

The Development of the Ministerial Public Juridic Persons: Questions and Challenges

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In Australia at the present time, ten Catholic organisations known as ministerial public juridic persons (mPJPs) conduct hospitals, aged care facilities and services, community outreach programs and schools. To date seven have been established by the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life at the Vatican (CICLSAL), (namely Mary Aikenhead Ministries – 2008, Mercy Partners – 2008, Calvary Ministries - 2009, Kildare Ministries – 2011, Edmund Rice Education Australia – 2012 and Dominican Education Australia - 2015) while Sophia Education Ministries -2016 has been erected but is yet to be activated. Four non-pontifical entities have also been established: MercyCare (Western Australia) was established by the Archbishop of Perth; Good Samaritan Education by the Archbishop of Sydney; Catholic Healthcare by the Province of Sydney and St John of God Healthcare by the Bishops of Western Australia.

In addition, by April 2018, twenty-three pontifical right ministerial public juridic persons had been established in the United States, Canada, and Ireland. Because mPJPs established by local bishops or episcopal conferences are not recorded centrally, I do not know how many have been erected world-wide. One notable example is found in the Republic of Ireland, where, in 2008 the Irish Episcopal Conference approved the establishment of CEIST and Educena as ministerial public juridic persons, to govern 107 Catholic secondary schools in the name of the Church. These entities are civilly incorporated as Education Trusts, Educena holding the properties and CEIST governing the schools.

The generally smooth transition of these ministry systems into new governance structures is remarkable, as is the significant growth that has been achieved since this innovation was introduced less than thirty years ago.

The 1983 Code of Canon Law, in cc. 113 to 123, treats the topic of public juridic persons more extensively than in the previous Code (cc. 99-102) in which the term ‘moral persons’ was used in a general sense referring to all ecclesiastical corporate entities. The current Code uses the term ‘moral person’ only with reference to the Catholic Church and the Apostolic See, distinguishing their establishment by divine institution rather than by the action of an ecclesiastical authority. In addition to the change in nomenclature, the new Code provides more clarification of the traditional structure and related processes. Title V in Book 1 on Statutes and Ordinances (cc. 94 and 95) is the only significant change to this topic in the 1983 Code, a helpful addition since all public juridic persons are defined, at least in part, by their Statutes.

The recent evolution of Ministerial PJPs

Historically, the concept of the public juridic person has been used to define Church entities such as dioceses, parishes, seminaries and religious institutes as so-called ‘aggregates of people’ and special purpose funds as ‘aggregates of things’. This distinction between associations and foundations is recognisable in European civil law systems, and in many countries these Church entities are recognised in civil law. So it is not surprising that the evolution of the modern ministerial public juridic person has begun in countries with a common law system which does not recognise a special status for Church entities and where Church entities are permitted to own and govern schools and hospitals.

In the United States in 1965 the government established a system of state aid for the health care of the elderly, called Medicare, and a health insurance program for people with low incomes, called Medicaid. At that time, Catholic hospitals were mainly owned and managed by individual religious institutes. These government aid programs led to increased government regulation of health care facilities to ensure accountability for government funds. These demands, as well as natural growth in the health care sector, stimulated the aggregation of health facilities into systems, in which the individual facilities were each owned by their founding institutes but were governed by a single corporation.

Questions were soon raised about the status of ecclesiastical property when it was transferred from the legal ownership of a religious institute to a corporation, leading to the so-called “McGrath and Maida” debate. This debate was resolved in favour of Maida’s thesis, to the effect that, if Church property is civilly incorporated it remains Church property and is subject to the legal systems of both the Church and of the State. The Church required that those responsible for the incorporated ministries must do all in their power to ensure that the Catholic identity of the organisation is protected. The Vatican Congregation for Religious and Secular Institutes confirmed that ecclesiastical property belonging to a religious institute would not be alienated in the act of incorporation, if the Institute continued to hold reserve powers sufficient to ensure the nature and purpose of the ministry. These reserve powers were identified as control over the purpose of the corporation, its statutes and by-laws, appointment of the board, the alienation of property and the dissolution of the corporation. However, when a number of different institutes held reserve powers over separate facilities within a single corporation, this arrangement became unworkable. Canon law does not provide for legal partnerships or joint ownership between groups of religious institutes (with the exception of the conference of religious).

