CANON AND CIVIL LAW ISSUES FACING RELIGIOUS INSTITUTES

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Introduction

It is obviously a delight for me to be able to be with you today and, together, to look at some of the canonical and civil issues facing religious institutes. I hope that what we will cover will be helpful to you, but also that it will be interesting. As they always say, truth is stranger than fiction. The issues are quite numerous, and so I had to be selective in the ones I retained for discussion.

While canonical issues can generally be considered to be somewhat similar across the country, we cannot necessarily say the same in regard to issues arising from civil law. And, given the fact that I am not a civil lawyer – and don't pretend to be – I will not be able to enter into the same detail in regard to these matters, except to rely on my own experience in certain cases.

It might be helpful to begin with a brief overview of the situation of religious institutes today, both those that are struggling for personnel, and those that are of recent foundation. Then, in turn, we could examine some of the canonical and civil issues to be addressed. This would lead us to a final section where some practical recommendations in relation to vocation discernment could be presented for discussion.

I. The Status of Religious Institutes in North America Today

If we were to limit our overview exclusively to religious institutes in North America, as they presently exist, without addressing the fact that numerous new groups are in various stages of foundation, we might risk becoming quite pessimistic as to the future of various forms of consecrated life in our world.

So, I will divide this section into two parts, the first referring to religious institutes in the proper sense of the term, and the second looking at new associations of the faithful in North America.

A. Religious Institutes

We can begin with Canada, since I am more familiar with this situation. A look at statistics shows very clearly that the number of religious in Canada is diminishing very rapidly. As an example of this: in 1975, there were 55,180 religious men and women (with 1,173 in initial formation). In 2004, there were 22,471 religious men and women (with 131 persons in initial formation). In 2010, there were 19,235 men and women religious in Canada. January 2013: a total of 16,626 religious men and women. January 2015, 15,488 religious, of which 140 were in initial formation. January 2016, 13,890, with approximately 100 in various stages of initial formation. So we are just about one-quarter of what we were after the Council.

As for the USA, we can note a similar pattern. The overall change in the population of women religious in the United States over the past 50 years is one of dramatic decline. The numbers show that the number of women religious in the United States grew rapidly over the course of the twentieth century and reached its peak in 1965 with 181,421 sisters. The 2016 *Official Catholic Directory* notes that there are now 48,225 women religious, 11,731 religious priests, and 4,158 brothers. This represents nearly a three-quarters decline from the peak total in 1965.

As the *CARA*, Special Report, Fall 2015, indicates:

> The total membership among religious institutes of men has decreased dramatically across the last 45 years, from almost 42,000 in 1970 to fewer than 18,000 in 2015. This decline in numbers is notably greater than the corresponding decline in the number of diocesan priests in the United States over the same period. There are now 30 percent fewer diocesan priests than 45 years ago, while the number of men in religious life has declined by 58 percent. This drop is especially significant given the growing Catholic population in the United States, which has increased from 47,900,000 in 1970 to 68,100,000 in 2015.

But, numbers are not enough to give an overview of the situation. At the same time, as we all know too well, the median age is climbing rapidly, and, even though the membership is still there in many communities, the number of persons available to assume internal and external responsibilities is also diminishing progressively. Furthermore, those members who are gainfully employed become more and more essential to the communities, and so are not realistically available for institute leadership roles, unless the community is in the fortunate position of having sufficient financial reserves for the future.

In view of the diminishing personnel, many institutes have now abolished their provinces – sometimes to replace them with "sectors" or other internal structures, and sometimes to return to centralized government, as was the case in the initial stages of foundation.

Of course, international institutes have, for the most part, retained their North American provinces, although, in a certain number of recent instances, provincial borders now overlap between the USA and Canada, and, at times, also include Mexico and other Latin-American countries. For these communities, this brings about new issues, particularly in relation to corporation law and, more especially, to the legislation and policies relating to contributions and gifts given to organisms outside of the country of origin.

When we look at current leadership, we note that a number of major superiors are now in their third, fourth, or even fifth term of

office. The pool of eventual leaders is shrinking rapidly. Also, from an apostolic perspective, there are less and less ministerial works that remain directly sponsored by religious institutes in the North America. More and more religious are now involved on a somewhat individual basis in apostolic works, which are sponsored by other entities. This being the case, we have to become more sensitive to the feelings of employers, and we cannot simply remove persons at will from their positions, as might have been the case in the past.

It is obvious that the *Code of Canon Law* was not designed to address such rapidly changing circumstances. There are, therefore, times when we must think "outside the box," as they say.

B. New Associations, Movements, and Groups

At the same time as we note the diminishment of religious institutes, with their particular way of life, we do note that a number of new foundations are springing up, here and there. Many of these are still relatively small in numbers.

There is another phenomenon that cannot be overlooked. Now that we operating in many areas through public juridic persons (PJPs), more frequently referred to lately as MJPs ("ministerial juridic persons") as sponsors of apostolic works, the members of the boards of these PJPs, while not constituting a new association in the proper sense of the term, are together, as a group, assuming a greater role in the direction of apostolic activities in the country.

I still note, however, a certain reluctance on the part of some persons to consider that the laity involved in the operations of these MJPs can represent the Church as well as clerics and religious. This is particularly true when it comes to issues of ethics to be applied in our healthcare institutions. At the same time as we note this reluctance to respect those who are responsible for these ministerial activities, we also note a hardening of positions in relation to decisions to be taken. There seems to be less and less room for discussion and even for a legitimate divergence of opinion when delicate situations arise. Pushed to its extreme, this attitude could even lead – in the long term – to the removal of the Catholic identity of some of our institutions which are presently sponsored by PJPs.[1] I am trying to follow this tendency closely and monitor how it is developing.

For the newer groups that wish to include priests among their members, the issue of incardination has become quite delicate. Until the group is formally recognized on its own, it cannot incardinate clerics; these must then belong to a diocese. Yet, because of all the problems facing the clergy, and the resulting liability issues, bishops are becoming more and more reluctant to accept for ordination candidates who, while remaining part of the diocesan clergy, are, in fact, being prepared for service within the new association. There is a lurking issue of liability. This is a challenge we will have to face if these new groups are going to be able to grow and develop. This, of course, is not a new issue.

There are usually four issues which distinguish these new associations from present religious institutes:

1) membership is open to both men and women;

1. See, for instance, Bishop T.J. OLMSTEAD, "Phoenix Hospital No Longer Considered Catholic," in *Origins*, 40(2010-2011), pp. 505-507. See also, *ibid.*, pp. 507-509, 537-551.

2) membership is not reserved exclusively to Catholics;

3) there is no perpetual or definitive commitment;

4) commitment is not necessarily individual; it may be family-based.

