

Appeal to An Bord Pleanála

By the Friends of St. Colman's Cathedral

Hearing 28th February 2006 at Midleton Park Hotel **Ref. No. PL53.214338**

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Re: Proposed Re-ordering of the Interior of St. Colman's Cathedral, Cobh, Co. Cork, Planning Register No. 05/52040. Appeal against Decision of Cobh Town Council, dated 5th September 2005

SUBMISSION

in favour of: The Friends of St. Colman's Cathedral

By: Alan Robert Kershaw, Esq., Advocate of the Apostolic Tribunal of the Roman Rota

The matter of contention is the following proposed development: **“Reordering of St. Colman's Cathedral.”**

“The proposed reordering, which is designed to meet the liturgical requirements of the Cathedral as a place of worship, will include:

- a) extending the sanctuary area into the nave;**
- b) removing and partially relocating the existing altar rails;**
- c) creating a permanent altar on the extended sanctuary;**
- d) providing a new cathedra facing the congregation;**
- e) locating the vesting sacristy at the base of the tower;**
- f) converting the pieta chapel to a mortuary chapel;**
- g) reducing the area of the predella of the altar of the Crucifixion in the south transept and the Altar of the Holy Family in the north transept.**

The extension of the sanctuary and the moving of the altar rails will involve lifting and relaying portions of the mosaic to the nave and sanctuary and providing additional mosaic to match the existing as required at St. Colman's Cathedral, Cathedral Place, Cobh, Co. Cork”.

Upon study of the documentation pertinent to the case a question of fundamental importance under Canon law immediately comes to light: Has the Diocesan Bishop complied with dictates of Canon law in proceeding with the intention to re-order the interior of St. Colman's Cathedral?

Central to this query, and what must be verified is whether the Bishop has given a proper decree, stating his decision and the reasons upon which it is based for the re-ordering of the Cathedral?

To clarify it will be useful and should suffice to explain what constitutes a decree in Canon law.

Canon 48 C.J.C. very clearly states: “A singular decree is an administrative act issued by a competent executive authority, whereby in accordance with the norms of law a decision is given or a provision made for a particular case; of its nature this decision or provision does not presuppose that a petition has been made by anyone”

Canon 50 C.J.C. then advises: “Before issuing a singular decree, the person in authority is to seek the necessary information and proof and, as far as possible, is to consult those whose rights could be harmed”.

Canon 51 C.J.C. establishes: “A decree is to be issued in writing. When it is a decision, it should express, at least in summary form, the reasons for the decision”

Canon 54 § 2 C.J.C. then advises that a decree must be made “known to the person” it affects.

Why is the question regarding the existence of necessary decrees of “fundamental importance” in this proceeding?

First and foremost to ascertain the existence of certain decrees, or the lack thereof, will allow us to determine the validity of certain actions brought heretofore. As we will see, this process could legally impact the very central basis of the entire question of the Cathedral re-ordering, and affect the legitimacy and actions of the Ordinary.

There is mention in the documentation pertinent to the matter at hand of a “Historical Churches Advisory Commission”, an ecclesiastical body within the Diocese of Cloyne as is shown on page 37 of the Cloyne Diocesan Directory 2006. As an ecclesiastical body it is subject to ecclesiastical law in its erection and operation.

The proper and legal creation of this commission by the Ordinary of the Diocese should have been done by decree. **Having examined the documentation pertinent to this case I have not found a copy of this decree.**

The competence of the commission and the limits of its range of action, among other things, should be regulated by appropriate statutes which have been approved by the Ordinary. **I have not found a copy of these statutes among the case documents.**

The members of the “Historical Churches Advisory Commission” should have been appointed by decree of the Ordinary. These decrees would also indicate the qualifications and expertise of the appointed members. **I have not found a copy of the decrees which appoint the members of the “Historical Churches Advisory Commission” in the case documents.**

If these aspects have not been verified, and, what's worse, if there are no decrees as just described then one would be obliged to question the validity of everything the "Historical Churches Advisory Commission" has done to date, leading up to the present hearing.

Ad rem it could be asked whether the Cobh Town Council had a duty to ascertain, before it directly or indirectly accepted any advice from it, that the Historical Churches Advisory Commission had been duly constituted in accordance with Canon law.

