

THE ARCHIVIST: RIGHTS AND RESPONSIBILITIES

A CANON LAW PERSPECTIVE

MERCY CENTRE, BURLINGAME, CALIFORNIA, USA

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The rights and responsibilities of Archivists do not derive exclusively from the Code of Canon Law. They have their origin in the teaching of the Church as it is expressed in the Documents of the Second Vatican Council, notably in *Gaudium et Spes* (56-62) and *Sacrosanctum Concilium* (122-128). They arise too from the ten (10) Principles for the Revision of the Code of Canon Law (1983), and then from those norms in the Code which articulate the Church's teaching, and which ultimately derive from the whole juridical and legislative tradition of the Old and New Testaments. Finally, they are further reinforced in *Pastor Bonus* (Art. 99-104), the Apostolic Constitution on the re-organisation of the Curia (June 1988). In addition, the Commission for the Cultural Heritage of the Church has endeavoured, through circular letters and the provision of training, to instil in every ecclesiastical institution, including Institutes of Consecrated Life, a sense of responsibility and vigilant attention to their historical and cultural patrimony.

PRINCIPLES FOR THE REVISION OF THE CODE OF CANON LAW (1983)

Assuming that you are all well-acquainted with the Documents of the Second Vatican council, let's begin by looking at the relevant Principles for the Revision of the Code of Canon Law and how they impact on your work as an Archivist.

- The first principle states that the Code of Canon Law has a juridical character. After spelling out purposes and structures, it spells out the obligations and rights of all members. These fundamental rights and obligations must be recognized, correctly defined, promoted, and safeguarded. Your rights and responsibilities, then, derive from the juridical character of the Code, which states the rights and obligations of all the members.
- Closely related to this principle is the provision in the Code of appropriate measures for the faithful to be able to vindicate their rights. This one is being severely put to the test today. For you it means recognizing that members have a right, both canonically and civilly, to know that the information about them, contained in the Archives, is correct and that they have a right of access to information in their own personal file and to certified copies of documents which are of a public nature and which pertain to their own status as persons (c. 487 §2). The manner of access, of course, is not unrestricted. They have the right to see other documents in their file which are not of a public nature or which do not concern their status. They do not have the right to remove documents from their personal file. Most Congregations require that another person be present when members access archival information. Relatives, friends, and community

- members do not have the right of access to members' personal files nor have they the right to obtain copies of information from members' personal files.
- Another principle highlights the distinction between the internal forum and the external forum and exhorts us to a co-ordination between the two in order to avoid conflict. For you as an Archivist this means distinguishing between what is of its nature private and what is of its nature public, what should be confined to the Secret Archive, and what can legitimately be kept in the General Archive.
 - The Code of Canon Law is a Pastoral Instrument, marked by charity, temperance, humaneness, patience, and moderation. Your role as an Archivist is a distinctly pastoral role, involving all those qualities.
 - The principle of subsidiarity is enshrined in the Code of Canon Law. It means taking decisions at the most appropriate level, hence we have particular law for dioceses and proper law for institutes of consecrated life. We think of our Constitutions, the inspirational document of the Congregation. Guidelines for the implementation of the Constitutions are contained in Statutes, Directives, Policies, etc. The policies you design for your archives will be in the context of the proper law of your province or region, as well as being in line with the Universal Church Law and the Civil Law. The principle of subsidiarity requires you, as Archivists, together with the Congregational Leadership, to actively promote and encourage participation, personal responsibility, and effective engagement by every sister according to their opportunities and gifts.
 - The Code of Canon Law is the fruit of collegial co-operation and so your work as an Archivist reflects collegiality with all its rights and responsibilities.
 - The Code looks towards the achievement of order in the Church and so the Archives are part of the orderly development of the Church and its institutions. As an Archivist you are part of that orderly development.
 - Canonical laws, by their nature, demand observance and so, as an Archivist, you have a responsibility to know what they are and to implement them.

