

*The Australian Royal Commission into Institutional Responses to Child Abusers commended "no excuse, protection, nor privilege" should apply for priests who failed to convey information about child abuse to the police because it was reported during confession. The Commission had heard evidence of paedophile priests who received absolution and continued to abuse minors. The Commission also heard of child victims telling confessors they were sexually abused yet nothing was done to stop the abuser. "How does the seal of confession apply to a paedophile penitent who confesses the sin and a child penitent who reveals the abuse in the context of confession?"*

OPINION

There are many issues concerning the seal of confession that are misunderstood. The Fourth Lateran Council in 1215 was the first Church Council to address the issue of the seal of confession. It explicitly taught the doctrine of the seal of confession in canon 21:

Let him take the utmost care, however, not to betray the sinner at all by word or sign or in any other way. If the priest needs wise advice, let him seek it cautiously without any mention of the person concerned. For if anyone presumes to reveal a sin disclosed to him in confession, we decree that he is not only to be deposed from his priestly office but also to be confined to a strict monastery to do perpetual penance.<sup>1</sup>

This Council attached the penal sanctions of deposition from office, and confinement for violating the seal of confession. The priest was barred from having any offices in future and the penances would have included fasting.

Saint Thomas Aquinas (1224-1274) taught that the sacrament of penance signified the action of Christ within the person forgiving them their sins. Saint Thomas taught that since God does not reveal the sins of the penitent, neither

1 4<sup>th</sup> Lateran Council, canon 21, Translation in Norman P. Tanner, ed., *Decrees of the Ecumenical Councils*, vol. 1, (London : Sheed and Ward, 1990), 245

because he acts in the person of Christ himself.<sup>3</sup> Because of this role, the priest must keep what is confessed secret. For Saint Thomas the seal covered the sins confessed, as well as any information that would reveal the identity of the penitent and what sins they confessed.<sup>4</sup>

Pope Innocent III (1160-1216) argued that the obligation of the secrecy of confession was derived from the fact that the priest had no human knowledge of events from what he had seen, but only knew about events from acting as God's representative.<sup>5</sup>

Consequently, the 1983 Code stated:

Canon 983 §1. 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.

§2. The interpreter, if there is one present, is also obliged to preserve the secret, and also all others to whom knowledge of sins from confession shall come in any way.<sup>6</sup>

The confessor who directly violates the seal of confession incurs the penalty of a *latae sententiae* excommunication that can only be removed by the Apostolic See.

Canon 1388 §1. A confessor who directly violates the sacramental seal incurs an automatic (*latae sententiae*) excommunication reserved to the Apostolic See; one who does so only indirectly, he is to be punished in accord with the seriousness of the offence.<sup>7</sup>

The confessor who indirectly violates the seal of confession is to be punished according to the seriousness of the violation. A direct violation of the seal is revealing information that conveys to another what sin a particular person committed. An example of an indirect violation of the seal would be a priest making a comment, subsequent to a confession, that the person is not to be

2 Saint Thomas Aquinas, *Summa, suppl.*, q.11 a.1

3 Kennedy, *State Protection of Confessional Secrecy in the United States of America*, 22. Saint Thomas Aquinas, *Sent.* IV, d. XXI, q. LII, art. 1<sup>o</sup>

4 St. Thomas Aquinas, *Sent.* IV, d. XXI, q. LII, a. L, q. 3, s. 2:

5 Pope Innocent III, *Sermo* 1, *De Consecratione Pontificis*, (M.L. CCXVII), 625D.

6 Translation of 1983 *Code of Canon Law* by The Canon Law Society of America, [http://www.vatican.va/archive/ENG1104/\\_P3F.HTM](http://www.vatican.va/archive/ENG1104/_P3F.HTM), hereinafter all translations of the 1983 Code from this source.

7 [http://www.vatican.va/archive/ENG1104/\\_P3F.HTM](http://www.vatican.va/archive/ENG1104/_P3F.HTM).

by the Apostolic Penitentiary in 1983.<sup>8</sup>

Interpreters are rarely used in the Sacrament of Penance. If an interpreter is involved in the confession, canon 1388 §2 states: "An interpreter and other persons mentioned in canon 983 §2, who violate this secrecy are to be punished with a just penalty, not excluding excommunication."<sup>9</sup> Their knowledge is more of a professional secret and the seal of confession strictly applies to the priest alone.

