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ROBIN GARD: IN MEMORIAM

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THE CATHOLIC ARCHIVES SOCIETY

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PUBLICATIONS SUB-COMMITTEE

Co-ordinator: Sister Dominic Savio Hamer, C.P., 'Grass and Passion' Society, 21 Tree Tops, Grange Avenue, Warrington, Cheshire WA1 3JQ, e-mail: archives2@btinternet.com
Editors: Catholic Archives: Rev. S. Foster, Brentwood Diocesan Archives, Cathedral House, Ingrave Road, Brentwood, Essex, CM15 8AT, e-mail: archives@dioceseofbrentwood.org
CAS Bulletin: Rev. D. Lannon, 3 Todmorden Road, Burnley, Lancashire, BB10 4AU, e-mail: davelannon@aol.com
CAS Directory: V. Rev. C. Smith, 20 Newcomen Road, Dartmouth, Devon TQ9 9BN

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Catholic Archives, the Journal of the Society, is published each Spring. Its main object is to describe the character, arrangement, historical interest and use of the archives of the Roman Catholic Church in the United Kingdom and Ireland. Subscription details are given on the inside and cover.
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CATHOLIC ARCHIVES

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CONFIDENTIALITY, ARCHIVES AND RECORDS MANAGEMENT

Rev. Francis G. Morrissey O.M.I.

INTRODUCTION

The topic of 'archives' has taken on new significance lately, particularly in view of the various court cases arising here and there. I will try to look at the legislation concerning archives, placing it within the context of privacy and confidentiality, which is of such significance today. However, I am not a civil lawyer and therefore I make no pretence of knowing what the applicable civil law is in a given territory, particularly in regard to access to information. Therefore, if delicate situations arise, it will be important to consult the legal advisers of the institute or diocese.

I: SECRECY AND CONFIDENTIALITY IN CANONICAL LEGISLATION

There are many canons in the Code which speak of secrecy, confidentiality, and related issues. While it would be difficult to arrange them in order of importance (since the Code itself does not foresee such a listing), nevertheless, we can realize that there is a certain gradation in the obligation of preserving secrecy.

The general norms of moral theology regarding the obligation of observing secrecy in each situation would have to be observed in the following and similar instances.

A. The Seal of Confession

According to canon 983, the confessional seal is inviolable. Failure to observe this provision can lead to the most serious canonical penalties. Indeed, canon 1388 provides that a person who directly violates the sacramental seal incurs an automatic excommunication reserved to the Apostolic See (Congregation for the Doctrine of the Faith).

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B. Pontifical Secrecy

The Instruction of 2 February 1974 on Pontifical Secrecy provides that failure to observe such secrecy can also entail the imposition of serious penalties (suspension from office, removal from office, dismissal from office). This provision became even more significant in the life of the Church when the Congregation for the Doctrine of the Faith issued the circular letter of 18 May 2001, *Ad exsequendam* outlining particular deficits which were henceforth reserved to the Congregation (see AAS 93 [2001], pp. 785-788). Among these, we find the abuse of minors under the age of 16. A complementary document, 'Procedural Norms', was not released publicly. It was promulgated by Pope John Paul II on 30 April 2001, and contains 26 norms - five of which are considered to be substantive, the other 21 being procedural. These provide that cases involving minors are subject to Pontifical Secrecy. Pontifical Secrecy also applies in cases relating to the appointment of bishops, the examination of writings of theologians, creation of cardinals, etc. (See also canon 1362).

C. Secret of the Holy Office

The Secret of the Holy Office is not mentioned in the current Code, and is perhaps identified with Pontifical Secrecy, but it was mentioned in a number of former documents. Again, penalties were laid down for those who violated it. There has been considerable publicity given lately to the 16 March 1982 Instruction of the then Holy Office referring to cases of solicitation in the confessional. Sections 71-74 of this text refer to sins of clerics against those who had not reached the canonical age of puberty (14 for a boy, 12 for a girl), or with persons of the same sex. All information relating to such cases was subject to the Secret of the Holy Office (Sections 11 and 70), and was considered to be *sub gravi*. Failure to observe secrecy led to automatic excommunication, reserved exclusively to the person of the Pope. Some lawyers have been stating recently that this law of the Church was intended to prevent bishops from notifying the civil authorities about a paedophile in the ranks of the clergy. However, the intent of the document was to protect the reputation of all persons involved and avoid scandal (since such cases were considered to be so rare); there was no mention of the civil authorities in the text, either for or against.