According to the present canonical legislation, groups which have such criteria for membership could not become religious institutes (unless there were separate male and female branches, and the other issues were addressed).

One of the major issues facing these groups is the question of finance. They have young members in formation, but, because they are not yet in a position to exercise some stable form of ministry and thus generate regular income for the group, financial resources are quite limited. Yet, in many instances, potential new members are turning to these newer foundations as they express their desire to serve the Lord in some form of community and find that the members of existing religious institutes are either too old, or are not focused on ministries these persons would like to assume in the Church.

A number of religious institutes are being asked to support, either with personnel and finances, or even with leadership, the founding of these new associations which might, someday, become religious institutes. Sometimes, too, the call to found new groups comes from within the institute. For instance, one of its members now feels called to found a new group to respond to unmet needs that the present community cannot assume.

The *Code of Canon Law* provides for various steps to be taken when new institutes are being founded. Five steps in all are foreseen:

1) a period (usually five years) when the new group lives together as a purely voluntary association, without juridic personality or canonical recognition; during this time, it begins preparing a rudimentary form of statutes or constitutions;

2) a period (again, usually five years) when the group lives as a private association of the faithful in the Church, with recognized statutes (but which have not yet been formally approved);

3) a period when the group lives as a public association of the faithful, with juridic personality; its statutes are formally approved and can be changed subsequently only by the authority who approved them;

4) when the group has some 50 members, consideration can be given to becoming a diocesan religious institute;

5) then, when the group has 100 or so members, consideration could be given to requesting pontifical status.

The problem we face is that a number of the newer groups, which are still at the first stage, need some type of recognition from the Church in order to obtain "Charitable status" or listing in the *Official Catholic Directory*. Since canonical recognition would be given only at the second stage, a number of Bishops, when dealing with groups that are still at the first stage, have been using a new mechanism, which is not found in the *Code*, and which they call "Pastoral recognition." Given in the form of a letter (not a decree), this document states that the Bishop recognizes that this group wishes to function within the mission of the Church and is in good standing. It enables the group to present its request for recognition and subsequent tax exemption.

Although this form of recognition is not mentioned in the law, there is nothing preventing a Bishop from issuing such a commendation, if he sees fit. However, it would be important not to rush into the approval of new private, and especially public, associations of the faithful.

Also, it would be essential to verify their doctrinal approach, as well as their style of life. Otherwise, as we have seen, unfortunately, in a number of recent foundations (which have since been suppressed), there is a strong risk of developing a "sectarian" mentality, with brainwashing techniques.[2] Religious who are being asked to assist in helping these new associations should be particularly attentive to this risk, and superiors should exercise care before releasing members for this new work, keeping in mind, however, that most of our present communities began with borrowed assistance of one form or another.

As an illustration of this point, just a few months ago, a Bishop in the USA asked me to review the statutes of a new association of the faithful, destined eventually to become a religious institute. The group has used as a working text, one approved by the Holy See in 1895 (not a typo!). Three times in their "new" document they referred to their "total fidelity" to the Magisterium of the Church. However, nowhere was there any reference to the 1917 or 1983 *Codes of Canon Law*, nor to Vatican II, nor to the Apostolic exhortations *Evangelica testificatio* and *Vita consecrata*, nor to any of the other Vatican documents referring to consecrated life. I suggested that they change the expression "total fidelity" to read "selective fidelity," but that didn't meet with much appreciation!

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2. See F.G. MORRISEY, "Canonical Associations Destined to Become Religious Institutes," in *Informationes SCRIS*, 26 (2000), pp. 88-109. See also id., "Canon 303 and the Establishment of Third Orders and Related Associations," in *Consecrated Life*, 25 (1999), pp. 73-90. See also P. VERE, "Sifting the Wheat from the Tares: 20 Signs of Trouble in a New Religious Group," *Catholic Exchange*, March 1, 2005, at *http://www.catholicexchange.com*. Personally, I have found a number of warning signs that indicate that something is not totally right when a new group wishes to be founded. Among these, we could mention:

1. "Total" loyalty to the teachings of the Holy Father; this usually means "partial" loyalty to selected teachings, and bypasses the diocesan bishop;
2. Too soon an insistence on placing all goods in common;
3. Special revelations or messages;
4. Special status of the founder, or foundress (for instance, special meals, place to stay, etc.);
5. Special penances imposed;
6. Multiplicity of devotions, without any unity among them (for instance, Marian devotions before the Blessed Sacrament exposed);
7. Special vows: joy (which cannot be verified externally), smiling, etc.;
8. Absolute secrecy imposed on members;
9. Control of confessors and spiritual directors;
10. No sense of belonging to the local Church;
11. Promotion of "fringe" elements in the life of the Church (special apparitions, arch-conservative or arch-liberal agendas, etc.);
12. Lack of true cooperation with diocesan authorities, such as refusal to submit reports;
13. Having recourse to lies and falsehoods to obtain approval;
14. Serious discontent with the previous institute of which certain members were part, blaming this on a "conflict of personalities;"
15. Any form of sexual misconduct as a base.

Canadian canonist Peter Vere, as noted above, has added five other warning signs:

16. The group is preoccupied with bringing in new members;
17. The group is preoccupied with making money;
18. Elitism;
19. The leadership induces feeling of guilt in members to control them;
20. The group completely severs its members from the outside world.

So, within this context of diminishment and, at the same time, of new birth, we can now turn our attention in more detail to a number of canonical issues that have to be addressed in many religious institutes and associations of the faithful.

II. Canonical Issues to Be Addressed

A. Recent Vatican Decisions

I would like to share with you three recent developments in Vatican practice which have applied to Canadian religious institutes who are approaching the final stages of their mission. I would presume that similar provisions have been made for communities in the USA, but I am simply unaware of them.

For instance, in the last couple of years, the Holy See has authorized at least four of our pontifical institutes, whose median age is in the upper 80s, to cease holding general chapters. Instead, an assembly of those who are willing and able to attend can be held. There is no question of quorum, of mandatory attendance, election of delegates, etc. The issue of elections becomes more and more moot as the members age and there is little, if any, internal leadership potential.

The second authorization, which is still relatively rare, allows members of other institutes to serve on the general leadership of the Institute, either as Congregational Leader, or as a councillor. A third change authorized for some Canadian institutes, was to ask the community to designate a person (younger than the Sisters!) to serve as Vatican representative for them. Sometimes, this person is given the title of "Pontifical Commissary." The Sisters can, for instance, ask for the diocesan bishop to be this person. (To my knowledge, two have done so to date.) In other instances, a religious from another institute has been chosen.

Depending on the letter of appointment, this person can even have all the prerogatives that a diocesan bishop would have over a diocesan institute, although the institute remains pontifical. We are still working out the mechanics of such appointments, although they hold very interesting and helpful possibilities for the future.