The search for an appropriate canonical structure to ensure the ecclesial identity of civilly incorporated entities led to the choice of canon 115 §3 as the legislative route for the ecclesiastical incorporation of these ministries.

Can. 115 §3 An aggregate of things, or an autonomous foundation, consists of goods or things, whether spiritual or material, and is directed, in accordance with the law and the statutes, by one or more physical persons or by a college.

The significance of this decision was that the ministries and their assets were to be governed by a body of people who were not defined by their membership of a Church organisation and whose role was defined by ‘the law and the statutes’. It was also decided that the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life at the Vatican would be the appropriate ecclesiastical authority to erect these new public juridic persons. This decision also included the innovation of the ‘sponsor’, namely an ecclesiastical entity such as religious institute, which held the reserve powers mentioned above. This ‘sponsorship’ role, required by the Vatican, continues the links between the ministries and their founding institutes and connects the mPJPs to the governance structure of the Church in a more tangible relationship than would be possible to maintain with the Vatican.

After many years of discussion, the first decree of erection of a ministerial public juridic person by CICLSAL took place in 1991, with respect to what is now known as Catholic Health Care Federation based in Colorado, a conglomerate of health ministries of a large number of different religious institutes, civilly incorporated as Catholic Health Initiatives. Although the decree was issued some years before, the mPJP itself began operating in 1996. In that same year, Covenant Health, in Massachusetts, founded by the Grey Sisters of Montreal, was also erected as a mPJP. In 2000 Catholic Health Ministries, known as Trinity Health, in Michigan, was also established. These three organisations provided invaluable leadership to many other Catholic health systems as they followed the path of amalgamation and corporatization, and recognised the need for ecclesiastical erection as a mPJP.

From 1997 to 2000, three Canadian health systems, formed through the collaboration of a number of institutes and dioceses, also requested ecclesiastical incorporation. These systems are substantially different from those in the US because Canadian health systems are predominantly financed and governed by the Provincial governments. The main purpose of these Canadian Public Juridic Persons is the maintenance of the Catholic ethos of these ministries.

After a gap of six years, from 2006 several more mPJPs were established by the Vatican, reaching the current total of 30 pontifical decrees. During that time, of course, US Catholic health systems continued to evolve through mergers and partnerships, with the result that two of these ministerial pjpms have already been absorbed by bigger systems, namely Hope Ministries with Catholic Health Ministries, and St. Joseph Health Ministry in Southern California, with Providence Ministries.

Canadian Religious Stewardship

The simple structure of the ministerial public juridic person has allowed healthcare and educational organisations of many sizes and shapes to transition to this form of governance. One interesting exception to the ministerial norm is Canadian Religious Stewardship (Canadian Catholic Congregational Management), which was erected by CICALSAL in 2010 at the request of the directors of an insurance company, Canadian Religious Administrative Services Inc. This company had been established in 1997 by religious institutes in Canada to provide insurance and related services. Its governing body consisted of elected religious leaders. The company recognised that the rapid aging and diminishment of the membership of small religious institutes, provinces and autonomous houses in Canada had left some in a perilous condition, with both the members and their properties in need of professional care. The proposed solution was to enable the insurance company to take ownership of these properties, where necessary, in order to provide better stewardship of their assets and better care for the members. Thus the necessity of public juridic person status for the company so that it could own and administer these ecclesiastical goods and, if necessary, conduct any remaining ministries, at least temporarily. One successful outcome of this initiative has been the provision of large modern aged-care facilities for these religious. The organisation has also taken over the management of many communities and potentially, also their governance when and if the membership is finally unable to continue this responsibility.