In point of fact, McCutcheon Mulcahy presented a document for the applicants dated 9th November 2005, which states: "The submission was approved by the Historic Churches Advisory Committee of Cloyne at a meeting on 8th November".

Only if the "Historical Churches Advisory Commission" has been properly and legally created, will it have authority to give approval to submissions.

The issues pertaining to the proper and legal creation of the "Historical Churches Advisory Commission", meaning: whether the Diocesan Bishop has acted in compliance with Canon law, give rise to another consideration of similar magnitude.

In accordance with Canon law, when the Ordinary decided to re-order the interior of St. Colman's Cathedral he was to do so by administrative decree, listing *saltem summarie* (Can. 51 CJC) the reasons for his decision. **Do we have a copy of this decree?**

From a canonical standpoint the issue of the re-ordering of the interior of the Cathedral should have begun with a single administrative act of the Ordinary, given *cum prudentia* after having consulted experts and having heard the faithful.

As foreseen under Canon law this single administrative act (the decree) could subsequently be challenged by one of Christ's faithful, and subjected to scrutiny by the competent Dicastery of the Roman Curia through administrative recourse. It would be through this type of process that the Ordinary would receive approval of his decree, or by which the same would be rejected.

Once the Ordinary has received approval from the Holy See then he would duly proceed with an application to the civil authorities. **Unless there is a decree and subsequent of approval of the Holy See then it would appear that the Ordinary has initiated procedures for the re-ordering in reverse order.** This means that regardless of what the Appeal Board should decide the entire matter must still receive approval by the Holy See which will exercise its authority by evaluating and establishing whether liturgical laws have been scrupulously followed.

The entire issue of proper legal action by the Ordinary introduces the next point of interest: the laws on the reordering of churches. For the moment I will refrain from illustrating the process and points of juridical interest regarding hierarchical administrative recourse.

Title 1: The current law on the re-ordering of churches

For the proposed re-ordering of the Cathedral sanctuary the applicants have made the case that this is “necessary” for liturgical reasons. In other words the applicants argue that the re-ordering is “required” by liturgical laws and norms of the Roman Catholic Church.

Brian McCutcheon writes in his November 9th 2005, document for the applicants: “The HCAC’s **liturgical requirements** were explained to the Town Council and the design proposed to achieve these **requirements** was discussed in detail”. Unless the Bishop of Cloyne has received a specific mandate or order from the Holy See, regarding certain “liturgical requirements”, and he has subsequently “delegated” his authority to the HCAC, this commission cannot legitimately claim to have liturgical requirements nor can it “explain liturgical requirements”. In any case the HCAC has no ecclesiastical authority to interpret liturgical legislation.

This being said, what must be clarified and established is the difference between “what is a requirement and what is desired”, or a preference.

The proposed alterations are NOT REQUIRED to bring the Cathedral sanctuary or interior into conformity with liturgical laws and norms presently in force in the Roman Catholic Church.

What is being proposed by the applicants is a preference or a desire, but it is being expounded as a “requirement”. This is incorrect and misleading.

Preferences and requirements, cannot be confused.

If one acknowledges that “the cathedral is a protected structure of special religious, architectural, historical, cultural and social interest and of international stature, which must be considered as a whole and could not sustain the proposed alterations and maintain any integrity,” then the following is a necessary corollary:

The description of St. Colman’s Cathedral: “a protected structure of special religious, architectural, historical, cultural and social interest and of international stature, which must be considered as a whole”, as is self evident, is constituted by a series of considerations and qualifications which together and singularly must be recognized as distinct from the issue of conformity to liturgical laws and requirements. An edifice can be of architectural, historical, cultural, social, artistic and even religious interest but not be subject to any liturgical law or issue. And the opposite is equally true: a building can hold a liturgical interest, yet have no architectural, historical, or artistic interest.

Just the same, while said group of “non-liturgical” interests does exist and by its nature could be held distinct from issues of “liturgical interest” it must be recognized that in the matter of re-ordering St. Colman’s Cathedral **the same “architectural, historical, cultural, social, and even religious interest” is inextricably entwined with the undeniable “liturgical interest” which the Cathedral houses and represents.**

Upon inspection, the actual internal layout of the cathedral does not present or contain any aspect which is contrary to liturgical legislation that would require change. Much less is there any alteration or adjustment which could be or is imposed by liturgical laws with regard to St. Colman's Cathedral. This means the present internal layout is an intrinsic part of the "protected structure of special religious, architectural, historical, cultural and social interest and of international stature, which must be considered as a whole", particularly when the same is utilized as designed to be used in its inherent liturgical function, according to the legislation of the Roman Catholic Church.

