Memorandum

The forced retirement of Bishop William Morris as the Ordinary of the Diocese of Toowoomba on 2nd May 2011 and its antecedent processes raise serious questions for the Church and generally.

In his final appeal to Pope Benedict XVI on 24th December 2008, after the three Cardinal Prefects of the Congregations for Bishops, Divine Worship and Doctrine of the Faith had repeatedly required his resignation as Bishop of Toowoomba Diocese, he wrote to the Holy Father:-

> "... the processes leading to this have serious shortcomings and are based on actual errors of fact and misinformation."
>
> and
>
> "Throughout this sad matter I believe I have been denied natural justice."

In support of the latter the Bishop briefly summarised some of his relevant concerns:-

> "I have not seen the report prepared by the Apostolic Visitor; the Apostolic Visitor did not discuss his findings with me; I have not been shown any of the "evidence" that was gathered or even the list of the "accusers". When I made the request to have an audience with you I was told that this was not an option available to me until I had resigned."

The factual bases for these concerns and others require further analysis.

However, before attempting that, it is necessary to deal firstly with the "natural justice" issue and its relevance to the facts of this case. It needs to be said at the outset, that despite the depth of the Bishop's concern, it is idle to suggest that the issue now has any justicable potential or that specific relief might be sought by means of any canonical or civil process.

Although robustly rejecting the Cardinal Prefects' persistent requests for his resignation, which requests the Bishop rejected with equal persistence, because - "I can not in conscience before God, resign" - he finally assured Pope Benedict that "I ... undertake to conform and abide by whatever is your determination ... ".

That determination, clearly influenced by the Cardinal Prefects' intervention was an unfavourable one but was "prayerfully" accepted by Bishop Morris. Notwithstanding, he remains firm in his belief that the process which led to his "resignation" as the Bishop of Toowoomba was procedurally unfair and breached the principles of natural justice.

Natural Justice, a product of the Natural Law, imposes the need for, and recognises a general duty of fairness. This will be more compelling in the case of any decision making process which may adversely affect the rights and interests of the person, the subject of the decision. And similarly when that person has a legitimate expectation that he/she will be treated fairly by those with the apparent capacity to make decisions concerning him/her which affect adversely his/her rights or interests.

One example will suffice. If evidentiary material, relevant to the decision is not only false but not disclosed to the person who is prejudicially affected by it there is, prima face, unfairness.

The Administrative Law in this country is replete with cases involving the use of undisclosed reports by decision makers. But if a decision maker receives a prejudicial report or other evidentiary material concerning another ex parte, and which is not disclosed to the person affected, this is a compelling case for judicial intervention. It represents the high water mark of unfairness.

The principles of natural justice and fairness lie at the heart of the maxim:-

> "Not only must justice be done, it must manifestly be seen to be done."

Nor should this principle in its application be restricted only to the Civil Law. In that other branch of human, as distinct from Divine Law, namely, the Canon Law, the requirement for fairness and equity should apply a fortiori, certainly, with equal force. Canons 220 and 221 of the Code recognise this:-

> "Canon 220 – No one may unlawfully harm the good reputation which a person enjoys or violate the right of every good person to protect his or her privacy."
>
> and
>
> "Canon 221 – Christs faithful may lawfully vindicate and defend the rights they enjoy in the Church before the competent ecclesiastical forum in accordance with the law."

It would be a contradiction in terms for anyone to suggest that the fundamental principles of fairness and equity and natural justice have no place in the Canon Law. It is noted that in "Gaudium Et Spes" (n79) Natural Law is identified as "that permanent and universal binding force with all embracing principles".

Natural Law and legal concepts of fairness and justice therefore possess a moral content. Here morality and legality coincide.

Given the nature and extent of the allegations made against Bishop Morris by the Cardinal Prefects and relied upon by them to require his resignation, it is not open to doubt that he was, as a matter of legal and canonical principle, entitled to and legitimately expected that he would be treated fairly and with equity and in accordance with the principles of natural justice.

THE RELEVANT FACTS

Events Prior to 3rd October 2007

The first relevant document to be noted is a letter dated 21st December 2006 to the Bishop from Cardinal Arinze, the Cardinal Prefect for Divine Worship. By way of background, one knows that in the Australian Church, the practice of general or communal absolution had become controversial for some years prior to December 2006. An apparent relaxation of the canonical requirements in respect of communal absolution in Australia had come to the notice of Church authorities in Rome and appropriate intervention resulted in the rite of reconciliation being henceforth celebrated "according to the Canonical Liturgical Norms of the Church's tradition".

