



# LEADERSHIP, MINISTRY & A COFFEE MACHINE

Figtree Anglican Church v. the Dobbs family

*What are the limits on the power and authority of the clergy and lay leadership of a Parish and officers and senior clergy of Sydney Diocese of the Anglican Church of Australia to prosecute pseudo-criminal proceedings against an ordinary parishioner?*

*In its' prosecution of the Dobbs family, the leadership of Figtree Anglican church (in Wollongong NSW Australia), the director of the Professional Standards Unit (PSU) of the Anglican church of Australia, Sydney diocese, the then Chancellor of the Diocese Peter Grogan QC, the members of the Professional Standards Committee (PSC) and the investigator Ken Taylor, appointed by the PSU all, either wilfully or with blinding incompetence, tried to argue that Dr. Dobbs held a position of leadership in the parish (as a volunteer) and therefore the PSU had jurisdiction to act against him and his family in relation to the deluded allegations brought by Lee Nicholls on behalf of her 20-year-old daughter, Emma. This was because he had served espresso coffee to parishioners and others at outreach events and after regular services using a commercial coffee machine he had presented to the parish and which he and one of his sons had trained as baristas to use. For all sorts of reasons this was nonsense, which is discussed in this article, which was first published on the website Anglican Future Louise's Page in 2009.*

*It has been updated, because Figtree Anglican church still have not carried out the directions of the then Archbishop and undertaken a reconciliation process with the Dobbs family.*

Louise Greentree  
2018

**LEADERSHIP, MINISTRY & AN ESPRESSO COFFEE MACHINE**

*What are the limits on the power and authority of the clergy and lay leadership of a Parish and officers and senior clergy of Sydney Diocese of the Anglican Church of Australia to prosecute pseudo-criminal proceedings against an ordinary parishioner?*

By Louise Greentree

*In her article 'Open Letter to the members of the Disciplinary Tribunal of the Anglican Church of Australia Sydney Diocese: Setting the Boundaries on Church Discipline'<sup>1</sup> **Louise Greentree**<sup>2</sup> raised the question of what boundaries if any existed under the Anglican Church of Australia Sydney diocese Discipline Ordinance 2006, in relation to a number of areas including jurisdiction,<sup>3</sup> taking as a case study the conduct of Figtree Anglican Church and the Professional Standards Unit (PSU) in the matter of Dr. Dobbs and his family.<sup>4</sup>*

*In this article, she charts the history of the initial challenges to jurisdiction up to forcing the Archbishop Dr. Peter Jensen to appoint a promoter of charges in order to bring the challenge to jurisdiction before the diocesan Disciplinary Tribunal, and the various ways in which the PSU and others failed to give due and proper consideration to the issue. She continues with a close examination of the material that the diocese finally produced to support its argument that Dr. Dobbs is a 'church worker' as defined by the Discipline Ordinance 2006 and thus subject to the jurisdiction of the Professional Standards Unit (PSU) and its Director Philip Gerber, the members of the Professional Standards Committee (PSC) and the diocesan Disciplinary Tribunal.*

*In the final part the article chronicles the preparation for a preliminary hearing by the diocesan Disciplinary Tribunal on the point of jurisdiction. It reports what happened at that preliminary hearing, resulting in the Promoter for the diocese offering (insisting, even) that the Tribunal recommend to the Archbishop that the charges be withdrawn and dismissed, but leaving the issue of the boundaries on jurisdiction unresolved.*

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***New Readers Begin Here:*** the saga continues in the case of Figtree Anglican Church, in their relentless pursuit of Dr. Dobbs and the whole of his family – his wife Machel and their six children, who at the time (2007 - 2009) were one pre-teen, three teenagers and two young adults.

Readers who have been following the earlier articles will recall that this was the result of a complaint by third parties alleging child and adult sex abuse by Dr. Dobbs of a 20-year-old woman friend of one of his daughters, one Emma Nicholls, who had only recently been taken to the church by the Dobbs family. Eventually the child sex abuse allegations<sup>5</sup> and six other alleged 'incidents'<sup>6</sup> were dropped as unsustainable. The remaining allegations were radically down-graded to four simple incidents of what the church legislation calls low level sexual harassment by unwelcome touching of an adult woman, even if unintentional or sexual exploitation. Even these are denied by Dr. Dobbs.

When this article was first written it was well over 2 years since the first 'official' complaint was made by Emma's mother Mrs. Lee Nicholls on 1<sup>st</sup> and 4<sup>th</sup> February 2007, which included even then the information that her 20-year-old daughter had 'fallen in love' with Dr. Dobbs<sup>7</sup> and refused to stop trying to see him, his wife and family. It is true that towards the end of 2006 Emma Nicholls had started to behave strangely: one night she had invaded a Dobbs son's bedroom and got onto the bed beside him – he was asleep at the time - and fallen asleep there; she had invaded Dr. Dobbs' study and tried to nestle up to him while he was working on his computer; she kept ringing up the household and asking to speak to Dr. Dobbs (Machel Dobbs usually fielded these calls and always told her that Dr. Dobbs was too busy to speak to her).

Dr. Dobbs and Machel were making strenuous efforts, consistent with their Christian compassion, to remove her from their lives. She had first come into their lives through the home-schooling movement and as a friend of their eldest daughter who was 4 years younger than her. She was 14 when she first started coming to the Dobbs home. After that she would spend a lot of time for a period and then not so much for a while. She told Ken Taylor, the investigator appointed by Sydney diocese that, in effect, she used the Dobbs family to spend time with when she was having trouble at home, which was a mere 10 minutes away. In early 2006 she had not been around so much, but she reappeared in the family's life in about September/October 2006 through emailing the eldest daughter to re-establish contact, and she was making a nuisance of herself in a multitude of ways.<sup>8</sup>

The Dobbs family started to take her to Figtree Anglican church towards the end of 2006 in the hope that she would meet other people and cease to fasten herself onto them. Machel Dobbs sought assistance from a parishioner of Figtree Anglican church, Mrs. Pam Goodhew and for a while Emma transferred her attentions to Mrs. Goodhew, asking her to find her a flat to enable her to

move out of her parents' home, and also to provide someone to take her to her myriad of appointments with doctors and so forth.<sup>9</sup>

None-the-less, by mid-January 2007 Emma was back again trying to draw herself to Dr. Dobbs' attention. She wrote a pathetic letter to him (and another equally strange one to Mabelle Dobbs) apologising for her behaviour, and then tried to nestle up to him and stand in his way while he and one of his sons were trying to serve espresso coffee to the evening congregation at Figtree church.

Emma herself, on her own admissions in her signed statements as well as in the evidence supplied by her treating doctor is a woman with multiple physical and mental problems, some of which arise from her psychological disorder Obsessive Compulsive Disorder (OCD) and others in respect of which she was referred to a psychiatrist but, sadly, declined to attend the follow-up appointments.