If there was no liturgical legislation to abide by then the granting of the permission for re-ordering would be incontestable canonically.

If liturgical legislation in force in the Roman Catholic Church had been rightfully and fully observed in planning the proposed re-ordering¹ there would be no grounds for an action against the ill-founded Town Council decision which does not give proper and full attention to applicable liturgical law.

The recent Instruction *Redemptionis Sacramentum*, compiled by the Congregation for Divine Worship and the Discipline of the Sacraments in agreement with the Congregation for the Doctrine of the Faith, at n. 9 "recalls that the whole tide of faith flows through the rites and prayers of the liturgy," but "abuses sometimes show up an ignorance of the meaning of the norms themselves, through a lack of knowledge of their deeper meaning and antiquity." (Archbishop Domenico Sorrentino, Commentary on *Redemptionis Sacramentum*, 23 April 2004)

In his Commentary the Undersecretary of the Congregation for Divine Worship and the Discipline of the Sacraments then warns that it is "absolutely forbidden... to make the liturgy a free zone for experimentation and private arbitration, which can in no way be justified by any good intention". (ibid.); and reminds us that the Instruction *Redemptionis Sacramentum* is "a radical antidote to abuses" (ibid.) thus all liturgical norms should be read and, hence, restrictively interpreted.

It is in this light that John Paul II, in *Spiritus et sponsa* (n. 7), called for an intensification of "liturgical life within our communities".

For greater detail on "the current liturgical requirements of the Catholic Church" I direct attention to a previous submission with same title by Reverend Father Gabriel Burke, CC, dated 19th August 2005.

¹ As stated in liturgical legislation the criteria for new church edifices do not apply to the reordering of an existing church edifice. In fact, regardless that in my opinion the Cathedral of Los Angeles is not normative, in this case it must be said that any reference is irrelevant by the simple fact that *Our Lady of the Angels* is a NEW church.

Title 2: Ad normam legis The Norms of Laws

Only the **Roman Pontiff** can legislate in matters of liturgy, unless specific and express delegation is made to the diocesan bishop.

By virtue of his supreme office as the successor of Saint Peter, the Roman Pontiff is the head of the Episcopal college and exercises over the universal Church full and supreme power of governance. His power is truly Episcopal, ordinary, and immediate, and he can always freely exercise this power. All the pastors and other faithful, whatever their rite or hierarchical rank, whether personally or as a group, must be hierarchically submitted to give obedience to him, not only in matters of faith and morals but also in all that pertains to the discipline and governance of the Church that is spread all over the earth. (cf. can. 331 CJC)

Canon 360 CJC further clarifies: The Supreme Pontiff usually conducts the business of the universal Church through the Roman Curia, which acts in his name and with his authority for the good and for the service of the Churches. The Curia is composed of the Secretariat of State or Papal Secretariat, the Council for the public affairs of the Church, the Congregations, the Tribunals and other Institutes. The constitution and competence of all these is defined by special law.

The exclusive competence of the Roman Pontiff is reaffirmed in the March 25th 2004, Instruction *Redemptionis Sacramentum*,

14: “The regulation of the Sacred Liturgy depends solely on the authority of the Church, which rests specifically with the Apostolic See and, with the Bishop.”²

15: “The Roman Pontiff, ‘the Vicar of Christ and the Pastor of the universal Church on earth, by virtue of his supreme office enjoys full, immediate and universal ordinary power, which he may always freely exercise’,³ also by means of communication with the pastors and with the members of the flock.”

16: “It pertains to the Apostolic See to regulate the Sacred Liturgy of the universal Church, to publish the liturgical books and to grant the *recognitio* for their translation into vernacular languages, as well as to ensure that the liturgical regulations, especially those governing the celebration of the most exalted celebration of the Sacrifice of the Mass, are everywhere faithfully observed.”⁴

17: “The Congregation for Divine Worship and the Discipline of the Sacraments attends to those matters that pertain to the Apostolic See as regards the regulation and promotion of the Sacred Liturgy, and especially the Sacraments, with due regard for the competence of the Congregation for the Doctrine of the Faith. It fosters and enforces sacramental discipline, especially as regards their validity and their licit celebration’. Finally, it ‘carefully seeks to ensure that the liturgical regulations are observed with precision, and that abuses are prevented or

² Second Vatican Ecumenical Council, Constitution on the Sacred Liturgy, *Sacrosanctum Concilium*, n. 22 § 1; cf. Code of Canon Law, can. 838 §1.

