

**Submission to**

**The FAMILY AND  
COMMUNITY  
DEVELOPMENT  
COMMITTEE Inquiry**

**on the processes by which  
religious and other non-  
government organisations  
respond to the criminal  
abuse of children by  
personnel within their  
organisations**

**By Jennifer Belinda Jacomb**

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## **1.0 Management Summary**

The purpose of this submission is:-

1. The dangers and fallacies of attempting to breach the seal of confession.
2. Recommend an approach which would cover all organisations involved with children and improve the protection of children.
3. Highlight the desirability of civil over criminal penalties and
4. Highlight a problem with a current civil structure of organisations like the Catholic Church which would need to be addressed for both civil penalties and civil remedies to work.

**Please note I would like to be heard on the matter and make oral submission to the Committee**

## **2.0 Legal References**

### **2.1 Australian Law:**

Briginshaw v Briginshaw [1938] HCA 34; (1938) 60 CLR 336 (30 June 1938)  
Trustees Of The Roman Catholic Church V Ellis & Anor [2007] Nswca 117  
(24 May 2007)

### **2.2 Roman Catholic Church Canon (Law)**

Code of Canon Law (No. 983.2)  
Code of Canon Law (No. 1388.1)  
Code of Canon Law (No. 1388.2)

## **3.0 Additional Material**

The Seal of the Confessional by FR. WILLIAM SAUNDERS, Catholic Education Resource Centre

## **4.0 Breaching The Seal Of Confession**

There has been much said about this in the press and elsewhere.

### **4.1 Summary**

Any attempt to invade the confessional will invariably fail because of:-

1. Church Law
2. Individual Catholics Faith
3. Its bad public policy
4. Would result in Chief Wiggum in the confessional
5. Attacks the titles of the Sovereign
6. Represents an attempt by the Parliament to interfere with the articles of faith of a major and well respected religion.

It would result in a situation where no Catholic in good conscience could support any government or any party that supported such an invasion and violation of our faith.

### **4.2 No Evidence That Priest Have Confessed To Pedophilia In Confession**

1. There has never been evidence that Pedophile Priests confess to being pedophiles in confession.
2. I have taught first confession and one of the things you are taught to teach is the "these and all my other sins" clause. The purpose of this is that you have to live with your local parish priest, so you confess a few simple sins and cover the rest by the other sins clause.
3. Any pedophile priest would know and do this.
4. The way the church has become aware of the problem has not through breach of the confessional seal but rather through parents directly approaching and complaining to the Church hierarchy.

#### **4.3 Priests And Laity Can Never Break The Seal Of Confession**

1. A person who becomes a priest does so as the ultimate expression of a deeply held profound faith.
2. Under Canon Law 1388.1, it states:-  
**"A confessor who directly violates the seal of confession incurs an automatic excommunication reserved to the Apostolic See;"**
3. Thus by attempting to pass a law that requires reporting of things such as pedophilia confessed in the confessional as we do for doctors and child abuse, would in fact be requiring that the priest forsake all that he believes, and is no longer able to be a priest.
4. Furthermore, any member of the laity involved in a confession, such as a translator is also bound by that seal. Under Canon Law 1388.2, it states:-
5. "For such a person to violate the secrecy of another person's confession is a mortal sin and warrants "a just penalty, not excluding excommunication"

#### **4.4 Priests And Laity Protect The Sacraments And Confession Unto Death**

1. For Catholics, history is replete with times we have preferred death and imprisonment to abandoning our faith e.g. St Thomas More.
2. Furthermore, a good example of how seriously priest view the seal of confession is given by St. John Nepomucene (1340-93), the vicar general to the Archbishop of Prague.
  - a. King Wenceslaus IV, described as a vicious, young man who easily succumbed to rage and caprice, was highly suspicious of his wife, the Queen. St. John happened to be the Queen's confessor. Although the king himself was unfaithful, he became increasingly jealous and suspicious of his wife, who was irreproachable in her conduct.
  - b. Although Wencelaus tortured St. John to force him to reveal the Queen's confessions, he would not.
  - c. In the end, St. John was thrown into the River Moldau and drowned on March 20, 1393.

#### **4.5 Bad Public Policy To Make Unenforceable Laws**

1. This is why as a matter of public policy over the centuries, the Crown has not invaded the confessional.
2. Furthermore, it is bad public policy to make a law that can never be enforced.