What is particularly concerning about this case is that it is all too apparent from her own writings that if Emma had been touched in any way by Dr. Dobbs<sup>10</sup> it would have been with her absolute, ecstatic consent! This means that there was no substantive case against Dr. Dobbs, because it is an element of the 'offence' of sexual harassment of an adult that the alleged behaviour is unwelcome. Nor was Dr. Dobbs in a pastoral or supervisory relationship with Emma, which is one of the requirements of the offence 'sexual exploitation'. In any case, he had not engaged in any form of sexual activity with her. So, the convoluted attempts by the director PSU and others to claim that there was jurisdiction clouded this issue: even if there had been no problem with jurisdiction, the case could not have succeeded.<sup>11</sup>

## Introduction

### *The Discipline Ordinance 2006 Sydney diocese (the Ordinance)*

The Ordinance replaced The Church Discipline Ordinance 2002. Although it is commonly represented as the diocesan response to child abuse allegations its reach is far wider than that. It has also replaced other diocesan legislation dealing with the discipline of parish clergy for a range of 'offences' of which the commission of child sex abuse is but a small part. The scope of the Ordinance extends to adult consensual sexual relations outside marriage as well as such matters as a failure to pay due debts and issues of personal behaviour that were originally applied ONLY to clergy in view of the nature of their ordination vows. Now these are applied to a broad range of people, both employed and volunteers, both staff and parishioners, as will be discussed in more detail below.

While it was entirely appropriate that earlier legislation required parish clergy to live demonstrably 'good' lives to serve as a pattern for Christian living (as clergy vow to do with God's help on their ordination), the extension of the processes and the possibility of the imposition of penalties for an adverse finding in a highly flawed process, on people who are not in any form of contractual relationship with the parish or church organisations (and thus not vulnerable to be 'sacked'), and who might by any measure be seen to be ordinary parishioners who are involved in some form of assistance in the parish (as parishioners are frequently urged to do) represents a major change in the relationship of the parish of an Anglican church in Sydney diocese with its parishioners.

For that reason, the issue of the boundaries of jurisdiction are of even greater importance. It is impossible to overstate the devastating effect on a parishioner and his or her family members of a 'notification' or complaint to the PSU followed by an intensive and invasive (and largely irrelevant) investigation, followed by a consideration on the documents accompanied by representations by Mr. Philip Gerber, the then Director PSU<sup>12</sup> (but not by or on behalf of the accused person) with a public report, followed by a Tribunal hearing<sup>13</sup>.

In the case of the Dobbs family this process has taken almost 2 & 1/2 years from February 2007 and it is still not finished.

*2017 Update:*

When this was written the case had yet to go to the Disciplinary Tribunal, first on the issue of jurisdiction, on Dr. Dobbs' insistence. What happened there was that Phillip Gerber proved that he had no evidence to support his claim for jurisdiction and the case was 'withdrawn and dismissed'. Several recommendations were made to facilitate a welcome of the family back into Figtree Anglican church after informing the congregation of the collapse of the case against the family. However, both Bishop Al Stewart and the new senior minister of Figtree Anglican church the rev. Ian Barnet refused to comply with Dr. Jensen's request to comply.

In 2017, Mabelle had the opportunity to confront the present Archbishop of Sydney Dr. Glenn Davies and ask why there has been no apology and no announcement to the congregation and withdrawal of what was an unlawful ban on the family continuing to attend the church.

Convinced that a grave injustice had been done to the whole family he is preparing to make that announcement containing his personal apology and informing the congregation that the ban on the family is withdrawn. This has been a very welcome development, 10 years later.

*Why was the complaint entertained in the first place?**Two warnings from Phillip Gerber to FAC leadership.*

In the early stages of the complaint process in the case Philip Gerber wrote on two separate occasions in the nature of a warning to the Figtree Anglican Church leadership that there were problems with the case.

The first warning was in an email to Yvonne Gunning responding to her statement that her brother (a 'criminal lawyer') said the matter should be reported to the police and that Dr. Dobbs could get two years gaol; Mr. Gerber pointed out that the allegations were not of obvious criminality.<sup>14</sup>

The second was in an email to the Rev. Bruce Clarke raising concerns with the jurisdiction issue. In both cases the recipient had displayed eagerness to 'prosecute' the complaint and to spread gossip<sup>15</sup>. This in itself might have alerted Mr. Gerber to the lack of objectivity and balance demonstrated by these two main players on behalf of the Figtree Anglican church against the whole of the Dobbs' family.

*Other early indicators of problems with the case.*

However, there were additional issues that might have alerted him to the desirability of making careful and proper examination of all available evidence, especially in relation to the jurisdictional issue before allowing the matter to move forward.

The initial problem with the complaint is that it was not made by Emma Nicholls but by her mother Mrs. Lee Nicholls. And it was made a bare 2 months after Emma Nicholls' doctor recorded in his clinical notes that she was having arguments and trouble at home with both of her parents and she needed money to move out from the family home.<sup>16</sup> And before Emma even knew about the complaint made by her mother (who wanted her identity as complainant kept secret from Emma), a great many Figtree Anglican Church people knew about it and officious Figtree Anglican church staff and parishioners had started a campaign to harass the whole Dobbs family – adults and children alike - and to evict all of them from the church. The malice of this behaviour (which would not have been appropriate even if every word of the complaint was true) should have alerted Mr. Gerber that there was something operating here on the part of the FAC leadership of the time that defied Christian principles. It was also in defiance of ordinary principles of justice.

The sheer paucity of the complaints made on behalf of Emma Nicholls was another matter that should have alerted Mr. Gerber to consider very carefully how they would be handled. He certainly acknowledged the lack of clear-cut issues in his email to Yvonne Gunning.<sup>17</sup>

The fact that the PSU chaplain Jenni Woodhouse was informed by the Rev. Bruce Clarke on 20 February 2007 that Emma did not want to make a complaint, and was asked to advise whether they could proceed without her complaint should have induced Mr. Gerber to consider whether the matter should be taken any further. This might have been the better option rather than to rely on a statement signed only after this woman, characterised by Mr. Gerber himself as 'vulnerable' was put under pressure in a three-hour conference with the Children's Minister Captain Yvonne Gunning<sup>18</sup> on the evening of the very same day that the chaplain informed the Rev. Bruce Clarke that they needed Emma to make a complaint in order for the matter to proceed. There is a suggestion that she was only induced to make a statutory declaration (drawn up according to her mother's instructions by the Children's Minister Yvonne Gunning) after false representations were made to her that Dr. Dobbs was a serial sexual predator of other young women and therefore did not love her. Even so it took a three-hour session for Yvonne Gunning to get Emma's signature to what had been set up for her.<sup>19</sup>

Another worrying issue is the fact that before she was brought up to the mark to give a personal statement that echoed the terms of the statement already recorded from her mother in that three-hour interview with Yvonne Gunning, Emma had already received financial and other assistance from the Parish to set her up in a flat of her own; she was provided with furniture, and no doubt assisted with all the associated costs. The Parish is reputed also to have provided her with advice and assistance to obtain a disability pension, so she could continue to support herself away from her family. Her vulnerability to pressure to make the statement when she had previously refused to do so is only too evident. This situation comes perilously close to evidence obtained by 'bribery'.