B. The Administration of Temporal Goods within Religious Institutes

The issue of finding treasurers who are members of the institute is one that simply won't go away, and the strong need exists to appoint other persons to fulfill this important role. As you know, the Holy See has been very reluctant to authorize the appointment of outside persons as treasurers. For my part, though, I consider that it is much more important to have good and transparent financial administration – no matter who carries it out – rather than to have a person appointed who is unable to meet the challenges of the moment, but who happens to be a member of the community.

Hopefully, before too long, we'll see some movement in this regard. In the meantime, practical steps have to be taken. Interesting enough, but somewhat disappointing, is the fact that the very important and helpful 2014 Vatican document on the proper administration of temporal goods within religious institutes, doesn't even allude to this situation; it seems to take for granted that all treasurers will be members of the institute (see *Guidelines for the Administration of the Assets in Institutes of Consecrated Life and Societies of Apostolic Life).*

Nevertheless, the Holy See has been trying to address the issue from a slightly different perspective. For instance, it has approved a public juridic person for Canada, *Canadian Religious Stewardship*, to assume financial administration for those institutes unable to continue doing so on their own and who, for this reason, request its assistance. The key element is that this must be a voluntary request on the part of an institute, and there is no obligation whatever for a community to make use of its services. Something like this could be considered for the USA, either as a whole, or for the various regions of the country. Of course, many institutes would be able to administer their own goods; it's just that they don't have a qualified religious available.

In addition, we now have quite a number of examples of smaller institutes whose temporal goods are, in a spirit of service, being administered by another institute. There have been "covenants" or similar agreements entrusting civil administration to the other institute. This is great, provided the applicable civil documents have been suitably amended. To date, most of the instances where this has taken place in a formal manner have involved institutes of diocesan right, with the approval of the Bishop to whom the institute is subject.

I am not aware yet of any instance where this has been formally accepted by the Holy See for a pontifical institute, although a number of pontifical institutes have entered into agreements to be assisted in their financial administration by other communities. But some of you are probably more informed of this situation than I am.

Nevertheless, no matter who the treasurer is, an active and competent finance committee is essential today for any institute. Indeed, canon 1280 prescribes that there be one, although there still is resistance to the concept. Some communities have investments committees and the like, but not committees with a full overview of the financial situation. There are also situations where the treasurer is almost holding the community to blackmail, by refusing to work with such a committee.

Some of the attributions of a finance committee, either at the provincial (if applicable) or general level could be:

- help prepare and monitor the application of the annual budget;
- assist with an evaluation of property and housing needs;
- assist in preparing and updating inventories;
- advise regarding employment and other contracts to be entered into;
- advise regarding social justice and environment protection issues;
- advise regarding repairs and improvements that are either necessary or beneficial;
- establish an investment policy and monitor the investments of the group;
- examine salary scales and pension plans for lay employees;
- examine insurance coverage and make appropriate recommendations;
- assist with building projects;
- assist with eventual sales of property;
- assist in interpreting taxation laws, and seeing to their implementation.

C. Eligibility for Chapter Membership

As members grow older, the question arises frequently as to who has a right to vote.

Canon 171 is quite clear on the fact that those who are incapable of a human act no longer have a right to vote. This canonical term – "human act" – implies the use of knowledge and of free will. While, in some instances, it is evident that a person no longer enjoys the use of his or her faculties (as in cases of persons in a coma, or of those with serious mental illness), in others, the situation is not as clear – for instance, persons who seem to have good days and bad days.

The standard canonical practice is to have two medical certificates attesting to the fact that the person no longer has the use of his or her faculties. One certificate is usually from the physician who is treating the patient on a regular basis; the other could come from the nurse who is in daily contact with the patient. What is important is that it not be the Superior who issues the certificate in these cases–to avoid undue complications down the road, especially with the family. Even though there might be "good days," the presumption could well be that the mental deterioration has reached a point where it has become irreversible, and the person is now ineligible to vote.

On the other hand, canon 18 of the *Code* tells us that when it is a question of restricting rights – such as voting rights – a strict interpretation is required; that is, all the conditions must co-exist before any declaration relating to the loss of the right or to its exercise could be issued.

There is also the possibility to keep in mind that members can voluntarily renounce the exercise of their right to be consulted or to vote, but not renounce the right itself. Those who sign such a document, preferably with the counter-signature of a witness, no longer count in the total number of possible voters.

D. Election of Leadership

Lately, given the fact that, in larger international institutes, the members do not always know each other well, we find that the Constitutions are now calling for one-half of the general leadership to be elected by the Chapter. The other half is then appointed by those who were elected. In some instances, these appointed persons are being designated as general secretary and general treasurer. Once appointed, they immediately become members of the general council. Of course, there is no obligation to assign them these offices. It's just that when there are so few persons available, this makes for a better distribution and use of personnel.

The day is coming – and, in fact, it is already here for some smaller institutes as noted above – when we will no longer be able to designate members of the institute for the general leadership, even for the position of Superior General. We have to foresee this possibility.

An initial step in some communities has been to designate one or two councillors from outside the institute. Of course, we have to make sure that the Constitutions allow for this, or that the appropriate authorization has been received from the Holy See.

E. Disposition of Congregational Assets

Canon 584 tells us that only the Holy See can suppress an institute and dispose of its assets. In view of this, and to make matters easier, some institutes are now envisaging what we have come to call a "Congregational Will." This term doesn't exist in canon law, but the concept is clear. In civil law, if I'm not mistaken, only a physical person can make a "will." So, the term is not exactly

correct, and should be avoided in any formal document.

Actuarial studies give a good idea of the amount of money that would be reasonably required to care for all the members. Surplus funds could then be disposed of on a regular basis. Of course, if there are no surplus funds, then the issue doesn't arise, at least for now.

Four areas of concern are often addressed in "congregational wills:"

1) Institutes who are no longer accepting new members, and are preparing for their eventual dissolution upon the death of the last member, are making arrangements to support works that have been similar to those initially carried out by the community.

2) A number of congregations are also using any surplus funds to assist some of the newer groups that are badly in need of resources to support their formation programs.

3) Many are also making significant donations to the Congregation that accepted to care for their members during the last years of the institute.

4) Then, of course, there is always the fact that they could use their assets to support the diocese(s) where they have been working, particularly by contributing to the priests' compensation fund.

F. New Ways of Belonging to Institutes

Many general chapters, in recent years, have entrusted the elected leadership with the responsibility of considering how there could be new ways of belonging to the institute, ways that go beyond being associates. We should keep in mind, though, that, according to the present legislation, a person cannot be a member of an institute if he or she does not pronounce vows within the institute in accordance with the constitutions. If we wish to avoid liability issues, it would be important, when accepting others, never to use the term "member" (and this applies also to associates).

