

De-structuring in Religious Institutes
What does Canon Law say?

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Interview by

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Thank you, Mary, for having accepted to be with us. Restructuring – or reconfiguring- is a concern for many congregations today, this is why there is such a great expectation about this Seminar. Besides the fact that you are a canon lawyer very well-known and appreciated! Let me ask my first question to you: restructuring is not a new issue, so what is special about it today? And then, what are the more usual responses to the need of restructuring?

1. Introduction:

Hello to everyone who is sharing in this seminar. Thank you for your participation.

My task is to give an overview of the canonical aspects of this important topic. As we are all aware, in many parts of the world, we are experiencing a rare moment in history when the numbers of members in ‘western’ religious institutes have declined very steeply. While this decline has been evident for many years, it is only now becoming a crisis because the great majority of the members in these institutes are now too old and too frail to continue in leadership. This rapid decline in members available for leadership means that institutes need to change in response.

2. Possible responses

One obvious response to the unavailability of leaders is to reduce the number of internal structures, so that fewer leaders are required. Another response is to reduce or change the role description of the leader where possible,

to limit the demands on the physical capacities of older members to hold these responsibilities.

In this scenario you reduce the number of units, but you get bigger ones!... You change the role description of the leaders, but the demands on those fewer leaders, in those bigger units, become heavier! So what can happen after several years is that this doesn't work anymore, and one needs to revise the whole thing again. Could it be that we need to think about restructuring in a more dynamic, ongoing, and provisional way? In any case, let us continue our conversation!

... I am struck by the fact that besides the concepts of structuring and restructuring, you also speak about de-structuring! You really provoke my curiosity. Can you say a bit more, please?

3. Purpose of internal structures.

An institute establishes internal structures, such as provinces, regions, areas, local communities, in order to “enable the members to lead their religious life in accordance with the purposes and spirit proper to the institute” (c. 610).

These internal structures were set up in response to an increase in young, active members and a wider geographic dispersion. They facilitated the exercise of leadership at a more local level, so that decisions could be made as close to the situation as possible. These structures also promote delegation of authority, spreading the responsibility for leadership, and the experience of leadership.

Thus the purpose of ‘de-structuring’ is to respond to the decrease in younger members and the increase in older, frail members.

The internal structures of an institute do not have any intrinsic religious or charismatic value. These arrangements are predominantly practical administrative solutions to foster the life and mission of the institute more effectively.

De-structuring also includes detaching from the ministry and administrative commitments which grew up at a time when the community was young and vigorous. Hard decisions need to be made, sooner rather than later, while leaders are still competent to do so, because the institute is responsible in canon law, as a part of the Church community, to make wise provision for the future of its members and ministries and for the future use of its assets.

Canon law allows the institute itself to decide on its own internal structures, either by decision of the institute leader and council, or by the general chapter (c. 621). This authority is defined in the constitutions. In most institutes, it is the general leadership which has this authority.

I really like the points you have brought. I see them like criteria for restructuring

- *To facilitate the exercise of leadership at a more local level so that decision can be made as close to the situation as possible*
- *Promote delegation of authority*
- *Spreading the responsibility for leadership*
- *Spreading the experience of leadership among a larger number of members*

This was the case when our congregations were in the expanding and growing phase of their development. The challenge is to maintain these same values in the new structures we create when the congregations are in the diminishing phase.

If you don't mind let us go back again to de-structuring...

4. A step along the way:

In many institutes, de-structuring is one step closer to the time when they will not be able to hold a general chapter or elect general leadership. When the institute cannot maintain these two fundamental structures, it will not be able to survive as an independent entity. At this point, different decisions need to be made, which are not addressed in this presentation.

5. Canonical leadership requirements Every institute must have general leadership, what the Code of Canon Law calls the 'supreme moderator' and a general council. The only other obligatory structure is the community, with its community leader. All other internal structures are optional, even if they are provided in the constitutions.

Canon law does not define the limits of internal structures, or the number of members or houses they contain. Provinces do not need to be defined geographically, and once established, a province continues to exist even if it contains only a few members (ref. c. 120). Provincial superiors are not obliged by canon law to live in their province.

Let me stop you here for a minute: in fact, in canon law there is space for "freedom"!

My next question is about provinces and those other units that are not provinces...

Canon law defines a province as a part of the institute which is governed by a major superior (c. 620). By the law itself, a province is a public juridic person (c. 634), with a certain autonomy at the local level, and the provincial leader has ex-officio rights according to the constitutions.

The Major Superior: In canon law, the major superior is the leader who is authorised to make some important decisions, especially relating to formation, separation from community, finances and property. The institute leader and the province leader are major superiors by law.

Other parts of institutes have leaders who are not major superiors. They exercise delegated authority from the superior general. Certain decisions, defined in the constitutions, cannot be delegated, and therefore cannot be made locally, and must be referred up to the institute leader, or to the relevant provincial superior.

Please, could you now introduce some practical, concrete examples?

6. One size doesn't fit all institutes

We are all aware of the enormous variety of religious institutes, in size, cultures, age distribution, purpose, geographical distribution.

Today I will focus my remarks on some particularly challenging characteristics:

- a) majority of members are aged and/or frail
- b) wide geographical and cultural spread
- c) some younger members in distant locations
- d) a variety of languages

In other words, I will focus on institutes which have a large number of issues to consider when planning 'de-structuring'.

7. One size doesn't fit all parts of an institute:

Within an institute, it is possible to retain

e.g. one province, and abolish all the others. This might be a suitable solution for a part of the institute with many younger members, an active formation program and active ministry commitments requiring many decisions at the local level.