³ Code of Canon Law, can. 331; cf. Second Vatican Ecumenical Council, Dogmatic Constitution on the Church, *Lumen gentium*, n. 22.

⁴ Code of Canon Law, can. 838 §2.

eliminated whenever they are detected'.⁵ In this regard, according to the tradition of the universal Church, pre-eminent solicitude is accorded the celebration of Holy Mass, and also to the worship that is given to the Holy Eucharist even outside Mass.”

18: “Christ’s faithful have the right that ecclesiastical authority should fully and efficaciously regulate the Sacred Liturgy lest it should ever seem to be ‘anyone’s private property, whether of the celebrant or of the community in which the mysteries are celebrated.’”⁶

The liturgical norms contained in *Redemptionis Sacramentum* are directly grounded in Canon Law and other legislation.

Canon 838 CJC states: §1 “The ordering and guidance of the sacred liturgy depends solely upon the authority of the Church, namely, that of the Apostolic See and, as provided by law, that of the diocesan Bishop.”

§2 “It is the prerogative of the Apostolic See to regulate the sacred liturgy of the universal Church, to publish liturgical books and review their vernacular translation, and to be watchful that liturgical regulations are everywhere faithfully observed.”

§3 “It pertains to Bishops’ Conferences to prepare vernacular translations of liturgical books, with appropriate adaptations as allowed by the books themselves and, with the prior review of the Holy See, to publish these translations.”

§4 “With the limits of his competence, it belongs to the diocesan Bishop to lay down in the Church entrusted to his care, liturgical regulations which are binding on all.”

With an eye to the legislation in force and given the public nature proper to liturgical activities, it is plainly evident that these can be regulated solely by the authority of the Church. Diversely, there could be no guarantee of the value of the Sacraments, nor the coherence of the liturgical formulæ with the faith of the Church. Indeed, the liturgy is so closely linked to the principles of the doctrine of the Church that it is very difficult to separate the authority of the *magisterium* from the responsibilities pertaining to the hierarchy of the Church in the organization of liturgical activities: *lex orandi, lex credendi*. Consequently, by divine right – always exercised by the hierarchy throughout history – the liturgy has been subject to the laws of the Church. This is the content of liturgical law, which has to determine the correct expression of the authentic prayer of the Church.

The importance of the competency proper to the Holy See in preparing liturgical books and in supervising the fulfilment of the legislation on this matter is obvious. The competent organs of the Roman Curia in liturgical matters as well as

⁵ Cf. Pope John Paul II, Apostolic Constitution, Pastor Bonus, 28 June 1988: AAS 80 (1988) pp. 841-924.

⁶ Cf. Pope John Paul II, Encyclical Letter, Ecclesia de Eucharistia, n. 52: AAS 95 (2003) p. 468.

the most important provisions related to the recent liturgical reform, are indicated in canon 838 and undoubtedly form a fundamental part of current liturgical law.

Since the Constitution *Pastor Bonus* “whatever pertains to the Apostolic See concerning the regulation and promotion of the sacred liturgy, primarily of the sacraments (art. 62) is the responsibility of the Congregation for Divine Worship and the Discipline of the Sacraments (arts. 62-64). As shown by the Instruction *Redemptionis Sacramentum* the Congregation for the Doctrine of the Faith is also invested with authority to oversee the proper application of liturgical laws.

The competence of the conferences of bishops regarding the translation of liturgical books is defined according to what the liturgical books themselves have established on this point. For the procedures of the conferences in the preparation of decrees on this matter, cf. canon 455. In order to use a terminology similar to that of canon 455 §2, the term *approbare* – which appears in §3 of the draft of c. 838 to explain the necessary intervention of the Holy See before the decree of the conference of bishops becomes obligatory – is replaced by that of *recognoscere*, which refers to the act of the competent higher authority permitting the promulgation of the law of a lower-level authority. This is not a mere formality, but indeed an absolutely necessary act of the power of governance which may also impose modifications – even substantial ones – of the law or decree presented for *recognitio*.