D. Secrecy in penal and contentious trials

Canon 1455 provides that, in penal trials, the judges and tribunal assistants are bound to observe always the secret of the office; in a contentious trial, they

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are bound to observe it if the revelation of any part of the acts of the process could be prejudicial to the parties. There is also an obligation of permanent secrecy concerning the discussion held by the judges. Canon 1457 provides for appropriate penalties if court personnel breach the law of secrecy.

E. Secrecy of Office

Canon 127 provides that if the seriousness of the matter requires it, they [councillors] are obliged carefully to maintain secrecy, and the superior can insist on this obligation. Likewise, canon 471: 'All those who are admitted to an office in the curia must [...] observe secrecy within the limits and according to the manner determined by law or by the Bishop.'

F. A Committed Secret

According to canon 845, superiors can seek information from others before admitting candidates, and can promise secrecy (which must then be observed). Canons 983, §2, and 1388, §2, would apply here: those to whom confessional knowledge comes in any way, even though they are not the confessor, are bound to observe the secret.

G. Professional Secrecy

Canon 1548, §2 provides that, in ecclesiastical court cases, clerics are exempted from the obligation of replying to questions in those matters revealed to them by reason of their sacred ministry. The same applies to 'civil officials, doctors, midwives, advocates, notaries and others who are bound by the secret of their office, even on the ground of having offered advice, in respect of matters subject to this secret.'

H. The General Provision of canon 220

'No one may unlawfully harm the good reputation which a person enjoys, or violate the right of every person to protect his or her privacy.' More on this later.

II: THE CANONS ON THE RIGHT TO PRIVACY AND REPUTATION

A. Canon 220 - General Principles

The fundamental canon in the 1983 Code, and which is the basis for on-going jurisprudence today, is canon 220, noted above. This canon contains two rights: the right to privacy, and the right to reputation. It is complemented by canon 128: 'Whoever unlawfully causes harm to another by a juridical act, or indeed by any other act which is malicious or culpable, is obliged to repair the damage done.' Likewise, canon 1390, §2: 'One who ...injures the good reputation of another person can be punished with a just penalty, even including a censure' such as excommunication.

1. The Right to One's Reputation

There are two dimensions to the right of one's reputation: the loss of it, and the harming of it.

(i) There are times when a person's reputation can be damaged lawfully, as in the case when a penal trial is held, a person is pronounced guilty, and the sentence is declared or the situation is notorious. But, as canon 1717, §2 provides, before the trial is held, 'care must be taken lest anyone's good name be endangered by the [preliminary] investigation.' Even after the trial, if the person cannot observe the penalty without danger of serious infamy, then the penalty is suspended for the time being (c. 1352, §2). Therefore, dioceses should not be making public the names of priests accused of actions - even with minors - until the trial has been held, either in the secular forum or before the Church, and a decision given.

(ii) A person's reputation can be harmed first of all by revealing secrets. But it can also be harmed through calumny and slander. The law takes the obligation of not harming a person's reputation so seriously that a willful violation of such a personal reputation could be subject to very severe penalties within the Church. Furthermore, if such a violation were to occur, there always remains the obligation of making suitable reparation. For instance, priests and religious can be falsely accused of actions they did not commit, or insinuations are made about their behaviour without sufficient evidence of proof. Reparation should be made in such instances. The topic of 'letters of recommendation' is a very delicate one. For instance, canon 241, §3 provides that 'when persons seek admission after they have been dismissed from another seminary or from a religious institute, further testimony is required from their respective superior, especially regarding the cause of their

dismissal or their leaving.' If the reasons for departure were public or of a public nature, such letters would have to be forthright, or at least should invite the recipient to have personal contact with the writer for additional information. At times, the refusal to write a letter of recommendation is sufficient indication in itself of a serious problem on the part of the candidate. But, if the information is strictly confidential or on the level of the internal forum, then it cannot be communicated, no matter how advantageous it would be to have access to it.