But this is far from the full story. As this article explores, the state of the 'evidence' now produced by the diocese on Dr. Dobbs' insistence to 'prove' that Mr. Gerber had the authority to entertain the complaint (had 'jurisdiction') is so poor – non-existent in fact - that had this issue been properly investigated at the beginning, as so strongly urged by Dr. Dobbs, the matter would have stopped there.

In that case Emma's pathetic fantasies could have been dealt with medically and appropriately, as her treating doctor said to the investigator Ken Taylor, and without the certain humiliation that awaits her as this matter continues.

### **Jurisdiction: what the Ordinance says and some definitions**

Mr. Gerber had to establish that Dr. Dobbs was a **church worker** as defined in the Discipline Ordinance 2006 in order to claim that the PSU and the Professional Standards Committee and the Disciplinary Tribunal have been and are entitled to subject him to the process set up under that Ordinance. If it has not, then Mr. Gerber, the members of the PSC and the Tribunal are in no way protected from civil court proceedings and could be liable for damages for inflicting the highly damaging 2 ½ year (to date) process on Dr. Dobbs and his family.

Whilst there is clearly no difficulty with the church organisation setting up a process that exercises power and authority over parish clergy and over staff and employees of church and parish organisations (thus providing a process for 'sacking' them from their positions, and in the case of parish clergy of deposing them from Holy Orders for strongly unacceptable conduct), the legislation becomes highly problematic when it ventures into the area of church volunteers and ordinary parishioners, but this is a matter for further exploration elsewhere.<sup>20</sup> For the purposes of this paper it is sufficient to look at the range of the persons that the definition applies to.

The full definition contained in Chapter 1 clause 2 of the Discipline Ordinance 2006 is set out at the end of this article. The fundamental and overriding concept of the definition as applied to all

persons who are not ordained clergy is that they must be or have been in a **position of leadership** in the parish or church organisation, whether paid or as a volunteer. The definition interprets this concept with a number of specific examples, without closing the definition to any other form of 'position of leadership' that might exist, but which has not been anticipated by the legislators (that is, by diocesan Synod). An example of volunteers who are in positions of leadership (who are actually enumerated in the list in the definition) is persons who put themselves forward for election or appointment as wardens or election as members of parish council.

- Dr. Dobbs has never been a member of the ordained clergy. That precluded proceedings under sub-clause (a) of the definition.
- Nor had he held any position in a diocesan organisation nor exercised any function, and that precluded proceedings under sub-clauses (b)(i)-(vi) of the definition.
- Nor had he been an officer under Part 6 of the Church Administration Ordinance 1990 (which was applicable at the time)<sup>21</sup> which precluded proceedings under sub-clause (b)(vii) of the definition.
- Nor had he been appointed to any position of leadership by a curate-in-charge, wardens, or Parish council or a delegate, agent or representative of these, which precluded proceedings under part of sub-clause (b)(viii).

Mr. Gerber admitted in his first submissions to the Disciplinary Tribunal that none of the above categories of church worker were applicable to Dr. Dobbs.

Therefore Mr. Gerber could only rely on one of two parts of the definition –

- (i) An appointment to a position of leadership by a rector or his delegate referred to in part of sub-clause (b)(viii); or
- (ii) A general interpretation of the words 'position of leadership' in the light of the facts of the particular situation in the absence of an appointment by a Rector or his delegate.

Right from the start Dr. Dobbs said he had never been appointed to a position of leadership by the Rector or a delegate of the rector. And he very much doubted that making and handing around cups of espresso coffee constituted a position of leadership in any interpretation of that phrase.

Here is what he says about it:

[https://www.youtube.com/watch?v=FxlpYrINo\\_w](https://www.youtube.com/watch?v=FxlpYrINo_w)

*An appointment to a position of leadership by a rector or his delegate referred to in part of sub-clause (b)(viii)*

In relation to this, the first part of the definition that could be relied upon, the Rector does not have an open power to appoint anyone to any position in the church. At the relevant times of the Figtree Anglican church case under discussion the relevant diocesan legislation giving power to the Rector to appoint persons to a 'position of leadership' was the Church Administration Ordinance 1990 and in particular Clause 43.

That clause gives a power to the 'minister' (so defined to include the Rector and such others as curates-in-charge of a parish and persons who are not licensed to the parish as Rector but who perform similar functions and have similar responsibilities for the parish) to appoint certain persons for certain clearly defined purposes.

The full text of clause 43 is at the end of this article, but the Rector's power (set out in sub-clause (1)) or that of his delegate (under sub-clause (2)) to make an appointment is limited this list of persons –

*'superintendents, teachers, leaders or other officers', -  
for the purposes of exercising the control that the clause gives the Minister over the  
'policy, organisation and affairs of any Sunday School, bible class, study group, youth  
fellowship, guild or other organisation of the parish ....'*

Therefore Mr. Gerber would have to prove the following to establish that he had jurisdiction in the case:

- 1) That the rector either –
  - a. appointed, or
  - b. delegated the power of appointment -
    - i. to someone else, and
    - ii. that person appointed
- 2) Dr. Dobbs
- 3) To one of the positions of leadership in the parish organisations described in clause 43 or some other position of 'officer of a parish organisation' contemplated by that clause.

*A general interpretation of the words 'position of leadership' in the light of the facts of the particular situation in the absence of an appointment by a Rector or his delegate.*

In relation to this, the second part of the definition that could be relied upon, Mr. Gerber would have had to prove –

- 1) Dr. Dobbs
- 2) Held a position of leadership in the diocese or parish not included in the examples of sub-clauses (b)(i)-(viii).

### ***What in fact did Dr. Dobbs do in the parish?***

There were only two 'continuing' activities, two 'one'-off activities a year apart in 2005 and 2006, and another one-off activity, and at various times Mr. Gerber has tried to rely on some or all of these. All of them were undertaken only in the last 2 years before Dr. Dobbs and his family were expelled from the parish after 12 years' attendance at that church.

#### ***1. Making and handing out espresso coffee.***

The first continuing activity arose out of conversations with the then Assistant Minister the Rev. Leigh Roberts<sup>22</sup> lamenting the quality (rather, the lack of quality) of the coffee offered by the parish after church services. Dr. Dobbs offered to purchase, repair and donate a second-hand commercial espresso coffee machine to the parish so that the people on the refreshment team could offer espresso coffee, particularly to members of the public who would be coming to the church during a period of community outreach.

He did these things at his own expense and with his own expertise, but the machine was, in his words 'thrown into a cupboard', and nobody on the refreshment team would use it. Therefore, reluctantly as he did not want to make any firm commitment (he was trying to earn a living to support his wife and family of six children) he learnt how to be a barista, and set the coffee machine up on an old door set across a table in the lounge area of the church foyer, and started making coffee.