In 2004, at a time when the issue was a live one, Bishop Morris, on the occasion of a visit to Rome, was invited to a meeting with Cardinal Arinze to discuss the use of the communal rite in his Diocese. One notes that Toowoomba is a "very sparsely settled

and diverse Diocese" extending west from the dividing range to the Northern Territory/South Australian border. Its area is 487,000 sq.kms. It has a Catholic population of 66,000 – about 30% of the total population. On the relatively rare occasions when a Priest had travelled long distances and had access to a sizeable congregation, the communal rite had been celebrated, but otherwise the canonical and liturgical norms were followed. Bishop Morris went to the meeting with Cardinal Arinze unconcerned expecting a meeting "between Brothers searching for the truth and reflecting together on the pastoral needs of the people of God". To his surprise, Cardinal Arinze was accompanied by an Archbishop and two Monsignors – apparently Canon Lawyers. He felt compromised by the tone of the meeting which at times was exceedingly robust. He later wrote to Cardinal Arinze (17th January 2007) in response to the letter dated 21st December 2006, with reference to the 2004 meeting, that "I will never place myself in that situation again" and would attend any further meeting only if accompanied by "a Brother Bishop and possibly a Canon Lawyer".

Cardinal Arinze's Letter dated 21st December 2006

Bishop Morris, upon receipt of this letter was not unduly concerned although it asserted that:-

> "The Holy Father has instructed the three Cardinal Prefects of the Congregation for the Doctrine of the Faith for Bishops and the discipline of the Sacraments, to hold a discussion with you on the practice of general absolution in the Diocese of Toowoomba."

His lack of concern is apparent in his reply dated 22nd December 2006. While commenting that he found the Cardinal's letter "a little strange" because he had "not given permission for the celebration of the communal rite with general absolution" since his prior meeting with the Cardinal in 2004, he emphasized that the Priests of the Diocese were encouraged to act in accordance with the canonical and liturgical norms and that the Diocese had employed a Religious Priest to travel the Diocese to give people the chance of a visiting confessor in more isolated communities and to provide "ongoing education" concerning the sacraments.

He concluded with advice that the Australian Episcopal Conference was in the course of drawing guidelines for the use of the communal rite with general absolution for Australian conditions. Accordingly the need for a meeting with the three Cardinals in Rome on the same subject matter at short notice was therefore not readily apparent to Bishop Morris.

The Cardinal's letter suggested two possible dates – Tuesday 13th February 2007 or Friday 23rd February 2007 at 10:00am in the office of the Congregation of Bishops – about six weeks hence from his receipt of the letter. Nor was the need for such urgency for such a meeting readily apparent to him. In his prompt reply to the Cardinal's letter Bishop Morris advised his unavailability for the February dates "because of pastoral commitments, the provincial meeting of the Queensland Bishops as well as the Australian Episcopal Conference." He advised that he had to be in Rome in the week commencing 21st May 2007 and requested that the meeting take place at that time.

I have referred to this initiating correspondence and the surrounding circumstances in some detail because of what follows.

On 4th January 2007 Cardinal Arinze advised in peremptory terms that the proposed meeting "is important enough to take precedence over the other possible schedules you mentioned". His letter concluded:-

> "You are therefore requested to chose one of the two dates in February and communicate to us ...."
>
> and
>
> "If you wish to bring a Brother Bishop it is all right (sic). But if you insist on bringing in a Canon Lawyer we can accept. (sic)"

Bishop Morris now had good reason to be concerned as within a matter of days (21st December 2006 – 4th January 2007) the mind and intention of Cardinal Arinze and his Cardinal colleagues had shifted from the apparent need to hold a discussion with the Bishop concerning the practice of general absolution in his Diocese to one which implicitly rejected his informative response, asserting that the proposed meeting at short notice "is important enough to take precedence over other possible schedules ...".

In his response dated 17th January 2007 Bishop Morris, perhaps unwisely, stood firm. Over and above the matters referred to earlier his "pastoral responsibilities" then also included his care and support for a terminally ill young Diocesan Priest as well as significant issues arising in the national committee for professional standards of which Bishop Morris was co-chair.

The Bishop again sought a May meeting and added that at that time he would have "the support of a Brother Bishop". Wisely he sought "an agenda" for the meeting with the questions that are going to be addressed.

One can only question the integrity of the earlier stated proposal for "a discussion" concerning general absolution. Later correspondence and meetings with the Cardinals disclose that a discussion on this issue was never a priority. It was later mentioned, if at all, only in passing.

The Bishop received no reply to his letter of 17th January 2007. Two months later, Cardinal Re, Prefect of the Congregation of Bishops, by letter dated 16th March 2007 advised Bishop Morris that Pope Benedict "after consultation with" the three Cardinal Prefects had decided to send an Apostolic Visitor "to the Diocese", namely Archbishop Chaput of Denver USA, and that he would arrive in Toowoomba on 23rd April 2007.

The stated "reason for this visit" in Cardinal Re's letter makes no mention of the prior concern about the practice of general absolution in the Toowoomba Diocese. This was the matter said by Cardinal Arinze to be "important enough" to require Bishop Morris to attend a meeting in Rome at short notice and as such to "take precedence" over the Bishop's then heavy demanding and time consuming pastoral commitments. This was the matter which the Bishop was expecting he would discuss with the three Cardinals in the course of his May visit to Rome. His request for an agenda of the matters to be discussed received no reply. It was Cardinal Re's letter of 16th March 2007 however which revealed at last the real issue. The "reason" for the apostolic visit by Archbishop Chaput was:-

> "That the doctrinal and disciplinary line you are following seems not in accordance with the Magisterium of the Church."