2. The Right to Privacy

Although the 1917 Code focussed more on the right to privacy in correspondence (canon 611) than on other matters, the current law appears to extend the right to privacy to cover many personal issues. For instance, although the 1983 Code does not mention specific areas, we can deduce from experience and by analogy a number of instances where the right to privacy would be violated.

(i) For instance, forcing a candidate to priesthood or to religious life to reveal his or her sexual orientation.

(ii) Another area is undue inquiry into a person's past medical history, unless this has bearing on a candidate's aptitudes for religious life or priesthood today: for instance, an active case of AIDS.

(iii) A third area concerns the retention and distribution of psychological evaluations and reports. We must recognize that there is a major difference between having candidates undergo a psychological assessment, and having the results of such evaluation shared by many people.

(iv) There are also privacy issues regarding what is kept in a person's personal file. For instance, if a person giving a letter of recommendation is promised secrecy, this letter should not be placed in the candidate's file. The same applies to anonymous letters denouncing a person. If ever there was a trial against a person, the accused would have the right to know who the accusers are and what they are stating (c. 1720, 1°). Likewise, reports from counselling centres that are supposed to be destroyed after six months should not be kept in a person's file; indeed, they should be destroyed as demanded.

(v) A very common occurrence today is the respect (or disregard) of privacy when a priest or religious is transferred to another posting. A bishop or superior is not at freedom to give the reasons for the transfer. The same

applies to instances where a member wishes to leave a religious institute, or a priest applies for priest applies for laicization.

3. Some Immediate Practical Applications

(i) The right to privacy is invoked as the basis for Roman statements that a bishop may not oblige a cleric to undergo therapy without the latter's consent. (See G. Ingels, 'Protecting the Right to Privacy when Examining Issues Affecting the Life and Ministry of Clerics and Religious' in *Studia Canonica* 34 (2000), pp. 439-466). An Instruction of the Secretariat of State (6 August 1976) spells out the elements to be kept in mind when dealing with therapy: it is not licit for anyone, either a religious or diocesan superior, to enter into the psychological or moral privacy of a person without having received from that person a prior, explicit, informed and absolutely free consent...'

(ii) It is also held that a cleric cannot even be sent for psychological evaluation without his consent, cf. Congregation for the Clergy, 8 October 1998: '...Therefore, this Congregation concludes that Your Excellency cannot, in this case, under pain of obedience, oblige your priest to undergo psychological evaluation.' And, if he accepts to go, the report should be protected. Father G. Ingels lists three principles that could be followed in instances where it is essential for a superior to have psychological information:

(a) *When circumstances suggest the need for a priest or religious to undergo a psychological evaluation or when an assessment recommends ongoing therapy, the individual should be invited to take part in the evaluation or therapy.*

(b) *A priest or religious who freely consents to an evaluation or ongoing therapy should be invited to release the results of the evaluation or the therapy to his or her superior or ordinary. He or she cannot be compelled to release such results following the assessment or to sign a release prior to an assessment agreeing to the later release of the results; if he does release them, then the conditions of the release should be respected.*

(c) *Under no circumstances can a priest or religious be required to undergo invasive testing which elicits information over which the individual has no freedom or personal control, for example, through testing or procedures which involve the use of a polygraph, the penile plethymograph, drug induced responses, or other techniques of this nature. Due to the questionable morality associated with the use of these techniques, even if an individual should freely*

submit to such testing, any information gathered from such procedures cannot be used in the external forum.

A person who signs a release should be able to ask that, even though they are used in the actual therapy, certain pieces of information be deleted from the report being sent to ecclesiastical authorities.

(iii) If the priest refuses to undergo evaluation, the bishop is free to ask a specialist for an evaluation of the documentation already gathered, and to make a report based exclusively on the information available. Of course, this does not give a full picture, but if nothing more is available, and the bishop must act, then he can proceed in this way in applying canons 1041, 1° or 1044, §2, 20 (which determine that a person is unfit for ordination, or for the exercise of orders already received). The priest or religious may then determine whether an evaluation would help in his right of defence, but he cannot be forced to authorize such an intervention.

(iv) The Congregation for the Clergy has also decreed that medical records cannot be used as evidence in a penal case without the direct consent of the person accused (9 June 1998). Medical records are there to assist the patient, not to militate against him.