Initially, this was just for a period of community outreach in July 2006. Some members of the congregation asked him to continue and he did so. He was never on a roster, nor did he organise a



roster, and he was most certainly not a member of the existing refreshment team under the leadership of Jane Major-Smith<sup>23</sup>.

### ***2. Playing the guitar in one of the church bands on a fortnightly basis at one service.***

The second continuing activity did not continue for very long. Responding to a general call for help for more musicians and singers for the several 'bands' that played at services, he was placed on a fortnightly roster playing guitar in 'band a'. This was only for a period of a few months until he was told off in no uncertain terms by the music ministry leader that he should not have been at a 'leader's meeting'.

Mr. Gerber described this as 'an upfront role' which, he felt in his original claim of jurisdiction, constituted a position of leadership under clause 43, but he appeared later to withdraw reliance on it. But even so, the materials he produced for the Tribunal included copious pages of the rosters for all the bands, the instrumentalists, singers, lighting technicians and sound technicians.

When he was pressed at one of the several preliminary conferences with the Deputy President of the Tribunal Mr. Andrew Frank, Mr. Gerber finally admitted that he was only relying on two roles, and not on the so-called 'up-front' role in the band.

### ***3. Acting as a houseparent at a Kids' Camp, along with his wife, one in 2005 and one in 2006.***

The two 'one-off' activities in each of 2005 and 2006 that Dr. Dobbs participated in was to attend an annual Kids' Camp as a houseparent with his wife Machel. He did this at Machel's request, as she had been asked by the other pair of house parents to help out. This occurred at those two annual camps only. He and his wife, along with everyone else who was not attending the camps as a 'camper' was termed a 'leader' and this term was applied to some who were as young as 10, 12 and 13. He was not approached by the Director of the Kids' Camps, Yvonne Gunning, the Children's Minister of the parish. The camps themselves were simply an annual discrete activity among the many activities of the ministry to children conducted in the parish by Yvonne Gunning.<sup>24</sup>

### ***4. & 5 Attending a 'working with children' training session and signing a 'working with children' background check, which was in respect of his playing in the music ministry (as shown on the documents produced by the parish)***

The other two discrete activities apparently relied on by Mr. Gerber (according to the material prepared by him for the Tribunal) were these: first, undergoing a 'working with children' training session run by Yvonne Gunning; and second, submitting to a 'working with children' background check. Dr. Dobbs did this because he was informed both were required because he was playing in one of the parish bands and on the documents prepared at the time the nature of his 'ministry' is stated to be 'music'<sup>25</sup>.

Apart from the above Dr. Dobbs was an ordinary parishioner who attended church regularly and sat in the pews within the worship space or outside in the huge lounge area listening to the service on the public-address system.

### ***Interpreting the Ordinances***

At this point it is congruent with normal practice in interpreting legislation to look at the meaning of each word that is significant in the sections of the two relevant Ordinances. None of these words are defined in either the Ordinance, nor in any other pieces of church legislation. Therefore, it is only appropriate to interpret these words in accordance with common meaning and usage.<sup>26</sup> The first means of ascertaining this is to consult reputable Dictionaries of the English

language. Any number of Dictionaries can be consulted, and it will be found that there is commonality between the various dictionary definitions –

**Appoint (v) (to make an appointment):** to select somebody for a position or job: to select a person for an official position or to do a job.

**Appointment (n):** post, office (the word used in Cl. 43 of the Church Administration Ordinance 1990) or position (the word used in the Church Discipline Ordinance 2002, which was the predecessor to the Discipline Ordinance 2006).

**Organisation (n):** a group of people identified by a shared interest or purpose eg a business.

**Position:** title, standing, status, station, importance.

**Leadership:** office or position of leaders, headship, control, guidance or direction.

**Ministry:** the profession, services and the work of a religious minister.

**An analytical history of the diocesan responses to Dr. Dobbs' challenges to jurisdiction.**

*The first challenge to jurisdiction: Conversation and correspondence with the Director PSU who then 'forms a preliminary view'.*

Dr. Dobbs first challenged jurisdiction in a conversation with Mr. Gerber on 5 March 2007. His submissions were then contained in a letter to Mr. Gerber dated 12 March 2007. It is clear from the letter that he was torn between pressing the challenge to jurisdiction and not doing so and giving himself the opportunity to meet the complaints, which he felt were too ludicrous to be taken seriously by anyone, especially one who, like Mr. Gerber, held a law degree and was an experienced lawyer. As the matter progressed he realised that this was not how things worked in the PSU. Also in the meantime his whole family had been purportedly 'excommunicated' and banned from coming to church at Figtree by the Parish leadership with the knowledge and consent of Mr. Gerber and senior clergy of the diocese. It was then that he realised that the whole process was likely to be a sham and a disgraceful denial of natural justice. He started to doubt that he would ever get a fair and proper hearing under this Ordinance.

Therefore, he pressed the issue, not a 'mere technicality' but a fundamental concept of justice: that a person, committee, Tribunal or court only has authority to act within the limits placed on their powers by the statute or other instrument giving them that power. This is so obvious when State and Federal laws are considered. And clearly the Anglican Church of Australia Sydney diocese, by its' Parliament, Synod, intended to apply a similar principle when it enacted legislation that contained a definition clause describing the person over whom the legislation and its personnel, Mr. Gerber as Director PSU, the members of the Professional Standards Committee, and the members of the diocesan Tribunals, could validly exercise power and authority.

In response to Dr. Dobbs' verbal and written submissions Mr. Gerber replied in his letter dated 28 March 2007. He made the following points:

1. '**Inquiry**<sup>27</sup> has been made of Figtree Anglican Church ("FAC") **to ascertain what role or ministry** you were involved in at the relevant time.' (emphasis added).
2. '..you had a "coffee ministry" which was conducted in the vestibule outside the auditorium on a regular basis after services.'
3. 'This was an activity **endorsed by the Senior Minister (Rector)** as part of the programme of ministry.....'
4. '... and recognised as such both (sic) by yourself, the ministry staff (including the Rector) and others.'

5. 'We understand that you may also have been involved in an "upfront" music role which if correct would also constitute "...appointment by a Rector...".'

As a result of these considerations Mr. Gerber says that 'We (sic) have therefore formed the preliminary view that it is an "...appointment by a Rector..." under clause 43 church Administration Ordinance 1990 and in terms of the (Discipline) Ordinance (2006)'.

There are three problems immediately apparent with this response (apart from Mr. Gerber's assumption of the plural to refer to himself):

1. From the very beginning Mr. Gerber did not ask the correct question. He asked what role or ministry Dr. Dobbs carried out. The section of the definition that he was relying on refers to 'an appointment' by the Rector or his delegate (in this case) to a specified position – superintendent, teacher, leader in certain specified parish organisations or an 'other officer' in a parish organisation, not to a ministry or a role.
2. It is difficult to see how a 'coffee ministry' endorsed by the rector<sup>28</sup> as part of the 'programme of ministry' might, by even the longest stretch of interpretative imagination come within some, even distorted, idea of an officer of a parish organisation under S.43 CAO, and which under no stretch of the imagination could it be called a 'position of leadership' which is the overriding description.
3. The mere playing of an instrument on a roster administered by others, playing music chosen by others, and in the company of other people likewise under the control and supervision of a music ministry leader, is also not by any stretch of interpretive imagination a position of leadership, let alone an officer of an organisation under S.43 CAO.