Also, there is pressure in some communities for persons who are somehow "attached" to the institute to have a voice in the general chapter. While they may be invited as observers, and even allowed on occasion to address the assembly, they do not have a vote. It would be important to keep this in mind when issues are being voted upon during the chapter.

One male institute functioning here in the USA has quite a number of lay persons related to it; it wants to redo its entire structure so as to form a "family" grouping priests, religious and laity, where the lay persons would have a vote on future apostolic activity and even on matters relating to the lifestyle of the vowed members. I have expressed most serious reservations about this proposal, and it will be very interesting to see what will be the reaction of the Holy See in this regard, if ever the proposal is presented for approval. To date, as we know, the Holy See has been most attentive to make certain that others are not voting on issues that concern the vowed members. This is certainly in line with the protection of the rights of the professed members.

G. Members Who Have Been Living Alone for a Long Period of Time

Since many institutes have found it necessary to relinquish their various ministries, it now happens more and more

that members are living on their own, in order to be closer to the place where they are carrying out their apostolic mission. Canon law provides for this possibility in canon 665.

However, a factor that is becoming more and more evident is that, after a number of years, as they grow older, it becomes exceedingly difficult for these persons to resume community life in common. It is also difficult for those who have to receive this person – unless, of course, we are speaking of admission to the infirmary.

Therefore, it follows, if the community has allowed – or even asked – a member to live alone for a number of years for apostolic reasons, the community should not expect that this member will easily make the transition back to life in common. Therefore, for the good of all concerned, even after the religious has finished working, it sometimes is preferable to allow the member to continue living alone, for as long as health and other factors are appropriate.

While this is not the ideal by any means, nevertheless, we must take into consideration this person's past life and ministry. Sometimes, in applying the canon, I use the general category "health," which can be that of the person, or even that of the community!

H. Dealing with Difficult Members, Especially Those Who Return to Community

Likewise, I am finding that more and more religious institutes have to deal with members whom we could even call "bullies." This becomes evident more particularly when they return to community life after having lived on their own for a while. They insist on having their own way in everything, disrupt the life of the others, threaten people, resort to threats (for instance, I'll inform the Holy See on what you are doing), and the like.

If these persons are allowed to have their own way, for all practical purposes they become the superior of the group. This, of course, is unacceptable, not only in theory, but also in practice. Of course, it takes a strong leader to stand up to these types of persons, but the longer the situation is allowed to last, the more difficult it becomes to correct it (except for waiting for the cemetery!).

Sometimes, though, the bullying is more underhanded – talking with other individuals against the superiors, but never in community meetings where the person gives the impression of being "Maria Goretti incarnate," or something similar. These types of persons are more difficult to handle because we need direct proof before being able to intervene. At times, they even constitute what we could call a "shadow cabinet" within the institute!

Nevertheless, even in these instances, we should not be afraid to invoke the vow of obedience, with threat of imposed exclaustration or even dismissal if the member does not shape up. The person should be given a personal precept, in virtue of the vow of obedience, listing things that are to be done, and things to be avoided. What counts most is that each of the elements listed in the precept be verifiable. The precept should also contain a warning: "Failure to observe this precept or any part of it will constitute cause for (1) the imposition of exclaustration, or (2) for dismissal.

It is important, though, to keep in mind that once we get on this treadmill, there should

be no getting off. Otherwise, the bully wins again! So, if a superior does not feel able to face up to this member, then there is little choice but to endure this person or wait for the next leadership.

I. Inter-Congregational Living

Lately, we have seen quite a number of instances where members of more than one religious institute are living together. Sometimes, there are inter-congregational infirmaries, or arrangements are simply made whereby one corridor or section of a larger motherhouse or convent is reserved for members of the other community or communities.

The advantages in relation to costs, employees, property upkeep, and the like, are very evident. On the other hand, the idea of local community can become somewhat stretched. Yet, at the same time, it is much easier to provide regular Mass and chaplaincy services when these groups are together; also it avoids an unnecessary duplication of services. These are important factors for an ageing community and it seems they would take precedence over simply living together under the same roof, with little if any interchange among the members.

As communities grow smaller, those members who are living in inter-congregational housing, rather than being assigned to a specific local community, are sometimes assigned directly to the person of the Major Superior, who then also serves as the equivalent of local Superior. Of course, this is not too practical in larger groups because the Provincial or Congregational Leader finds that all the time is taken up with personal matters, leaving little time for establishing and implementing any type of long-term vision or something similar. But, a vicar could be appointed for these members if their number justified such an appointment.

Personally, my attitude is that religious in their senior years have the right to live in peace, and, if we can arrange for peaceful and secure surroundings, with appropriate religious services, this is much more important than the literal observance of certain canonical norms.

J. Departing Members and a Charitable Subsidy

We are seeing more and more religious who are leaving the institute, or former members, threatening to go to the civil courts for redress when they leave the community and are not satisfied with what they receive as a charitable subsidy upon departure.

The principal point to keep in mind is that the community has obligations towards its members, but these are not the same as those it has towards those who leave voluntarily or who are legitimately dismissed. Religious profession does not become a "meal ticket" for life if a person decides to leave the community.

Of course, once people reach a certain age, it is more and more difficult for them to obtain employment that will enable them to live reasonably. Some people, when going to court even raise the argument that they should have the right to live the standard of life to which they have become accustomed. So, if we let them, as religious, live "high off the land," as they say, we should not be surprised to see them invoke this precedent.

Each community should really have a policy, which could contain the following elements:

1) a basic lump sum;

2) a basic sum for each year of profession;

3) any pensions which they may have acquired through their work;

4) sometimes, an interest-free loan to enable them to make the down payment on a home;

5) the car they have been using; furniture, computers, etc., as the case may be.

Some institutes, rather than giving a lump sum, prefer to retain the capital and give instead a monthly or annual donation. In this way, when the member dies, the capital remains with the community, and not with her estate. But others prefer to cut all ties immediately, for very valid reasons sometimes.

Any sum should be determined, then, on objective criteria, such as:

1) age;

2) health (physical and psychological);

3) employment possibilities;

4) responsibilities held during membership;

5) the possibility of pensions from employment (if the person was involved in ministry to which a pension was attached);

6) personal patrimony (if any).

These would seem to be the major canonical issues arising today from the fact that members are fewer in number, are getting older, and are often in poor health. We could now, briefly, look at some of the civil law implications arising from these situations.

III. Some Questions Arising from Our Interaction with Civil Legislation

A. Unification of Provinces

Those religious institutes which still have provinces will probably, before too long, be considering a regrouping of units within the institutes. Quite a number of communities have already gone through this delicate process.

