LESSONS LEARNED FROM RESTRUCTURING WITHIN THE ROMAN CATHOLIC CHURCH

INTRODUCTION

I am delighted to be able to be with you today and I wish to thank Terry Carter for his kind invitation to share some experiences with you. I hope that what we cover will be both helpful and interesting.

I have had the good fortune of being directly involved in a number of restructuring projects in the Catholic Church, both in Canada and in other countries, and so am able to draw some lessons from what has been learned. These projects included the division and regrouping of parishes, the suppression of certain entities, and the amalgamation of apostolic works into one coherent system.

While, usually, restructuring today involves the regrouping of entities or ministries, it can also apply to the division of such, especially when a parish grows, or a school or nursing home becomes too large.

I think it would be good to begin by looking at the various forms of restructuring we can encounter. Then we could consider some of the points to be taken into consideration before any actual project begins. Thirdly, we will look at some of the conditions to be kept in mind for the governance of the new structures, and, lastly, and unfortunately, what to do when the restructuring doesn't give the desired results.

I. VARIOUS FORMS OF RESTRUCTURING

Restructuring can be brought about for many causes, as we shall see. However, no matter what the circumstances, the important thing is to keep the persons involved suitably informed. A change in structures does not necessarily entail a change of heart. No such project can be rushed; it is preferable to take time now, rather than spend years trying to get people on board.

A. Mergers, fusions and unions

The most common form of restructuring we have to face today could be called downsizing. It consists in two distinct procedures.

The first, which in canon law we call a “fusion” or a “merger” consists in having a larger entity, such as a parish, absorb one or more smaller ones. The Catholic Church’s canon law provides that when such entities are merged, the receiving entity obtains not only the assets, but also the liabilities (see canon 121. Thus, before proceeding to a merger, it is important to determine whether, indeed, there are outstanding liabilities, such as potential suits for misconduct.

The second form, a “union”, takes place when all the existing entities are suppressed, and a new one is established. This sometimes has to be done when parishes are amalgamated, but there are strong feelings among the parishioners about not belonging to “this” or “that” former parish. At times, this leaves a number of buildings to dispose of, although, in some instances, they are converted into chapels of ease.

At times, because of potential lawsuits, rather than merging units, or setting up a union, we have had to create a new entity, and leave the current ones dormant, until the suits are settled. Otherwise, the assets of the new entity become contaminated and subject to loss.

B. Joint ventures, affiliation agreements, and contracts for shared services

Another form of restructuring has been the entering into joint venture agreements with other providers. This is particularly the case when homes for the elderly, or similar institutions are operated by two sponsors and they wish to consolidate operations, at least to some extent.

In these instances, it is important to determine whether the philosophies of both groups are compatible. At times, this will show through in the new name of the undertaking. Thus we can end up with names such as “St. Joseph Baptist Hospital”, which, at least at first sight can be a contradiction!

In the United States, this is a most common form of restructuring, particularly in small villages where two previously competing institutions have decided to come together, sharing as much as they can in light of their philosophies and moral teachings.

C. Transfer to lay boards or to multi-level corporate structures

A third very common situation today entails a change in the operations of a ministry which was previously in the hands of the clergy or of religious men or women. As their numbers decrease, it is necessary to provide for the continuity of the work by having lay persons directly involved in the governance of the institution. In such instances, a series of reserved powers are integrated into the corporate documents of the work, calling for the intervention of Church authorities before certain specific decisions are taken in their name.

D. Divisions of existing entities

The canon law of the Catholic Church (canon 122) gives us some general principles to observe when a parish or an undertaking is divided:

- the first obligation is to observe the wishes of the founders and benefactors; these wishes have to have been specified beforehand when the gift was first accepted;

- the demands of acquired rights must be respected (for instance, existing contracts);

- the requirement of any governing documents must be satisfied;

- divisible goods and liabilities are to be divided in due proportion, in a form that is equitable and right (for instance, taking into account the population assigned to each entity), and making certain that the new parish or work has sufficient assets to carry out its mission;

- goods that cannot be divided, and joint liabilities, are to be under joint responsibility, in due proportion, and according to equity.

For instance, if the new parish is entirely “on the wrong side of the tracks”, it might never have the means necessary to succeed. In such an instance, other factors besides population numbers would have to be taken into account when dividing the existing assets.

II. MATTERS TO BE ANTICIPATED BEFORE ANY RESTRUCTURING TAKES PLACE

A. Determining the purpose of the restructuring

Restructuring does not take place simply for the purpose of restructuring. There must be presenting causes, some of which, under close examination, might not be retained as valid reasons for a change.

The most common reasons justifying a restructuring could be presented under four headings:

- Lack of qualified personnel

A lack of qualified personnel can be the major reason for the transfer of a work to a lay board. But, in addition to having the qualifications, the persons to become involved must also have a passion for the mission of the work, whether it be in healthcare, education, social work, or direct parish ministry.

