

Orientation for New Directors

Session on Canon Law

Part 1 – What is Canon Law

First of all the bad news - Canon Law is not synonymous with Church Law which includes much more than what we find printed in the Code of Canon Law. As well as the universal law of the Church found in the 1983 Code of Canon Law, Church Law includes amongst other things:

- The Code of Canons of the Eastern Churches which bind the other Catholic Churches, eg, the Maronite Church
- The law of religious institutes, so for us that means the ISMAPNG Constitutions, Directory and Chapter Acts
- Liturgical law found in liturgical books such as *The Roman Missal* or *The Divine Office*
- Sacramental law, eg, *the Rite of Confirmation* or *The Rite of Penance*
- The laws relating to beatification and canonisation
- The laws relating to the burial of a pope, generally in latter years changed when the new pope sees what happens to his predecessor!

However for the purposes of this presentation, I will use the terms somewhat interchangeably

What Canon Law is not

As you are no doubt aware canon law is not the most popular aspect of church life and most canon lawyers feel sometimes that they would rank somewhere near parking inspectors, tax officials or football umpires in a popularity contest. That is mainly because for one reason or another people either have had negative

experiences or understandings of just what is the role of canon law in church life and usually have quite serious misconceptions of what it is and not much idea of what it is not.

Well – what isn't it?

I sometimes use cartoons in my teaching of canon law, as often they are spot on. One of my favourites shows a guard at a convict colony greeting new prisoners. He says to them: *Welcome to the colony you new convicts... All we ask is that you keep the rules. They are very simple. If you are thinking of doing anything, don't.* I am sure that some people think that is how canon law operates. Another cartoon exemplifies a common enough dilemma. It simply depicts two one-way traffic signs going in opposite directions. This dilemma is also shown in a cartoon which shows someone standing in front of two traffic signs, one entitled: *Morally right*, the other pointing in the opposite direction and reading: *Legally right*. That reminds me of the saying: *Everything I like is illegal, immoral or fattening!*

Canon law at times has been used in ways which are not life giving. I am sure that most of you have heard at one time or another the statement which is meant to finish off the argument: *You can't do that: it's against canon law*. My advice to you is to ask in the nicest possible way for the person laying down the law to show you the actual canons to which they are referring. In times past there is no doubt that canon law was seen as a mysterious and important part of church discipline which was ignored at your peril.

What Canon Law is

Now that we have had a brief look at some common misconceptions of Canon Law and what it is not, or at least should not be, we turn our attention to the question - but what is it?

The basic purpose of all church law – of which canon law is an important source but not the only one - is stated in an odd place in the Code of Canon Law, in the very last canon.

This is found in the section dealing with the procedure whereby a priest who does not wish to be transferred from his parish is actually transferred by his bishop against his will. The canon concludes with the phrase: ... *keeping in mind the salvation of souls, which in the Church must always be the supreme law.*¹ This is not just a pious exhortation but is a statement derived from Roman law which has a long and venerable history dating back to the time of the Roman Empire. It provides the basic context and essential backdrop to how all church law should operate.

Interestingly, and perhaps not surprisingly, Pope John Paul II made an explicit reference to this principle in 2002 in his opening remarks at a conference held in Rome and entitled: *The Identity of Catholic Health Care Institutions* when he said: *To completely understand the identity of (Catholic) health care institutions, we need to go to the heart of what the Church is, where the supreme law is love.*

There are two major areas which must be examined and understood by all who are charged with interpreting and applying canon law. They are:

- The place and role of law in the Church
- The relationship between theology and canon law.

The place and role of Canon Law in the Church

The nature, purpose and content of canon law should flow from the nature and purpose of the Church. A proper understanding of canon law should be based on

¹ Canon 1752

an understanding of the Church. Consequently, a sound ecclesiology should offer sound theological principles on which practical norms for action may be based. This implies a necessary and close co-operation between the two disciplines of theology and canon law.