The competence proper to the diocesan bishop indicated in this canon echoes stipulations of *SC* 41-46 concerning the bishops as “high priest of his flock” (cf. Can. 387-390). His mission of supervising the fulfilment of the provision of liturgical law is extremely important. A more specific consideration of this obligation is considered in the introduction to the Instr. *Tres abhinc annos* and in canon 392, which states: “Since the Bishop must defend the unity of the universal Church, he is bound to foster the discipline which is common to the whole Church, and so press for the observance of all ecclesiastical laws”. (Code of Canon Law Annotated)

The **Episcopal Conference** can only legislate within the limits of its authority, but this does not include norms regarding the liturgy. Any norms given by the Episcopal Conference would have to be approved by the Holy See through the process of *recognitio*.

In fact the Instruction *Redemptionis Sacramentum* n. 28 sanctions: “All liturgical norms that a Conference of Bishops will have established for its territory in accordance with the law are to be submitted to the Congregation for Divine Worship and the Discipline of the Sacraments for the *recognitio*, without which they lack any binding force”. (cfr. Can. 838 §3 CJC)

With regard to the Bishops' Conference Canon 455 §1, C.J.C. establishes that general decrees can be made “only in cases where the universal law has so prescribed, or by special mandate of the Apostolic see, either on its own its own initiative or at the request of the Conference itself.”

The canon in § 2 specifies: “For the decrees mentioned in § 1 validly to be enacted at a plenary meeting, they must receive at least two thirds of the votes of those who belong to the Conference with a deliberative vote. These decrees do not oblige until they have been **reviewed by the Apostolic See** and lawfully promulgated.”

§ 3 “The manner of promulgation and the time they come into force are determined by the Bishops’ Conference.”

§ 4 “In cases where neither the universal law nor a special mandate of the Apostolic See gives the Bishops’ Conference the power mentioned in §1, the competence of each diocesan Bishop remains intact. In such cases, neither the Conference nor its president can act in the name of all the Bishops unless each and every Bishop has given his consent.”

As poignantly commented in The Code of Canon Law Annotated, the text of **Can. 455 CJC** § 1 prevents one from understanding that conferences of Bishops may issue general decrees on any type of subject. Those that have the force of law are those which pertain to subjects over which it has authority (Cfr., *Comm.* 12 [1980] 268). The CPI/ 84 - 89 issued an extensive interpretation of the content of § 1, and applied it not only to the general decrees of cc. 29 – 30, but to all normative acts in general, and specifically, to the general executory decrees of c. 31 (cfr. Reply of the CPI/84 of 05-07-1985, AAS [1985] 771; *CLD* 11 [1983 – 1985] 69; cf. Appendix III). Excluded from this general criterion are, for example, the appointment of the officials of the conference or the experts. Naturally, these will not require a mandate from the Holy See.

The conferences of the bishops collegially exercise (cf. C. 119) ordinary power (cf. C. 131, §1) in matters which are entrusted to them by common law, which are numerous in this Code, or by special mandate of the Holy See, given *motu proprio* or at the request of the conference. **Outside this scope, the conference of bishops has no authority, since the content and limits of its activity are not established by the bishops, whether considered jointly or separately, but by the supreme authority of the Church** (cf. *Comm* 12 [1980] 244- 245). One must note that the unanimity mentioned at the end of § 4 does not authorize the conference to issue general decrees (cf. §1) but only to enter into collective actions. The exercise of authority in the terms of this canon is entrusted only to the plenary meeting. It may not be delegated subsequently to any other body of the conference. (Cf. Reply of the Central Commission for the Coordination of Postconciliar Work and for the Interpretation of Conciliar Decrees of 10- 06- 1966, *AAS* 60 [1988] 361; *CLD* 7 [1968 – 1972] 131; Reply of CPIV/ 67- 84 of 31-01- 1980, *AAS* 72 [1980] 106).

For the validity of decision on matters in which its competence is acknowledged, the favourable vote of two-thirds of the members with a deliberative vote according to the statutes is required. If these validly adopted decisions are to have *binding force*, the **recognitio** of the Holy See is also required, as well as subsequent promulgation through the channels determined by the conference. These decisions, according to the Directory *Ecclesiae imago* 212, shall

be faithfully accepted from that time onwards by the diocesan bishops, even though they might not have given them their favourable vote in the beginning. The same number of this Directory Points out that the other “decisions” adopted by the conference – those which do not obtain the necessary number of votes required or which do not enter into the juridical competence of the conference – must ordinarily be adopted by each bishop and eventually given legal force by him as diocesan legislation, in deference to the unity with and charity towards his brothers in the episcopate, unless there are grave reason that prevent their application in the diocese. These reasons he will have to evaluate before God.