#### **4.6 Law Could Never Secure Conviction Without Bugging The Confessional / Police Pretending To Be Priests**

1. Under Australian Law, the evidence of the penitent saying “yes, I confessed to pedophilia to another priest” would be insufficient in law to secure conviction.
2. It is also a fundamental principle that no person can be required to incriminate themselves.
3. Thus any such law to invade the confessional would require the bugging of the confessional.
4. If we bug the confessional what happens if some one confesses to say robbery or murder, will we invade the sacrament further to undermine and destroy the sacrament.
5. It is not for the Crown to destroy or force the change of beliefs of people of religion.
6. What net will we bug synagogues, churches, mosques and temples.
7. **Will we end up like the Simpson, with Chief Wiggum pretending to be the priest in the confessional?**

#### **4.7 Such A Law Will Result In Discrimination Against Catholics**

1. It will also affect the employment of Catholics who are employed as police because of the impact of the afore mentioned Canon Law on Catholics.  
Thus we will be discriminating against police, juries and judges who are Catholic.
2. The role of government for the last 200 hundred years has been to eliminate discrimination of all sorts, not add to it.

#### **4.8 Such An Attack On The Confessional Attacks The Titles Of The Sovereign**

You will forgive me for raising this, but as a Catholic I feel obliged to.

One of the titles of the Sovereign is “Defender Of The Faith”

It was awarded to King Henry the VIII and his successors, for his writing of a very learned book “**In Defence Of The Sacraments**”, which of course includes confession.

Whilst the law making people liable to death for attacking the titles of the Sovereign have been repealed.

I do submit it is bad form still for the Parliament to even consider attacking a title of the Sovereign.

## **5.0 Alternative Solution**

I would like to recommend that the correct solution is that for all organisations that have dealing with children, be it a church, youth group, school or any other organisation that it be made law, that:-

“When parents express concern about possible child abuse, there is a civil obligation with significant civil penalties for the person of that who organisation to whom the concerns are made to:-

1. Encourage those expressing the concerns to report the matter to the police
2. Report the matter themselves to the police.

Failure to do so making them liable for those civil penalties.

This would be a logical extension of what the Parliament has done elsewhere with regards mandatory reporting of abuse by Doctors.

I would not recommend requiring that Ministers of Religion be required to undergo Police Checks and obtaining a working with Children Permit as that would be seen as interfering with an individual religion.

**The separation of Church and State is an important convention.**

**A separation that is in everyone’s best interest to remain.**

## **6.0 Why Civil Rather Than Criminal?**

As has been seen from the Courts, it is hard to obtain criminal conviction because of:-  
The standard of proof being reasonable doubt and  
Sometimes the long delay in the laying of charges.

In America, in recent times, they have found it much more useful to go for Civil Penalty rather than Criminal.

The reasons are:-

1. Lower Standard of Proof – Briginshaw Test - Briginshaw v Briginshaw [1938] HCA 34; (1938) 60 CLR 336 (30 June 1938) **Test**
2. The fact that these days senior managers are becoming much better skillded at concealing the smoking gun be it email or other evidence thus making it much harder to obtain criminal conviction.

This approach has been highly successful in dealing with American Companies engaged in bribing foreign officals and changing corporate behaviour.

I feel that it is an approach that we might benefit from



## **7.0 Need To Ensure That Corporate Structures Do Not Shield From Civil Penalties**

I would like to draw the Committee's attention to a recent case in the NSW Supreme Court Of Appeal, Trustees Of The Roman Catholic Church V Ellis & Anor [2007] Nswca 117 (24 May 2007).

In that case, Mr Ellis sued:-

1. The Archbishop Of Sydney
2. The Trustees of the Roman Catholic Church and
3. The Priest who molested him.

This case failed.

It failed because:-

1. The priest who molested him had no assets and died
2. The Archbishop of Sydney had no assets
3. The one party that did have the money, being the Trustees of the Roman Catholic Church was not liable under vicarious liability.


As I understand the matter, the Roman Catholic Church has a similar structure in Victoria.

As you would expect given that the Roman Catholic Church:-

1. Has been in business for over 2000 years and
2. At one point ran the bureaucracy of the Roman Empire.

We all remember Jeff Kennett and St Vincent's Hospital.

Any law considered by Parliament would need to factor in such corporate structure and prevent the organization concerned using such structure to avoid paying civil penalty and civil remedy.



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## The Seal of the Confessional

### FR. WILLIAM SAUNDERS

Can a priest ever tell someone another person's confession?

The standard of secrecy protecting a confession outweighs any form of professional confidentiality or secrecy. When a person unburdens his soul and confesses his sins to a priest in the Sacrament of Penance, a very sacred trust is formed. The priest must maintain absolute secrecy about anything that a person confesses. For this reason, confessionals were developed with screens to protect the anonymity of the penitent. This secrecy is called "the sacramental seal," "the seal of the confessional," or "the seal of confession."