One could hardly imagine a more serious allegation that could be made against a Diocesan Bishop. It was later to be repeated and broadened with added vigour.

By way of an addendum Cardinal Re added:-

> "An expression of this is also found in some phrases of your Advent Pastoral Letter 2006."

Yet Bishop Morris' Advent Pastoral Letter had been issued to the Diocese on 17th November 2006 – several weeks prior to Cardinal Arinze's original letter of 21st December when the alleged concern was the communal rite. The events and correspondence in the period dealt with above, 2nd December 2006 – 17th March 2007, provide the relevant background to what follows.

This present enquiry has only to focus on Bishop Morris' concern that he suffered a denial of natural justice and unfairness in the course of the administrative processes adopted by Church authorities in Rome in requiring his resignation as the Bishop of Toowoomba. Whilst the above catalogue of events prior to the Apostolic Visit are not in any way decisive of the issue, they do provide a useful backdrop in any attempt to validly assess the character of later events.

The Apostolic Visit

The Visitor spent the night of Monday 23rd April 2007 with Archbishop Bathersby in Brisbane and arrived in Toowoomba on Tuesday 24th April 2007. He met informally with Bishop Morris and then with the Council of Priests, various Diocesan bodies, officials, Priests, Directors of Church agencies and the people of the Diocese. Prior to his arrival he had named various people, clergy, officials and groups with whom he wished to meet. Others were nominated by the Bishop. Accordingly, the Apostolic Visitor was provided with a cross section of people and clergy of the Diocese representing all levels of support and opposition to the Bishop. On Wednesday 25th April and Thursday 26th April, with Bishop Morris, he travelled to parts of the Diocese and met with people and clergy at Miles, St George and Dalby. On Friday 27th April and Saturday 28th April interviews were resumed in Toowoomba. He departed Toowoomba for Brisbane at midday on Saturday 28th April 2007.

Bishop Morris' expectation was that the Visitor's report would be prepared for the Congregation of Bishops in time for his proposed visit to Rome in May 2007. Immediately after the Apostolic Visitor's departure, unknown to the Bishop, the majority of Diocesan Clergy (except three), Pastoral Leaders in the Diocese, members of the Diocesan Pastoral Council and others signed letters of support for the Bishop which were forwarded to the Congregation of Bishops. Receipt of these letters has never been acknowledged.

Bishop Morris had for many years been aware of a small group of Priests and people in his Diocese who reflect a particular view of Church life and in his "Statement of Position dated 14th March 2008 written shortly after his meeting in Rome with the three Cardinal Prefects on 19th January 2008" he said with reference to the former:-

> "They see me as exemplifying all that they think is wrong with the "post Vatican II". The Lepanto Journal, which I am aware has been sent to the Congregation of Bishops, has little credibility and its promoters are obsessed with finding instances of lack of orthodoxy. Their reports are exaggerated and lack context.

I have not had the opportunity to deal with any specific complaints they have made." (My emphasis)

When the Visitor first met with the Bishop in Toowoomba he expressed a measure of surprise that Visitor was being asked to investigate the Bishop because as far as he could see, from the material provided to him, things "that I had reportedly said and done were happening in other places as well".

In a later conversation with Archbishop Bathersby, the Visitor also questioned the need for him to investigate Bishop Morris. Again when being driven to Brisbane by Father Brian Sparksman (Diocesan Chancellor and Canon Lawyer) at the conclusion of his visit, the Apostolic Visitor remarked that he would be astounded if the Diocese was to lose its Bishop. Not only was Bishop Morris, at all material times, totally ignorant of the material in the Visitor's possession when he arrived in Toowoomba, nor was he told anything to identify his accusers or the real reason for the visit, nor was he given a copy of the Visitor's report or any information concerning its contents. As of now he still has never seen it.

Accordingly, it is of considerable importance to hypothesise that the Apostolic Visitor's report concerning the Bishop and his leadership of the Diocese may have been unfavourable. Equally, it may have been favourable or even neutral. I will return to this point below when dealing with the unsigned document dated 28th July 2007 which emanated from the Congregation for Bishops led by Cardinal Re and which is a document of prime importance in any assessment of the relevant processes.

After the Visitor's departure Bishop Morris anticipating his planned May visit to Rome expected that he would be advised by Cardinals Arinze or Re concerning the time and location of the meeting with them which had been proposed earlier. However, he heard nothing before he left Toowoomba and when in Rome completed his business there and returned to his Diocese at the end of May without having met any of the relevant Cardinals; nor had he been invited to any such meeting.

