**CANONICAL REFLECTION**

I have been invited to provide a brief canonical reflection on the Carter Report.  I have read the report.  My reflection is solely in response to the report, as I have not read the documentation examined by Hon. W.J. Carter, Q.C.

I presume that I have been invited because I am not a Queenslander.  I have never met Mr Carter, although I know that he is an eminent and highly respected jurist.

1. ***Grants and Termination of Ecclesiastical Office***

In the Catholic Church at present, an ecclesiastical office is defined as any post which by divine or ecclesiastical disposition is established in a stable manner to further a spiritual purpose (can. 145).    Furthermore, an ecclesiastical office cannot be validly obtained without canonical provision.  The provision of every ecclesiastical office is effected in one of five ways, namely: 1)  by it being freely conferred by a competent ecclesiastical authority;   2) by appointment after presentation; 3) by confirmation or admission after an election; 4) by confirmation or admission after postulation; 5) by acceptance of an election which does not require confirmation.  In this brief reflection, it is sufficient to note here that at present in the Catholic Church the Pope freely appoints most bishops; and he confirms the election of the diocesan bishops of about 130 dioceses which have the right to have their bishops elected.  In other words, the Pope confers office on every bishop, either by freely appointing them (as in the Diocese of Toowoomba) or by confirming their election.

An ecclesiastical office is lost naturally by the death of the incumbent.  Besides death, there are six other ways in which an ecclesiastical office can be lost, namely 1) expiry of a predetermined time; 2) on reaching the age limit defined by law;  3) by resignation; 4) by transfer to another office; 5) by removal; 6) by deprivation.

Many offices in the Church are conferred for a predetermined time. Examples include parish priests in Australia being appointed for terms of six years. However, the vast majority of bishops (including the Bishop of Toowoomba) are appointed without any limitation of time, which means they have permanent tenure of their see.

At present, some office bearers (including diocesan bishops, auxiliary bishops and parish priests) are requested to submit their resignation from office on the completion of the seventy-fifth year of age, or if they become unsuited for the fulfilment of their office because of illness or some other grave reason.  All the circumstances surrounding the offered resignation will then be examined, and the resignation will be either accepted or deferred.  The Carter Report reveals that Bishop Morris was repeatedly urged to submit his resignation to the Pope.  If he had done so, presumably the Pope would have accepted it.

A resignation can be made by anyone capable of personal responsibility for a just reason.  A resignation made as a result of grave fear unjustly inflicted, or of deceit, or of substantial error is invalid; and the authority accepting the resignation is forbidden to accept it if it is not based on a just and proportionate reason.  The Carter Report noted that Bishop Morris felt compromised by the exceedingly robust tone of the 2004 meeting (p. 3); it details the subsequent correspondence and meetings between Bishop Morris and three Roman Curial cardinals which the Bishop perceived to be accusations founded on errors of fact and generalised assertions, culminating with a meeting on 19 January 2008 at which his resignation was insisted upon.  If a resignation had been offered then, many canonists would certainly have questioned whether a bishop in such a situation would be capable of the personal freedom necessary to make an informed decision.

The possibility of the transfer of Bishop Morris to another office does not appear to have been considered.  Not infrequently a bishop is transferred from one office to another, although normally in the context of a perceived “promotion.”  Canon law  provides a specific process for the transfer of parish priests.  If a bishop is transferred, the principles of consultation with him, hearing some of his peers, weighing the reasons to favour or oppose the transfer, and consideration of the general good of the bishop and the Church would no doubt be employed.  The fact that a transfer was not considered in this case is probably consistent with Cardinal Re’s written opinion that Bishop Morris was not “a solid bishop who is in accord with the Pope and the universal Church.”