Pope John Paul II's apostolic letter *Sacramentorum sanctitatis tutela*, issued on 30 April 2001 reserved competence in the external forum for dealing with direct violations of the seal of confession to the Congregation for the Doctrine of the Faith.<sup>10</sup> Then on 7 February 2003, Pope John Paul II reserved the delict of indirect violation of the seal of confession to the Congregation for the Doctrine of the Faith.

### Direct and Indirect Violation

The Congregation for the Doctrine of the Faith defined the Seal of Confession as "the obligation of strict confidentiality imposed by divine law on a confessor in the sacrament of penance not to reveal to any person, under pain of excommunication, the sins confessed."<sup>11</sup> Direct violation of the seal requires the confessor to violate the seal of confession deliberately. Gregory Zubacz explains "Direct violation occurs when a confessor reveals: a) to a third party, b) the identity of the penitent, c) the confessed sin."<sup>12</sup>

Indirect violation of the seal of confession "occurs when the sin and the sinner can be deduced from the words, gestures, deeds, or omission of the confessor."<sup>13</sup> Juan Arias says an indirect violation could occur when the confessor speaks of a sin confessed when only a small number of people have been to confession. E.g. A priest in a homily in a small country town referring to a sin confessed. The confessor could also indirectly violate the seal by telling a friend not to invest in the company shares of a penitent.

8 Cf. Paenitentiarum Apostolica, Letter, *Pro memoria*, 24 October 1983, in *CLD*, vol. 11, 49-52.

9 [http://www.vatican.va/archive/ENG1104/\\_P3F.HTM](http://www.vatican.va/archive/ENG1104/_P3F.HTM).

10 Article 3, 3: "Delicta contra sanctitatem sacramenti Paenitentiae, Congregationi pro Doctrina Fidei cognoscendo reservata, sunt: violatio directa [et indirecta] sigilli sacramentalis, de qua in canon 1388 §1 Codicis Iuris Canonici et in can. 1456, §1 Codicis Canonum Ecclesiarum Orientalium."

11 [http://www.vatican.va/resources/resources\\_glossary-terms\\_en.html](http://www.vatican.va/resources/resources_glossary-terms_en.html).

12 Gregory Zubacz, *The Seal of Confession and Canadian Law*, (Montreal: Wilson & Lafleur Ltee, 2009), 51.

13 Juan Arias, commentary in E. Caparros, et al., *Code of Canon Law Annotated*, (Montreal: Wilson & Lafleur Ltee, 2004, 1078.

during confessions. The Holy Office issued an instruction in 1915 which stated:

In future, not only in theological classes but also in conferences on moral 'cases' as they are called, and in public and private talks and exhortations to the clergy, they carefully see to it that the priests subject to them be taught never to dare to mention anything which pertains to the matter of sacramental confession in any form or under any pretext, especially on the occasion of sacred missions or spiritual exercises, nor even incidentally, directly or indirectly in public or private speech (except the case of necessary consultation to be made according to the rules laid down by approved authors).<sup>14</sup>

Confessors must be clear about their obligations of confidentiality. Pope Blessed Innocent XI, in 1682, presided over the Holy Office when it replied to a question concerning confidentiality. He prohibited the use of information obtained in confession that could be to the detriment of the penitent even though the seal of confession was maintained.<sup>15</sup> Information gained in confession can never be used to the harm or detriment of the penitent, but implicitly without breaking the seal, information could be used for the good of the penitent. Thus the 1983 Code legislates:

Canon 984 §1. Even if every danger of revelation is excluded, a confessor is absolutely forbidden to use knowledge acquired from confession when it might harm the penitent.

Specifically, the code rules out use of confessional knowledge by religious superiors or those who are later in a position to use it.