The Unsigned Document dated 28th June 2007/The Congregation for Bishops

On or about 17th September 2007 while attending a conference of Australian Bishops, he was handed an unsigned document by the Apostolic Nuncio, Archbishop de Paoli. The authorship of this document has never been identified nor has any relationship between its contents and any report of the Apostolic Visitor been revealed. The document carried the heading:

"Congregatio pro Episcopis" (the Congregation for Bishops)

In summary this four page document is a scathing presentation of Bishop Morris' alleged failings and failures on account of which he was considered by the author of the document to be unfit to continue as the Bishop of Toowoomba. It contains these allegations:-

1. "The local Church in Toowoomba is moving in a different direction than that of the Catholic Church";

2. The Diocese "is going through a severe crisis that spreads its roots back over the last ten years";

3. The Bishop had failed "to guide the faithful in fidelity to the doctrine and discipline of the Church; to work hard to promote priestly vocations; and to offer solid theological, spiritual and human formation to his Priests";

4. He has condoned "liturgical abuses";

5. He continues to condone "an unacceptable extension of the conditions required for "grave necessity" and that accordingly general absolution is still common";

6. Despite "admonitions" the Bishop "adamantly resists fulfilling his responsibility to apply Church norms properly";

7. "The general theological climate of the Diocese and especially its Priests" fails "to move towards an authentic Catholic identity";

8. That "in the past seven years there has been no priestly ordinations";

9. The failure of the Diocese "to have an effective and sufficiently dynamic program for promoting vocations or finding Priests from elsewhere";

10. The Bishop fails "to offer the leadership necessary to reverse" the above situation;

11. Priests are being marginalised and retiring early because of their substitution by deacons or laity;

12. "Bishop Morris' theological preparation and type of leadership are inadequate to confront the crisis of the Church of Toowoomba";

13. And accordingly, "Toowoomba needs a Bishop who, with determination and courage, will tackle the problems and rectify what is not in conformity with the doctrine and discipline of the Catholic Church".

In December 2006/January 2007, according to Cardinal Arinze, there was the need for a discussion on the practice of general absolution in the Diocese. By 28th June 2007 the concerns of the Congregation for Bishops had widened remarkably. As pointed out the authorship of these serious allegations is obscure. The chronology suggests that they were the product of the Apostolic Visitor's 6 day visit in April 2007 to the Diocese and were reproduced in the unsigned document. Whether they were or not requires some analysis.

If what the Visitor had said to Bishop Morris, Archbishop Bathersby and Father Sparksman in late April 2007 truly reflected his state of mind both before and at the conclusion of his short visit and the same was contained in his report to the Congregations in Rome, then it is inconceivable that in a report dated 28th June 2007 he could catalogue such a list of damaging allegations against Bishop Morris. Further, the nature and extent of certain of the more scandalous allegations:-

- That over the last ten years Toowoomba Diocese had gone through "a severe crisis" of faith;

- That the "general theological climate of the Diocese" had failed to reflect an authentic Catholic identity;

- That the Bishop had failed to promote vocations and to offer "solid theological spiritual and human formation to his Priests";

could only be validly asserted after a lengthy and detailed assessment of all aspects of Catholic life in this large far flung Diocese and more particularly after the collection and assessment of a large body of cogent factual evidence to support such generalities. These general assertions in the 28th June 2007 document are just some of the alleged findings relied upon by some unknown and unidentified decision maker that "Toowoomba needs a Bishop who with determination and courage will tackle (these) problems", and "rectify what is not in conformity with the doctrine and discipline of the Catholic Church". And finally it is because of these very damaging and sweeping failures that "Bishop Morris' theological preparation and type of leadership are inadequate to confront the crisis of the Church in Toowoomba". Not only does the document display an appalling lack of evidence and particularity, it certainly contains demonstrable errors of fact. It is stated that there had been "no priestly ordination" in the Diocese for seven years. In fact there had been four new Priests ordained in the previous eight years. It also states that Priests had been "marginalised" and "deacons and laity" substituted. In fact the Toowoomba Diocese has never engaged any deacons to serve in this Diocese.

These simple factual errors are typical of a substandard fact finding process, if one was ever undertaken. Rather they reflect a process of decision making by high ranking Church officials, more likely based on gossip and hearsay.

The relevant circumstantial evidence tends to suggest that, consistent with what he had said to others, the Apostolic Visitor and his report were not the basis for the 28th June 2007 document. That would mean that it was authored by someone else whose identity is and remains unknown as is the evidence upon which these damaging findings were made. The same unidentified person also concluded that the Bishop had to be removed from leadership of the Toowoomba Diocese.

When Bishop Morris first saw and read the document in September 2007, it is clear from the text that decisions as to his future had already been made. More importantly it is strongly arguable that the decision of the Congregation of Bishops or of its Prefect had been made without evidence or on the basis of evidence which was factually untrue; he the Bishop was denied knowledge of the authorship of this document; he was not made aware of any of the evidence made to support what can only be regarded as seriously damaging affects upon his reputation as a Bishop of the Church. Nor had he been asked to respond to, comment upon or explain the core of these allegations.