The next possibility was removal.  No one may be removed from an office which is conferred on a person for an indeterminate period of time, except for grave reasons and in accordance with the procedure defined by law.   While there are canonical processes for removal in general (cann. 1732-1739), and specifically for parish priests (cann. 1740-1747), there is no specified process for the removal of a bishop.  If the process for removing a parish priest were adapted for the case of Bishop Morris, it would involve:  identifying the reasons for his removal;  discussion about the reasons for removal by the Pope with two Australian bishops elected by the bishops conference; an invitation to Bishop Morris to reply in writing to the specified accusations; an inspection by Bishop Morris of all the evidence gathered and an invitation to him to respond or produce contrary evidence;  a weighing up of the evidence by the two elected bishops and their recommendation to the Pope; and a decision by the Pope.  Such a process would ensure procedural fairness and natural justice which the Carter Report found were denied to Bishop Morris.

The final possibility was deprivation of office, which is being deprived of office as a punishment for an offence.  Deprivation may be effected only in accordance with the provisions of the canons concerning penal law.  The penal process may be either judicial (a hearing by a Church tribunal) or extra-judicial (an administrative process).  However, both the judicial and extra-judicial processes require that the accused be assisted by an advocate; that his good name not be called into question; and that procedural fairness and the right of defence be respected.  Moreover, a perpetual penalty may be imposed only after a judicial process, not after an extra-judicial process.

The Code of Canon Law lists many offences for which a member of the Church - if found guilty - can be punished.  Most of these offences are to be punished with “a just penalty” which is to be determined by the judge or the presiding ordinary.  The only offences for which deprivation of office is specified as a penalty are the offences of apostasy from the faith, heresy or schism committed by a cleric; the abuse of ecclesiastical power or an office; and grave violation of the obligation of residence to which he is bound because of an ecclesiastical office.

While the unsigned document dated 17 September 2007 on letterhead from the Congregation of Bishops (of which Cardinal Re was the Prefect) made serious allegations about Bishop Morris and the Diocese of Toowoomba, such as the Diocese was moving in a different direction to that of the Catholic Church, and that the Bishop had failed to guide the faithful in fidelity to the doctrine and discipline of the Church, it fell short of the specific accusation of heresy or schism.  Consequently, it is most unlikely that a penal process would have been able to find the Bishop guilty, and therefore able to deprived of office as a punishment.

In summary, as Bishop Morris had permanent tenure of his see, there was no possibility of his tenure terminating because it was limited by a predetermined term or an age limit.  While there was the possibility of Bishop Morris freely offering his resignation if he became convinced he was unsuited for the fulfilment of his office, the Carter Report indicates that he was unable to offer his resignation.  Transfer to another episcopal office was not suggested by the Holy See, which left only two possibilities, namely removal or deprivation.  Although the Holy See identified what it believed to be a canonical reason for removal or deprivation (“leadership of the diocese is seriously defective”), it consistently refused to permit a canonical process for either to commence.  Instead, the Pope himself wrote, “Canon law does not make provision for a process regarding bishops whom the Successor of Peter nominates and may remove from office.”

In fact, canon 19 of the current Code of Canon Law states,

If on a particular matter there is not an express provision of either universal or particular law, nor a custom, then, provided it is not a penal matter, the question is to be decided by taking into account laws enacted in similar matters, the general principles of law observed with canonical equity, the jurisprudence and practice of the Roman Curia, and the common and constant opinion of learned authors.

1. ***Historical Precedents***

Bishop Morris is not the first Australian Bishop to have his resignation requested by the Holy See.  At present, the archives at the Holy See are open to researchers officially until 1938, although in practice it is very difficult to access records later than 1930. There were four episcopal casualties until then, and a resignation was demanded from each.  When Bishop John Brady of Perth refused to resign in 1850, he was forbidden to live in his diocese;  he returned to Ireland and acted as an auxiliary to the Bishop of Kilmore; an apostolic administrator was appointed to govern the Diocese of Perth;  but Brady remained Bishop of Perth until his death in 1871.  In 1867, Auxiliary Bishop-elect Austin Sheehy of Sydney humbly submitted his resignation and worked as a parish priest until his death in 1910.  In 1877, Bishop Timothy O’Mahony of Armidale most unwillingly resigned under pressure, and then was appointed Auxiliary Bishop of Toronto (Canada).  In 1910, Bishop Matthew Gibney of Perth resigned most unwillingly, and then lived as a recluse until his death in 1925.