14 Holy Office, Instruction on the Seal of Confession, 9 June 1915, *CLD*, 1: 414.

15 Pope Innocent XI, decree, 18 November 1682, (Denzinger-Schönmetzer, no. 2195), translated in Ian Waters, "The Seal of Confession," *The Australasian Catholic Record*, "Is it lawful to use knowledge obtained in confession, provided it is done without direct or indirect revelation, and without burden upon the penitent, unless some greater evil follows from its non-use, in comparison with which the first would rightly be held of little account, an explanation or limitation then being added, that it is to be understood concerning the use of knowledge obtained from confession with burden to the penitent, any revelation whatsoever being excluded, and even in the case in which a much greater burden to the same penitent would follow from its non-use? Reply The stated proposition, even with the aforesaid explanation or limitation, must be altogether prohibited, inasmuch as it admits the use of the said knowledge with burden upon the penitent."

use for external governance knowledge about sins which he has received in confession at any time.

Both Superiors at the time and confessors who become Superiors after they resign, who have knowledge concerning sins from confession, cannot use this knowledge in any way for external governance.

Seminary staff are specifically required to protect knowledge acquired in the sacrament of penance or the internal forum:

Canon 240 §2. In making decisions about the admission of students to orders or their dismissal from the seminary, the opinion of the spiritual director and confessors can never be sought.

### The Penitent/Victim

The Catholic Bishops Conference of England and Wales and the Conference of Religious established the *Catholic Safeguarding Advisory Service (CSAS)*.<sup>16</sup> Its *Procedures Manual* states:

The Sacrament of Reconciliation offers the penitent the seal of absolute confidentiality; in this context alone is the priest bound to keep secret what is disclosed. Knowledge of the information is for the priest, the penitent and God. Where there is involvement of an interpreter, e.g. during the Confession of a deaf person, a duty of complete confidentiality is extended to this person. Information gained in the context of the sacramental confession may not be used in any other forum. Disclosure of an incident of sexual abuse in the context of the sacramental confession is very rare but a priest must know what to do in these circumstances.<sup>17</sup>

<sup>16</sup> The Catholic Bishops Conference of England and Wales and the Conference of Religious accepted these recommendations and the new national structures were established on 1st July 2008.

#### NATIONAL CATHOLIC SAFEGUARDING COMMISSION (NCSC)

The NCSC has responsibility for setting the strategic direction of the Church's safeguarding policy and monitoring compliance. Its place in the organisation of the Church, mandated by the Conference of Bishops and Conference of Religious, and with accountability across Dioceses and Religious Congregations is to ensure that standards are met and policies are implemented. The CATHOLIC SAFEGUARDING ADVISORY SERVICE (CSAS) has been established to be responsible for driving and supporting improvements in practice. Its primary role is one of co-ordination, advice and support in respect of the wider job of safeguarding children, young people and vulnerable adults.

<sup>17</sup> Catholic Church England and Wales, *Catholic Safeguarding Advisory Service (CSAS) Procedures Manual*, <http://www.csasprocedures.uk.net>.

and procedures concerning disclosure of sexual abuse. They must "always reassure the person that he or she has acted properly in seeking help."<sup>18</sup> In a confession involving disclosure of abuse the penitent/victim might think the seal of confession applies to them personally. The penitent/victim may also think that the seal applies to everything said on the occasion of going to confession. The *Procedures Manual* advises:

A priest must be clear with the penitent about the status of a conversation and ensure that there is no misunderstanding about whether the Seal of Confession applies.<sup>19</sup>

Also, the penitent/victim might think mistakenly that they have in some way sinned, caused the abuse or have acted wrongly. The *Procedures Manual* instructs priest confessors:

A victim or survivor of abuse is not guilty of any sin in respect of the abuse suffered. In part, their healing relies on the recognition of this fact. Abusers will often tell their victims that they are to blame and that they will be punished if they tell of the abuse. The priest should help the penitent/victim to place the responsibility where it belongs, i.e. with the offender.<sup>20</sup>

The priest/confessor must do his best to get help for the penitent/victim as the *Procedures Manual* advises:

Survivors and victims of abuse will usually need help. From within the context of the sacramental confession the priest can encourage the penitent to seek such help outside the sacrament. They should also be given encouragement to pass on the information to an appropriate person. It is not the priest's role to engage in counselling in the context of the sacramental confession, even if he is appropriately professionally qualified to do so, since this leads to a confusion of roles and might give rise to conflicts of interest for himself and the penitent.<sup>21</sup>

An example to make the point: a 13-year-old boy came to confession and on his way, is knocked off his bike by a car whose driver did not stop. When he

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

would not be breaking the seal of confession if he phoned the police or the boy's parents and told them that the boy had been a victim of a hit-and-run accident. The boy had done nothing wrong. What happened to him was not a sin on his part. He is an innocent victim and needs help. Similarly, if a boy, for example, has been sexually abused, he has not committed any sin. He is an innocent victim and needs help.

