wrong with lawyers and courts, both civil and canonical attempting to confine the meanings of words to restrictive interpretations. But, with great respect, you can’t do it by ignoring inconvenient parts of a statute or canon or by ignoring the authorities that both systems of law create for guidance in interpretation. All that does is bring the legal system into disrepute, and to create Humpty Dumpty law. To adapt the words of Humpty Dumpty in *Alice in the Looking Glass*, “Words will mean whatever I want them to mean. It depends on the public relations needs of the time.”