In short he has been denied the right to be heard; he has been treated unfairly. He had not been provided with any evidence to support the case against him nor was he given any opportunity to respond to and correct known errors of fact and generalised assertions.

One could not imagine a more striking case of a denial of natural justice inherent in the preparation and publication of the unsigned document.

This conclusion is somewhat aggravated by the fact that much later on 12th November 2009 when the Bishop complained to Pope Benedict about "defects in process" and "a lack of care for the truth", the Pope himself in his response dated 22nd December 2009 dismissed these complaints as "a misunderstanding".

The above analysis has so far proceeded on the basis that the document of 28th June 2007 was not based on the report of the Apostolic Visitor.

If on the contrary it was, the same conclusion is even more compelling.

Immediately the visit was concluded, all of the Priests of the Diocese (except three), the Diocesan Pastoral Council and other Church agencies wrote letters to Rome strongly supporting the leadership of Bishop Morris in his many years as the Ordinary of the Diocese. Bishop Morris was then unaware of this. Therefore by the time the 28th June 2007 document was written the Congregation of Bishops not only would have had an "unfavourable" report of the Apostolic Visitor but strongly favourable reports from respected clergy and lay pastoral leadership in the Diocese. The fact that the receipt of the latter was not even acknowledged suggests they were ignored. In any event any unfavourable report by the Visitor after his short visit would have needed to be evaluated in the light of the supportive reports from those representatives of the Catholic Church in the Diocese. In the light of any such competitive assessments, those with the capacity for decision making could not avoid a finding of procedural unfairness and denial of natural justice without providing to Bishop Morris particulars of the adverse findings in the report and the evidence upon which the report was based so as to provide the Bishop with the opportunity to be heard and to provide evidence based material to challenge what was alleged against him in such a report.

Further, if on his departure from Toowoomba the Visitor proposed to report unfavourably it was his primary duty to inform the Bishop, with particularity, of his findings and the supporting evidence, so as to thereby give the Bishop the opportunity to respond. He was denied that opportunity. Such an unfair process was seriously aggravated by a failure and/or refusal of the Congregation of Bishops and the three Cardinal Prefects to do likewise if it was intended to act on this unfavourable report for the purpose of decision making concerning Bishop Morris' future.

Therefore, irrespective of whether the visitors report was favourable or otherwise the subsequent process engaged upon by Church leaders in Rome was seriously flawed. There can be no doubt that the decision to have Bishop Morris removed from his position of leadership of the Toowoomba Diocese was made, at the latest, by the time of the compilation of the unsigned document dated 28th June 2007. Nor in my view can that process be considered to be other than unfair and characterised as a serious denial of natural justice.

Letter from Cardinal Re dated 3rd October 2007

When Bishop Morris received the unsigned document from the Apostolic Nuncio on or about 17th September 2007 its contents both surprised and concerned him. He was about to go on annual leave. He wrote to Cardinal Re on the same day:-

> "My annual leave is due on October and during this time I will take the opportunity to pray and think about my response so that my letter can form a basis for future dialogue."

Cardinal Re's response to this letter dated 3rd October 2007 is a defining document. It persuasively demonstrates that by that date the relevant decision to oust Bishop Morris had been made – not to be resiled from. Bishop Morris' future had been decided unequivocally at the latest by Cardinal Re by 3rd October 2007. Later correspondence reveals that Cardinal Re had been in close collaboration with his

Cardinal colleagues, Arinze and Levada. They who had invited him to Rome to discuss the communal rite of reconciliation in December 2006/January 2007 had by now decided upon his removal as Bishop of Toowoomba perhaps by 28th June 2007 and certainly by 3rd October 2007 and the basis for this decision was the unsigned document which had been given to the Bishop only three weeks before Cardinal Re's letter of 3rd October. He had had no practical opportunity to respond.

In spite of the Bishop's concern about the contents of the unsigned document and the tainted processes surrounding its origins and in spite of the Bishop's courteous response that he proposed to reply to it so that that response "can form the basis for future dialogue" he was presented in Cardinal Re's letter of 3rd October 2007 with an unequivocal and decisive decision requiring his removal as Bishop of Toowoomba, before any opportunity could arise for the Bishop's response to what were obviously scathing allegations which damaged Bishop Morris' personal and vocational reputation nor had the evidence to support these damaging accusations been identified.

In the 3rd October 2007 letter Cardinal Re wrote to the Bishop:-

> "I trust that during these days (whilst the Bishop was on leave) the Lord will enlighten you and also give you courage in order to take this step which I know will be for you painful, but also essential. I ask you, first and foremost, to consider the good of the Diocese of Toowoomba which should have a solid Bishop who is in accord with the Pope and the universal Church.
>
> In the name of the Holy Father I ask (you) to submit your resignation ...
>
> ... I expect to receive your letter of resignation by the end of this October for the good of the local Church in Toowoomba."