One of the points that has arisen is the transfer of liabilities from the former provinces to the new entity replacing them. For this reason, it has seemed good in some cases to create a new province, rather than simply unifying the existing ones. In this way, the new province can begin without carrying previous liabilities. The former corporations should be maintained for as long as there is a reasonable possibility of court suits arising from previous activities of members. This might entail keeping a nominal leadership in place so that these persons can address issues arising from pending legislation.

Also, there is the very delicate issue of transferring members to the new unit. While this seems to be a judgment on the persons involved, it might be worthwhile, giving the present climate, not to transfer to the new unit those persons who are subject to court action, until the issues have been resolved. Of course, in most instances, no one knows for sure when or if a suit will be presented. There is no fail-sure method, but sometimes a little prudence can protect the long-term interests of the community. Other communities feel that it would not be acceptable to distinguish between the members, and so proceed to place everyone and everything in the new entity. This is their decision, and they might have very valid reasons for proceeding in this way. I'm raising the issue merely as a matter of prudence.

B. Corporate Documents and Land Titles

Given the fact that it probably will soon be necessary to have lay persons or members of other communities as members or directors of congregational corporations, it might be worthwhile to begin examining the wording of our various corporate documents, to make sure that they don't limit membership to persons who are professed in the congregation.

Of course, the ideal has been and still is to have the members of the civil corporation be identical with the leadership of the unit. But, if this is not going to be possible, then other arrangements should be considered while there is still time to act prudently.

There is no formal canonical rule stating that both the congregational or provincial leadership and the corporate members must be identical. Experience tells us, though, that this is most appropriate, because it avoids mixed leadership directions. Nevertheless, we might have to face certain situations that could call for a different approach. I realize I'm walking on eggs when I say this, but it's important not to wait for the last moment before considering possibilities.

Since many institutes are divesting themselves of surplus property – and this is an excellent idea – it would be important to have on hand a detailed inventory of property presently belonging to the institute, noting more particularly any restrictive clauses affecting its eventual use or future sale. Such restrictions often occur when property was donated by benefactors. It is too late to discover these limitations once the property is put up for sale.

C. Insurance Policies

One unfortunate lesson that we have learned with our court cases is that it is essential to be able to determine what insurance coverage, if any, we had during a given period of time. Since many of the cases coming to the fore today date from a number of years ago, it is important to be able to determine what coverage was in place at the time the alleged actions took place. Since there has been quite a turnover with insurance companies, it often happens that the current replacement company says that it does not have access to former policies. Indeed, in a number of instances, we have found that insurance companies are not really our friends when it comes time to make a claim, and if we can't demonstrate that we were indeed covered at that point in time, there is a tendency to deny coverage.

For this reason, we should never discard an expired policy. We need this as a record of what coverage existed at a given point in time. Also, it would be essential to make certain that when current cases are brought forward, that we observe all the conditions spelled out in the policies. Otherwise, we could be denied coverage.

It would also be appropriate, on occasion, to review the type of coverage that an institute holds. Some of the following points could be used as a sort of check list:

1) general liability;

2) personal injury liability (libel, slander, defamation of character, etc.);

3) civil damages (including exemplary and punitive awards);

4) legal defence costs;

5) policy territory (on and off the premises, even overseas);

6) advertising injury;

7) additional insured (including volunteers);

8) participants coverage (in sports and recreational activities);

9) medical expenses (no-fault coverage);

10) non-owned coverage (use of non-owned automobiles, etc.);

11) mental anguish rider;

12) counselling liability;

13) abuse and harassment ("vicarious liability");

14) employers liability rider (bodily injuries);

15) employee benefits liability (errors or omissions);

16) pollution liability (environmental damage);

17) tenants' legal liability;

18) directors and officers liability (wrongful or negligent acts);

19) umbrella or excess liability (for summer camps, buses, other activities).[3]

D. Suits by Former Members and Even by Actual Members

One phenomenon that we are facing more and more is the fact that former – and even actual – members do not hesitate to take their (former) community to court, not only for financial support, but also on charges of bullying, boundary issues, and the like.

This is particularly the case when a person has been legitimately dismissed from the institute, or has been asked to leave at the expiry of temporary vows. Given today's climate and concern over more lawsuits, we have to recognize that a dismissal from a formation program usually entails the impossibility of being accepted elsewhere.

Therefore, my recommendation, upon the advice of lawyers assisting communities, is never to dismiss a member, or refuse to admit that person to subsequent profession or ordination, without first hearing the person, explaining clearly the reasons for the refusal (even if the person in question does not accept them), and giving the person an opportunity to reply. This should be done in writing, or as least there should be written and signed notes, attesting to the various steps that were taken to ensure that the natural rights of that person were respected. Of course, this is painful. If a person is being dismissed for lack of judgment, that person usually does not have enough judgment to understand what is being said and make the necessary distinctions!

Unfortunately, there is nothing in the Latin *Code of Canon Law* against taking superiors to court. Formerly, there were penalties imposed for doing so, but not now. The incongruous thing about this – besides, in fact, suing oneself – is that, in the case of current members, it is the institute that has to pay the costs involved, unless the member had personal patrimony to be used (with permission!).

E. Addiction to Internet Pornography

One of the newer forms of addiction we have come across in recent times is addiction to pornography on the internet. Of course, there is a major difference between pornography involving minors, and images

3. This list is taken from K.A. HALL, "Facing the Risk — Liability Insurance Checklist", in *CCCC Bulletin*, 1998, No. 4, p. 5.

of adults. Nevertheless, neither of these is acceptable in a religious institute.

Because downloading of pornography can be a crime in certain civil jurisdiction, we can look at it here, keeping in mind its canonical counterparts.

In spite of what people say, we do not have a right to access to the internet, and, if the superiors have reason to believe that one of the members is addicted to pornography, there can be a prohibition against surfing the internet alone.

From a canonical point of view, the Holy See has raised the issue to the level of a grave delict, when minors under the age of 14 are involved and the person who is downloading the pornography is a cleric. In such cases, this can lead to dismissal from the institute and even from the clerical state.[4] For the time being, there is no similar provision for religious, although I expect to see such a norm enacted before too long a period of time. Indeed, the draft text distributed recently by the Holy See for the revision of Book VI of the *Code of Canon Law*, contains provisions to this effect in the revised canons 695 and 1395. If they are promulgated as drafted, they would be applicable to religious institutes of men and of women.[5]

Of course, many other issues could have been raised, but these are most likely covered elsewhere. I am thinking, for instance, of accepting donations with long-term restrictive clauses, power of attorney for health care, issues relating to personal privacy and confidentiality, especially in relation to psychological health, and so forth.

