

becomes habitual, and a relish for the great authors of the Church's spiritual tradition, without being limited to spiritual reading of a modern cast."

Another foundational principle is found in canon 586. It indicates that a just autonomy of life, especially in the area of governance, exists for each individual institute so that they may preserve their own patrimony in accordance with their particular purpose. Autonomy refers to the internal life and governance of a particular institute. The canon goes on to say that local ordinaries have a responsibility to preserve and safeguard this autonomy. The autonomy is not absolute since all institutes are subject to ecclesiastical authority in accordance with the universal law of the Church. Canon 678, §1 indicates that members of religious institutes are subject to the diocesan bishop in matters pertaining to the care of souls, the public exercise of divine worship, and other apostolic works. The exercise of divine worship includes the public celebration of worship within religious institutes as liturgy is envisioned in canon 834.

It would appear from these foundational canons and the *Directives on Formation in Religious Institutes* that the diocesan bishop cannot compel all novices to attend Sunday Mass only in parish churches. Such a directive goes against the rightful autonomy of the religious institutes and one of the purposes of the novitiate: celebration of the liturgy according to the spirit and character of the institute.

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### Canon 241 §3

#### ADMISSION OF SEMINARIANS PREVIOUSLY ENROLLED IN A SEMINARY OR RELIGIOUS INSTITUTE

*A man has asked to be admitted to the seminary for our diocese. He attended another seminary for a few semesters some years ago, studying for another diocese. Is our bishop free to accept him as a seminarian?*

#### OPINION

The 1917 *Code of Canon Law* required in its canon 1363 §3 that the bishop seek from religious superiors or other persons information about the dismissal of former seminarians or religious from other seminaries or religious institutes and information about their character, disposition and talents. The bishop was required to know with certainty that there was nothing about them that was unbecoming to

the priestly state. Canon 1371 of *CIC/1917* had listed possible reasons for expulsion from the seminary as being: disruptive, incorrigible, unruly, those who did not seem morally and psychologically suited to the ecclesiastical state, those who made so little progress in their studies that there was no hope that they would ever acquire sufficient learning, and those who have offended against good faith or morals. These grounds required a bishop to be wary of accepting someone who had been dismissed.

Issues arose over the acceptance of former seminarians and religious following the promulgation of the 1917 *Code of Canon Law*. Consequently, the Sacred Congregation for Religious and the Sacred Congregation for Seminaries and Universities issued the joint Decree *Consiliis initis* on July 25, 1941. It stated: "Before a person who has belonged to any title to a religious family, is admitted to a seminary, the Ordinary must have recourse to the Sacred Congregation of Seminaries and Universities, which, after all that the case requires has been done, will inform the Ordinary of its judgment in the case. Likewise, before a person who has for any reason left a seminary, is ascribed to a religious family, the religious superior must have recourse to the Sacred Congregation of Religious, which, after all that the case requires has been done, will inform the superior of its judgment in the case." (*CLD* 2, p. 426)

Later the Sacred Congregation for Seminaries and Universities on July 12, 1957, issued the Decree *Solemne habet*. The decree extended the requirement of a bishop to seek the permission of the Holy See for the acceptance of former seminarians who had been dismissed or left the seminary on their own accord: "It is an established principle in the Church that candidates for the priesthood are to be carefully tested, so that those who are worthy and qualified shall receive Sacred Orders while the unworthy or unfit are excluded. For this reason Bishops should as a rule not admit to the Seminary students who have left the Seminary of any diocese of their own accord or have for any reason been dismissed therefrom by Superiors. If after carefully considering everything they think that such a one should be admitted, then, having observed the prescription of canon 1363 §3 of the Code of Canon Law, they should moreover apply to the Sacred Congregation of Seminaries and Universities for authority to receive him, so that the fitness of the candidate may be more abundantly proved." (*CLD* 4, 387.)

However, the Apostolic Delegate for Australasia reported that the Sacred Congregation for the Propagation of the Faith decided on October 25, 1957, that the aforementioned Decree of the Sacred Congregation for Seminaries and Universities of July 12, 1957, did "not oblige in the territories depending on Propaganda." (*CLD* 4, p. 388) These territories had to seek the approval, rather, of the Sacred Congregation for the Propagation of the Faith.