The sacramental seal is inviolable. Quoting Canon 983.1 of the Code of Canon Law, the Catechism states, "...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" (No. 2490). A priest, therefore, cannot break the seal to save his own life, to protect his good name, to refute a false accusation, to save the life of another, to aid the course of justice (like reporting a crime), or to avert a public calamity. He cannot be compelled by law to disclose a person's confession or be bound by any oath he takes, e.g. as a witness in a court trial. A priest cannot reveal the contents of a confession either directly, by repeating the substance of what has been said, or indirectly, by some sign, suggestion, or action. A Decree from the Holy Office (Nov. 18, 1682) mandated that confessors are forbidden, even where there would be no revelation direct or indirect, to make any use of the knowledge obtained in the confession that would "displease" the penitent or reveal his identity.

(Just as an aside, a great movie which deals with this very topic is Alfred Hitchcock's "I Confess," which deals with a priest who hears a murder confession and then is framed for the murder. As a priest, I was in agony during much of the movie.)

However, a priest may ask the penitent for a release from the sacramental seal to discuss the confession with the person himself or others. For instance, if the penitent wants to discuss the subject matter of a previous confession — a particular sin, fault, temptation, circumstance — in a counseling session or in a conversation with the same priest, that priest will need the permission of the penitent to do so. For instance, especially with the advent of "face-to-face confession," I have had individuals come up to me and say, "Father, remember that problem I spoke to you about in confession?" I have to say, "Please refresh my memory," or "Do you give me permission to discuss this with you now?"

Or if a priest needs guidance from a more experienced confessor to deal with a difficult case of conscience, he first must ask the permission of the penitent to discuss the matter. Even in this case, the priest must keep the identity of the person secret.

What happens if a priest violates the seal of confession? The Catechism (No. 1467) cites the Code of Canon Law (No. 1388.1) in addressing this issue, which states, "A confessor who directly violates the seal of confession incurs an automatic excommunication reserved to the Apostolic See; if he does so only indirectly, he is to be punished in accord with the seriousness of the offense." From the severity of the punishment, we can clearly see how sacred the sacramental seal of confession is in the eyes of the Church.

Actually, the Church's position in this matter has long-standing credibility. The Fourth Lateran Council (1215) produced one of the first comprehensive teachings concerning the Sacrament of Penance. Addressing various problems ranging from abuses to heretical stands against the sacrament, the council defended the sacrament itself, stipulated the need for the yearly sacramental confession of sins and reception of the Holy Eucharist, and imposed disciplinary measures upon priest confessors. The council decreed, "Let the confessor take absolute care not to betray the sinner through word or sign, or in any other way whatsoever. In case he needs expert advice he may seek it without, however, in any way indicating the person. For we decree that he who presumes to reveal a sin which has been manifested to him in the tribunal of penance is not only to be deposed from the priestly office, but also to be consigned to a closed monastery for perpetual penance."

A beautiful story (perhaps embellished with time) which captures the reality of this topic is the life of St. John Nepomucene (1340-93), the vicar general to the Archbishop of Prague. King

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Wenceslaus IV, described as a vicious, young man who easily succumbed to rage and caprice, was highly suspicious of his wife, the Queen. St. John happened to be the Queen's confessor. Although the king himself was unfaithful, he became increasingly jealous and suspicious of his wife, who was irreproachable in her conduct. Although Wencelaus tortured St. John to force him to reveal the Queen's confessions, he would not. In the end, St. John was thrown into the River Moldau and drowned on March 20, 1393.

Each priest realizes that he is the ordained mediator of a very sacred and precious sacrament. He knows that in the confessional, the penitent speaks not so much to him, but through him to the Lord. Therefore, humbled by his position, the priest knows that whatever is said in confession must remain secret at all costs.

Another interesting side to this question is the obligation of the laity: An interpreter needed for someone to make a confession or anyone who gains knowledge of a confession (such as overhearing someone's confession) is also obligated to preserve secrecy (Code of Canon Law, No. 983.2). For such a person to violate the secrecy of another person's confession is a mortal sin and warrants "a just penalty, not excluding excommunication" (No. 1388.2). A person who falsely accuses a priest of breaking the seal of the confession incurs a mortal sin and perhaps other canonical penalties, including excommunication.

Clearly, the Church regards the seal of confession as sacred. Every person — whether priest or laity — must take the obligation to preserve the secrecy of confession absolutely seriously.

#### **ACKNOWLEDGEMENT**

Saunders, Rev. William. "The Seal of the Confessional." *Arlington Catholic Herald*.

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