This was well understood during the revision process after the Second Vatican Council and expressed by Pope Paul VI in 1977 as follows:

*... the new Code will avoid the danger of disastrous separation between spirit and institution and between theology and law, since law and pastoral authority will be understood as means of spreading the peace of Christ, which is the work of God's justice, not man's.*²

When Pope John Paul II promulgated the Code of Canon Law in 1983, he described its purpose in words that are applicable in all Church law. He said:

*... the purpose of the Code is not in any way to replace faith, grace, charisms, and above all, charity in the life of the Church or of Christ's faithful. On the contrary, the Code rather looks towards the achievements of order in the ecclesial society, such that while attributing a primacy to love, grace and the charisms, it facilitates at the same time an orderly development in the life of both the ecclesial society and of the individual persons who belong to it.*³

It is then essential to realise the place of law in the life of the Church. As the previous quotations indicate, it is concerned with practice within the community of faith. As such, it:

² Paul VI, **Address to Officials of the Roman Rota**, 4 February 1977.

³ John Paul II, **Apostolic Constitution, *Sacrae disciplinae leges***, 25 January 1983.

- Is about order and discipline rather than doctrine and dogma
- Contains guidelines about action not beliefs
- Presents norms of conduct, not the content of faith
- Does not attempt to measure or compel personal conscience or moral judgements.

Canon Law and Theology

When we come to the relationship between canon law and theology, we find that they are inextricably entwined. Some commentators consider that while theology can be seen as *faith seeking understanding*, then canon law should be seen as *faith seeking action*.⁴

One eminent American canon lawyer describes the relationship between canon law and theology as follows:

*Canon Law is to theology as horticulture is to botany, as the practice of medicine is to the science of physiology. It is the theology of the Church put into practice. Canon Law is a subset of theology, not a subset of law or juridical science. Canon Law is applied theology. It expresses in norms and rules and practices what the Church believes and teaches about itself. Canon Law gives institutional expression to the faith of the Christian community.*⁵

Another even more eminent American canon lawyer has examined this relationship carefully. In one of his books⁶, he summarises the reasons why they should be considered separate disciplines as follows:

⁴ See Euart, S, *Theology and Law*, *The MAST Journal*, Vol 11, No 1 (2001), 2 – 5.

⁵ Coriden, J, *Canon Law as Ministry: Freedom and Good Order for the Church*. New York: Paulist Press, 2000, 142.

⁶ Örsy, L , *Theology and Canon Law*. Collegeville: Liturgical Press, 1992, 158 – 189.

- The one affirms the mysteries, the other organizes the community
- The one contemplates God and the created universe with no limits, the other operates in a well-defined field
- Each yields its meanings through the use of its own specific rules of interpretation
- Each has its own specific cultural matrix, the one philosophy, and the other jurisprudence.

He then lists the ways in which they are organically united:

- Both of them are concerned with Christian mysteries, and in speaking of them they use the same words and expressions
- Both are a product of the internal drive of the Church toward a deeper understanding of the mysteries and towards an enrichment by the appropriation of values
- The decisions represented by canon law flow from a vision of values presented by theology
- Theology retains the power to judge canon law.⁷

By now I hope you realise that Church law is meant to help, not hinder. This is emphasised by some of the rules of interpretation, many of which are enshrined in the Code of Canon Law, e.g. canons which restrict a right or impose a penalty are to be interpreted strictly, i.e. followed exactly and with no short cuts.

Canon law is not immutable or unbending. It is mainly of human not divine origin so most things can be dispensed from. A good canon lawyer is usually able to find ways around what at first sight seem to be black and white statements. I now return to my cartoon collection. This time it is Calvin and Hobbes. I think this particular strip puts Canon Law in its right place, and is a salutary reminder to all of us. Calvin asks Hobbes, his constant stuffed toy tiger companion: *Hobbes*,

⁷ Ibid, 173.

do you think our morality is defined by our actions, or by what is in our hearts?

Hobbes replies: *I think our actions show what's in our hearts.*

Part 2 Canon Law and Church Agencies

The Canon Law of the Catholic Church for the most part does not enjoy a good press. In the public eye it is seen as mysterious, esoteric, generally concerned with what people cannot do, and to be avoided as far as possible. I guess in some ways this is not very different from a common view of our law in general, as those of you who are lawyers would know from the preponderance of jokes about lawyers, which often have a bitter edge. There are similar jokes about canon lawyers, I assure you.

I realise that you are well aware that the source of your different ministries is the ministry of Jesus as demonstrated in the Gospels. From this should flow our attitude to all we do. My task today is to show you, in an admittedly sketchy way, how the law of the Church fits into, supports and strengthens this, and what are the implications for those who are charged with either the responsibility to lead Catholic organisations involved in the education, health & aged care or social welfare ministry of the Church or with their general oversight.