- Lack of sufficient finances

In the case of parishes, when the number of parishioners drops below a sustainable level, the work no longer is able to support itself. As a general principle in canon law, each Church undertaking is to have sufficient financial support to meet its needs and carry out its mission. When this is lacking, it is time to take appropriate steps, so as not to drain all the finances of the sponsoring group. Of course, there can be works that will never be self-supporting, but where the church community nevertheless wishes to invest its efforts.

- To maintain quality

Particularly in the case of healthcare institutions, it is sometimes necessary to amalgamate in order to be able to purchase the specialized equipment required for good care of patients. A small stand-alone institution cannot always afford the material necessary to maintain highest standards of excellence. Canon 806 of the Code of Canon Law suggests that if the work offered by the Church is not of the highest quality, it should be asked whether that particular work should continue. A Church work should not be identified with second-class service.

- To avoid unnecessary duplication

At times, Governments have been instrumental in forcing a restructuring to avoid unnecessary duplication of services. We find this with schools, healthcare institutions,

and similar undertakings, particularly when there is some form of public funding involved. But even without such external pressure, the responsible stewardship of goods – persons, time, finances – calls for a reconsideration of existing works. Do they still answer a need?

It would be important to be pro-active in such situations, to avoid having "outsiders" determine what our ministry and outreach will be.

At times, there is even a justice issue here – to avoid undue competition and rivalry, especially with another Church entity.

B. Selection of an appropriate partner

A second point to consider is compatibility with a future partner. This is especially true in the case of healthcare, especially as we move more and more towards a greying society. The value of human life must be primordial and if humans become simply consumers, it will not be surprising to see growing pressures to dispose of those who are not considered useful for society. End of life issues are taking on more and more importance in Canada today.

Also, if the potential partner considers the undertaking merely as a business venture, and not a ministry, there will be conflicting values, and a successful outcome is not guaranteed.

C. Mission and values to be preserved

A Church group wishing to partner with another must have a clear vision of its mission and values. Again, it often comes down either to promoting the dignity of the human person, or making a profit.

D. Proper inventories of goods in relation to conditions placed on properties

Once Church properties (whether real estate or capital assets) are amalgamated, it is almost impossible to withdraw them afterwards if the venture does not pan out as expected. This can be considered in the light of the "drop of ink" theory – where a drop of ink will colour an entire glass of water, and it is most difficult – if at all possible – to withdraw the ink once it has become diluted. Goods that are commingled usually have to remain that way, unless there are good and clear inventories beforehand of the equity of each original sponsoring member.

It is also important to have a clear listing of properties to which conditions are attached (especially in cases of termination of the activity), so that these are not overlooked when assets are amalgamated or divided.

E. Determining the Church's equity in the undertaking

In a number of instances, where public funds have been contributed to support a given work, it becomes more and more difficult to determine what portion of the assets belongs to the original Church sponsor, and what portion is to be considered as belonging to the public. The "drop of ink" theory applies here also, with public goods being given preference.

F. Possibility of retaining existing corporations

Sometimes, when we are dealing with a change of sponsor, it is not necessary to redo the existing corporate documents. However, it would be important to examine them to see whether there are certain reserved clauses, relating, for instance to the designation of members or directors, and these would have to be changed to correspond to the new sponsors.

Of course, this is much less expensive when it can be done.

At other times, there will be a new corporation established, but the current one(s) will be retained because of the possibility of impending lawsuits.

One point that is often overlooked in such transactions, is to make certain that insurance policies are either continued or re-issued, taking the new structure into account. It would be important, though, to keep previous policies, because claims can arise many years later, and, even though there is now no coverage for such and such a claim, it might have been covered in the past when a different policy was in place. This was probably one of the most important lessons we learned. Also, we found out that a number of the insurance companies are no longer our friends when a claim is presented, so it is good to have coverage examined time and again.

Our Canon Law requires that a finance committee be established and that it examine carefully such matters (canons 1280 and 1284.2.1).

G. Compliance with civil law and church law requirements

While, at times, it might be considered appropriate to proceed with a restructuring, there are reserved powers leaving the final decision to designated Church authorities, who might not see things the same way. So, these matters should be investigated before any commitment can be made: who, indeed, is competent to enter into the agreements?

Likewise, at times, there can be civil ramifications, particularly in the case of tax status, zoning regulations, restrictive covenants, eventual use of premises, and the like. These should be carefully examined beforehand.

H. Public relations issues within and outside the faith community

One of the more difficult areas to assess – because it is intangible – is the potential reaction of Church members to the proposed amalgamation. It is hard enough to combine two Church services on a Sunday morning, let alone enter into a cooperative agreement with another faith community. So, such moves have to be very carefully prepared, and appropriate information given to those who could be potentially concerned. As I mentioned at the beginning, this will make or break the restructuring.