CANONICAL PRINCIPLES

There is no particular canon of the Code of Canon Law which applies specifically to the keeping of archives in religious congregations. However, there are several canons which deal with the keeping of general Church archives and these can be applied, by analogy, to religious congregations. Canons 484 to 491 deal with the preservation and careful handling of archival material in parishes and dioceses, and by analogy, in religious institutes. Careful handling would entail duplication of records, microfilming of old documents, proper storage facilities, temperature-controlled rooms, acid-free cartons, security, etc. Canons 1053 and 1054 address the registration and certificate of ordination to priesthood. When you apply this norm to religious profession, it means that the name of the sister making profession, the place where the ceremony takes place, the name of the Congregational Leader or her deputy, a signed copy of the Act of Profession, are carefully preserved. This information is inserted into a special register kept in the Congregational Archive. Canon 1054 establishes that the profession be notified to the parish priest of the parish where the sister was baptised, for notation in her baptismal register. Canon 1208 prescribes that a record of the blessing and dedication of a church or cemetery be kept in the Congregational archive.

Canon 1284 prescribes that all administrators should perform their duties diligently. They must be vigilant that no goods under their care suffer damage in any way; ensure that the ownership of ecclesiastical goods is safeguarded in ways that are valid in civil law; observe the provisions of canon and civil law; keep accurate records of income and expenditure; keep in a secure archive the documents and records establishing the rights of the church or the religious institute to its goods (deeds, titles, etc). Canon 1285 regulates the administration of records of pious or Christian donations or gifts to the Congregation. The rights of persons “*to obtain personally or through another an authentic written copy or photocopy of documents which are public by their nature and which pertain to the status of such persons*” is legislated for in canon 487 §2. This is especially true of sacramental records.

RESPONSIBILITIES OF THE ARCHIVIST

- As Archivists you have rights and responsibilities vis-a-vis the members and the material you are looking after now and as it will be in 50 years time. You have a responsibility to engage with the members before death and immediately after death with their material, which will become archival material. You have responsibilities to the past, to the present, and to the future. You have responsibilities to material, to space, and to people. With regard to the present you must know what is in the archives relating to the members and what will be in the interests of transparency. With regard to the future you must know who will want to access material in the archives; who will be caring for the archives; will the material in the archives give a clear picture of life at a particular time.
- You have a responsibility to ensure that the universal, proper, and civil laws are observed. You must be aware of and understand the implications for your work of the Freedom of Information legislation and Data Protection in your particular jurisdictions. You must know the law pertaining to copyright and ensure that researchers are aware of it. You have a responsibility to be available to researchers and to provide guidance. Have policies in place with regard to access and to supervision of researchers.
- You have a responsibility to promote the Archives. All your focus should not be on boxing and shredding.
- As an Archivist, you must know what the archive contains and that documents are correct. You have a responsibility to ensure that there are no errors and that the standards of Government Departments, at least, be adopted. It is very important that you develop an inventory or catalogue of what is in the archives (c. 486 §3).
- You must convince members of their obligation to preserve and conserve documents and artefacts of significant value. It is crucially important to remind them of the importance of keeping good annals and provide them with clear guidelines for the presentation of annals.
- When oral archives are being created, preparation is very important. The rights of the members as stated in canons 208-231 are to be taken into account, especially canon 220. The values you are seeking to uphold must be reflected in the questions you ask. Don't confuse the process.

- Observe confidentiality with regard to all sensitive information. Again, be aware of canon 220 which states that “*no person is permitted to damage unlawfully the good reputation another person enjoys nor to violate the right of another person to protect his or her own privacy.*”
- You have a responsibility to keep the process public in order to avoid conflict with members and/or with family members. Hence the importance of having a clear policy in place. Once a policy is decided and approved, then it should be applied across the board and it should be reviewed regularly. It should be known and acceptable to members, hence the need for communication with a view to providing information and raising awareness.
- As an Archivist you are ultimately assisting in bringing people closer to Christ – from a canonical point of view. You have a responsibility, therefore, to exercise your role in a spirit of service. Hence the need for particular formation for Archivists and the need to keep yourself informed by contact with other archivists, by being a member of relevant Associations, for instance. You should use every form of collaboration with other Archivists of the Congregation, indeed with other congregations, and with different ecclesiastical institutions like dioceses.

RIGHTS OF THE ARCHIVIST

- Canon 670, by analogy, applies here. As an Archivist you have a right to be professionally trained not simply in conservation techniques but rather for a conscientious appreciation of the historical and cultural heritage you are dealing with.
- You should have access to ongoing opportunities to update your basic training and to acquaint yourself with innovations and new legislation in the area, both civil and canonical.
- You have a right to have the space, the necessary technological equipment, and assistance to facilitate the carrying out of your work.
- You have the right to expect the active and consistent support of Congregational and Provincial Leadership. An occasional reminder to membership about the importance of keeping records is not enough. Membership should be reminded regularly of the importance of keeping accurate and detailed records and encouraged and helped to do so.