The law of the Church

It is unfortunate that the law of the Church, especially as expressed in the Code of Canon Law, is all too often seen as something alien and intrusive. It is not meant to be that.

The Church's law is derived from several sources. Its pre-eminent source is of course the New Testament, and it is heavily influenced by the concepts of Roman law, not common law upon which our own legal system is based. Other sources include:

- Natural law
- Custom
- Various local and ecumenical councils
- The writings of the fathers of the church
- Letters and responses emanating from the Popes in particular and bishops in their dioceses

- Rules of religious orders
- Civil law.⁸

Its development followed a complex and tortuous path. As you can imagine, given this history, Church laws became chaotic, found all over the place, often centuries out of date or contradictory. Just prior to the First Vatican Council which was supposed to address this (but did not because of its abrupt conclusion), the French bishops rather plaintively wrote to the Pope: *We are drowning in laws*. Eventually the first Code of Canon Law was promulgated in 1917 in the tradition of similar governance documents in European countries, the first and perhaps the most important of which was the *Code Napoléon* of France.

As time went on this also began to outlive its usefulness and when Pope John XXIII announced the calling of the Second Vatican Council, he also announced that the 1917 Code of Canon Law was to be updated. Sometimes it is said that this Code of Canon Law is the last great document of Vatican II, and there is no doubt that it was heavily influenced by the documents of Vatican II. Some canons, for example, are direct quotations from various documents, and the whole emphasis is heavily influenced by the teachings of Vatican II. It came into effect in 1983. For many of you, additional laws relating to religious congregations are also applicable. Many of these are found in the Code of Canon Law and applied in the constitutions and other congregation governance documents. Maybe like those French bishops you sometimes feel you are drowning in laws!

The place of Church law

Law should be of service to the community and all those in it. It has four major functions which are to:

- Aid society in the achievement of its goals and facilitate the purpose or common good of the society
- Provide stability to the society, ie, to enable things to be done in an orderly, thorough, and predictable fashion

⁸ See Coriden, J A, *An Introduction to Canon Law (Revised)* (= *Coriden*). London: Burns & Oates, 2004, 33 – 34

- Protect people and their rights
- Educate people in the values and standards of the community and their personal responsibility.

These functions are true of all law, not just Church law.

In summary

The Code of Canon Law:

- Caters for the Universal Church so sometimes is very general and apparently far removed from particular situations as they develop in various parts of the world, or the way certain ministries develop here and there
- Is of necessity a static document
- Written for the time and cannot or does not pretend to cover all situations, especially those which arise in the future, eg, the canons on temporal goods, especially alienation, now do not cater well for the health ministry in many countries such as our own or the canons on trials and penal provisions do not adequately deal with clerical child abuse
- Is meant to be a servant not a master
- If disregarded or given an importance beyond what it warrants, can lead to abuses of power and control
- Should be accorded no more nor no less respect than it merits in the overall scheme of things
- Is an essential part of the life and culture however it is defined of the Catholic Church
- Has an impact on the way the ministries of Catholic health care, education and social welfare in general and your organisations in particular are organised and how these ministries are carried out.
- Can and has been changed by popes in a few instances since 1983.

The purposes of the Church's mission

Running through the Code are frequent references to the purposes of the Church's mission which are seen to be: works of piety, of the apostolate and of charity, whether spiritual or temporal, and the support of its ministers. For example:

- Canon 114 § 2 lists the purposes I have just mentioned when describing juridical persons which of course covers all dioceses, parishes, religious institutes and other established juridical persons.
- Canon 222 § 1 enjoins all of Christ's faithful: *to provide for the needs of the Church, so that the Church has available to it those things which are necessary for divine worship, for apostolic and charitable works and for the worthy support of its ministers.*
- Canon 222 § 2 is a reminder that they: *... are obliged to promote social justice, and mindful of the Lord's precept, to help the poor from their own resources.*
- Canon 1254, the first canon in **Book III: The Temporal Goods of the Church** states quite definitely that the Church has the inherent right to acquire, retain, administer and alienate temporal goods in pursuit of its proper objectives which are principally:
 - The regulation of divine worship
 - The provision of fitting support for the clergy and other ministers
 - The carrying out of works of the sacred apostolate and of charity, especially for the needy.

Indeed this canon underpins many of the prescriptions in this section of the Code.