III. **CONDITIONS TO BE LAID DOWN IN AGREEMENTS**

Experience shows that four points should be covered before any restructuring agreement is finalized.

A. Determining an appropriate governance structure

If there are joint sponsors, the governance structure of the undertaking should provide for appropriate input from both or all parties.

The structure should be such that frequent recourse to the original sponsors (whether a diocese, a parish, an association, etc.) would not be necessary. The use of delegated authority can be quite efficient.

B. Proscribed procedures or activities

In the case of a healthcare institution – such as a long-term care facility or nursing home – the parties should be made clearly aware of any procedures that cannot be carried out on the premises because of the religious convictions of one or more of the sponsors. In particular, end of life issues – such as the withdrawal of feeding tubes, disconnecting respirators, hastening death – should be clearly spelled out in advance so that there are no surprises along the way.

C Use of the Church's name

If the Church's name is to be used in the undertaking, then the Church should have some say over how the ministry is carried out. It's similar to opening a hamburger shop and placing the Golden Arches over the entrance. If the Arches are there, McDonald's will want to have a say over any activities taking place on the premises.

D Evaluation procedures

As with any undertaking, reality does not always correspond to the dreams of the designers. Therefore, appropriate evaluation procedures should be put in place when this new work is undertaken, to provide for periodic examination. Some person or persons should have the authority necessary to make changes if necessary.

E. Certain social justice issues

When various works are brought together, it often happens that the employees are not on the same salary scale. Adjustments have to make to equalize payments, and this can have an effect of budgetary provisions.

Likewise, retired employees who are on pension should be taken into consideration, particularly if the pension benefits are different for both entities.

Likewise, at times we are dealing with unionized employees and acquired rights under contracts must be respected. If the union is unbending and refuses to go along with the sponsors' wishes, then at times the very stability of the work itself might have to be considered. This could well be a sign that the work is no longer presenting an image that relates directly to the mission and therefore should no longer be considered a Church undertaking.

IV. **UNSCRAMBLING THE EGGS**

In spite of the best intentions, it sometimes happens that things simply do not work out as originally planned. In such an instance, it is preferable to take steps either to correct what is missing, or to dissolve the partnership.

A. Recognizing that the undertaking is not working out

While things might be working out for the leadership, it sometimes happens that the staff or personnel are not satisfied with the new direction. If an institution loses its staff, or if morale in sinking below an acceptable level, it is preferable to take steps immediately to avoid destroying either the work itself, or its specific mission.

Any partnership agreement should provide withdrawal clauses in case of necessity. At times, we have foreseen the intervention of a qualified mediator before proceeding to a dissolution of the work or of the partnership.

B. Appropriate dissolution clauses

A number of points could be included in eventual dissolution clauses:

- respect for the intentions of the original donors, and of any conditions laid down concerning the ministry and its operations;
- respect for any laws governing the tax-free or "charitable" status of the work;
- determining whether the original sponsors can take anything back from the work, or whether the assets will be distributed according to the wishes of the current directors;
- determining whether there are similar works that would benefit from any residual assets;
- if no such provisions were made beforehand, goods generally go to the next higher responsible body, provided it qualifies under taxation law, etc.

C. Division of the restructured work

At times, a form of "divorce" is the most appropriate way to enable the parties to continue their ministry, even if from separate and distinct perspectives.

In such instances, any agreement should clearly determine where potential future liabilities arising from the partnership or its representatives, will be handled, and who is to assume liability (if any). A very common – and unfortunate – situation that we have to face is when a diocese is diocese or reconfigured, and a priest is now assigned to Diocese "B", although he was previously part of Diocese "A". Both "A" and "B" signed off on the agreement for the division of goods. It now comes to light that while the priest was in Diocese "A", he was a "naughty boy". Who is responsible for the case? We have found it most helpful to have this spelled out in the agreement finalizing the division.

On the other hand, instead of facing liabilities, we are often confronted with the situation, especially when a diocese is divided, that a certain piece of property was left

to Diocese “A” as it existed at the time. It is now within the boundaries of Diocese “B”, but is also a very productive piece of land. To what extent can “A” claim all or part of the royalties, especially since it contends that the donor’s intention was to give the land to Diocese “A” as it then existed. Situations such as this have landed us in court in many occasions.

CONCLUSION

As can be seen, there are many forms of restructuring and many issues to consider. Experience shows us, however, that it is most important to have clear and precise documentation along the way to avoid potential pitfalls – and costly litigation – later on. It takes a bit more time now to have all papers in order, but it can save a lot of time, anguish, and money in the years ahead.

Structures, on their own, do not assure sound ministry. But they do set up a framework within which the ministry can operate peacefully and fulfill the goals of the sponsoring Church community.

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