Yet this is the actual 'judicial' conclusion that was applied to Dr. Dobbs by Mr. Gerber in the earliest response to his submissions.

It is unprofessional that Mr. Gerber was content merely to rely on inquiries without actually insisting that there be a proper investigation of the actual situation. It would have been appropriate for him to have taken steps to find out what documentary evidence existed – some letter of appointment would have been the clearest evidence of an appointment by the Rector or his delegate – and to satisfy himself by the most professional and appropriate means that his decision had a proper foundation in fact. Given that by this time Mr. Gerber was or should have been fully cognisant of the malice directed at the whole of the Dobbs family by members of the parish leadership, it would have been a simple matter of professional competence to have marshalled the evidence for such an important issue.

But this was not done; instead Mr. Gerber was content to undertake a quasi-judicial function (making a 'finding') without acting with 'judicial' competence in ascertaining the facts<sup>29</sup>. And the unfortunate result is discussed below.

#### **Dr. Dobbs formulates a detailed reply to Mr. Gerber's 'preliminary view' in favour of jurisdiction.**

Dr. Dobbs wrote a letter dated 22 April 2007 to Mr. Gerber attaching his submission in respect of the so-called preliminary finding, which he termed his 'second submissions'. In that letter he complains that Mr. Gerber has failed to respond to his earlier complaints about the way the he and his whole family have been treated by the Figtree leadership, especially in the light of the fact that the proper finding is that there never was jurisdiction. However, he says, 'I am still amenable to your attendance...at a discursive conciliation meeting' and goes on to talk about the tentative date and arrangements for that meeting.<sup>30</sup>

*In his submissions, Dr. Dobbs made five important points.*

**Firstly**, regarding Mr. Gerber's passing reference to Dr. Dobbs' position as a guitarist for a period of time with one of the bands, which he called an 'up front' position and characterised as an 'appointment by a Rector' without considering the status of it as a 'position of leadership': Dr. Dobbs pointed out that when he went to a 'worship leadership meeting' on 15 July 2006 and, as requested by other band members, raised questions about the direction that the worship music was taking he was told by the parish staff member Music Ministry Leader Mr. Trevor Hodge that he was out-of-order as he was not a member of the leadership team and he had no right to be at the meeting. Dr. Dobbs left the meeting and resigned from the band. Clearly therefore there are no grounds for the assertion that there had been an appointment of Dr. Dobbs to a position of leadership (even if there had been an 'appointment by a Rector' which there had not) in relation to his playing guitar in one of the several worship bands that were rostered to play for certain services on a fortnightly basis.

**Secondly**: he pointed out that part of the Discipline Ordinance definition refers to '(b) (vii) an officer of the kind specified in part 6 of the Church Administration Ordinance 1990'. Part 6 of the CAO specifies an 'organist, choirmaster or choir, secretary of Parish council and Treasurer, Accountant and bookkeeper' who may also be of the kind of 'officer' that the Discipline Ordinance covers. These are positions that largely involve organisational or administrative responsibility. Dr. Dobbs had not held any of these positions.<sup>31</sup>

Even more tellingly, he did not have any administrative or organisational responsibilities (other than to buy some coffee beans and milk) in relation to any activities in relation to Figtree Anglican Church.

**Thirdly**: he pointed out that clause 42 of Part 6 of the CAO gives power to the churchwardens with the concurrence of the minister to appoint a verger, cleaner, gardener or other person to perform duties in or about the church, and with the concurrence of the minister and subject to clause 45 to remove them 'from office at any time'. Clause 45 says that the removal of an employee is subject to the applicable laws relating to the termination of employment. The use of the words 'and subject to clause 45' in clause 42 makes it clear that these 'offices' are employed positions and that clause is not applicable to volunteers.

**Fourthly**: In further support of this argument he refers to the custom at Figtree Anglican Church to gather new-comers into duties as volunteers around the church to give them an incentive to continue contact with the church. Such involvement would include helping out in the kitchen, making BBQ's, helping with duties on week days at Figtree Anglican church – all similar in character to making and serving coffee after services. A different reading of clause 43, and a reading of the Discipline Ordinance in accordance with Mr. Gerber's 'finding' would mean that all of these people would be also 'officers' under the purview of the Discipline Ordinance 2006 and could be subjected to its processes. Bearing in mind that the Ordinance gives Mr. Gerber and the parish leadership power to drag the unfortunate person through these processes for such matters as not paying their due debts (even involuntarily – something that may afflict many people in the current economic climate) or gazing ever-so-slightly lustfully at their neighbour's spouse, this would indeed be a draconian introduction for new Christians to learning about the forgiveness and saving grace available through belief in Jesus Christ.

**Fifthly**: the making of an appointment to a position of leadership surely requires formal communication between the rector or his delegate and the 'church worker' establishing something in the nature of a contractual relationship whereby (i) the duties and responsibilities are agreed and also (ii) submission to the Ordinances of the Church in particular the Discipline Ordinance 2006 (any predecessor or successor) is made abundantly clear and (iii) accepted by the person receiving the appointment. This did not happen in Dr. Dobbs' case. There was no communication in the nature of an appointment; there was no communication of duties and responsibilities; there was no-one designated as persons that Dr. Dobbs would 'lead' (he was not the head of a roster of persons

providing coffee and refreshments); he was not invited to staff meetings; he was given no recognition nor thanks for what he did; if anything, his good nature was exploited.

*Problems with Phillip Gerber's failure to apply the definition appropriately.*

The following facts and comments are pertinent to the inappropriateness of Mr. Gerber's preliminary 'finding':