Bishop Morris' future had already been determined. He had never been offered nor given the opportunity to respond to this catalogue of alleged failures set out in the unsigned document.

In the light of what had occurred between the Bishop and the Cardinals prior to 3rd October 2007 and the circumstances relating to the unsigned memorandum which he had received only shortly prior to that date, Bishop Morris' response was entirely predictable. He wrote on 6th November 2007:-

> "I would like to present a detailed reply to the comments in the memorandum but I find this difficult in view of the general nature of some of them. For example, I am not sure how one assesses "the general theological climate of the Diocese" or what would be a "sufficiently dynamic pastoral program for promoting vocations". Nor do I believe that general absolution "is still common".
>
> The memorandum, I must assume, has been drafted in the light of information which the congregation has to hand. I am not aware of that information, nor have I had any opportunity to respond to it. I would welcome receiving more specific details of the material that has formed the basis for the conclusions which are set out in the memorandum.
>
> I respectfully suggest that my detailed reply to that material which I will undertake to deliver within 14 days of its receipt should form the basis for a discussion face to face.

By letter dated 30th November 2007 Cardinal Re wrote in reply that it was only after "prayerful reflection" that he (Cardinal Re) accepted Bishop Morris' request to meet with him in January 2008. He advised that Cardinals Arinze and Levada "will be with me". His letter continued:-

> "The Holy Father however will receive you only after the publication of your resignation."

And finally:-

> "Regarding your request for more detailed information that was used in drawing up the memorandum, I would invite you to re-read your own 2006 Advent Pastoral Letter. It is a Pastoral Letter (that is, a document written by you as Bishop of Toowoomba) which presents a vision and a pastoral approach that does not conform with the doctrine and discipline of the Church."

This letter confirms two things: firstly, that the Bishop's resignation was insisted upon; indeed, it was a condition president for a papal audience; and secondly, the Bishop's request to respond to the allegations in a meeting with Cardinal Re was accepted but only as a matter of grace and again only after "prayerfully reflection". Yet Bishop Morris had not so far had the opportunity to respond nor had he been provided with any evidentiary material; only an oblique reference to his Advent Pastoral Letter

The Advent Pastoral Letter dated 17th November 2006

Cardinal Re's letter dated 30th November 2007 can only be interpreted to mean that the Bishop's Advent Pastoral Letter dated 17th November 2006 provided the substance of the basis for the several damaging allegations catalogued above and referred to in the unsigned memorandum. In his 30th November 2007 letter to the Bishop he advised that he (Cardinal Re) and the other Cardinals would meet Bishop Morris in Rome on 19th January 2008 at 9:00am and that Archbishop Wilson, the President of the Australian Bishops Conference would also attend. It needs to be emphasized that when the Bishop replied on 22nd December 2006 to Cardinal Arinze's original letter of 21st December 2006 requiring an urgent meeting on the practice of general absolution, the Bishop had replied, without qualification:-

> "... since my meeting with yourself Cardinal Arinze (in 2004), I have not given permission for the celebration of the communal rite with general absolution."

Yet in the unsigned document its author claimed that "general absolution is still common" and further "there is a tendency to abandon or to reduce individual confession with consequential serious harm to the spiritual life of the faithful ...". And yet in his letter six months earlier the Bishop had told Cardinal Arinze:-

> "I have encouraged the Priests of the Diocese to make sure they always celebrate the right of reconciliation according to the canonical and liturgical norms of the Church's tradition."

These statements had been ignored or gratuitously rejected. Only in his letter of 30th November 2007 did Cardinal Re accept "that general absolution is no longer a common practice in Toowoomba" yet it had been positively and wrongly asserted as a fact in the unsigned memorandum months before.

One then turns to the Bishop's Advent Pastoral Letter of November 2006. The Bishop first learnt of Rome's concern when he read the unsigned document on or about 17th September 2007. That document had alleged:-

> "The local Church in Toowoomba is moving in a different direction from that of the Catholic Church. One expression of this is seen in Bishop Morris' 2006 Advent Pastoral Letter ... ."
>
> and
>
> "An attentive reading of this Pastoral Letter reveals a flawed ecclesiology resembling that of a Protestant Church".

One can only question whether the author of these declarations had read the Pastoral Letter "attentively", or indeed, at all.

The main thrust of the Pastoral Letter is obvious. Its focus is the Diocesan Pastoral Leadership Plan with its associated Staffing Plan and Appointments Policy for Priests and Pastoral Leaders which was a transitional measure adopted by the Diocese for the nine years commencing Easter 2005 to Easter 2014. Against that background the Bishop identified "the immediate task" and "the long term task". He then wrote:-

> "The immediate task before us is to develop the procedure for making appointments of Priests in the Diocese in the light of the discussion, discernment and appointment decisions made in these last twelve months. The new Ministry Appointments Policy and Procedures for Priests and Pastoral Leaders addresses these tasks"

He then went on to refer to the long term task as follows:-

> "The long term task that remains as yet unaddressed is the development of a Priests Staffing Plan for Easter 2014, once again within the wider context of a vision for Diocesan Pastoral Leadership."