But, rather, let us move on to the other issue I was asked to address: certain situations affecting the eligibility of persons who apply for admission to our institutes.

IV. Issues Relating to Vocation Selection

A. Impediments and Irregularities

1. For All Religious

a. General principle:

Canon 642 lists general conditions for any candidate to the novitiate:

- having the required age
- having the required health
- having a suitable disposition
- having sufficient maturity

b. Canonical impediments or restrictions:

- Not having completed the 17th year of age.
- A spouse, while the marriage lasts. If a candidate had been married, and the spouse has died, or if the marriage was declared null, then there is no impedement. If he or she is divorced, but the "former" spouse is still alive, and no declaration of nullity has been received, then an indult is required from the Holy See. This is a MOST difficult indult to obtain; it is granted only on certain very specific conditions: (a) the divorce is final and absolute; (b) there are no alimony or child support payments to make; (c) there are no minor children

4. See CONGREGATION FOR THE DOCTRINE OF THE FAITH, *Norms*, May 21, 2010, Art. 6.

5. See PONTIFICIUM CONSILIUM DE LEGUM TEXTIBUS, *Schema recognitionis Libri VI Codicis Iuris Canonici*, Romae, Typis Vaticanis, 2011, 40 p.

under 18; (d) the candidate was not the guilty cause of the break-up of the marriage; (e) there would be no scandal; (f) the "former" spouse is aware of the project and has no objection.

- If, on the other hand, a candidate had received a declaration of nullity for a former marriage, then it is important to examine the court's decision, to determine whether or not there was a restrictive clause imposed. If the candidate requires psychological counselling before entering into marriage, even more so if he or she wishes to enter religious life (and the clerical state). A restrictive clause (*vetitum* or *monitum*) should be taken MOST seriously before accepting a candidate.
- A person who is already a member of another institute.
- A person who enters the institute through force, grave fear or deceit.
- If the community does not ask certain questions of the candidate, then it cannot blame him or her for hiding information. For instance, regarding family background (mental illness, criminal activities, etc.) or health (AIDS/HIV, other physical or psychological illnesses).
- One who concealed the fact that he or she was previously in an institute. And today, in men's communities, we usually add, one who had previously been in a major seminary. In the case of someone who was previously in a community or a seminary, it is essential to have reports from the former superior.
- The Holy See has determined that candidates who have "deep-seated" homosexual tendencies are not to be admitted (November 29, 2005). This decision does not apply to those with the "transitory" problems of adolescence. Of course, each situation has to be evaluated personally.

2. For Future Clerics

A number of permanent impediments, known as irregularities, affect the admissibility of candidates for Orders. While these may, in certain circumstances, be dispensed, in general, we could say that Church authorities are rather reluctant to dispense from them. It follows that candidates who are subject to one or more of these permanent impediments should not be accepted as candidates for orders, without first making certain that a dispensation will eventually be available.

If any of these situations arises, it is essential to consult a canonist or specialist before proceeding further, in order to determine whether or not a dispensation is possible, and, if so, by whom must it be granted.

a. Serious psychological illness

While insanity obviously would prevent a person from being accepted, other forms of psychological illness could render a person incapable of properly fulfilling the ministry. For instance, intense scrupulosity.

b. Apostasy, heresy, schism

A person who once was Catholic and left the Church to join another church or ecclesial community, and then returns to the Catholic Church, cannot generally be admitted to Orders, except after a prolonged period of probation.

c. Forms of attempted marriage

Someone who commits bigamy (in the canonical sense – while a former spouse is still alive, and the first marriage has not been dissolved or declared null), or who marries while under vows, or who marries a person who is under vows, cannot be accepted for Orders.

d. Wilful homicide, abortion, and positive cooperators

This impediment is, unfortunately, rather common, especially in regard to abortion. Given the Church's public stand on this issue, a dispensation is MOST difficult to obtain, and is usually refused once or twice before it is eventually granted, if ever.

e. Serious mutilation, attempted suicide

It is held today by some canonists that a person who underwent a voluntary vasectomy is subject to the impediment (but the bishop may dispense more readily from it). The question of attempted suicide relates to psychological illness as mentioned above.

f. Abuse of Orders

A person who carries out an act of Orders reserved to others (i.e., attempting to celebrate Mass publicly, or hear confessions, while pretending to be a priest), is also subject to an impediment.

B. The Living of the Evangelical Counsels and New Situations

Since the vows are constitutive of religious life, it would be important to spend more time on them and on certain contemporary issues relating to their living.

1. Consecrated Chastity

> **Canon 599** The evangelical counsel of chastity embraced for the sake of the Kingdom of heaven, is a sign of the world to come, and a source of greater fruitfulness in an undivided heart. It involves the obligation of perfect continence observed in celibacy.

Canon 599 could be read in parallel to canon 277 on clerical celibacy. Both canons speak of a twofold obligation:

- abstention from marriage;
- abstention from any external or internal act which violates chastity.

The vow, by those who take it, adds a new moral bond, that of the virtue of religion, so that in their case, an act against chastity is not only a sin against the virtue of chastity, but also a sin against the virtue of religion.

Given today's special cultural context, I thought it would be helpful to address a certain number of contemporary issues relating to the selection of candidates, and their capacity to live the obligations of celibacy and chastity.

a. Sexual Integration

Given the importance of a healthy and integrated sexuality in the life of a religious, it is important to know a candidate's psycho-sexual history as well as his or her ability and desire to embrace the celibate life. A period of celibate living, usually several years, must precede entrance into the initial stage of formation.

Related to this are issues of disclosure of sexual history and orientation. While disclosure to one's spiritual director or formator is important to ensure that healthy integration is taking place in that area of

one's life, disclosure to the community requires discernment.

The candidate must also come to a clear understanding of the issues of appropriate boundaries in ministry and of the issues of sexual misconduct and abuse of power in relationships. These issues have grave consequences both in canon and civil law. As a suggestion, in the case of any candidate who is discovered to have been sexually involved, as an adult, with a person under 18 years of age, it is understood that he or she will not be advanced to vows.

The call to chastity is the same for all, regardless of sexual orientation. Candidates who commit themselves to a life of consecrated celibacy, as well as those who guide them in this direction, must have the moral certitude that, with the help of God's grace and the prudence proper in this domain, they can be faithful and can grow and mature in peace.

b. Certain Particular Areas of Concern

i. Affective maturity

In order for the formator to assess the affective maturity of the candidate, the following should be considered:

- family history and related issues;
- relationships with persons in authority, with peers, with persons of both sexes,
- the naturalness and ease of these relationships;
- ongoing development, both in his relationships with others and in personal self-acceptance; attention to what is blocking or stunting growth; attention to feelings of bitterness or frustration;
- capacity for generosity, openness and faithfulness in daily behavior.

ii. HIV testing

A candidate who expected to undergo an HIV test prior to admission should be aware of what is involved and declare in writing his or her willingness to undergo this medical examination. A lawyer should be consulted about the advisability / legality of signing such a waiver. Candidates who prefer not to undergo the HIV test which may be requested by the institute, are thereby withdrawing from the program and cannot apply for admission.

