

DIALOGUE AND CONSULTATION A PART OF CHURCH LAW

Any study of the church's legislative history shows how important it is to provide opportunities for consultation, communication and dialogue with those involved in a legislative process. Nevertheless, at first sight, and without looking at the whole of the *Code of Canon Law*, it might appear that the church gives those in authority almost total leeway to make decisions as they see fit and to have them implemented. However, a closer examination of the canons reveals that the code provides many structures for dialogue and consultation.



FR. FRANCIS
G. MORRISEY

Recognized and properly used, these means of communication can produce excellent results.

Some people object to the fact that most of these structures are consultative in nature, that they are not decision-making bodies. However, we should keep in mind that the Catholic Church is not organized on a congregational model. Rather, it

follows a hierarchical model that has been in place over the centuries.

Within that model, the canons call for consultation that is more than a formality, clearly giving those consulted input and influence in decisions. Consultation does not take place in a vacuum. It presupposes appropriate communication of available information, and this is a two-way street.

A sound consultation process usually includes five steps:

- Gathering the facts and the pertinent information
- Evaluating the possibilities that arise
- Making the decision
- Implementing the decision
- Evaluating the results after an appropriate period of time and, if necessary, making adjustments

The canons provide many forms of consultative structures. For instance, on the level of the entire church, the pope communicates with and gets assistance from the Roman curia and the synod

of bishops. There also is the ecumenical council, though its frequency is relatively rare.

At the diocesan level, the college of consultors helps the bishop, as do the priests' council (or senate of priests), the finance council and, if it is established, the diocesan pastoral council. Sometimes a diocese sets up structures for promoting understanding in specific areas such as a sisters' council or office for youth ministry.

At the parish level, the parish council and the finance council play consultative roles.

When it comes to religious institutes — that is, orders and congregations — the *Code of Canon Law* makes it mandatory, at all levels, for every religious superior to have a council used in the exercise of the office (Canon 627). But in addition to this ordinary consultative body, the highest form of dialogue and consultation is expected to take place within the general chapter (Canon 631). Chapters are held at periodic intervals, usually from every four to eight years.

Canons 632 and 633 also provide for other opportunities to consult and receive input from the members. These can be, for instance, provincial chapters, provincial and regional assemblies, councils of the congregation and other related gatherings. Canon 633 specifically states that these various groups express in their own way the care and participation of all the members of the institute for the good of the whole community. The same canon also warns that wise discernment is to be observed and that these groups are to operate in conformity with the character and purpose of the institute.

For religious orders and congregations, as well as for dioceses, the *Code of Canon Law* provides

three different ways in which a bishop's or superior's council is to operate:

1. In certain instances, a majority of the members must give their *consent* before the bishop or superior can act. If the council does not agree with a proposal, these persons cannot proceed. However, the council cannot force the bishop or the superior to act even if the majority are in favor of the decision.

2. On other occasions, the law simply calls for *consultation* of the council, either gathered together or, in particular cases, acting on an individual basis.

3. In a few instances, usually depending on the provisions of an institute's constitutions or on the appropriate statutes, the bishop or superior and the council act *collegially*. A collegial vote is a binding one, and the bishop or superior is obliged to act even if he or she voted against the proposal.

The practice of the church has been somewhat reticent in regard to collegial votes as the ordinary form of government in a religious institute. One reason is to protect the superior's personal authority. Furthermore, a collegial vote implies that all the available information has been shared among those who are called upon to vote. Collegial voting in situations involving personal or private issues brings the risk of endangering privacy or reputations.

One of the practical difficulties that religious superiors face today, especially in large international congregations, is bringing the council together for regular meetings. The *Code of Canon Law* calls for the physical presence of those who are to give consent (see Canon 127). This is the

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general norm, but we have to recognize that nowadays there may be visa restrictions or immigration difficulties that can prevent the members of the council from meeting together.

In such cases, communities have resorted to other means of sharing information, such as arranging conference calls by telephone or Skype, video hook-up and so forth. No matter what type

of communication technology is used, it is generally a basic condition that all participants be able to hear each other and share their opinions. At times, though, functioning via such long-distance

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connections becomes rather delicate, especially when the proceedings call for a secret vote.

Some congregations provide that only those who are physically present are able to participate in a secret vote (provided there is a quorum). I am not aware of any instances where "chat rooms" or Internet or e-mail dialogue has been authorized for those instances where the consent of the council is required and the members are unable to be physically present.

At the congregational level, it has typically been the practice to elect general councilors at the general chapter. However, this is not a requirement of the *Code of Canon Law* as such; only the congregational leader must be elected. So, there can be special provisions in the constitutions allowing for various ways of composing a general or provincial council.

For instance, in some communities whose constitutions allow it, the congregational leader (or the provincial) and two councilors elected by the general or provincial chapter meet to determine who will be the secretary and who will be the treasurer. Once these persons have been named, they automatically become members of the council.

However, in a number of religious institutes, the secretary and the treasurer are not members of the council (although they often are members of the corresponding civil corporation). If this is the case, then they do not have the same input in decision-making procedures. Nevertheless, there is a general provision in communities that, if the treasurer is not a member of the council, his or her opinion is to be sought in all matters relating to financial implications of decisions to be made. Indeed, the

constitutions of many institutes go further and prescribe that the treasurer's opinion is to be included in the minutes of the meeting. In this way, the opinion given is not just a formality, but it really can color the discussion and the final decision.

On the surface, these regulations can appear to be complicated. However, communities readily adjust to them. What is essential is that the council be used fittingly, once it is in place. If councils want those in authority to make good decisions, it is imperative that they help the leaders receive the appropriate information. The same applies at the levels of the parish, the diocese, and the entire church.

The councils have a moral responsibility to carry out their duties. Indeed, Canon 127 explicitly provides that "all those whose consent or advice is required are obliged to give their opinions sincerely." Canon 1292.4, when speaking of certain property transactions, goes even a bit further: "Those who must give advice about or consent to the alienation of goods [and to acts which can jeopardize the stable patrimony of the juridic person — Canon 1295] are not to give this advice or consent until they have first been informed precisely about both the economic situation of the juridic person whose goods it is proposed to alienate and about alienations [or contracted debts] which have already taken place."

An old legal principle reads, "Those who do not raise an objection are presumed to consent." If people simply disregard invitations to participate in consultation processes, then they are not in a position to criticize the eventual decisions.

FR. FRANCIS G. MORRISSEY, OMI, Ph.D., J.C.D., is professor, canon law, Saint Paul University, Ottawa, Canada.

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