8. The option to reduce the number of internal structures

An example of de-structuring:

In an earlier restructuring phase, many institutes removed all provinces and established larger 'areas', perhaps one for each continent (e.g. Europe, Africa, Asia, South America), and the area leaders were given delegated authority.

The challenge at this step was that each area leader had to take responsibility for many different nationalities, languages and legal systems.

As a second step, in the phase of 'de-structuring', an institute might remove these large areas and their leaders, leaving only one local community leader in each country, who would be the legal representative for the institute in the particular country. One of the general councillors could then be given responsibility for liaison and support for these leaders in each continent.

One important issue in all this is the role of the leader. It seems to me that sometimes we change structure, but in our minds, in our expectations, etc., the role of the leader remains the same!

9. The option to change the role of the leader

Canon law does not specify the particular role of the leaders of internal structures, except that all leaders must exercise their authority in accordance with the constitutions and the charism of the institute (cc. 578, 586).

When structures are changed or eliminated, care must be taken to change the responsibilities and expectations of the members who are taking on new leadership roles. For example, moving the responsibilities of the provincial or area leaders up to the general councillors can add to the work load and travel demands on councillors, and can add complexity to the levels of authority at the general level. The general council may need expert advice and facilitation to ensure this complexity is understood.

Leadership needs for different groups must be revised when the role of the leader is changed. A community of aged members living together in an aged-care residence has specific needs which are very different from a community of mixed ages with active ministry responsibilities. Expectations must be realistic and delegation of tasks to other members and to lay colleagues should be required and facilitated.

In the circumstances of an aging membership, all leadership roles should be refined, ensuring that old models are not perpetuated, and that trivial issues are not being passed up to the generalate. For example:

- a. Transfer ministry responsibilities to the diocese or to another religious institute; alienate property which is not essential to the life of the members, e.g. large mother-houses which are half-empty.
- b. Ensure that leaders are not occupied with small local problems which other people can solve, or problems that are very complex which require the use of experts, especially in financial planning, legal issues.

Accountability challenge: Every new structure or system needs a process of accountability and review, especially when the local members are not experienced or expert in these areas.

Finally, Mary, will you please comment about some canonical issues related to reconfiguration, such as decisions, constitutions, general chapters, etc

10. Canonical Issues:

Decisions: decisions about internal structures can be made by the institute leadership (c. 581), and do not need approval by the Vatican or by a bishop unless the constitutions require this.

Constitutions: Even if the constitutions provide for provinces or other structures, it is legitimate to remove these structures without changing the constitutions. However provision needs to be made for specific canonical decisions to be made by the major superior, who is usually the institute leader.

Constitutions may have to be changed to accommodate for the absence of internal structures such as province chapters prior to the general chapter. If these provisions are contained in the directory or similar proper law, they can be adapted by the leadership and confirmed by the general chapter.

Chapters: Representation at general chapters needs careful planning and perhaps, changes to the constitutions. One option is to hold an extraordinary general chapter to change the constitutions relating to local representation at the general chapter, so that this system can be in place prior to the elective general chapter.

The reduction in ex-officio members of the general chapter means that general chapters can be much smaller – because the elected delegates only need to be one more than the ex-officio members.

Delegation of authority: When structures are removed, the general leadership must state in writing who will now make which decisions. In addition, written decisions must be made about the rights of members in preparing for general chapters, and in electing members to attend general chapters.

Conflicts of interest: Canon law does not prevent general councillors from holding other offices in the institute. However prudent judgement must be used to ensure that councillors are not holding responsibilities which conflict with their primary responsibilities. It is my opinion that a general councillor must not be a major superior, and therefore cannot be a provincial superior. The role of the general councillors is to assist the superior general in her ministry of leadership of the whole institute. They must give advice or consent about decisions in every province and for any member. Therefore the councillor cannot be solely occupied in one province.

Formation: The question of formation needs very courageous, honest evaluation. In canon law, superiors are obliged to ensure that candidates are clearly suitable for the life of the institute (c. 642). This obligation creates an equal responsibility for superiors to ensure that the institute is suitable for the life of the candidate.

If the institute cannot guarantee on reasonable evidence that it can provide the essentials of life for the new members (such as appropriate formation and ongoing community support), new members should not be accepted.

Prudent adaptation of Mission and Works: The purpose of each institute is related to its mission (c. 675). However, when almost all the members are too old or frail to be involved in active ministry, the institute must re-define its ministry objectives in terms suitable for the capacities of its membership. Each institute also needs to express its charism and mission in language which is real and contemporary, rather than ideal, and cease to speak in grandiose terms about its traditional ministry aspirations as if they were still possible to achieve.

C. 677 speaks of 'prudent adaptation' of mission and works according to the needs of the time and place. De-structuring therefore could and perhaps should include divesting the responsibility for institutional ministry, or the expectation that aged members would continue in ministry responsibilities unsuited to their health and strength.

Property: In some institutes, especially ones with a long history, property can become a burden rather than an asset. The purpose of property in religious life is threefold: to support the members, to carry out the mission, and to care for the needy (ref. c. 1254 §2). In addition, institutes are 'to avoid all appearance of luxury, excessive gain and the accumulation of goods' (c. 634 §2). It is wrong for an institute to spend its financial and personal resources on maintaining buildings which do not aid its mission. It is also a scandal if accumulated, surplus assets being held in one very aged part of the institute are not being used, either for a younger and more vigorous part of the same institute or for other Church ministry.