The candidate must be counselled before the examination, must be the first to receive the results, and must be counselled after the test. The results also would be given to the formation director who can counsel the candidate in view of the medical results and help to discern the future (cf. canons 220 and 642).

iii. The homosexual or lesbian candidate

A special point of concern today is the admission of the homosexual candidate. We could, for our purposes here, consider homosexuality to be the predominant and permanent psychosexual attraction toward persons of the same sex. The Congregation for Catholic Education deals with this topic in an official instruction (cf. *Instruction Concerning the Criteria for the Discernment of Vocations with regard to Persons with Homosexual Tendencies*, 2005. This instruction applies also to all candidates to religious life).

iv. A previously married person

A previously married person who applies to enter the formation program will be assessed according to the norms that are usually applied in vocation discernment. For persons who have received a declaration of nullity

from a previous marriage, there is no resulting canonical impediment for the admission to an institute of consecrated life or to sacred orders. The obligations of natural law, however, as well as the criteria of suitability and prudence must be kept in mind and applied in all such cases.

In assessing the candidate's suitability for entering a formation program, the formators will be especially attentive to the candidate's:

- motivation;
- relationship to the former marriage partner and the latter's attitude to the potential candidate's request to enter religious life (and to receive Holy Orders);
- possible obligations to dependents (educational, social, financial, and legal situation);
- psychological balance and maturity;
- ability to live the religious vows;
- ability to live an authentic community life;
- freedom in regard to previous obligations (especially in regard to debts that the candidate cannot extinguish; cf. can. 644);
- Christian faith and life during the marriage experience and following the separation and annulment.

v. Candidates with previous history in a seminary or in another Institute

This last situation doesn't apply exclusively to the capacity of living the vow of chastity, but, very often, there is a strong relationship to it. This is why I'm mentioning it here.
In cases where the candidate has had a previous history with a seminary or religious institute, references must be sought from the seminary director or the person in charge at the time of the candidate's leaving / dismissal. Information asked for should include:

- how long this person was in the program;
- the reasons why he or she left or was dismissed;
- recommendation concerning entry into the formation program;
- other relevant information, oral or written.

The above information should also be sought from the candidate personally. In case of a candidate hiding having been a member of another religious institute or diocesan seminary, admission and profession are invalid (cf. can. 643 § 1 no. 5 and can. 656 no. 2).

In the case of a religious in temporary vows belonging to another institute, or of a diocesan seminarian, who wish to join the community, the following procedure should be observed:

- If it is a question of admitting clerics or candidates who have been received by another institute of consecrated life, or a society of apostolic life, or a diocesan seminary, or have been sent away by them, there is also required, depending on the case, a reference from the local ordinary, or the major superior of the institute or society, or the rector of the seminary or house of formation;
- It would be desirable that this reference show, briefly but clearly, the history of the candidate during the time he or she was in the given institute (diocesan seminary, or religious house of formation), the circumstances and reasons for departure or dismissal, and

the clear and objective opinion from the above authority regarding the request of the candidate to enter into the community (cf. can. 645 § 2; and also can. 241 § 3);

- Other references may be required regarding the worthiness required of the candidate and the absence of impediments, e.g. transcripts of studies, medical reports, police check, letters of reference from the parish priest, etc. (cf. can. 645 § 3);
- Superiors can also, if they deem it necessary, ask for more information, even under the seal of secrecy, while safeguarding the candidate's right to a good reputation (cf. can. 645 § 4).

2. Consecrated Poverty

To understand the implications of the canonical legislation on poverty and personal patrimony (canon 668), we must first take a quick look at canon 600 which spells out the underlying principles relating to the vow. We will then be in a better position to understand the norms of canon 668 on patrimony.

We could limit ourselves to a "legalistic" approach to the issue, but this would be deadening. Instead, we are dealing here much more with an attitude than with a legal system. This is why a counterpart "spiritual" component is so important, and to overlook it would risk falsifying the entire understanding of the Church's laws on the matter.

a. The Implications of the Vow of Poverty

> **Canon 600** The evangelical counsel of poverty in imitation of Christ, who for our sake was made poor when he was rich, entails a life which is poor in reality and in spirit, sober and industrious, and a stranger to earthly riches. It also involves dependence and limitation in the use and the disposition of goods, in accordance with each institute's proper law.

Canon 600, which is based on *Perfectae caritiatis*, No. 13, spells out five general constituent elements of consecrated poverty:

- a life which is poor in reality and in spirit;
- a life of labour (earning one's daily bread);
- a life lived in moderation and a stranger to earthly riches;
- dependence on superiors in the use of temporal goods;
- limitation in the use and disposition of goods.

It is the last two of these five elements which will call for particular canonical explanations – dependence and limitation. Canon 668 will spell out what is meant by these terms in the context of a religious institute.

The rules on dependence and limitation have as one of their purposes to make certain that religious who come from families that have greater wealth will not be leading a lifestyle different from those whose family has little or nothing.

We note that canon 600 speaks of the "proper law" of the institute. If there is one area of canon law that relies on the spirit of each particular institute, it is this one. In other words, the general principles must be complemented by the norms of each Institute's own Constitutions and Rule. We cannot overlook the fact that today, although the canon speaks of dependence

and limitation, the emphasis seems to be placed much more on sharing with the poor and needy (see c. 640), and on responsible creative stewardship of goods. This can lead to internal tensions because of differing understandings of the implications of the vow.