B. Canon 642 - Formation Issues

Canon 642 is probably the principal canon in the law for religious dealing with protection of the right to privacy, although canon 618 also speaks of the 'reverence' which superiors are to show for the human person. Canon 642 is concerned with admissions to the institute. Three points are specifically mentioned in the canon as calling for verification:

- (1) the health of the candidate
- (2) that person's character
- (3) personal maturity

These three areas can be verified if necessary by using experts, with due regard for the prescription of canon 220. The experts would be physicians, psychologists, counsellors, and the like. One area in relation to a person's character - if handled with care - which could be the object of an inquiry, is the family background of the person being evaluated. For instance, where there

was alcoholism, sexual abuse, violence, serious dysfunction, and so forth. Persons who were brought up in such a milieu are not always able to function in an appropriate manner in an institute or seminary.

When canon 642 speaks of 'maturity', it would seem that 'affective maturity' would be an important element to consider. This would apply to sexual maturity and integration, to the capacity to reach out to others, to love and be loved - according to the norms of religious life.

III. THE NATURE AND PURPOSE OF ARCHIVES

The information received is eventually sent to archives. For this reason, it will be important to review the norms of the Code relating to archives - keeping in mind the perspective of confidentiality.

A. The Nature of Ecclesiastical Archives

Although the Code does not provide a definition of ecclesiastical archives, the following elements of an eventual definition can be gleaned from the canons:

- they are to be established in a safe place (c. 486, §2)
- documents and writings are kept (c. 486, §2)
- these documents concern both spiritual and sacramental matters (c. 486, §2)
- they are to be properly filed (c. 486, §2)
- they are to be carefully kept under lock and key (c. 486, §2)
- an inventory (catalogue), with a short synopsis of each document, is to be prepared (c. 486, §3)
- only certain persons are authorized to have access to the archives (c. 487, §1)

- the persons concerned have the right to receive, personally or by proxy, an authentic written or photostat copy of documents which are of their nature public and which concern their own personal status (c. 487, §2)
- it is not permitted to remove documents from the archives, except for a short time and with appropriate permission (c. 488)
- there are three types of archives: the general archives, the historical archives, and the secret archives (see c. 489, §1)
- the secret archives are to be securely closed and bolted in a cabinet that cannot be removed (c. 488, §1)
- a retention policy for documents kept in the secret archives is established by law (c. 489, §).

B. The Contents of Archives

The Code of Canon Law lists a number of documents that are to be retained in ecclesiastical archives. Among these, we could mention the following:

- canon 482, §1: acts of the curia; these would be acts which have juridical effect, that is, those which are signed by the Ordinary and countersigned by the Chancellor (see canon 474). Acts of the Ordinary, which do not have juridical effect, need not be kept in the archives (such as personal correspondence)**
- canon 486, §2: documents concerning both the spiritual and the temporal affairs of the diocese or institute**
- canon 489, §2: documents relating to ecclesiastical criminal**

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cases concerning moral matters (with particular norms for their retention)

- canon 491, §2: historical documents**
- canon 535, §4: local archives (parishes, etc): documents relating to spiritual and temporal matters, necessary or useful documents**
- canon 1082: marriage dispensations granted for occult cases**
- canon 1133: records of marriages celebrated in secret**
- canon 1283, 30: copies of inventories of temporal goods**
- canon 1284, §2, 9°: copies of documents and records establishing the rights of the Church or Institute to its temporal goods**
- canon 1306, §2: copies of documents relating to the establishment and governance of canonical foundations**
- canon 1339, §3: copies of warnings and corrections in criminal cases**
- canon 1475, §2: judicial acts and documents obtained in processes.**

It can be noted that these canons do not speak of personnel files as such. While the current files of clergy (and religious) are kept in the chancery office or secretariat, the files of those who have died or have left are usually placed in the archives after a certain period of time. The question that arises constantly is: *what is to be retained in such files?* We will return to this in a few moments.

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For cases relating to repossessions, a response of the Apostolic Signatura states that the originals may be destroyed after ten years, except for the original text of the sentence and decrees of confirmation which must always be preserved. The other judicial acts are to be preserved on microfilm (or some similar method), which is prepared with all due technical care so that the integral acts can be reproduced whenever this is necessary (July 29, 1989, in CLSA, Roman Replies and CLSA Advisory Opinions, 1990, p. 22).