Having detailed the number and age of the Priests who will be engaged in Parish based and Diocesan based Ministry in 2014 the Bishop went on:-

> "We may well be moving towards a Staffing Plan that places two Priests in the larger towns or communities in each of the six regions, one Priest 65 years or younger and the second Priest from the older group (66/70), with the surrounding faith communities served by an increased number of Pastoral Leaders."

In short in the context of discussing a major and important pastoral issue for the Diocese in 2014 and beyond the Bishop in his letter was proposing a possible future planning initiative whereby two Priests would be placed in the larger towns and communities, with the surrounding faith communities being served by an increased number of lay Pastoral Leaders. He went on to outline his then Advent 2006 plan for the second three year period of the nine year Pastoral Leadership Plan and the consultation which he proposed to undertake so that the responses could be used as a basis for discussion at the "next Diocesan Presbyteral Forum to be held during Lent 2007.

It was in this context that the Bishop, as an aside, referred to the "other options" which had been discussed internationally, nationally and locally including the ordaining of

married men, welcoming former Priests back to active Ministry, ordaining women and recognising Anglican and other orders. He then continued in his letter immediately:-

> "We remain committed to actively promoting vocations to the current celibate male priesthood and open to inviting Priests from overseas."

It was only in this broader context when discussing Pastoral planning Diocese that Bishop Morris made reference to "other options" but then immediately concluded that he and the Diocese were committed to the current celibate male priesthood.

It seems however that it was this brief reference to the matters mentioned in the broader context of developing pastoral leadership for the Diocese and at the same time confirming his commitment to the current celibate male priesthood that led to his removal as the Bishop of Toowoomba. Whilst the Bishop in later documents conceded that his presentation may have been "clumsy" and "could have been worded better" he reaffirmed that:-

> "My invitation to the Diocese that we reflect on all of these matters does not mean that we, or I, reject the current teaching of the Church. On the contrary, once I became aware of some level of misconstrued reading of my Letter, I responded through the local media immediately and later through our Diocesan website, to correct this misunderstanding and misinterpretation of my words."

Again he stated:-

> "The statement of Cardinal Re at our meeting (19th January 2008) and related comments from Cardinals Arinze and Levada allege that my Advent Letter amounted to a rejection of the teaching of the Catholic Church on the ordination of women and the validity of Anglican orders. May I assert clearly in response that I have never rejected the teaching of the Church on either of these matters."

Yet in the face of such denials by Bishop Morris during 2008, rather than retract, the Cardinal Prefects persisted in reaffirming their long held view (at least since 28th June 2007) that Bishop Morris was unfit to continue as the Bishop of Toowoomba.

Bishop Morris' first opportunity to respond was not given until his meeting with the Cardinal Prefects on 19th January 2008. By that time Cardinal Re had thrice already (28th June 2007, 3rd October 2007 & 30th November 2007) determined that the Bishop must resign.

Immediately subsequent to the 19th January meeting Bishop Morris on 24th January 2008 reaffirmed in his letter to Cardinal Re "that I am unable to resign". In response Cardinal Re again on 13th February 2008 insisted upon the receipt of the Bishop's resignation because "your type of leadership of the Diocese is seriously defective".

Canon 401, clause 2 states that "a Diocesan Bishop who because of illness or some other grave reason has become unsuited for the fulfilment of his office, is earnestly requested to offer his resignation from office". It can be assumed that the Cardinal Prefects were seeking the Bishop's resignation pursuant to Canon 401 for "grave reasons". In terms of Canon 401, Clause 1 "age" and "grave clause" are said to provide the basis for such a request.

The gravity of the "reason" or "cause" connotes the need for some serious canonical disqualifying or disabling reason or cause before such a request can be validly made.

But whether validly made or not, bearing in mind his strong factual evidence based response, the canonical process implicit in Canon 401 must be procedurally fair and one which accords with the principles of natural justice.

The serious deficits in that process can be readily summarised:-

1. In advising Bishop Morris by letter dated 16th March 2007 of the Apostolic Visit to the Diocese in April 2007, Cardinal Re stated that "the reason for this visit is that the doctrinal and disciplinary line you are following seems not to accord with the Magisterium of the Church".

2. Cardinal Re failed to identify or particularise for Bishop Morris the facts or matters relied on to support the Bishop's alleged departure in matters of doctrine and of discipline which were not in accord with the Magisterium.

3. The Apostolic Visitor did not at any time during his visit to Toowoomba inform the Bishop of any of the matters alleged against him as being the reasons for the visit nor did he do so after the visit nor did he give Bishop Morris the opportunity to respond to any such allegations nor did he identify to Bishop Morris the evidence relied upon to support the various allegations nor the identity of his accusers.