1. The definition of the Ordinance makes no reference to an 'up-front' position, only a position of leadership. And there needs to be an appointment to that by the rector or his delegate. Dr. Dobbs responded to a general call for more musicians (he plays the guitar) and he was placed on a roster, required to attend fortnightly rehearsals and provided with the music he was to play under the direction of the parish music leadership headed by Mr. Trevor Hodge<sup>32</sup>.
2. Dr. Dobbs was rostered on once a fortnight with a designated band alongside singers and sound and lighting technicians. If he was in a leadership position, then so were all of these. But the sound and lighting technicians were not in an 'up front' position.
3. In a later letter Mr. Gerber PSU referred to Dr. Dobbs having a 'singing role'. This indicates that from the very beginning Mr. Gerber was confused, and almost certainly misled, about the actual roles that Dr. Dobbs had in Figtree Anglican Church as well as any alleged appointment to them by the Rector or his possible delegate, the Rev. Bruce Clarke.
4. The corollary to the requirement that there be some sort of evidence of a formal appointment, whether in writing or orally or a combination of the two, is that there should also have been evidence of Dr. Dobbs' acceptance of the alleged appointment. As will be discussed below, there was no evidence of either the appointment or any acceptance.
5. In any event, the Church Administration Ordinance 1990 has a separate section under Part 6 that deals with the Rector's power of appointment and dismissal of such persons as organists, choir members, the parish secretary, treasurer, and bookkeeper. These come under the umbrella of the definition of church worker in the Ordinance in sub-clause (b)(vii), the one before that selected by Mr. Gerber to proceed under which he finally admitted was not applicable.
6. And ultimately damning is the fact that Mr. Gerber used then, and has continued to use right up to making his written submissions to the Tribunal, a verbal sleight-of-hand: he admits right from the beginning that the relevant clause of the definition that he relies on is (b)(viii) – an appointment by the Rector or his delegate pursuant to cl. 43 Church Administration Ordinance 1990; but the rest of his material, his letters and his conversations take a different turn which effectively acknowledges that he is (or must be) aware that there is no appointment by the Rector or his delegate to a position of leadership: Mr. Gerber talks (incessantly and irrelevantly) about ministry roles, coffee ministry, lay ministry, something approved by the staff meeting, a ministry called this by members of the parish leadership: anything but an appointment by the Rector or his delegate. He even talked about there being a 'coffee-cart' (as if this would signify a leadership position!) when what the reality was, was an old door laid across a couple of tables. This distortion of the case is surprising behaviour in an experienced practicing

solicitor especially one dealing with a 'litigant-in-person' who is not himself in practice as a solicitor.

### **What happened next?**

Nothing happened next. Mr. Gerber did not even give Dr. Dobbs the courtesy of a reply to his carefully argued submissions.

What he did do was to issue instructions to Kelly & Associates to commence an investigation not only of the complaints made on behalf of Emma Nicholls but also the false and unsubstantiated allegations made by the Rector's wife Dr. Helen Irvine, even though these had nothing to do with either Emma Nicholls nor Figtree Anglican Church, where no formal complaint had been made to the PSU by any person apparently involved (and never was), nor had any details been made available to Dr. Dobbs, let alone in the form of a statutory declaration as required by PSU process in order to allow him to prepare formal documents in reply.<sup>33</sup>

At this stage Dr. Dobbs and his wife were aware only of these vague complaints, introduced at the last moment when it seemed that some reason would prevail in the matter of Emma Nicholls, and the rev. Bruce Clarke had admitted to parishioner Dr. Clarrie Pratt that the case had collapsed, and they could not find out anything.

They were not informed at the time that an investigation had been commenced.

Eventually Dr. Dobbs, by now in a state of exasperation with the treatment he was receiving at Mr. Gerber's hands, threatened to take the matter to the Supreme Court of NSW on an application for an injunction against Mr. Gerber to stop him from proceeding in the matter. In the course of considering whether to grant this application the civil and secular court would have to do what Mr. Gerber refused to do, namely consider evidence and Dr. Dobbs' arguments about the failure of jurisdiction.<sup>34</sup>

### **Mr. Gerber decides to refer the question to the diocesan Chancellor**

The fact was, and still is, that Mr. Gerber could make such quasi-judicial decision without being subject to any review process under the diocesan Ordinances, a fact acknowledged by him in his letter in reply received on 3 September in which he proposed to refer the issue to the diocesan Chancellor, at the time Acting Judge Peter Grogan.

Dr. Dobbs responded by email on 10 September 2007 saying: 'I am not willing to wait for an "opinion" to be handed down with respect to the remaining body of information (ie evidence of the appointment) that I seek.' Mr. Gerber replied rather testily on 11 September 2007 to Dr. Dobbs (rather impertinently stripping him of his PhD), saying: 'Mr. Dobbs you have challenged jurisdiction. We (sic) will, as indicated, clarify that for you, and us (sic), by getting a second opinion of an eminent lawyer, i. e. the Chancellor, as you requested.'

Now Dr. Dobbs had not requested any opinion from any eminent lawyer. He wanted a proper judicial decision which would have to be made on the evidence and with all the appropriate processes normally available to a respondent, such as a right to cross-examine.

### **Mr. Gerber's letter of referral of the issue of jurisdiction to the then diocesan Chancellor Acting Judge Peter Grogan.**

<sup>35</sup>How Mr. Gerber approached this issue now was to fail to give the Chancellor appropriate documentation<sup>36</sup> and to ask the Chancellor the wrong question (again), and thereby he ensured that he received the answer he wanted – confirmation of his original 'preliminary view'. It is only recently that Dr. Dobbs has been able to obtain a copy of the two major documents that demonstrate this: the letter that Mr. Gerber wrote to the Chancellor on 4 September 2007, and a file note of a telephone conversation that he says that he had with the Chancellor some days later.<sup>37</sup>

The letter to the Chancellor is deficient in many ways. What it asked the Chancellor to do was to confirm Mr. Gerber's conclusions. It did not put the question in what would in the secular legal world be regarded as an appropriate statement of the case, and of course it was not accompanied by any evidence, nor indeed does it refer to any evidence. Mr. Gerber highlights the fact that the Rector has excluded the whole family from the parish – in other words a warning to the Chancellor that a decision against Mr. Gerber's interpretation is likely to inflame an already over-heated situation (the prudent lawyer would at that point be thinking about civil court proceedings against certain persons for damages). Mr. Gerber completes his information by enclosing a copy of 'the complaint and other relevant papers' (unspecified). There are three issues in Mr. Gerber's handling of this aspect of the matter:

*The first* is that Mr. Gerber made the submission without consulting with Dr. Dobbs on the wording of the 'stated case' and it would appear without even including his carefully argued submissions, which are not referred to in Mr. Gerber's letter.<sup>38</sup>

*The second* is the inclusion of irrelevant material discussed above, and the provision of the actual complaint. But which document was this? Emma Nicholls did not make an official complaint. She was only finally induced to make a statement (erroneous in parts) by Yvonne Gunning from which a statutory declaration was cobbled together and subjected to changes before being signed by Emma. Also, it has to be asked why 'the complaint' would be included, as it is not relevant to the question of whether there is jurisdiction – was Mr. Gerber trying to imply that the nature of the complaint should bear some influence on the Chancellor's decision? Surely what it did was to impact adversely on his appearance of impartiality.

*And thirdly:* what other 'relevant papers' were enclosed? Was Dr. Dobbs' document of carefully argued submissions ever considered by the Chancellor? If so, would not the Chancellor have been then alerted to the fact that Dr. Dobbs clearly denied that he had ever been appointed to a position of leadership by the Rector or his delegate, and would have called for evidence from the Rector on this point before taking the matter further and being induced to making yet another quasi-judicial finding without the exercise of appropriate judicial inquiry.