The archivist determines the value of records based on their administrative, legal, fiscal, historical, or sacramental uses (see CLSA, New Commentary on the Code of Canon Law, p. 640). We will now examine what this means in practice.

IV. ACCESS TO DOCUMENTATION

NB. The following points and those in the next section are taken, at times literally, from the 'Guidelines' prepared by the Archdiocese of Edmonton (15 December 1998) on acquisition/collecton, preservation, reproduction and access to general and historical records.

The archives of a diocese or religious institute exist to collect, preserve and make available the records of enduring value which pertain to the history of the Church. As such, they play an integral part in the information system of a diocese or religious institute.

The archives seek to ensure a documentary heritage to us and to future generations. Eventually, they will form a basis for scholarly research in keeping with the moral and historical precepts of canon law and the democratic values and civil law of the country. For years, superiors and other persons in charge have been collecting these silent but eloquent witnesses of our history; as custodians of these historical documents they have the responsibility both to preserve and to share them.

The Catholic Church (as well as its various component parts) is a *private institution*. As with any religious body, many of the various internal involvements and undertakings of the Church are not strictly speaking open to the general public. The private nature of the Church influences the preservation and use of its records. In a word, they too are private.

Guidelines for access to archival material should be developed with a sensitivity for both the right of an individual to privacy and the right of a researcher to information, thus complying with canon law and with the civil legislation in effect, which recognize the right to privacy and to reputation. Such guidelines would be meant to ensure that anyone using the archival resources will do so in the most responsible manner.

General elements of a Policy:

A. General Norms

1. The archivist (chancellor) is the custodian of the ordinary archives (see c. 482, §11). The archivist looks after the day to day care and supervision of the archives and serves as the bishop's/superior's representative and liaison in the establishment of archival policies.

2. Public ecclesiastical documents and public civil documents are those which an official person draws up in the exercise of his or her function in the Church or in society, according to the formalities required by ecclesiastical and civil law (depending on the case). All other documents are private (see c. 1540).

3. In the broadest sense, documents could be considered to be any type of object that is not oral and which may serve to establish proof of a situation. Thus, in general, the word 'document' could refer to instruments on which is recorded matter which may be used evidentially. Such could be letters, lithographs, photographs, maps, plans. The inscription need not be on paper. Inanimate objects could also be considered as documents (e.g., a box of pills).

4. The custom is that historical documents become public domain after a period of seventy (70) years. However, documents considered confidential in nature may remain confidential indefinitely.

5. The Code of Canon Law stipulates one of the most basic principles to keep in mind whenever dealing with general, sacramental or historical records; viz. professional secrecy: 'No one may unlawfully harm the good reputation which a person enjoys, or violate the right of every person to protect his or her privacy' (c. 220).

6. Persons have the right to receive, personally or by proxy, an authentic written or photostatic copy of documents which are *public of their nature* and which concern their *own personal status* (see c. 487, §2). These would include

copies of acts of religious profession, dispensation from vows, dismissal from the institute, ordination, laicization, etc.

B. Acquisition/Collection

1. Historical memory constitutes an integral part of the life of a diocese or religious institute, of its various communities and services. Therefore, original documents, acts and writings concerning the spiritual and temporal affairs of the various parts are to be clear, complete with names, dates and annotations, legibly signed and witnessed. They are to be properly filed and carefully kept.

2. Ordinations and religious professions, as well as funerals/burials, are to be entered carefully and without delay in the appropriate registers. Such entries are to be complete with names, dates and annotations, as required by law, signed and legibly witnessed (see c. 535).

3. For safety purposes, documents kept in parishes or religious houses should be regularly transferred to the central archives to be systematically filed, catalogued and kept under lock and key. If the originals are necessary in the place where they originate, duplicate copies should be forwarded to the central archives, duly signed, testifying to their authenticity.

4. All persons involved, such as parish priests, those in charge of diocesan offices, schools etc., are to collaborate with the diocesan or congregational archivist to ensure that records are as complete as possible. Omissions must be identified and every effort made to locate missing records.

5. When a particular work is closed, all original records are to be transferred to the central archives.

6. Documents are not to be removed from local or central archives, except for a short time and then with the appropriate permissions (see c. 488).