After the Second Vatican Council I (1962-1965), diocesan bishops were able to exercise greater autonomy in many things, but the Sacred Congregation for Seminaries and Universities reiterated on March 23, 1976, that after the promulgation of the *motu proprio, De Episcoporum muneribus*, the Holy Father said the Decrees *Consilii initis* of July 25, 1941, and *Solemne habet* of July 12, 1957, were still in force, as sufficient reason to exempt Ordinaries from the obligation of recourse to the Sacred Congregation for Seminaries and Universities was not had. (*Comm 8* [1976], p. 138)

These two decrees, however, have been revoked since the 1983 *Code of Canon Law* came into effect. The Secretariat of State, on June 6, 1983, wrote to the Cardinal Prefect of the Sacred Congregation for Catholic Education, stating:

With your letter, n. 575/83/2, of 13 May last, your Sacred Congregation has pointed out that with the entrance into force of the new *Code of Canon Law* the decrees, *Consilii initis*, of 25 July 1941, and *Solemne habet*, of 12 July 1957, will cease. They concern the admission into the seminary of ex-seminarians and of ex-religious. You have requested to know the line of conduct to be followed in the future.

On the proposal I wish to inform you of the following:

1. We fully share the preoccupation of your Sacred Congregation over the problem of admission of ex-seminarians and ex-religious, and, in general, for the admission of anyone not giving due guarantees of fitness for the priesthood;
2. As of the moment, it does not appear to be opportune to reinstate the above-mentioned decrees, which would be to abrogate the provisions of the new Code, not before the Code goes into force;
3. Your Sacred Congregation ought to endeavor to find other ways equally adapted to attain the desired scope; as a purely indicative heading, permit me to point out the possibility which canon 242 of the new Code offers by way of the occasion of approval of the *Program of Priestly Formation* which each episcopal conference must prepare for its own territory. (*CLD 10*, p. 203)

The acceptance of former seminarians or religious into seminaries continued to be an issue, so Congregation for Catholic Education, on March 8, 1996, issued the Instruction *Regarding the admission to a seminary of candidates coming from other seminaries or religious families*. (*Origins 26/22* [1996-1997], pp. 358-360) The Congregation wanted stricter norms on accepting former seminarians or religious,

and suggested a general decree addressing this be issued –or even a commission to deal with these cases be set up– by the conference of bishops.

The Congregation for the Evangelization of Peoples clearly shared this concern of the Congregation for Catholic Education, as evidenced in its letter of April 25, 1996, to the President of the New Zealand Episcopal Conference:

As Your Excellency well knows, the formation of candidates for the priesthood is one of the determining factors for the future of the Church.

In this context, it is essential to look for quality rather than quantity and therefore it is necessary to carry out a more strict selection, as foreseen in the “*Ratio Fundamentalis Institutionis Sacerdotalis*,” 19 March 1985, the “*Directives*” which this Congregation sent out on 25 April 1987, following the Plenary of this same year and the Apostolic Exhortation, “*Pastores dabo vobis*.”

In particular this applies to what concerns the possible re-admission of aspirants to the priesthood, previously dismissed from other Seminaries or Religious Institutes.

The new *Codex* of canon law has left this responsibility to the individual Bishops, but this does not mean categorically that the re-admission in question could be done indiscriminately without the total prudence which the case obviously requires.

Unfortunately, over these past years, in this area, a number of abuses have been verified, resulting in serious harm in the life of the Seminaries, with unpleasant surprises and delusions for the “benevolent” Bishops and with grave inconvenience for those Bishops who, on the contrary are justly rigorous in the selection of candidates for the priesthood.

Faced with this situation, many bishops have had recourse to the Holy See, showing their preoccupation and asking for prompt and effective intervention.

This Congregation on which the Seminaries of the mission countries depend does not exclude possible direct interventions; from now on however:

- each bishop is invited to proceed with extreme prudence. Keeping in mind canon 241 §3 of the CIC prescribes that, before re-admitting the above aspirants the aforesaid aspirants to the priesthood, the bishops have the grave obligation “of also requesting the testimony of

the respective superior, especially concerning the reason for their dismissal or departure;"

- takes note with pleasure that various Episcopal Conferences have already faced the problem commendably, obliging their own members not to re-admit aspirants to the priesthood dismissed from other seminaries or religious institutes; (and)

- it exhorts the other Episcopal Conferences to face the problem and to adopt a common, very firm and effective policy."