According to a response of the CPI/ 84 –89 of 05- 07- 1985(cf. *AAS* 77 [1985]771; CLD 11 [1983-1985] 69; cf. Appendix II) the *recognitio* is necessary not only for general decrees, as indicated in the canon, but also for general executory decrees given by the conference of bishops according to cc. 31-33 (cf. appendix III).

A **diocesan Bishop** has executive and regulative competence within the territory entrusted to his pastoral care and governance.

Said regulative competence in liturgical matters is not very broad. On the contrary, a diocesan Bishop has a legislative authority that is quite limited. Without a specific mandate the Bishop cannot

The Diocesan Synods of 19th March 1997 illustrates these nine areas of competence as indicated in the Code of Canon Law:

With regard to exercising the Teaching Office - “*Munus Santificandi*” – bishops are “*i moderatori, i promotori e responsabili di tutta la vita liturgica nella chiesa loro affidata*”. *Al vescovo diocesano compete, tenute presenti le disposizioni dell'autorità suprema della chiesa, dettare norme in materia liturgica per la sua diocesi, alle quali sono tutti tenuti. Il Codice di diritto canonico affida poi alla potestà normativa del vescovo alcuni compiti particolari:*

- *regolare ciò che attiene alla partecipazione dei fedeli non ordinari nella liturgia, osservando quanto il diritto superiore abbia disposto al riguardo (Cf. Can. 230 §§ 2 e 3);* [Lay people in liturgical actions in accordance with the law]

- *stabilire, se la Conferenza episcopale non ha disposto in merito, i casi di “grave necessità” per l'amministrazione di alcuni sacramenti ai cristiani non cattolici (cf. Can. 844 §§ 4 e 5);* [administering sacraments to christians not in full communion with the catholic Church in moments of grave and pressing need]

- *determinare le condizioni perché si possa tenere l'educazione in una casa privata e portarla con se in viaggi (cf. Can. 935);* [unlawful possession of the blessed Eucharist]

- *laddove il numero di ministri sacri sia insufficiente, regolare l'esposizione dell'eucarestia da parte di fedeli non ordinari (cf. 943);* [insufficient ministers for the exposition of the blessed Sacrament and for the eucharistic blessing]

- *ordinare ciò che attiene alle processioni (cf. Can. 944 §2);* [regulations for participation in processions]

- *tenendo presenti criteri concordati con gli altri membri della Conferenza episcopale, determinare in quali casi si verifica la necessità dell'assoluzione collettiva (cf. Can. 961 §2);* [conditions required for general absolution]

- *dare disposizioni circa l'amministrazione comune del sacramento dell'unzione degli infermi per più malati contemporaneamente (cf. Can. 1002);* [communal celebration of anointing of the sick]
- *stabilire norme per le celebrazioni domenicali in assenza di presbitero, osservando quanto prescritto dalla legislazione universale della Chiesa in merito (cf. Can. 1248 §2).* [liturgy of the Word or prayer when no sacred minister is available]

Outside of these specific areas the Bishop does not enjoy autonomous legislative power, but must have a special mandate or order from the Holy See. Without a specific mandate all other dispositions would not have the force of law, just as any non authoritative interpretation of liturgical laws would have no more force than an opinion.

When the diocesan Bishop is to make decisions of a liturgical nature, these cannot be in contrast with the legislation and the Holy See.

What's more, the decision of the Bishop must be *ad normam legis* and cannot be despotic, meaning it must be made *cum prudentia* (*Eucharisticum mysterium*, 25 May 1967, n. 24).

Once again it must be clear that all of the decisions of the bishop are open to administrative recourse to the competent Dicastery of the Roman Curia.

As specifically regards cases of re-ordering a church the Bishop is to use care to avoid damaging or dilapidating artistic treasures, “*cavendum est ne thesauri artis sacrae in optandis ecclesiis dilapidentur*” (*Eucharisticum mysterium*, 25 May 1967, n. 24).