When a person comes to confession to confess their sins, the priest is only there acting in the person of Jesus Christ. The confession of sins made to the priest are understood as being made to God. The confession of sins is not for the priest to reveal. The seal of confession of canons 983 and 1388 applies only to the priest/confessor, not to the penitent. Nor does the seal of confession apply to matters that are not sinful. E.g. if a penitent during the confession tells the priest that his horse is going to win and suggests backing it, the priest is not breaking the seal when he suggests to a third party that they back this horse as well.

Many people think that the seal of confession applies to everything that is said on the occasion of going to confession. Sometimes people seek spiritual direction or advice when they have their confession heard. Priests must make it clear to penitents when sexual abuse is not covered by the seal of confession. The priest must advise the penitent/victim to seek help and to inform civil authorities. The priest could accompany the child to speak to its parents, to see the police, and could help the child inform authorities.

### **The Penitent/Abuser**

Many people go to confession anonymously and confess behind a screen or grill. The priest has no idea who is confessing. Nor is the priest allowed to ask the identity of the person with whom the penitent sinned.<sup>22</sup>

The essential element of a sacramental confession, at least as far as the seal is concerned, is the penitent's intention of receiving absolution. If the penitent is a paedophile confessing his personal sin of sexual abuse of a minor, the seal of confession applies to the priest/confessor.

Priests can delay or even deny absolution to a paedophile confessing his sin of sexual abuse of minors. Pope Blessed Innocent XI condemned the proposition that a priest could grant absolution to a penitent when there appeared no hope

<sup>22</sup> Canon 979. In posing questions, the priest is to proceed with prudence and discretion, attentive to the condition and age of the penitent, and is to refrain from asking the name of an accomplice.

abuse.

Thus, penitents, such as paedophiles, who are judged by the confessor to have no real intention of reforming and avoiding the occasions of sin, can have absolution deferred or refused until the confessor judges their intention of amendment to be sincere.<sup>24</sup>

The Catholic Safeguarding Advisory Service (*CSAS Procedures Manual*)<sup>25</sup> points out:

When the nature of the abuse disclosed is criminal, the Penitent should be directed to bring the matter to the attention of the statutory authorities and informed that the diocesan safeguarding commission can help in making any necessary contacts.

The confessor should ask for action consistent with a firm purpose of amendment as a constituent part of an assigned penance. The penitent's agreement to act in a way consistent with a firm purpose of amendment provides evidence of a proper disposition for the reception of absolution.<sup>26</sup>

- <sup>23</sup> Holy Office, Decree Condemning Sixty-Five Propositions, 2 March 1679, (Denzinger, no. 2164). quoted in Ian Waters, "The Seal of Confession," *The Australasian Catholic Record*, 340. 65 propositions on 2 March 1679, Proposition number 60 stated: The penitent who has the habit of sinning against the law of God, of nature, or of the Church, even if there appears no hope of amendment, is not to be denied absolution or to be put off, provided he professes orally that he is sorry and proposes amendment.
- <sup>24</sup> Canon 978 §1. In hearing confessions the priest is to remember that he is equally a judge and a physician and has been established by God as a minister of divine justice and mercy, so that he has regard for the divine honor and the salvation of souls.
- §2. In administering the sacrament, the confessor as a minister of the Church is to adhere faithfully to the doctrine of the magisterium and the norms issued by competent authority.
- Canon 980 If the confessor has no doubt about the disposition of the penitent, and the penitent seeks absolution, absolution is to be neither refused nor deferred.
- <sup>25</sup> The Catholic Bishops Conference of England and Wales and the Conference of Religious accepted these recommendations and the new national structures were established on 1st July 2008.
- NATIONAL CATHOLIC SAFEGUARDING COMMISSION (NCSC)
- The NCSC has responsibility for setting the strategic direction of the Church's safeguarding policy and monitoring compliance. Its place in the organisation of the Church, mandated by the Conference of Bishops and Conference of Religious, and with accountability across Dioceses and Religious Congregations is to ensure that standards are met and policies are implemented.
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- <sup>26</sup> Catholic Church England and Wales, *Catholic Safeguarding Advisory Service (CSAS) Procedures Manual*, <http://www.csasprocedures.uk.net>

could require the paedophile to seek help from a psychologist/psychiatrist and then require the penitent to return with proof of an appointment or a letter certifying that he has seen such a person. Then the confessor could give the paedophile absolution. The *Procedures Manual* advises:

