

# NORMS FOR CANONICAL ELECTIONS

Although at first sight they appear relatively simple, elections in religious institutes and other church bodies can raise a number of tricky issues. For example, under canon law, correctly applying the norms concerning who is eligible to vote, the validity of certain votes, the method of counting the votes and determining whether the required majority has been reached — all these can require extra thought and care.



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Let us look at some of these issues.

Canons 171 and 172 provide clear guidelines concerning a person's eligibility to vote — someone who is “incapable of a human act” cannot cast a valid vote, for example, so an individual in a perpetual coma, or someone in an advanced state of Alzheimer's disease or dementia, has lost the use of reason

and is not eligible. But what if it isn't clear that a person has indeed lost the capacity to vote? For instance, the individual may have good days and bad days, in terms of lucidity.

In such situations, before declaring that a person is incapable of voting validly, certain precautions must be taken. Canon 18 tells us that in cases restricting the use of rights, a strict interpretation is to be applied. The usual practice is to require two professional certificates to the effect that a person does, indeed, suffer from an incapacitating illness. One of these would come from a treating physician, the other from a professional who is involved on a daily basis with the person, such as an infirmary nurse. To avoid potential conflicts of interest, the superior should not be the person to issue such a statement.

The canons also say that someone who “lacks active voice” cannot vote validly in a canonical election. Thus, for instance, in a religious institute, an associate who is not a vowed member of the institute cannot vote validly in a chapter. The same applies to observers who have not been given the status of full chapter membership.

The *Code of Canon Law* contains prohibitions against a person who is excommunicated or who has notoriously defected from the Catholic faith, as well.

Although capable of voting validly, a person might wish to renounce the exercise of a right to vote or to be elected. When such a person, in writing, renounces this exercise, the required majority is diminished accordingly. This could be significant, for instance, when a vote is taken regarding the future of a religious institute, such as joining another one. While a 75 percent to 80 percent majority often is required, the percentage is determined on the basis of those who remain eligible to vote.

Likewise, when it comes to electing delegates to a general chapter, some persons might feel — and rightly so — that they no longer are aware of the situations to be addressed in the chapter, thus they renounce for this time, or even permanently, the exercise of their right. Such a renunciation should be in writing and witnessed.

Canon 172 outlines five conditions for the validity of a vote cast by a person who remains eligible to vote:

1. The vote must be free. If a person were threatened and in grave fear, or he or she were deceived, that vote is invalid. The deceit could arise from a promise that was made before the election took place. Such promises relating to a particular office have no juridical effect (see Canon 153).

2. It must be secret. This presupposes a written, unsigned ballot.

3. It must be certain. Sometimes, for instance, in communities, two or more persons have the same family name or a very similar name, with a

slightly different spelling. To indicate simply the family name without the other qualifiers could lead to an uncertain vote.

4. Likewise, the vote must be absolute. It cannot be conditional. Indeed, any condition attached to a vote is considered to be nonexistent.

5. It must be determinate, in the sense that a person could not validly indicate on the ballot: “I vote for whoever receives the most votes.”

A vote for someone who is not eligible also would be an invalid vote (except for the possible case of postulation). That means, for instance, in a general chapter, voting for someone who is not even a member of the institute.

But, what about abstentions? How do they count when determining both the required majority and the validity of votes cast? Canon 119 tries to answer a number of these questions, and it also contains provisions regarding the number of ballots and a possible cutoff point.

In matters of voting, Canon 119 gives preference to the governing statutes or to some law that is applicable in the situation. Thus, for a religious institute, its constitutions would override the canon if they contained something contrary to what the canon says.

## ELECTIONS

To hold a canonical election, first there must be present a majority of all who are to be summoned to vote. The majority in this case — the quorum — means more than half of the eligible electors. The canon then speaks of an “absolute” majority of those present.

Regarding majorities, there are different understandings in different countries, and, in the case of an international institute, the meaning should be clearly spelled out.

Four different types of majority could be considered:

- A qualified majority, such as a two-thirds majority, a specified supermajority or even a unanimous vote

- An absolute majority: more than half the possible votes

- A simple majority: more than half the valid votes

- A plurality: the person obtaining the highest number of votes

Using these definitions, it follows that in determining an absolute majority, both invalid votes and abstentions are counted in the total. However, in the case of a simple majority, abstentions and invalid votes are discarded and do not count in the total. Some communi-

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ties in their constitutions identify (or they confuse) terms by speaking of “an absolute majority of valid votes cast” — thus the importance of verifying the content of the constitutions before proceeding to a ballot. After all, in a small group, such as a contemplative monastery, one or two votes can carry great significance to the outcome.

## VOTES ON OTHER MATTERS

When it comes to canonical votes by a collegial body in which all are equal, but in matters that are not elections, an absolute majority suffices for the deci-

sion, unless otherwise provided. There also is a provision in the canon for a tie-breaking or casting ballot.

There is a significant difference, however, when it comes to a vote within a council regarding appointments, admission to vows, sales of property and so forth. These are not elections. In such instances, since superiors ordinarily are not councilors, they do not vote on such matters. And, unless the approved constitutions provide otherwise, the superior does not have a casting vote in the case of a tie.

There is, however, one additional point that is quite different when comparing council decisions to canonical elections. Canon 127, which governs the operations of councils, makes no reference to provisions of the statutes. Rather, for a council decision, an absolute majority of those present must approve the appointment or decision. Thus if, for instance, the consent of a council were required for the appointment of a local superior, and four persons were present, we could have the following situation: two votes in favor, one against, and one abstention. In this case, the total is calculated out of four, and not three (discarding the abstention), so there is no majority, and the consent of the council has not been given.

So, we see that what looked to be a rather simple process — voting in religious institutes and other church bodies — can become complicated if the electors or council members are not clear on the canonical requirements. Uncertainty can lead to internal difficulties later on, and, in order to avoid this possibility, things should be clearly spelled out beforehand.

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