Church law affecting Church organisations in general

There are several sections of the Code which relate to the running of church organisations which are relevant to all ministries. Some of the canons in these sections may have little direct impact on the day to day running of the organisation but are important as they provide part of the essential context in which you operate. Others are of greater importance particularly at the overall governance level or are quite specific. The canons relate to several areas which I list below before commenting on them. They address such matters as:

- The rights and obligations of Christ's faithful to spread the kingdom of God
- The right to form associations for charitable services
- Catholic identity
- Juridical persons
- The role of the bishop
- The role of religious institutes
- The right and obligation of the church (used here in its broader sense) to own and administer property for the furtherance of its proper objects

In more detail:

The rights and obligations of all Christ's faithful to contribute to the building up of the Church either as individuals or in groups is stated clearly. Canon 208 enjoins all the faithful to "... contribute, each according to his or her own condition and office, to the building up of the Body of Christ. Canon 209 §2 says that: *They are to carry out with great diligence their responsibilities towards both the universal church and the particular Church to which by law they belong*, and Canon 210 reiterates this obligation: *to promote the growth of the Church and its continual sanctification*. This right is also mentioned in Canon 216 and specifically in reference to the lay members of Christ's faithful, in Canon 225 §2 which speaks about the right and obligation ... *to permeate and perfect the temporal order of things with the spirit of the gospel [so that] particularly in conducting secular business and exercising secular functions, they are to give witness to Christ*.

The right to form or join various kinds of associations which serve charitable purposes such as those associated with health care are also delineated. Canon 215 gives any of Christ's faithful the right to: ... *freely establish and direct associations which serve*

charitable or pious purposes or which foster the Christian vocation in the world These associations are treated in some detail in Canons 298 – 329.

- Several canons deal with ***Catholic identity*** – a most important concept. Canon 216 states that: *Since they share the Church’s mission, all Christ’s faithful have the right to promote and support apostolic action, by their own initiative, undertaken according to their state and condition. No initiative, however, can lay claim to the title ‘catholic’ without the consent of the competent ecclesiastical authority.* This canon is repeated later on in the Code explicitly in reference to Catholic associations (Canon 300), Catholic schools (Canon 803) and Catholic universities (Canon 808). Much has been written about Catholic identity – what it is: how it is defined, fostered, inculcated and evaluated. I do not intend to spend any time here on this vital aspect of Catholic endeavours but draw your attention to the very fine description in the ***Code of Ethical Standards for Catholic Health and Aged Care*** which is applicable to all Catholic organisations. It reads:

A healthcare organisation bearing the name “Catholic” has a special responsibility to witness to the presence of Christ and to Catholic teachings about the value and the dignity of the human person. Tangible signs of the identity of the Catholic identity of an organisation include: sponsorship, ownership, governance and/or management by the local church or by a religious congregation; recognition by the bishop of the diocese; priority given to pastoral care and mission integration; availability of the sacraments and the prominence of Christian symbols; acceptance of Catholic teaching and observances of canonical requirements. All who work in and for Catholic health care should be united by their adherence not only to the ethical standards of their respective professions but also by a willingness to embrace the ethical standards of Catholic health care.⁹

⁹ Catholic Health Australia, ***Code of Ethical Standards for Catholic Health and Aged Care Services in Australia***, Canberra: Catholic Health Australia, 2001, 55.

- The role and functions as well as the rights and obligations of *juridical persons* are treated in general in Canons 113 - 123. Other canons deal specifically with various types of juridical persons - associations of Christ's faithful (Canons 313 and 332; dioceses (canon 373); parishes (Canon 515; and religious congregations (Canon 634) and other public juridical persons established by the bishops, eg, Mercy Care in Perth.
- ***The role of the bishop*** is emphasised. Canon 394 §1 obliges him ... *to foster various forms of the apostolate in his diocese and ... to ensure that ... all works of the apostolate are coordinated under his direction, with due regard for the character of each apostolate.* Canon 680 which is specific to religious institutes emphasises this cooperation again. He also has the right, according to Canon 397 §1 to visit *persons, catholic institutes, pious objects and places within the boundaries of the diocese.* With regard to religious institutes, according to Canon 678 §1, *In matters concerning the care of souls, the public exercise of divine worship and other works of the apostolate, religious are subject to the authority of the Bishops, whom they are bound to treat with sincere submission and reverence.* Canon 678 §3 also emphasises that: *In directing the apostolic works of religious, diocesan Bishops and religious Superiors must proceed by way of mutual consultation.*
- ***The participation of religious institutes*** is mentioned in several canons in the section on religious institutes such as Canons 675 – 678. A key canon is Canon 676 which says: *Lay institutes of men and women participate in the pastoral mission of the Church through the spiritual and corporal works of mercy, performing very many different services for people.*
- ***The right of the Church to own and administer goods*** for the furtherance of the works of charity, especially for the needy is stated in Canons 1254 – 1258. According to Canon 1273, *The Roman Pontiff, by virtue of his primacy of governance is the supreme administrator and steward of all ecclesiastical goods.* All temporal goods owned by juridical persons are ecclesiastical goods and as such are governed by the provisions of Book V of the Code of Canon Law entitled: ***The Temporal Goods of the Church*** (Canons 1254 – 1310). Temporal goods are generally considered to be: all the non spiritual assets, tangible and non tangible, which may be used by the Church in the furtherance of its mission, eg, land,