If the priest is subsequently contacted by the penitent, outside of the Seal of the Confessional, the Priest must make it clear to the penitent that the Seal of Confession no longer applies. If the information is repeated (he should not assume knowledge gained in the confessional), the priest must explain that he has a responsibility to take all reasonable steps to protect children or adults who may be at risk of abuse.<sup>27</sup>

If an abuser discloses his or her sexual abuse outside of sacramental confession, the matter is in the external forum and must be dealt with accordingly.<sup>28</sup> The priest has an obligation to prevent further sexual abuse of minors. If a priest receives knowledge of the abuse from a source outside the confessional, the seal of confession no longer applies to the knowledge thus obtained in the external forum. Nevertheless, because of the complexity of such situations, bishops, major superiors of clerical religious institutes and members of sexual abuse protocol committees are advised not to hear the confessions of priests to avoid any potential conflict of interest.

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

*The Diocesan Bishop was served with a civil law subpoena for the acts of a marriage case in the Diocesan Tribunal. Please suggest arguments which should be made in response and documents that should be submitted when the Diocesan attorneys seek that the subpoena be quashed.*

OPINION

First Amendment/Freedom of Religion arguments would be the first and most obvious approach in an effort to quash the subpoena, but there are other arguments to be made.

*First Amendment*

A First Amendment argument would include the fact that the party who submitted the petition (in a marriage case) to an ecclesiastical tribunal was required to do so by their church law, and that all those who submitted testimony or evidence did so for an exclusively religious purpose -- namely, the right to marry in a Catholic ceremony -- and that the results are binding only in a religious environment. Removing these Acts from their religious context places the secular court in the position of interpreting testimony and documents that were not only gathered for an exclusively religious purpose but can be understood and interpreted properly only in light of that religious purpose. Hence, for its own purposes, the secular court should hear from the same witnesses and request similar documents directly, without becoming entangled in ecclesiastical matters. The ecclesiastical tribunal undertook its judicial process for a purpose that is essentially spiritual, dealing as it does with matters of canon law, and usually in respect to marriage, matters of sacramentality. There is a First Amendment argument to be made about not entangling secular courts in the internal theological matters of the Church.

*Best Evidence Rule*

The "best evidence rule" is certainly pertinent as well. This long-standing legal principle holds that original evidence is superior to copies or secondary sources of evidence. If a state or federal court seeks documents, transcripts of

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The Canon Law Society of America (CLSA) publishes annually *Roman Replies and CLSA Advisory Opinions* for canonists and those seeking a clearer understanding of the *praxis legis* of the Catholic Church. The combination of these two services, begun in 1984, continues to serve as useful resources for those involved in the application of canonical discipline.

The compilation of materials for *Roman Replies 2018* was guided by Sister Sharon A. Euart, RSM, Chair of the CLSA Publications Advisory Board. The collection of entries in this issue, when viewed in conjunction with previous volumes, assists the reader both in understanding recent developments in the law and in identifying current trends in the *praxis* of the Roman Curia.

The selection and assembly of opinions for *CLSA Advisory Opinions 2017* was provided by Monsignor John A. Alesandro, editor and consultant to the CLSA Publications Advisory Board. The topics addressed in the opinions reflect a variety of canonical issues and demonstrate the scope of canonical expertise and reflection by members of the Society. Editorial assistance was provided by the CLSA Administrative Office.

*Roman Replies and CLSA Advisory Opinions* that are out-of-print are available electronically on the CLSA website ([www.clsa.org](http://www.clsa.org)). As an additional resource, the CLSA Advisory Opinion Online Index includes all published opinions, grouped by canon number on the CLSA website.

The CLSA provides this series as a professional resource. Care should be taken in considering the relative weight of the materials found in this publication. The principles for canonical interpretation (*CIC* cc. 16-19 and *CCEO* cc. 1498-1501) serve as guides in considering the contents of this volume.

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