In light of the foregoing it must be observed that if a bishop cannot authentically or authoritatively interpret liturgical laws of the Roman Catholic Church, but is bound to abide by and respect them, the same must be said and be applicable to a Town Council or civil authority when deciding on a planning application for a Church “of special religious, architectural, historical, cultural and social interest and of international stature.”

De hoc Sapientiores judicent!

Title 3: The Legal Status of “A Place of Worship”

The applicants have repeatedly indicated a book published by a Commission of the Conference of Bishops which is titled “A Place of Worship”.

It must be stated that this publication was never put to a vote by the Episcopal Conference and it was never submitted to the Holy See for *recognitio*, meaning it has never been approved. Hence **this publication is not vested with *vim legis* and thereby it is totally devoid of any authority.**

In fact, according to the dictates of Canon 455 § 1, CJC, it is legitimate to question if it was lawful for the commission to publish this book.

This is confirmed by n. 20 of the *Motu proprio Apostolos Suos* of 21st May 1988, which reads: “In the Episcopal Conference the Bishops jointly exercise the Episcopal ministry for the good of the faithful of the territory of the Conference;

but, for that exercise to be legitimate and binding on the individual Bishops, there is needed the intervention of the supreme authority of the Church which through universal law or particular mandates, entrusts determined questions to the deliberation of the Episcopal Conference. Bishops, whether individually or united in Conference, cannot autonomously limit their own sacred power in favour of the Episcopal Conference, and even less can they do so in favour of one of its parts, whether the permanent council or a commission or the president. This logic is quite explicit in the canonical norm concerning the exercise of the legislative power of the Bishops assembled in the Episcopal Conference: “The Conference of Bishops can issue general decrees only in those cases in which the common law prescribes it, or a special mandate of the Apostolic See, given either *Motu Proprio* or at the request of the Conference, determines it”⁷. In other cases “the competence of individual diocesan Bishops remains intact; and neither the Conference nor its president may act in the name of all the Bishops unless each and every Bishop has given his consent”⁸.

Did the Episcopal Conference have a mandate from the Holy See to publish a book on the liturgy?

If not, then why is the commission who is supposed to advise the Conference publishing this book?

The book “A Place of Worship” contains nothing more than opinions, hence it must be disregarded.

Title 4: The Liturgical Competence of the Historical Church Advisory Commission

If it has been established, and only after it has been established that the Ordinary did create legally and validly create the Historical Church Advisory Commission will it be possible to verify the limits of competence given by delegation from the Bishop to said Commission with regard to liturgy. Without proper delegation of powers ALL ACTS ARE INVALID.

Do we have a copy of the decree of delegation?

With regard to delegated powers one must be cognizant that said powers cannot exceed those of the Bishop.

This delegation of powers should be reflected in the statutes of the commission. Previously it was asked, and here it is reiterated: **Do we have a copy of the Commission's statutes, and the decree of approval of the same?**

The Commission must know the liturgical legislation. Are there any liturgists or experts in liturgical legislation on the Commission? Once again, **do we know the background and expertise of the members of the Commission?**

⁷ *Code of Canon Law*, Canon 455, 1. By the expression “general decrees” is also intended the executive decrees mentioned in canons 31-33 of the *Code of Canon Law*, cf. Pontificia Commissio Codici iuris Canonici Autentice Interpretando, Responsum ad propositum dubium *Utrum sub locutione (14 maii 1985): AAS 77 (1985), 711*

⁸ *Code of Canon Law*, Canon 455, 4.

And, do we have a copy of the decrees which appoint the members of the “Historical Churches Advisory Commission”?

Any recommendation made by the Historical Churches Advisory Commission could not restrict the options available in the law. A legally existing Commission would not and could not have the power nor the authority to overturn or change liturgical law; nor could it pretend to give an authentic interpretation of liturgical law.

This is particularly true with regard to the General Instruction of the Roman Missal and the norms of artistic patrimony.⁹

Title 5: Administrative Hierarchal Recourse

The direct hierarchical superior of the Ordinary of Cloyne is the Holy See, which handles the above captioned administrative disputes through the Dicasteries of the Roman Curia, each of which is vested with specific subject matter jurisdiction.

In this submission the point has been made that it is possible to make administrative hierarchical recourse against a single administrative act of a bishop

On Sunday July 10, 2005 a letter from the Ordinary to the Faithful was read in all the Churches, announcing that the design for the re-ordering was complete and “ready to be submitted to the Planning Authority.”