C. Personal Files

1. Each diocese or institute should have a policy relating to what is to be kept in the archives, or in the personal file of each member. There is a distinction between active files and those which have been placed in the archives.

2. It would be good for dioceses and institutes to work closely with civil archivists to make certain that the applicable civil law is also observed.

3. There are no hard and fast canonical rules regarding how long certain materials should be kept. There are advantages and disadvantages in keeping material. If retention schedules have been determined, they should be scrupulously adhered to so that no inference can be made of the fact that only certain documents were destroyed and others retained.

4. For instance, and merely as an example, the following could be determined:

- the personal notes of a superior (e.g., seminary rector, parish priest, etc.) are destroyed at the time of change of office. A verbal communication can be made to the successor in office, who can take notes from the conversation.

- there is another dimension to the communication of information, this time within the institute itself. For instance, when a major superior finishes his or her term of office, it is asked what information can be shared with that person's successor. The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life holds that a major superior can transmit information under certain circumstances. For instance, if a member who is HIV positive was having sexual relations with persons outside the institute, and the major superior, being aware of this, imposed the appropriate precepts on the religious, it is also important for the successor in office to be made aware of the fact so that the precepts are not lifted when there is a change of superiors.

To illustrate this point, CICLSAL replied on April 18, 2001: 'Regarding the issue of confidentiality, both Father X and the Congregation have important rights and responsibilities. Hence, the information concerning the medical condition of the religious should be placed in the secret archives of the Congregation and not released to anyone; however, you are permitted - in strictly confidential fashion - to share this information with your successor when that time arrives.'

- it should be determined what a person has access to in regard to his or her personal file, and who is to be present when the file is examined.

- retention schedules are drawn up (for instance, five or ten years for certain types of documents). This applies particularly to medical records, psychological assessments, therapy reports, etc.

- records for seminarists, associates, postulants, novices, etc., are usually kept separate from records of the clergy or members of a religious institute.

- anonymous letters are not kept, nor progress reports from therapy centres.

- addresses and telephone numbers of former seminarians, priests, or members of institutes are not given out without their permission.

- when a person leaves the diocese or institute (as distinct from dying while a member), very little of a personal nature is to be retained.

- pictures of persons (whether present or former seminarians, priests, members, etc.) should never be used in publicity or advertising without their permission.

It must also be remembered that to date the civil courts do not recognize that Church documents are privileged; therefore, any file can be confiscated, even those in the secret archives. As a principle, it is often stated that we should keep nothing that we would not want to see made public. Of course, there are nuances to make to this statement. Historians, obviously, do not agree with this approach, but until things quieten down a bit, we are better to preserve the good name of persons and institutions. Of course, once a court case has begun, no documents can be destroyed. Likewise, it is important to have a policy on hand, determining what to do when the police arrive with a subpoena.

Although there are differing opinions on the matter, it seems that, in summary, the following documents are generally *not* retained (subject to exceptions):

-anonymous letters

-personal notes of superiors

-letters that do not have historical value (unless there was a potential cause for beatification concerning the person)

-documents concerning matters that have been resolved (unless there are exceptions)

-copies of documents readily found elsewhere, unless access to the originals is difficult

-for deceased persons: seminary evaluations, psychological reports during formation years, last will and testament, disciplinary actions, etc.

-psychological evaluations and progress reports

-documents that we would not want to become public.

D. Preservation

1. All documents concerning the diocese or institute or its parts and its works are to be kept with the greatest care in a safe place and out of reach of unauthorized persons (see c. 486). Those in charge at all levels are to ensure that entries are accurately made and that registers are carefully preserved (see c. 535, §11).

2. No one is permitted to delete any information contained in church archives (see c. 428, §2) and this includes no use of white ink, cover-up tape, scotch tape. Tampering with original records is absolutely forbidden (see c. 1391). However, annotations (additions and corrections) may be made only upon presentation of true copies of legal supporting documents, and are to be kept in the original register (for instance, dispensations from vows or from the obligations of sacred orders). Generally speaking, to accommodate the possibility of future additions or corrections, a number of blank pages are to be left at the end of registers for the purpose of creating a 'B' entry, or for annotations, confidential or otherwise.

3. Records may not be removed from church archives except for such reasons as copying for conservation measures (see c. 488) and for similar purposes.