4. The unsigned document of 28th June 2007, which made serious and damaging accusations against him, failed to provide any evidentiary material relied upon by the author or its compiler to support such allegations.

5. Those responsible for the compilation of such documented allegations failed to identify the person who wrote the document nor any person or source who could support the allegations with the evidence relied upon.

6. Bishop Morris therefore was denied knowledge of the allegations and access to them and to the evidence relied upon by the author of the document to support them at any material time before or after the compilation of the unsigned document.

7. Having, on or about 17th September 2007 received and read the unsigned document Bishop Morris advised Cardinal Re by letter dated 17th September that he wished to respond to it and that he would respond upon his return from annual leave (due in October 2007).

8. Cardinal Re on 3rd October 2007 before Bishop Morris had the opportunity to respond wrote to the Bishop and asked him in the name of the Holy Father "to submit your resignation", because – "as stated in the memorandum which the Apostolic Nuncio delivered to you" (that is the unsigned document) "your theological preparation and type of leadership are inadequate to confront the crisis of the Church of Toowoomba".

9. Bishop Morris intended to fully and comprehensively respond to the allegations all of which he firmly refutes and denies but before being able to do so Cardinal Re concluded his 3rd October letter saying "I expect to receive your letter of resignation by the end of this October".

10. Cardinal Re and his Cardinal colleagues had decided by 3rd October 2007 to require the Bishop's resignation before he had had the opportunity to

respond and when the Bishop in his response on 6th November 2007 requested detailed information upon which the allegations were made so that he "could present a detailed reply", these were denied and again Cardinal Re persisted in requiring the Bishop's resignation before hearing any response from Bishop Morris.

11. The Vatican document which purports to be minutes of the meeting between the three Cardinals and Bishop Morris on 19th January 2008 in Rome records Cardinal Re as follows:-

"I think it would be useful to explain the mind of the Holy See and then we will listen to what Bishop Morris ... wants to say."

The Cardinal then repeated the contents of the unsigned document with emphasis only on that part of the Advent Letter referred to in the document. He concluded this presentation by again requesting Bishop Morris' resignation before he had had a chance to respond. The Cardinals conclusion simply repeated what Cardinal Re had determined and had already expressed in his letters of 3rd and 30th November 2007 before providing to Bishop Morris the details of the allegations and before hearing Bishop Morris' response.

Accordingly Bishop Morris' response delivered later in the meeting fell on deaf ears but he maintained his refusal to resign. He had not then nor had he later received the detailed evidence relied on to support the allegations.

12. The biased and preconceived conclusions of the Cardinals at the 19th January meeting is well evidenced by Cardinal Re's reference to Bishop Morris' response to the original Cardinal Arinze request for a meeting in February 2007 in relation to the general absolution issue when the Bishop requested a later date because of pressing pastoral responsibilities.

The minutes of the meeting record Cardinal Re saying:-

"He (Bishop Morris) replied (to the original Arinze letter dated 21st December 2006) by not accepting either date and postponing the encounter (sic) for a later time as if it were something that was not important."

At no time before his ultimate retirement did Bishop Morris ever receive the factual or evidentiary material relied upon to support the allegations before the decision was made to require his resignation, at the latest by 3rd October 2007.

All that emerged with any semblance of particularity were two matters – the communal rite issue and the "phrases" in the 2006 Advent Pastoral Letter – both of which the Bishop had effectively dealt with. In his final appeal to Pope Benedict Bishop Morris insisted that the communal rite issue had been resolved. (Even Cardinal Re had conceded that). And he confirmed that he had publically corrected and clarified "any ambiguity in my Advent 2006 Pastoral Letter". He therefore sought the Pope's intervention.

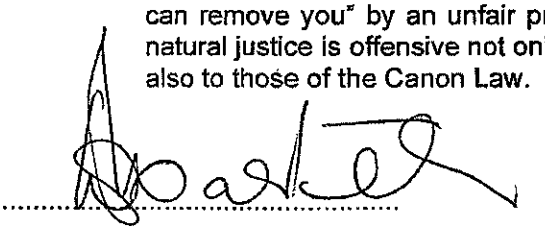
In his letter of refusal dated 22nd December 2009, when responding to the Bishop's concern about the process to which he had been subjected since December 2006, the Pope wrote:-

> "Canon Law does not make provision or a process regarding Bishop's whom the Successor of Peter nominates and may remove from office."

That statement is perhaps the most compelling confirmation that Bishop Morris was denied procedural fairness and natural justice.

Canon Law does expressly empower the request for a Bishop's resignation for "grave cause". That is an administrative decision which has the capacity to seriously damage the reputation of a Bishop, if resorted to, without a sound and valid basis. The notion that that can be done unfairly and without resort to principles of natural justice offends basic principles of morality and justice.

The proposition that because "I appointed you to a particular office, so I can remove you" by an unfair process and in breach of the principles of natural justice is offensive not only to the requirements of the Civil Law but also to those of the Canon Law.



Hon W J Carter QC