Another development in a different direction is the Australian Marist Brothers' proposal to set up a new Public Association of the Faithful which will take responsibility for the ministries now under the jurisdiction of the Marist Brothers. The association membership will be open to Marist associates and other lay people committed to the charism as well as to members of the Marist religious institutes. Public Associations of the Faithful are public juridic persons by the law itself (can. 313), and in distinction from the ministerial public juridic persons established in accordance with can. 115 §3, the Marist Association will be a membership organisation, not an autonomous foundation (see also can. 1303 §1, 1^o). It will be interesting to see how this initiative evolves in comparison to other mPJPs which have a similar ministerial purpose but a different canonical structure.

The most recent innovation in the evolution of this new reality in the Church is the Australian Association of Ministerial PJPs. This peak body has been established to support its members, to facilitate conversation between them and also to enable them to act jointly as a sort of third estate in the Australian Church, alongside the Conference of Bishops (ACBC) and the Conference of Religious (CRA). The potential effectiveness of this body is yet to be fully demonstrated, since this world-first initiative was civilly incorporated only in May 2016. However already it is possible to see the benefits of this representative body taking its place at the table and making a significant contribution to the future direction of the Church in Australia and beyond. The question

arises about the possibility and usefulness of the canonical erection of this body itself as a public juridic person, giving it the formal status of an ecclesial entity, similar to that of the Conference of Religious.

Statutes

Over the course of nearly thirty years, the Holy See through CICLSAL has developed a schema for the Statutes of a pontifical right ministerial pjp. Although not obligatory, it seems that a standard structure provides certainty and clarity for the petitioners when the text is being drafted. Unlike the constitutions of a religious institute, which govern the whole religious life of the members, the statutes of a ministerial pjp are focussed on the identity and purpose of the ministry and the rights and duties of its governing body, similar to the constitutions of a civil corporation. The standard schema contains a historical prologue and covers ten topics: the identity (name and address) of the organisation, its purpose, the sponsors and their powers and duties, the councillors and their powers and duties, council office holders, temporal goods, relations with the diocesan bishop, relations with the Holy See, suppression and amendment of the Statutes.

Various canonical options for statutes are available. The competent authority, in this case the Bishops of the ecclesiastical province of Perth, took a different approach when erecting St John of God Health Care in 2004. This mPJP is defined as a collegiate aggregate of juridic persons (ref. can. 115 §2) whose members are the Congregation of Sisters of St John of God and the Australian province of St. Therese of the Sisters of St John of God, and the Dioceses in which the facilities are located. These members, through their representatives, appoint the canonical trustees who in their turn appoint the civil company directors. There are no separate canonical statutes for the trustees, but the civil constitution contains entrenched provisions which provide for the canonical aspects of the governance of the organisation.

We could foresee, as illustrated by this example, that non-pontifical mPJPs, by virtue of the lack of standard practice, will be erected in a variety of different canonical shapes. While it is already clear that some of these innovations may need further refinement, we can expect that non-pontifical mPJPs will be a laboratory for new ideas, expanding the options available.

Canonical questions

The evolution of the ministerial public juridic person has given rise to a number of canonical questions.

- A. The ‘competent authority’ to erect ministerial public juridic persons is not identified in the canons in the section on juridic persons in Book I of the Code. The best guide we have to this important question is in the parallel section in Book II on Public Associations of the Faithful, cc. 312-320, where only the Holy See,

the Episcopal Conference and the Diocesan Bishop are identified. This leaves us with questions about the possible competence of other authorities, such as the ecclesiastical province, which also has juridical personality by the law itself (c. 432). The competence of a superior of a clerical religious institute in this regard is also under discussion.