The National Conference of Catholic Bishops in the United States issued the fourth edition of its *Program of Priestly Formation* in November of 1992. In its no. 526 it states: "An especially careful investigation must be made before accepting seminary students who have been dismissed or who seek transfer from another seminary. It is required that the consultation take place between administrations of both seminaries with the necessary documentation about the applicant's previous records being provided. This must be done in every instance. Similar criteria must be applied to applicants who have been in religious formation programs and who are now applying to a diocesan seminary or *vice versa*."

Similarly, the New Zealand *Programme for Priestly Formation* (also approved by the Holy See) states in its no. 170: "Special care is required when discerning the suitability of applicants from particular backgrounds; for example . . . those who have come from other seminaries or religious congregations."

As the current law stands, it is up to the individual diocesan bishop to take special care before accepting any former seminarian or religious for a diocesan seminary.

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#### Canon 474

#### SIGNATURES REQUIRED FOR ACTS OF THE BISHOP

*Our new bishop insists that it is unnecessary for his written decisions, appointments, etc. to be countersigned by the chancellor or other ecclesiastical notary. For example, he writes appointment letters for parish priests and sends these out over his own signature alone. He has also accepted a pastor's resignation from office in writing, given notice that a pastoral term is expired and thus created a*

*parochial vacancy, and imposed precepts against uncooperative clergy, but again without any notarization of his acts. Knowing that canon 124 requires observance of "the formalities and requirements imposed by law for the validity of the act," and noting that canon 483, §1 seems to set forth one of these legal requirements (the notary's signature "establishes authenticity for any acts") and that canon 484, 1° indicates their intervention is "required," I am concerned that the bishop's juridic acts will be challenged. Are they, in fact, valid without the signature of the chancellor or other notary?*

#### OPINION

The law applicable to your question is canon 474: "For validity, acts of the curia which are to have juridic effect must be signed by the ordinary from whom they emanate; they must also be signed by the chancellor of the curia or a notary. The chancellor, moreover, is bound to inform the moderator of the curia concerning such acts."

The key issue at hand is whether this canon applies to all ordinaries in the diocese, or to all ordinaries except the diocesan bishop. A canonist once told me that he thought this canon applied only to the vicar general and episcopal vicars, not to the diocesan bishop. He based his argument on the description of the diocesan curia in canon 469 as consisting of "those institutions and persons which assist the bishop in the governance of the whole diocese." Canon 469 suggests that the bishop himself is not part of the curia, but is assisted by it. Thus, the canonist reasoned, the bishop's acts do not require notarization because they are not acts of the curia. Perhaps this is your bishop's opinion as well. However, I have not found it supported by the authors, some of whom state explicitly that the diocesan bishop is to be included among the ordinaries who are subject to canon 474. This also is my view. The bishop is an ordinary (c. 134, §1). His juridic acts are part of the official administration of the diocese, and they must be treated in the same way as other official documents of the curia (cc. 482, §1; 484; 486-491). The requirement that they be signed by him, for validity, ensures the recipients that his acts do, in fact, emanate from him, that he is aware of their contents, and that he takes ownership of them, even if drawn up by someone else. The countersignature of the chancellor or other notary is evidence of the authenticity of the document and of the ordinary's signature.

While the ordinary's signature is required for the validity of his act, the signature of the chancellor or other notary is required only for liceity. This is clear from the wording of canon 474 as well as from the general norm of canon 10: "Only those laws must be considered invalidating or disqualifying which expressly establish that an act is null or that a person is unqualified." Moreover, it was the explicit intention of the drafters of this canon that the signature of the chancellor or notary not be required for validity.<sup>1</sup> Consequently, in my opinion, your bishop is acting illicitly by failing to

*Brenda Daly*

**ROMAN REPLIES**

**and**

**CLSA**

**ADVISORY OPINIONS**

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