Of these cases, only Bishop-Elect Sheehy acted willingly.  He immediately declined the episcopate, returned the apostolic brief of appointment, and asked the identity of the accusers.  The Cardinal Prefect declined to reveal the accusers, praised Sheehy’s humble renunciation, and told him to trust the Pope’s judgement.  On 14 June 1868, Pope Pius IX, after being advised that the charge could not be sustained, judged “in the Lord” that this resignation of “a virtuous man” from episcopal promotion be accepted.

Bishops O’Mahony and Gibney tried to negotiate; but each eventually resigned under pressure.  In contrast Bishop Brady was not forced to resign, although he was ordered to leave Australia.  In 2011, Brady’s body was exhumed, and was solemnly re-interred with his successors in the Perth cathedral, as he is now being rehabilitated as the zealous and selfless pioneer of the Church in Western Australia who ensured that it be established against impossible odds.  In contrast, in 1850 the Holy See saw him as defying instructions;  possibly mentally unstable;  and the product of a Parisian seminary with Gallican traits that expressed themselves in his referring to his rights under canon law, the Council of Trent and natural justice!  These three bishops were denied any process.

The Vatican archives have not been accessed for the resignation of Coadjutor Archbishop Michael Sheehan of Sydney in 1937.  However, Sheehan’s own account includes, “On 25 May (a black day for me), the Delegate sent for me; he said he had *triste notizia* for me; he read me a letter from Cardinal Fumasoni saying at an audience with His Holiness, the Pope had decided that I was at once to retire from Sydney, occupy myself with literary work, and receive any yearly allowance the Delegate thought reasonable.”  On 29 May, Sheehan cabled Pope Pius XI to reconsider.  The cable was not answered, and news of the resignation was published in Sydney on 3 June.  Sheehan acquiesced, returned to Ireland in retirement, and mused that the charge seems to have been that “I have been an absolute cipher.”

1. ***The Removal of Bishop Morris***

Since the removal of Bishop Morris, there has been much comment. Father Jesus Miñanbres Fernandez, of the canon law faculty at the prestigious Pontifical University of the Holy Cross, Rome, is reported as saying

In cases involving the conduct of bishops, the visitator would make a report to the Vatican.  The report would be secret, to be read only by the Pope and the Vatican congregation that ordered the investigation.  It could be harmful to release all the information.  The investigation probably includes the names of other bishops in Australia.  It is probably not convenient that he knows all the details.  There have been different conversations with people that are protected.

Father Fernandez was of the opinion that this was an administrative act.  He continued

If this act is signed by the Pope, it cannot be overturned.  If it’s just from a congregation, it can be.  If it’s that grave that it was signed by the Pope, no.  The actions of the Pope are definitive.

I have no reason to doubt that Father Fernandez knows how the Roman Curia really functions, and that the process he has described - a secret administrative inquiry with no right of defence by the accused - is what does happen, and has happened since the nineteenth century.

Consequently, on 11 May 2011, the weekly edition in English of *L’Osservatore Romano* carried the following advice under *Changes in Episcopate*:

The Holy Father relieved Bishop William Martin Morris of his office as Bishop of Toowoomba, Australia (2 May).

This is in marked contrast to the usual announcement of

The Holy Father accepted the resignation of Bishop Xxxxxxx of Yyyyyyyy.  It was presented in accord with can. 401 §2 of the Code of Canon Law.

In accordance with Canon 19, the Holy See, departing from the earlier precedents for the removal of Australian bishops, could have designed a process similar to the process for removal of a parish priest, thereby according procedural fairness and natural justice consistent with the Code of Canon Law. This was not done. I respectfully concur with Mr Carter’s conclusion that “Bishop Morris was denied procedural fairness and natural justice.”

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