The Ordinary also represented that “the design was submitted by [him] to the relevant Congregation in Rome and received its approval. In the letter of approval the Cardinal Prefect states: “The plans seem in fact to ensure adequate space for the celebration and to make the sanctuary visually more accessible to the faithful.” The letter of the Ordinary then quotes the conclusion of the letter from the Prefect: “the Congregation wishes to congratulate Your Excellency once more on the zeal shown by many in the drafting of this project and from its point of view considers the question now closed”.

The Ordinary's letter which was read July 10th 2005 in the Churches is not a decree. What's more, the so-called “letter of approval” does not approve anything, as it would be far too early for the competent Dicastery to give expressions of approval. If a private letter from the Eminent Prefect does exist, it cannot be considered anything more than a private note that by no means is binding on the Dicastery.

For the sake of clarification it is worthy of note that the “reasons” indicated in the letter for re-ordering the Cathedral are too generic, too nebulous, insufficient and misleading, i.e. “the task of re-ordering the Sanctuary, in accordance with the mind of the Church and the spirit of the Second Vatican

⁹ Second Vatican Ecumenical Council, Constitution on the Sacred Liturgy, Sacrosanctum Concilium, n. 126; Sacred Congregation of Rites, Instruction Inter oecumenici, on the orderly carrying out of the Constitution on the Sacred Liturgy, 26 Sept. 1964, n. 91, AAS 56 [1964], p. 898.

Council... is necessary to enable the congregation to have full and active participation in the Liturgy”.

If these reasons were included in the requisite decree, they would not suffice *saltem summarie* (Can. 51 CJC) to justify the re-ordering.

It should be evident that if one of Christ's faithful impugned a similar administrative decree before the Congregation for Divine Worship and the Discipline of the Sacraments the above reasons would have to be weighed, and they would not be sufficient for approval. This is simply because said reasons would not find support in the liturgical legislation. The distinction between requirement and preference is cogent here.

Again, **I was unable to review an original copy of this decree for the re-ordering in the case file.**

Does the purported “letter of approval” make any reference to the decree?

The Congregation for Divine Worship and the Discipline of the Sacraments cannot give final approval if a decree does not exist.

It must be emphasized that the competent Congregation could not give the approval if the voice of the faithful had not been allowed to be heard: this can only be done by issuing a decree which is made known to the person[s] it will affect, allowing them the possibility to be heard in accordance with the law.

It would be highly irregular for the Bishop to take the decree to Rome before announcing his decision to the faithful. This would be a violation of the rights of the faithful under Canon law.

For the Bishop to lawfully issue the decree he must first consult experts as required by Canon law. On this point the Bishop writes in his above mentioned letter: “Once the Planning Application has been submitted the normal process of public consultation will then begin... The venues, dates and times for these meetings will be announced next Sunday.” “*Quantum fieri potest, eos audiat quorum iura laedi possint*” (Can. 50, CJC), from a canonical standpoint the experts and the faithful are to be heard before a decree *cum prudentia* is issued.

From the so-called “approval letter” there appears to be a final point that deserves clarification: “the Congregation... from its point of view considers the question now closed”.

Precisely what question had been raised by the Bishop, who personally submitted the design to “the relevant Congregation” that needed to be “closed”?

Obviously this question can only be answered by His Excellency, the Bishop!

Allow me to reiterate: the single administrative act (the decree) to re-order the interior of St. Colman's Cathedral is subject to challenge by one of Christ's faithful (Can. 1732-1739, CJC), and thereby it would be scrutinized by the competent Dicastery of the Roman Curia through administrative recourse in First Instance.

The Dicastery would either approve the decree and the actions of the Ordinary, or the decision would reject the planned re-order and strike down the impugned decree.

Only the Holy See can legitimately decide whether a proposed re-ordering is to be approved. **This means that regardless of what the Appeal Board should decide the entire matter must still receive approval by the Holy See which will exercise its authority by evaluating, and establishing whether liturgical laws have been scrupulously followed *in decernendo et in procedendo*.**

CONCLUSION

The application for the re-ordering should be rejected inasmuch as it must first receive approval from the Holy See. Until said approval is given by the Holy See it would be premature, and even non-sensical, to give planning permission for the re-ordering of the interior of St. Colman's Cathedral.

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