

Royal Commission into Institutional Responses to Child Sexual Abuse: Case Study 50

9 February 2017

The fourth day of the Royal Commission's Catholic "wrap up" hearing was held today in Sydney. The Commission today had two separate panels.

The first, comprised of Dr Roger Austin, Father Thomas Doyle OP, Sister Moya Hanlen OLSH and Kieran Tapsell looked into issues of canon law.

The second, comprised of Father (Dr) Frank O'Loughlin, Father (Prof) Ian Waters, Father (Dr) Joseph Grayland, Father Frank Brennan SJ, Father Laurie McNamara and Bishop Terence Curtin considered the Sacrament of Reconciliation.

Each panel will be looked at separately.

Canon law panel: witnesses

Father Doyle, Dr Austin and Sister Hanlen all have qualifications in canon law. Mr Tapsell does not, but has researched it for 10 years and wrote a book on its link to child sexual abuse.

Intersection of civil law and canon law

The panel discussed Canon 22, which provides:

Civil laws to which the law of the Church yields are to be observed in canon law with the same effects, insofar as they are not contrary to divine law and unless canon law provides otherwise.

Dr Austin said that this was not about a conflict between canon law and civil law, but civil law and *divine* law, and gave the example of the difference between canon and civil laws on marriage (ie, that civil law might allow divorce and remarriage, but canon law did not without an annulment.) He said that canon law was usually more restrictive than civil law.

Sr Hanlen said that canon law was not divine law, and pointed to the Ten Commandments as an example of divine law. She said that the reporting and proper dealing with perpetrators of child abuse was not contrary to divine law, and so the canon was not applicable in these cases.

Dr Austin explained that, unlike in civil law, there is no system of precedents (using prior judgments to make a ruling in a similar case), and so other Church documents (like encyclicals and the Catechism) were used to interpret and apply canon law. He mentioned Church documents which required respect for civil law as being authoritative in this respect.

Ability of canon law to deal with child sexual abuse

Each of Father Doyle, Dr Austin and Sister Hanlen said that the proper application of canon law would have enabled the effective dealing with abuse cases, which was contrary to the written submissions from Mr Tapsell. Father Doyle commented, however, that regardless of what the law said, there were some who ignored the law in order to protect the image of the Church.

Laicisation

The witnesses then spoke about the criticism that often, a Priest who has offended is not laicised after being found guilty.

Sister Hanlen told the story of an offender who had served his time in prison and was suffering from dementia. She said that had he have been laicised, the Priest would have become the responsibility of nieces and nephews, which she believed to be unjust. Instead, the Bishop removed any Priestly “privileges” from him (the ability to minister in any form, wear clerical dress or call himself “Father”) and put him under an order which required him to live in secure accommodation chosen by the Bishop. She said that a Bishop has no control over a person who has been laicised, and so while an offender against children was deserving of laicisation, it was sometimes better to not seek it for the good of the community. Father Doyle agreed, saying that he has lobbied against laicisation in certain cases.

Secrecy

Mr Tapsell told the Commission of his concerns that documents such as *Crimens Sollicitationis* (issued in 1962) and *Secreta Continere* (issued in 1974) required secrecy for canonical processes regarding child sexual abuse, even the initial complaint. There has been previous evidence to the Commission that the Australian Bishops were not aware of the existence of *Crimens Sollicitationis* until the late 1990s. Father Doyle said that, when the document was found, it was hailed as a smoking gun, proving a conspiracy. He rejected this, suggesting instead that there was a culture of secrecy within the Church. Sister Hanlen agreed.

Dr Austin made the point that there is no Latin-equivalent word for “confidential,” and so the word “secret” is used when really it is just meant to describe a level of confidentiality. Sister Hanlen made a similar point in relation to “secret archives,” saying that they were simply confidential, and available to the relevant authorities as needed.

Mandatory reporting

Justice McClellan asked whether the witnesses believed it was within the remit of the Commission to recommend a mandatory reporting law for the Church which went beyond civil laws. The witnesses all said that it would be preferable that all states had mandatory reporting laws. Mr Tapsell noted that making a recommendation which only affected the Catholic Church and no one else could be seen as unequal treatment.

Justice Murray asked about whether it would be appropriate for the Royal Commission to frame its recommendations around overriding principles, such as the best interests of the child, rather than specific legal changes. Father Doyle agreed this would be a good idea.

Confession panel: witnesses

Father (Dr) Frank O'Loughlin is a sacramental theologian, Father (Prof) Ian Waters is a professor of canon law, Father (Dr) Joseph Grayland has a doctorate in theology, Father Frank Brennan SJ is the CEO of Catholic Social Services Australia and a human rights lawyer, Father Laurie McNamara is a moral theologian and lecturer and Bishop Terence Curtin is the Chair of the Australian Catholic Bishops' Conference Commission for Doctrine and Morals.

What happens if a person confesses child sexual abuse in the confessional?

There was a discussion about what would happen if a person confessed a crime against a child during the Sacrament of Confession. Both Father Frank Brennan and Father Laurie McNamara said that in 31 and 47 years of Priestly ministry (respectively), no one had ever confessed to it.

Bishop Curtin said that, if it did, a Priest could withhold absolution until a penitent had turned themselves into the police. However, if the person did not turn themselves in, a Priest would not be able to break the confessional seal and make a report.

Should the Commission recommend mandatory reporting?

Father Brennan said that he understood that, in light of the horrific abuse statistics revealed, there was a need to focus on specifically "Catholic" issues and that the Sacrament of Confession must seem like a "parallel universe" to those outside the Church. However, he said that making mandatory reporting apply to the confessional might be a "red herring," because it could remove the possibility that a repentant paedophile might seek out confession as the first step to taking responsibility for their actions.

Should the Commission recommend withholding absolution until a person turned themselves in?

Justice McClellan asked whether it would be seen as outside the authority of the Commission to recommend that all confessors be instructed to withhold absolution for child sexual abuse until they were satisfied that a report had been made to the police. Father Brennan said that while the Commission had the authority to make the recommendation, he was not sure of the prudence of making a recommendation which would seem to single out the Catholic Church and could be seen as a fundamental interference on the separation between Church and State.

The confessional seal

There was a discussion of what was, and was not, covered by the Seal of Confession. Father Brennan said that it was only the sin of the penitent which was covered by the confessional seal, and said that if a child in confession had disclosed that they were being abused, then the confessor was free to report that information.

Father Waters said that it is naive to think that anything said in the confessional box is covered by the confessional seal, and that it needs to be made clear to Catholics that the seal only applies within the sacrament and then only in relation to a person's sins.

Bishop Curtin also said that he would have no concerns going to the police if a person attempted to use the confessional not as a genuine attempt at repentance, but rather as an attempt to bind a

Priest to silence. He undertook to provide a submission to the Royal Commission on what is, and is not, covered by the confessional seal.

Father McNamara pointed out the potential pastoral consequences of the discussion around the confessional seal, saying that it could have knock on effects in a Catholic community which saw the confessional as sacrosanct.

The hearing will continue tomorrow.