4. If documents are copied, one copy is to be stored in a vault off the premises. This is a precaution in the event of fire, flood or other damage.

5. If the general archivist, in view of providing specialized measures for the preservation of original documents of 80 years old or more (see c. 535, §5), requests old registers, a copy will be kept in the local archives.

6. The archivist is to see that all records are stored in a secured area where environmental conditions are controlled, where records are protected from damage caused by improper lighting, ultra-violet radiation, dust and infestation. Temperature and humidity controls are to be maintained within the accepted norms.

E. Reproduction

1. Reproduction of confidential documents cannot be authorized. However, certain records may be copied (microfilmed etc.) from time to time at the discretion of the archivist.

2. Should a copy of a historical document be required, the archivist will have the pertinent document photocopied and will sign the document attesting to its authenticity.

3. Whoever publishes a document from the diocesan or congregational archives should acknowledge its source.

4. Whoever wishes to publish an article or a book including material obtained from any church archive should seek approval from the archivist.

5. Reproduction of entire non-sacramental record groups, i.e., bodies of organizationally-related records established on the basis of provenance, may be authorized by the archivist (or the superior) in order to facilitate the work of research.

6. Some conditions may apply, depending on the request (whether for scientific research or for monetary profits), and the use to be made of the documents.

7. When reproduction is permissible, the archivist will determine (a) the reproduction cost; (b) the damage cost, if applicable; (c) a suitable compensation if the enterprise is a profitable endeavour.

F. General Access

The archival term 'access' refers to authority to obtain information from or to perform research in archival materials.

1. The person in charge of local archives may authorize others, such as secretaries, to access records for the purpose of preparing certificates.

2. The bishop/superior, or his/her duty-designated representative, can have access to the archives, or designate other persons to have access in order to prepare certificates.

3. Any person who is granted access to the archives is bound in prudence from releasing any archival document and to secrecy regarding the confidential information obtained from such records. The binding of secrecy holds even after their employment with the diocese or congregation has ceased.

4. In the case where a person would request that his or her name be taken from a register, the request is to be addressed in the most pastorally possible manner and kept with the original record.

5. Assistance may be given to individuals requesting genealogical research on their own family. Records of living persons are to be dealt with judiciously so as to respect their right to privacy.

6. Assistance may also be given to genealogical researchers. While their interest in any pertinent information contained in records with respect to family histories and lineage is legitimate, there is a certain aura of confidentiality to be respected in dealing with some of these records (for instance, dispensation from certain occult impediments, laicization and dismissal cases), which were created under the assumption of privacy. Consequently, direct access to certain records is not always permissible.

7. Access to any historical document pertaining to the diocese or institute may be obtained from the archivist. Access is open to all qualified researchers regardless of race or creed. However, if the request is made for the purpose of instituting a court case against the diocese or institute or one of its parts, the archivist (or ecclesiastical superior) may deny access.

8. Whoever uses substantial archival material is to sign a document to the effect that he or she shall observe an ethical code to the effect that all information received will be used in the most responsible manner.

9. An example: the Archdiocese of Chicago has opened up sacramental records up to and including 1915. After 1915, if a person is seeking his or her own record or has a legitimate reason to request family records (e.g., parent of a minor or guardian seeking the record of an incapacitated adult), the parish priest or authorized parish personnel shall examine the register and issue the required information either in person or by mail. If the person requesting is not known to parish personnel, a signed request with proof of identity (picture ID) is required. Requests made by someone other than the person whose record is sought, including government or corporate agencies, should be accompanied by a release signed by the person whose record is requested (or a legally qualified guardian) authorizing the release of information. However, certificates can be issued directly to a parish or other church authority for canonical purposes (such as a pre-marital inquiry), without a signed release (August 16, 1999, (Most) Rev. T.J. Paprocki, Chancellor). An adaptation of this policy could be made for the archives of religious institutes when persons seek information.