### ***How and what the then Chancellor (being an 'eminent lawyer') responded***

Based on the documents produced by Mr. Gerber, Acting Judge Peter Grogan would appear to have treated the referral for an opinion with neither due seriousness nor appropriate judicial consideration and competence. This is a reasonable inference from the manner of his response and its content, as reported by Mr. Gerber. He had been receiving copies of earlier emails between Dr. Dobbs and Mr. Gerber concerning the challenge to jurisdiction. But we have to remember that we have only Mr. Gerber's say-so that this is what Chancellor Grogan did and said.

If it is the case (as is unclear from Mr. Gerber's letter) that Mr. Gerber did not send to the Chancellor Dr. Dobbs' submissions, this would suggest a certain contempt on Mr. Gerber's part for Dr. Dobbs' arguments, and for his assertions that he had never been the subject of an appointment by the rector, nor his delegate nor by anyone else in the parish.

According to Mr. Gerber the Chancellor's response was expressed only in a telephone conversation of which a typed file note was produced by Mr. Gerber which reports the conversation in the following terms:<sup>39</sup>

2. *He has read the papers in the Dobbs matter and advises **that he is comfortable** that there is jurisdiction under the Discipline Ordinance. (emphasis added)*
3. *The respondents challenge (sic) jurisdiction in due course if the matter comes before PSC or Tribunal.'*

If Mr. Gerber has properly recorded what the Chancellor said, then this is an example of an unhappy want of an appropriate 'judicial' approach to the referral.

*Firstly*, whether the Chancellor was 'comfortable' with a judicial conclusion was not an appropriate test of whether that judicial conclusion was correct. The Chancellor should have called

for evidence that there had been an appointment of Dr. Dobbs to one of the positions of leadership described in cl.43 Church Administration Ordinance 1990 before declaring himself comfortable. Had he done so, and found, as is apparent now, that no such appointment was ever made, he could have made the sort of proper judicial findings of fact and application of the law which it was represented by Mr. Gerber to Dr. Dobbs that the Chancellor would do.

Had the Chancellor been furnished with Dr. Dobbs' carefully prepared and argued 'second submissions' he would have seen that Dr. Dobbs stated unequivocally that he had not been appointed to any position by the Rector or his delegate (which is required by the terms of cl. 43 Church Administration Ordinance 1990 in this case) and the Chancellor would surely have been professional enough to need to be satisfied that there was evidence to the contrary.

There was in fact a double deception of Dr. Dobbs operating in this situation.

*Secondly*, when the comment about being 'comfortable' is followed by one that suggests that Mr. Gerber can simply go ahead as if he did have jurisdiction, and let the Respondent challenge it either before the Professional Standards Committee or the Tribunal, it indicates some grave ethical problems permeating the conduct of Anglican Church lawyers at this time reminiscent of the gung-ho attitude of the excessively adversarial civil litigation lawyers of the 1980's<sup>40</sup>. This report of the Chancellor's conversation of course may not be correct, in which case it must reflect Mr. Gerber's attitude rather than that of the Chancellor. As the Chancellor did not put his 'finding' in writing accompanied by reasons, which might be expected and which Dr. Dobbs certainly asked for, we have no way of knowing exactly how the Chancellor expressed himself other than through Mr. Gerber's record of the conversation.

What we do know, by reason of the absence of relevant evidence of an appointment, is that the Chancellor could not have reached his conclusion had he called for evidence and found that it did not exist.

What is interesting is that Mr Gerber wrote an email to Dr. Dobbs on 11 September 2007, the same day as he had the telephone conversation with the Chancellor in response to his letter dated 4 September 2007. In this email Mr. Gerber said:

*'Mr. Dobbs, you have challenged the jurisdiction. We **will**, as indicated, **clarify** for you, and for us (sic), **by getting a second opinion** from an eminent lawyer i.e. the chancellor as you requested. ....*

***Once we have an answer on jurisdiction I will then attend to the other matters in your letter.***

....

***I will seek to ensure that the answer is obtained as soon as possible.'** (Emphasis added)*

This is strange 'future action' phraseology about something that was supposed already to have happened – at least as far as the letter of referral was concerned. If the letter to the Chancellor had been sent when stated, would not the appropriate email have been something along the lines of: 'Dr. Dobbs I referred the matter to the Chancellor on 4 September 2007 and I will follow up his opinion and let you know as soon as it is available.'? And if the letter to the Chancellor had been sent when stated, would it not have been appropriate to telephone the Chancellor before sending the email and thus to obtain up-to-date information about when the Chancellor would be ready to give his opinion (on the same day, as it happened)?

### **And what happened next?**

Dr. Dobbs was eventually informed of the 'decision' of the Chancellor. Dr. Dobbs immediately asked for a copy of the Chancellor's reasons for his opinion. In a letter dated 18 October 2007 Mr. Gerber wrote to Dr. Dobbs about a number of matters, including the following:

#### **'Jurisdiction**

*As previously indicated the Chancellor, Grogan AD, has confirmed to me verbally that the jurisdiction of the Discipline Ordinance 2006 (Ordinance) extends to you in the role you had*



*operating the coffee ministry at Figtree Anglican Church. He has not put this in writing and I have no right or power to ask him to do so.'*

As can be seen the whole of the reported conversation between Mr. Gerber and the Chancellor on 11 September 2007 was not conveyed to Dr. Dobbs. And secondly, it is extraordinary that Mr. Gerber, in his position as Director PSU, with a guaranteed right of access to the Archbishop, did not consider that he could ask the Chancellor for written reasons.

Could this have been, not as a matter of 'right' or 'power,' but as a matter of knowledge that without the consideration of evidence and a proper weighing of the arguments prepared by Dr. Dobbs, no reasons could possibly be available? The Chancellor would appear to have simply 'rubber-stamped' the deficient terms of Mr. Gerber's flawed referral.

**Then there is an investigation, and Dr. Dobbs still objects to jurisdiction.  
Archdeacon Deryck Howell intervenes.**

The next step was, presumably, for Mr. Gerber to call on Kelly and Associates to go on with the investigation of the substance of the claims that he had referred to them on 20 June 2007.<sup>41</sup> Mr Gerber, supported by the then Chancellor, had now irrevocably committed the diocese to the very considerable cost of the investigation and the procedures to follow, including the convening of the Professional Standards Committee and ultimately, the calling of a Disciplinary Tribunal to hear and determine, firstly, the very issue of jurisdiction.

Dr. Dobbs refused to cooperate with the Investigator on the basis that the issue of jurisdiction and the disgraceful treatment of his wife and children by Figtree Anglican Church had still not been properly addressed.

The Investigator's report was produced, and a copy was made available to Dr. Dobbs.

On 18 February 2008 Dr. Dobbs wrote to Mr. Gerber objecting to '*the huge quantity of malicious gossip and vicious innuendo, some of it anonymous, not only against me, but also against my wife and my children*' that is contained in the investigator's report. He states that the issue of jurisdiction has still not been resolved in a proper fashion and in particular he rejected '*the casual dismissal of my arguments, without reasons, by the diocesan chancellor*'. He called for information about who else would have the qualifications to hear and determine the issue, suggesting that perhaps a National Special Tribunal would have jurisdiction.