PERSONAL FILES AND PERSONAL PAPERS

As Archivists and Congregational Leaders, you must be aware that personal information should be limited to what is necessary and truly useful. Information of a confidential or sensitive nature should be kept no longer than is really necessary or may be required by law. Leadership may retain a summary of relevant information for the next administration. In general, personal information about a member can be used only for the purpose for which it was obtained. Confidential material should not be shared beyond those to whom the member explicitly released it without a further explicit written release. Confidential material should always be sealed and labelled and should indicate who has legitimate access to it and under what circumstances. Personal files should be culled annually of incidental materials that are no longer pertinent.

WHAT SHOULD BE IN PERSONAL FILES

- Basic documentary evidence: family of origin, date of birth, baptism, confirmation, education, prior employment, entrance, novitiate, stages of formation, profession, ongoing education, assignments, etc.
- Public information: photos, newspaper clippings, audio or video records, awards, etc.
- Significant materials personally produced by members: publications like books, articles, occasional papers, works of art, musical compositions, etc.
- Letters, Retreat notes, diaries, photographs. A medium must be found between keeping every little item placed in the file over many years and destroying items of genuine relevance for the future.
- Pertinent financial documents: patrimony data, social security, personal health records. These could be kept in separate sub-files for easy access.

DOCUMENTS TO BE KEPT PERMANENTLY

Most canon lawyers agree that the only things that need to be kept permanently are those matters which have canonical consequences:

- baptismal certificates; record of confirmation; marriage certificate; Church annulment; divorce; dispensation from impediments;
- record of admission to the novitiate; completion of the novitiate; petition for admission to temporary and perpetual profession; record of admission to profession; act of profession;
- a record of assignments;
- renunciation (if any) of property; appointment of administrators of goods;
- excommunication, indult of departure, death certificate;
- other material, including evaluations by superiors, members, and outsiders, do not have lasting value and should not be kept for a long time.

CONCLUSION

Since both civil and church authorities have come to realise that it is important to have properly authorised and correct documents and records kept according to civil law and church norms, it follows that we need properly trained archivists who are familiar with the requirements of civil law as well as having at least a working knowledge of the Canon Law pertaining to the keeping of records, so that the rights of persons, the safety of documents, the safety of property, the implications of criminal law, may be properly recorded. The Church, and that includes religious congregations, must uphold civil rights otherwise it might be held liable for a violation of rights. Contracts regarding the alienation of property, auditing of accounts, health services for employees, planning and building permissions, building insurance, health and safety policies, all these must be in accordance with the requirements of civil law and securely kept. Clear policies should be drawn up that are known to all the members.

It is the responsibility of Leadership, Congregational and Provincial, to see to the important matter of the keeping of records, to support the Archivists, to approve policies in this area, and to ensure that archives are accessible to researchers. In addition to

actively supporting the collecting, cataloguing, protecting, and preserving of archives, Leadership should encourage ongoing study so that we might have a better understanding of how our Congregation, in any given place, began and developed. Archives are not a place where we take refuge in the past but rather the space where we re-discover the founding spirit that inspired the growth of the Congregation through its geographical expansion, its crises, and now its contraction due to various factors.

The 1917 Code of Canon Law saw the archives predominantly as a place to put records. The revised Code of 1983 sees the archives as a place to access important and necessary information. Archives are points of reference for culture, art, social life, civilisation, politics, urban, and rural life. They are part of our past and so they are an extension of us and of our culture. This extraordinarily rich legacy of efforts and experiences of our foremothers and forefathers in the faith must be kept alive through a deeper awareness of our responsibility to commit ourselves to an active use of our cultural heritage as a valid and primary vehicle for pastoral and catechetical activity. The inspiring words of Pope John Paul II sum up what I am attempting to say here. In an interview with an architect, he said *“If I was able to do some good to those far away from the Church when I was Archbishop of Cracow, it was because I always began with the cultural heritage, which has a language everyone knows and everyone accepts and using this language I was able to start a dialogue which would not have been possible otherwise.”*

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Mary Lyons, RSM, JCD, PhD (Canon Law)
46A Forster Street
Galway
Ireland