V: PROCEDURES RECOMMENDED IN CASES WHERE A SUBPOENA IS SERVED FOR DOCUMENTS KEPT IN THE ARCHIVES

1. If police officers arrive to carry out a search of the archives, it must first be ascertained whether they are in possession of the requisite judicial search warrant. If so, there cannot be interference with their right to carry out the warrant.
2. However, it is of paramount importance to contact and brief counsel respecting the circumstances of the case, if possible before any documents are handed over.
3. The police officers should be invited to contact their own legal advisors. Direct communication between counsel for both parties would be advisable.
4. Counsel for the diocese or institute, or the person in charge of the premises described in the search warrant, should appraise the police of the likely existence of a privilege with regard to the documents they wish to take, as well as of the fact that it is intended to claim this privilege before the courts.
5. Counsel for the diocese or institute, or the person in charge of the premises, should insist that seized documents be placed in a sealed envelope before the police officers have an opportunity to read or photocopy them. Furthermore, every effort should be made to have the officers agree that the envelope shall remain thus sealed until such time as a judge examines whether or not a privilege exists respecting the documents.
6. In these conditions, the privilege may be protected until a judicial decision is handed down. This judicial decision may be made at the trial, in the course of a *voir dire* or similar procedure conducted to determine the admissibility of such documents (viz. the preliminary examination which the court and lawyers make to determine the suitability of such documents etc.), or it may be sought in the days following the search and seizure.

VI: CARE OF DOCUMENTS

1. Norms for historical archives were set out in a letter from the Congregation for the Clergy (1 February 1971); cf. *La Documentation Catholique* 86 (1971), pp. 521-522. Detailed regulations were given in the subsequent

Circular Letter from the Pontifical Commission for the Cultural Heritage of the Church (2 February 1997); cf. *La Documentation Catholique* 94 (1997), pp. 610-620.

The 1997 Circular Letter covers the following points:

(i) The ecclesial importance of transmitting our documentary patrimony

transmission as a moment of Tradition
transmission as the memory of evangelization
transmission as a pastoral instrument

(ii) The outline of an organic project

the strengthening of diocesan historical archives
adapting current archives (information and coordination)
mutual cooperation with civic institutions
common orientations adopted by the Conference of Bishops
hiring of qualified personnel

(iii) The preservation of documents that contain "memory"

gathering together in one place documentation that is unique
appropriate location
inventories and use of information technology

(iv) Sharing documentary patrimony for historical culture and for the Church's mission

the universal dimension of archival documentation
establishing a policy for access to archives
placing documentary material within a historical context
cultural formation based on the documentation preserved
promotion of historical research.

2. There should be reasonable criteria for the acceptance of possible archival material (not everything is to be kept):

- (i) Administrative value: is it considered vital to the person who created the document for administrative, financial, legal, or other reasons?

- (ii) Age parameter: does it fit into the chronological boundaries of the archives? Does it have value even if it is contemporary?
- (iii) Quantity: is there too much to keep? Is it all worth keeping? What is kept and what is not, and why?
- (iv) Type of material; does it contain important information? -Uniqueness: is it one of a kind?
- (v) Physical quality: Is it worth the cost of care?
- (vi) Time span: does the material indicate a pattern over a time period? Does it reveal a history?
- (vii) Accessibility: are there restrictions by the donor on its use? Would restrictions need to be established by the diocese or congregation?
- (viii) Use: how often will the material be used?

3. One area to be kept in mind is that technology is changing rapidly. Thus, the equipment used to create and read electronic records today may be obsolete and disposed of by the time it would be necessary to read the electronic record in the archives. Therefore, it will be important to keep the reading equipment, or transfer the material to newer 'diskettes', etc.

CONCLUSION

Given new circumstances, archival material is not always used for historical purposes. Today, dioceses and religious institutes need such material to provide justification of their activities when court cases are brought against them. Regrettably, there is a serious tension between preserving documents for the sake of history, and protecting dioceses and institutes from civil litigation. Hopefully, before too long, this wave of litigation will cease and archivists will be able to carry out the requirements of their profession in security and joy.

EDITORIAL NOTE

Father Francis G. Morrissey O.M.I. may be contacted at: The Faculty of Canon Law, Saint Paul University, Ottawa, Canada K1S 1C4. This article was first given as a paper at the Conference of Chancery and Tribunal Officials, Province of St. Paul and Minneapolis, held at Mandan, ND from 2-4 May 2005. The Editor is grateful to Father Morrissey and to Margot Bilodeau, Vice Chancellor of the Archdiocese of Edmonton, for permission to reproduce this paper.