Furthermore, in North America and in Europe, as institutes are declining, it is becoming more and more important to make long-range plans in regard to the support of the members themselves, which is a primary obligation on the part of institutes (see c. 670). While, in certain other countries, there is great pressure on religious to provide for their families, since the families are in need. Indeed, a number of religious consider that their first obligation is to their family, not to the institute. However, this is not what canon law teaches. Institutes are now making provision to assist parents who are truly in need. It must be remembered, though, that institutes do not make a vow of poverty, only the individual members do so.

b. Personal Patrimony and Cession of Administration

> **Canon 668** §1 Before their first profession, members are to cede the administration of their goods to whomsoever they wish and, unless the constitutions provide otherwise, they are freely to make dispositions concerning the use and enjoyment of their goods. At least before perpetual profession they are to make a will which is valid also in civil law.

i. Personal patrimony

Although canon 668 does not use the expression "personal patrimony," this term is generally used by institutes. Perhaps it might have been preferable to use the term "personal property," but I'll stick with the more commonly used term. A member's goods (depending on the proper law) **can** include the following:

- all that a member owned upon making profession (movable and immovable goods, copyrights, etc.);
- all that to which a member had a title upon making profession, even though not yet acquired (for instance, accumulated years of pension for teaching; paid-up annuities purchased in early childhood);
- goods received by a personal title of inheritance (either by will, or in lieu of a will, as when a father divides the goods among the children while he is still alive, so as to avoid disputes later on); the expression "personal title" refers to goods given to the person as a person, and not as a religious; if a religious' former girlfriend or boyfriend leaves money in a will to the religious [for past affection], this is presumed to be personal, but if the money were left to a religious by the parents of a child taught in a school, then it would be presumed to be for the community;
- substantial gifts destined to be added to the patrimony (an institute will usually determine a minimum amount before a gift is considered to be patrimonial);
- interest and revenues accruing to the above.

In institutes which have a stricter form of poverty, the members are not allowed to "capitalize," or add their interest to the capital. Some do not recognize the possibility of receiving patrimonial gifts. So, the proper law must be consulted to see what is considered as patrimony in a given Institute.

It should be noted that, according to civil law in a number of countries, revenues added to the patrimony are taxable since they are not given to the institute. For instance, in Canada, a religious' patrimony must be taken into account when determining eligibility for the old-age pension supplement; in other countries, the applicable civil law would have to be consulted and complied with.

ii. The documents to be signed

When making profession, religious usually sign three documents relating to temporal matters:

- the agreement not to demand compensation for services rendered, or for future considerations;
- the cession of administration of goods presently owned, or to be acquired in the future;
- the last will and testament determining how any personal goods are to be disposed of after death.

Today, there is usually a fourth document, often called "Durable power of attorney" for healthcare, "Advanced directives," and so forth; but this is not directly related to the vow of poverty. Each document is separate and has a distinct purpose. The document on cession of administration applies while the religious is alive; the agreement applies when a member leaves the institute; the last will and testament applies after death.

iii. Particular situations

It often happens today that persons enter the institute late in life, sometimes after having been married for a number of years, and with children of their own. It is not rare for religious entering today to have $500,000 in patrimony, either in funds or in real estate or similar holdings. In such instances, particular care must be given to family feelings.

On the other hand, a person who enters at a later age will not have as many productive years in the Institute, and will not be contributing as much to the common fund as others did. These persons, who have resources, sometimes want to pay room and board. However, it is preferable that they not be asked to do so immediately, especially if there are no charges for the other candidates entering the community. However, what is often done is to have the administrator put aside a sum each month in a special account in compensation. If the religious makes perpetual profession, this sum is given to the Institute at that moment. If he or she leaves before final profession, the money is returned.

If a member enters with goods that are used by the community, such as an automobile, a stereo and disks, books, a computer, etc., it is important to have some type of agreement in case the member leaves before first or final profession. For instance, a monthly sum is credited to his or her account in return for the use of the goods. If the religious wishes to have them used freely, then there should be a written agreement to this effect.

3. Consecrated Obedience

It is usually understood that while members of male institutes seem to have more difficulties with the vow of chastity, in women's institutes, it is the vow of obedience which frequently becomes the blocking factor.

a. Canon 590: The Supreme Authority

> **Canon 590** §1. In as much as institutes of consecrated life are dedicated in a special way to the service of God and of the whole Church, they are subject to the supreme authority of the Church in a special way.
>
> §2. Individual members are also bound to obey the Supreme Pontiff as their highest superior by reason of the sacred bond of obedience.

The supreme authority in the Church is the Holy Father, or the Ecumenical Council with the Holy Father (see canons 331 and 336). All institutes, even of diocesan right, are subject in a special way to the supreme authority, not only as are the faithful but, more particularly, precisely because they are institutes of consecrated life.

Individual members are obliged to obey the Supreme Pontiff (not the "Holy See", unless specifically delegated) in virtue of their vow of obedience. However, the Pope may demand obedience only in accordance with the proper law of the institute. Thus, for instance, he could not order a member of an apostolic institute to become exclusively contemplative, but he could order a religious to observe the norms on prayer in the proper law of his or her institute. See *Vita consecrata*, No. 46 on this point.

b. Canon 601: The Object of the Vow of Obedience

> **Canon 601** The evangelical counsel of obedience, undertaken in a spirit of faith and love in the following of Christ obedient unto death, requires the submission of the will to legitimate superiors, who stand in the place of God, when they command according to the proper constitutions.

Seeking the will of God must be the preoccupation of both superiors and subjects.

Members must obey the Roman Pontiff as their first superior (c. 590, §2); the other superiors are those determined in the constitutions.

Not every wish or desire of the superior comes under the vow. It should be clear from the constitutions whether the specific obligation of the vow is entailed in every clearly manifested order of a superior, or whether certain formalities have to be fulfilled in order to command under the vow (for instance, in writing, before witnesses, using appropriate words, which superiors may invoke the vow, etc.). The matter to be commanded has to do directly or indirectly with the life of the institute, that is to say, the observance of the constitutions and other norms of the institute.

A formal order given under obedience should also include the words: "Failure to observe this order would constitute cause for dismissal from the Congregation" (or something similar).

A superior cannot command what is against the law of God or against the constitutions (see Apost. Signatura, October 10, 1986). Some religious try to use "conscience" to refuse to accept legitimate orders of superiors. If the matter is not immoral, etc., and not against the constitutions, the obligation can hold. However, in certain delicate situations, some arrangements could possibly be made: for instance, in the case where a religious refuses an obedience to a certain place because a former sexual partner lives in that town or city, but the religious does not wish to share that information with the superior, a member of the council agreeable to both parties could

hear the Sister's reasons and make a recommendation to the Superior, without going into details.

CONCLUSION

I realize that I've been looking at newer situations from a legal perspective. There are, of course, many other dimensions to these issues that should not be overlooked. For instance, the spiritual, social, psychological, and human dimensions must also be taken into consideration.

The world is not the same as it was. We cannot deny, though, that we have to recognize the pressures that are being faced, and embrace the changes, even though we might not agree with all of them. "The Church lives in the world" and we cannot simply overlook the new situations that affect us in our daily life.[6]

It is a lot more difficult today to assume functions related to governance, but, if they are handled carefully and with prudence, it is still possible to navigate the troubled waters that we are facing in religious life.

These changes in mentality have made all of us more acutely aware of the rights of each individual, and this is one of the great lessons that has evolved from the situations we have been studying.

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6. Supreme Tribunal of the Apostolic Signatura, June 30, 2007 (Prot. No. 37937/05 CA).