- B. This question leads to the issue of which dicastery of the Vatican should be competent to erect pontifical ministerial public juridic persons to continue the apostolic works begun by religious institutes. Up to this point, the Congregation for Institutes of Consecrated Life and Societies of Apostolic Life has accepted this responsibility. However, the establishment of the new Congregation for the Laity, Family and Life by Pope Francis on 15 August, 2016 raises the possibility of that Dicastery taking responsibility for ecclesiastical entities which are predominantly governed by the laity, and where the assets did not, or no longer belong to religious institutes.
- C. The competence of Diocesan Bishops and Episcopal Conferences to erect mPJPs without any central reference point or guidelines has raised some concerns. The novelty of this canonical structure for lay-led ministry means that many bishops as yet have very little understanding or experience about the requirements and safeguards needed. On the one hand, heedless enthusiasm and on the other hand, excessive caution can both hinder the transition of important ministries in these times, when the stability of existing ministries could be at risk from the diminishing capacity of religious institutes to exercise responsibility for them. In addition, new ministries responding to new needs are also emerging, and their leaders will also be approaching bishops for formal recognition by the Church through this mechanism.
- D. A question of practical importance concerns the responsibilities of the Diocesan Bishop in relation to the activities and policies of ministerial public juridic persons in his diocese. In the simplest case, practice has been guided by the parallel provisions in the canons on the apostolate of religious institutes (c. 678), and in the canons on bishops (cc. 394, 397) which accord the local bishop the right to foster, coordinate and visit apostolic organisations in his diocese and to intervene if he becomes aware of abuses (c. 683 §2). The question arises whether the requirement for mutual consultation and warnings will apply to the chairpersons of mPJPs in their dealings with bishops, as it now does for religious superiors in cc. 678 §3 and 683 §2.

A more problematic issue concerns the role of the diocesan bishop in relation to the central governance of the mPJP if that office is located in his diocese. A ministerial pjp, even one erected by the Diocesan Bishop, is an autonomous foundation, governed according to the statutes, and not an ‘agency’ of the bishop. In the case of concerns about activities in a mpjp facility located outside his

diocese, but whose central office is in his diocese, it would seem that the local diocesan bishop has no authority. However if he has concerns about the policies of the leadership of the mPJP where the leadership office is in his diocese, it is reasonable to assume that he would approach the chair of the council, and if necessary, the erecting authority (either the Holy See or another ecclesiastical authority) which alone has the authority to suppress it (referring to the parallel provisions for public associations of the faithful, can. 320).

- E. The role of the founding religious institutes as sponsors of the new entities, has given comfort to the authorities that these ministries remain in the tradition of the apostolic religious institutes. Obviously this arrangement does not have a long future. In 2005 the two oldest pontifical mPJPs, Catholic Health Care Federation and Covenant Health, were granted permission for their canonical councils to hold the reserve powers previously exercised by the founding sponsors. This change allowed the mPJP council to be ‘self-perpetuating’, meaning that the canonical council now appoints its own new councillors. The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life has not continued this policy with any other entities. So it will be important for canonists to explore alternative proposals for sponsorship, when religious institutes are no longer able to provide this service, or to find a different Church authority which will appoint or at least confirm the appointment of the canonical directors of pontifical mPJPs. Different options may be possible for small, local diocesan mPJPs, such as we see in MercyCare in the Perth Archdiocese, where there are no sponsors, but one member of the canonical council is the Archbishop’s representative.
- F. The Congregation for Institutes of Consecrated Life and Societies of Apostolic Life has emphasised the importance of maintaining the charisms of the founding religious institutes when erecting new mPJPs. It sees the charism as a vital part of the identity of both the institute and its ministries. The requirement to preserve the charism runs into difficulties when the ministry is an amalgam of the works of many institutes. The challenge is for the new entity to discern how it can go forward with a clearly articulated, relevant Catholic identity and purpose that respects past traditions while creating its own expression of mission and values. We could also debate whether it is possible to preserve a specific founder’s charism once the religious institute which incarnated it has ceased to be involved in the ministry.