buildings, furnishings, equipment, and all other categories of real or personal property. All Church entities have the obligation to administer their temporal goods responsibly and ethically and to comply with its provisions, eg, in relation to contracts and alienation of property (Canons 1290 – 1298).

Many of these canons are or should be enshrined in the civil governance documents and policies and practices of the organisation. So for example, in the Memorandum and Articles of Association there are safeguards to ensure that the juridical person is able to exercise its rights and carry out its responsibilities in a true spirit of stewardship. They may either be written in by the insertion of clauses such as: *This organisation [however named] is subject to the Code of Canon Law of the Roman Catholic Church and/or the Constitutions, policies and practices of the Sisters of ...* or may be listed as powers reserved to the competent ecclesiastical authority, eg, the bishop or bishops or the Congregation Leader and Council or the parish priest. These safeguards are often known as *reserve powers*.

Church law affecting individual ministries

The Code has some sections which are more directly related to a specific ministry, eg, education, or by association, other ministries such as those relating to health and aged care or the provision of services to the poor and disadvantaged.

Education

If we look in the Code we find many references to the teaching mission of the Church especially in **Book III: The Teaching Office of the Church** which has sections on Catholic education in general and schools and Catholic universities. It is interesting to note that the relevant section heading is *Schools*, not *Catholic Schools*, although they are mentioned explicitly in several canons. While I will not comment in detail on any specific canons here, it is important to note that:

- The Church considers that parents have the right and duty to educate their children in the faith - Canon 793 § 1
- The Church has the right and duty to educate in the faith and to establish schools – Canons 794 §1 and 800
- Christ’s faithful are to consider schools of great importance in assisting parents to fulfil their role in education and must have real freedom in their choice of schools – Canons 796 – 798
- Catholic schools must comply with certain standards mandated by the Church – Canon 803
- The bishop has certain rights and duties with regard to teachers of religion and Catholic schools in his territory – Canon 804 – 806.

Health and Social Welfare

However there are no canons in the Code of Canon Law relating directly to the healing ministry or social welfare activities as such. But that does not let you off the hook! While I do not want you to hear me to say that education is not a work of charity, I would contend that the activities undertaken in the agencies and organisations you represent would come under this heading which has already been mentioned several times as also has the right and duty of the Church to try to alleviate the sufferings of the poor and disadvantaged.

In general, the canon law affecting the health and social welfare ministries falls into the following main categories:

- The universal law of the Church found mainly but not exclusively in the Code of Canon Law and already mentioned

- The particular law of dioceses or regions
- The proper law relating to religious institutes

Conclusion

In practical terms how do these canons affect the running of a Catholic organisation such as an educational institution; a health or aged care system or individual hospital or an aged care facility; or any of the many organisations established for the poor and disadvantaged?

As we looked at relevant canons, I hope each of you depending on your place in your particular organisation could see how they impact on your areas of responsibility. For example:

- Many of these canons are personal in nature and focus on the calling of Christians and people of good will to build up the Kingdom of God.
- All members of the organisation, whatever their place in the structure, have some responsibility for the Catholic identity of the place. The emphasis however or actual time devoted to this may differ. It certainly is something that boards and senior executives need to monitor and foster carefully on behalf of the owners who in many cases originally established and ran the organisations for many years.
- Bishops and religious congregations need to know their rights and correspondingly but perhaps not quite so emphasised their obligations.
- The careful stewardship of temporal goods which often translates into how to best use scarce resources is incumbent on all, but owners, boards and senior executives are usually the only ones involved in the actual details of buying, selling, alienating, etc.