

**CONCERNING LAWS DEMANDING DISCLOSURE OF MATTER HEARD WITHIN  
THE CELEBRATION OF THE SACRAMENT OF RECONCILIATION**

**A RESPONSE FROM ST PATRICK'S CHURCH, CHURCH HILL, NSW**

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**What does the Royal Commission recommend?**

*"Laws concerning mandatory reporting to child protection authorities should not exempt persons in religious ministry from being required to report knowledge or suspicions formed, in whole or in part, on the basis of information disclosed in or in connection with a religious confession."* (Royal Commission into Institutional Responses to Child Sexual Abuse, Recommendation 7.4. See this whole section – Volume 7, Improving institutional responding and reporting recommendations.)

**Comment:** This recommendation is dangerously open-ended. The Royal Commission is recommending that confessors be required *"to report knowledge or suspicions"*. There is huge potential for abuse in this recommendation. Perhaps the recommendation depends on testimony, given at the Royal Commission, of individuals – especially perpetrators – claiming to have confessed their sexually abusive behaviour in the confessional. One such perpetrator is a former priest, Michael McArdle.

**What conclusions can we draw from the testimony of Michael McArdle?**

McArdle pleaded guilty on the 8th of October 2003 to 62 counts of indecent dealing. In his appeal against his sentence, he stated that he "went to confession some 1500 times to admit sexually abusing boys. (He) claimed to have made confession about his paedophile activities to about thirty different priests over a twenty-five-year period." (John Cornwell, *The Dark Box: A Secret History of Confession*, Basic Books, New York, 2014, 189.) This case seems to be a significant reference for those supporting laws requiring the breach of the seal of the confessional. (See for example, Nick O'Malley, "Sexual abuse: Catholic priests must confess to regain our shaken faith", *Sydney Morning Herald Online*, 17 August 2017.)

Several obvious questions come to mind. Firstly, is McArdle a reliable witness? He has demonstrated he is capable of gross sociopathic behaviour and he is in this instance seeking leniency for that behaviour. It is in his interests to convince the appeals court that he did all in his power to get help. Secondly, what did McArdle tell the confessors? We have no details of what McArdle actually said to these "thirty different confessors". We cannot conclude with certitude that he made it absolutely clear that he was sexually abusing children. Thirdly, what might we reasonably expect to have happened had the alleged information given to the confessors been passed on to other authorities? It may be difficult for us to accept now, but as recently as 40 years ago such matters were typically covered up by society, not just the Catholic Church. We – Australian society – simply did not understand

the horrible impact it had on children and we did not have any effective ways to deal with it. Much has changed in both the Catholic Church and society at large. Fourthly, McArdle's testimony is not consistent with the behaviour of other sexually abusing clergy. The scientific and extensive research of Marie Keenan in Ireland – see Marie Keenan's, *Child Sexual Abuse and the Catholic Church: Gender, Power and Organizational Culture*, Oxford University Press, 2012 – suggests abusing clergy did not confess their abuse or if they did they were not clear and explicit about it. I have checked personally with five priests informally and not one of them has ever heard anyone confess to sexual abuse of children. Those five priests average forty-five years of priesthood each. It is fair to assume that each of those priests has heard 50 confessions in each of those forty-five years. That is 11,250 confessions without encountering one case in which someone confessed sexual abuse of children.

**Is there any evidence that might suggest laws requiring priests to break the seal will help protect children?**

The simple answer is, “No”. Perhaps we must presume that the recommendation by the Royal Commission is driven by the testimony of people like McArdle. As indicated above, that is hardly compelling evidence.

**How might the law requiring disclosure be policed?**

If McArdle had been subject to – and obeyed – this law, he would have told the police the names of the thirty or so priests to whom he allegedly confessed. Assuming he did do that and it got to a court case, how might it proceed? McArdle – a convicted sociopath giving witness against thirty priests who remain silent in the face of requests that they break the seal.

Since confessions are typically anonymous, the confessor will have to pursue the penitent and ask for contact details. It would hardly make sense for a priest to report that “someone” had confessed to sexual abuse of children but they did not leave their name and address.

**Might the law requiring priests to break the seal have other consequences – whether intended or not?**

One breach of the seal – as required by this law – means the seal is broken. It is no longer a seal. We should expect expanding requirements to breach the seal for other offenses. Two examples come to mind: Firstly, what if a fourteen-year-old girl confesses that she is having sex with her fourteen-year-old boyfriend, that she does not feel comfortable with this, would rather not do it, but all her friends are doing it; her parents know about it, as do her friends and some teachers at the school. Since she is not old enough to give consent, this is in fact an instance of sexual abuse. Must the confessor report this to the police? Must the confessor also report that her parents and others know of this and are therefore covering up the abuse? Secondly, will the confessor eventually be compelled to report any and every

crime that is confessed in the confessional – such as tax evasion and theft? If not, why not? The laws must be consistent.

Logically, according to the reasoning implicit in the Royal Commission’s recommendation, all confidentiality, in the case of sexual abuse of children, should be outlawed. No one should be exempt. If we are really serious about this we should apply it to lawyers, for example. Since about 80% of sexual abuse occurs in the family, should we not also apply the same rules to members of the family who might know about the abuse but are covering up? They too should be required to report information and suspicions.

It is reasonable to assume that the law requiring disclosure of information received under the seal, will ensure that no one who is sexually abusing children or who has sexually abused children will come to celebrate the sacrament. If they do they certainly will not admit that they are sexually abusing children or have done that in the past. Will this enhance or diminish the safety of children?

Might this law prompt someone to engage in the illegal business of entrapment?