Practical challenges

In the practical implementation of the Statutes of ministerial pjps, some challenges have arisen.

- A. The first is the difficulty of governing a complex organisation respecting the requirements of two parallel systems – the canonical and the civil. Most

professional and business people who are invited to participate as board directors or trustees of Church ministries have gained their experience in the corporate world, as have their legal and financial advisers. Confusion about nomenclature at various governance levels and in the two systems, with different definitions for sponsors, stewards, trustees, directors, councillors, members, participating entities, constitutions, statutes etc. is an ongoing difficulty and a common one.

- B. The system of reserve powers which require governing boards to get permission from Church authorities for major decisions can be frustrating to directors and executives. The relative merits of the board of directors also being the canonical trustees, as opposed to the two functions being carried out by different groups of people, continues to be debated. There is concern that, with a single board, the canonical responsibilities will not receive the necessary attention because the directors are more at home with their corporate statutory obligations. On the other hand, the separation of the canonical trustees and the corporate board brings in an extra layer of governance, with each level having difficulty understanding or trusting the expertise of the other. Care also has to be taken by the sponsors or trustees to avoid any appearance of acting as shadow directors.
- C. A related challenge concerns the residual relationship between the founding institute and the new ministerial entity. Boundary violations can be evident particularly when there is only one founding institute involved or when a single facility is in close proximity to the religious community which used to manage it. The former sense of ownership and entitlement can be persistent and pervasive, even when the leaders have done their best to help the members to adapt to the new reality. These pressures can also lead some systems to retain too many reserve powers at the sponsorship level. Some religious institutes have been loath to relinquish control of even relatively superficial aspects of their identity and charisma which are associated with their former ministries. The necessary trust will evolve if these issues are faced from the outset and if appropriate formation is provided in a timely and on-going manner for both groups. On the other hand, the support of the former religious owners can be a precious gift for the new entity, when their presence respects and values the changed relationship.
- D. Concerns about the ethical practices and catholicity of ministerial pjps have been expressed, especially in the health care environment. In the United States there are new questions being raised where partnerships and complex corporate relationships are being established between Catholic providers and facilities belonging to other religious traditions or for-profit enterprises. Innovative solutions to the ethical challenges created by government regulations and legislative changes contrary to Catholic beliefs will have to be found so that ministries can continue to be identified as Catholic. At heart, these difficulties are not created by the juridic structure of the Catholic ministry systems, but by the complexities of the health-care and educational environments and rapid social

changes. However the lay governors of these ministries are perhaps more exposed to the anxieties of the faithful or the Bishops than religious institutes are, or were. Leaders at all levels, including at the level of the peak body, will be called on to work together to find solutions, so that the vast enterprise of Catholic ministry can continue to express the good news of the love of Jesus for those who are in need.

Conclusion

In summary, in canonical terms, Ministerial Public Juridic Persons are well reflected in Can. 216: “Since they share the Church’s mission, all Christ’s faithful have the right to promote and support apostolic action, by their own initiative, undertaken according to their state and condition. No initiative, however, can lay claim to the title ‘catholic’ without the consent of the competent ecclesiastical authority.”

During these times of unprecedented change and challenge for the whole Catholic community, Church authorities can be grateful that the development of ministerial public juridic persons has been a quiet and successful revolution, although some canonical questions remain to be explored and practical difficulties resolved. The most important aspect of this innovation is the fact that we now have an ecclesial structure which invites lay experts to take their rightful place in the leadership of Church ministry. Clerical and religious organisations, with their resources and experience, have a new invitation to recognise the commitment and competence of these new leaders and to work with and support them and their successors. They can provide them with the means for appropriate formation, prepare academic experts to advise them in the necessary theological fields, and accord them respect at the Church’s round table of discernment, creating a true ‘*communio*’ in fulfilment of the core ideal of the Second Vatican Council.

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