### **Is the intent to protect all children or just some?**

If the intent is genuinely to protect children, logically, the legislatures should do whatever they can to protect *all* children from any abuse. The children currently on Manus Island and Nauru should be protected too. More importantly, the most vulnerable of all children – those still in the womb – should be protected. Surely it would be a terrible anomaly – and blatant hypocrisy – for a legislature to have side by side on its books, one law that demands priests break the seal of the confessional in order to enhance the protection of children – with no reasonable expectation that that will enhance the safety of our children – and another law on the same books that gives some people the right to kill children they choose not to bear – with absolute certitude many will exercise that right. If a doctor said, “I will give you the flu injection because I want to protect you from ill health, but as for the melanoma on your back, we will not go there”, would you believe that doctor was genuinely interested in protecting you from ill health? Again, the lack of consistency helps to make an ass of the law.

### **What does the Code of Canon Law say concerning the seal of the confessional?**

*“The sacramental seal is inviolable; therefore it is a crime for a confessor in any way to betray a penitent by word or in any other manner or for any reason” (#983:1 – see also 983:2, 984:1 and 2).*

Comment: “The two canons, 983 and 984, deal with distinct aspects of the confidentiality which the minister – and others who may obtain similar knowledge from the celebration of this sacrament must maintain with regard to matters learned from the individual confession of sins by penitents. Canon 983 is concerned with any kind of betrayal of a penitent, whose

confession of sins is said to be under or protected by an inviolable sacramental seal, and this even if he or she has not been absolved. It is any betrayal of a person who has simply confessed in the context of the sacrament.” (*New Commentary on the Cod of Canon Law* – commissioned by the Canon Law Society of America, edited by John P Beal, James A Coriden and Thomas J Green, New York, NY, Paulist Press, 2000, 1163-1164.)

*“A confessor who directly violates the sacramental seal incurs a latae sententiae (ie ipso facto) excommunication reserved to the Apostolic See; one who does so only indirectly is to be punished according to the gravity of the delict” (#1388:1).*

Comment: “Traditionally one of the most severely penalized delicts has been the violation of the confessional seal because of the serious breach of the priest-penitent relationship. The sacramental seal is the strict and inviolable obligation of keeping secret whatever has been related to the confessor to obtain absolution, the revelation of which would render the sacrament odious and onerous.” (*New Commentary on the Cod of Canon Law* – commissioned by the Canon Law Society of America, edited by John P Beal, James A Coriden and Thomas J Green, New York, NY, Paulist Press, 2000, 1592.)

### **Are Catholics placing Church Law above State Law?**

Absolutely not! This is not state law versus church law. This is bad law versus the moral right to defy that bad law. There is a fine tradition in Western civilization – one that we should all fight to uphold – that allows for the individual, on moral grounds, to protest against the requirements and demands of the state. In fact, civil disobedience is not only a right but a moral obligation sometimes. Had more people in Germany in the 1930s exercised this right and moral obligation, we would not have had the Second World War. If civil rights activists such as Martin Luther King had not exercised this right and moral obligation, the United States would almost certainly have been still mired in the infamous Jim Crow laws. If civil rights activists in Australia such as Charlie Perkins had not exercised this right and moral obligation, the plight of the indigenous peoples of Australia would have been even worse off than they are today. Catholics will similarly exercise this right and moral obligation and refuse to obey any law that requires the priest to break the seal of the confessional. Catholics believe the violation of the seal is a grave crime. The seal of the confessional is central to the celebration of the Sacrament of Reconciliation and the Sacrament of Reconciliation is central to the Catholic religion. The laws requiring priests to break the seal is a violation of the right of Catholics to practise their religion.

### **Summary comments**

1. Let it be stated clearly from the outset: We are all in favour of protecting children and the vulnerable. Nothing is going to be gained by society if we get into facile claims that “we” – whoever “we” refers to – are keen to protect children while “they” – whoever “they” refers to – are not keen to protect children. The question of the general good of society –

the “common good” – must be held in tension with the particular good of individuals and groups. This includes children. It will not serve society well if our concern to protect children, for example, prompts us to make bad laws and thus undermine the common good. And it would be irresponsible and perhaps even criminally negligent of us if we claimed to be upholding the common good and failed to do what we can to protect children and vulnerable others within our society.

2. The concern of this response is not the Royal Commission as such, nor is it the protection of children as such. The concern of this response is rather the particular recommendation 7.4 of the Royal Commission and its enactment in law, that Catholic priests be required to break the seal of the sacrament of reconciliation.

3. In the sacrament of reconciliation, a person seeks the mercy of God. The Church’s representative – the priest – acts as a minister of that mercy. In that context, the person addresses explicitly those issues in their life that need the healing mercy of God. It is a moment of honesty and vulnerability, often requiring a person to face issues that may be painful and embarrassing. Great care and respect, compassion and sensitivity must be shown by the priest. It is a precious and sacred moment for both penitent and priest. Both – especially the penitent – must experience it as absolutely safe. Anything that might threaten or undermine the priest-penitent relationship must be unambiguously and definitely avoided.

4. Protecting the confidentiality of this forum is therefore regarded by the Catholic Church as essential. There can be no exceptions. The sacrament of reconciliation – and the seal of the sacrament – are part of the very essence of the Catholic religion. An attack on the sacrament in general or the seal in particular is an attack on the Catholic religion and the freedom of Catholics to practise that religion. The Catholic Church will always claim the right to uphold the seal of the sacrament. The Church’s representatives must defy all pressure – be it state-sponsored or from any other source – that threatens the inviolability of the seal of the confessional.

5. Humanly speaking, there is much to be gained by having safe forums – whether they be religious or not – within which individuals can deal honestly with their deepest struggles to be human. This is an essential feature of trust in society. Remove such forums from society and we can reasonably expect grave harm to result.