On 22 February 2008 he received a reply from Archdeacon Deryck Howell, as Chair of the Professional Standards Committee. Archdeacon Howell wrote that '*unfortunately there is no set structure to obtain such a "ruling"*.' This is misleading, because, of course any Court or Tribunal can and indeed must (if challenged) make a ruling on jurisdiction before proceeding and therefore in this case the Disciplinary Tribunal had that power. Archdeacon Howell proposed a referral to a senior barrister nominated by the President of the Bar Association of NSW, at cost to the church, to whom both Dr. Dobbs and the PSU would put forward '*the facts and any submissions to the lawyer in writing*'.

Dr. Dobbs ultimately did not even answer this proposal. It seemed to him that there would be just another version of the situation he encountered with the referral to the Chancellor. There would be no procedure to compel the production of evidence such as statutory declarations from the Rector and the Senior minister the Rev. Bruce Clarke and any relevant parish documents, and to have a right of cross-examination, and Dr. Dobbs saw this question of jurisdiction as again being handled as a mere question of law in isolation from the necessity to make a finding of fact on the evidence.

He did not trust Mr. Gerber in the light of past events and he felt he had no reason to trust Archdeacon Howell, having received no proper response from him to the detailed complaint made

to him about the 'excommunication' of his wife and children from Figtree Anglican Church. He had long ago ceased to trust the Rector the Rev. Rod Irvine and the Rev. Bruce Clarke.

On 1 April 2008 Archdeacon Howell wrote again and said that in the absence of a response to his offer, he proposed to continue with the committee examination of the complaint '*when they next meet on Friday 2 May 2008.*'

He added: '*This will include consideration of the jurisdictional issue and your submissions in this regard.*'

What he did not indicate was how his Committee could proceed to make any finding when there was no evidence in front of them. It is particularly disappointing that one of the committee members was a senior lawyer, Alan Lucas, who, like the Chancellor, should have been alert to the need for evidence of an appointment on which to base a finding that there was jurisdiction. Unfortunately, this does not seem to have crossed the collective mind of the committee.

The Archdeacon and his committee also ignored other issues that were raised. The first were contained in an open letter by the writer to him and them on 12 April 2008, even though it contained matters that should have occasioned them concern, if only for their personal reputations. This letter pointed to the many flaws in the process whereby a committee purports to make yet another quasi-judicial finding on the basis of 'evidence' that, as in this case, was irrelevant to about 95% (as a generous estimate), anonymous, vicious gossip concerning not only Dr. Dobbs but his wife and some of his children, and hearsay to the third and fourth degree, and not yet answered by Dr. Dobbs because he was still trying to get some sense out of the diocesan response to the issue of jurisdiction.<sup>42</sup>

Archdeacon Howell also ignored a letter from Dr. Dobbs dated 27 April 2008 in which he requested that the investigator produce more material that he was said to have received from Emma Nicholls' email friends 'SanDee' and Lance Wearmouth, which had caused Mr. and Mrs. Wearmouth such concern about the possibility that Emma was being abused in her own home that they had offered her a home with them in Queensland.<sup>43</sup>

In its report the Professional Standards Committee rubber-stamped the 'finding' of Mr. Gerber on the issue of jurisdiction, and said, repeating the terminology of the Chancellor: '*such a 'ministry' can, in the opinion of the PSC, be **comfortably** construed as .... either an 'office' or 'an appointment' by a Rector ...or by any delegate ...or an appointment under cl. 43 (Part 6) of the Church Administration Ordinance 1990.*' (emphasis added)

Again, there is this entirely inappropriate emphasis on being 'comfortable'.

Again this is just nonsense when there was no evidence before the Committee that the Rector had appointed Dr. Dobbs to anything, or evidence of the delegation by the Rector of his power of appointment to someone else, and that that person had appointed Dr. Dobbs to anything let alone a position of leadership under (b)(viii) Discipline Ordinance 2006 nor any position as superintendent, teacher, leader or other officer of a parish organisation under clause 43 Church Administration Ordinance 1990.

There is also a problem with the Committee's reading of sub-clause 43 Church Administration Ordinance 1990 which does not make an 'either' 'or' distinction between 'an office' and 'an appointment' and in fact the sub-clause does not refer to 'an office' but to 'an officer'. It says that the Rector or his delegate has the power to make an appointment of a superintendent, teacher, leader or other **officer** of a Sunday school, youth fellowship, study group or guild or **another parish organisation**. It is sub-clause (b)(vii) of the definition clause in the Discipline Ordinance 2006 that refers to an 'office'. But this refers particularly to those named in Part 6 of the Church Administration Ordinance 1990, (in which clause 43 is contained) where sections 39 – 42 specifically list other 'offices': organist, choirmaster and choir appointed by 'the minister' (cl. 39); Secretary of Parish Council appointed by the members of Parish Council of one of their number (cl. 40); Treasurer, appointed by the wardens from one of their number, or a Treasurer who is not a warden, Accountant or bookkeeper appointed by the wardens with the consent of the minister (cl.41);

verger, cleaner, gardener or other person to perform duties in or about the church, hall or other building used in connection with the church appointed by the wardens (cl. 42).

As can be seen none of these appointments other than the organist, choirmaster or the choir are made by the minister, or to use the phrase in clause (b)(viii) the Rector or his delegate.

Dr. Dobbs had not held any of these 'offices' under clauses 39 -42 and Mr. Gerber not only had no evidence that he had held such an office, but he did not even assert that Dr. Dobbs had held such an office. For the Committee members to be comfortable to even refer to these 'offices' in the absence of any evidence or even submissions from Mr. Gerber is yet another example of the deficiencies of this Committee process. It also suggests a concerted effort to try to support a finding that there was jurisdiction in this matter come what may.

But over all this, Mr. Gerber has to bear full responsibility for the failure to properly brief the Chancellor and the Committee members. He did this by continuing to ask the wrong question. The first question that had to be answered was this: ***is there evidence of an appointment by the rector or his validly empowered delegate of Dr. Dobbs to anything?*** In the absence of evidence of a written or oral appointment the only answer could be that Dr. Dobbs was not a church worker within the definition sub-clause (b)(viii) as claimed by Mr. Gerber.

The 'wrong' question, that is, *was making and serving coffee a position of leadership in a parish organisation under cl. 43 Church Administration Ordinance 1990*, was just plain irrelevant until the first question had been answered in the affirmative that there was an appointment by the Rector or his delegate to making and serving coffee<sup>44</sup>. Mr. Gerber wanted the Chancellor and the committee to say that it was, and they obligingly did so without considering evidence and without the application of appropriate rules of legislative interpretation. But it did not matter in this case because there was no evidence of an appointment.

That the Committee could get it so wrong, and therefore commit the diocese to further expense of Tribunal proceedings and the Dobbs family to many further months of victimisation, is indicative of yet another of the many fundamental flaws in the system set up under the Discipline Ordinance 2006.

In its wisdom, the Professional Standards Committee sought to make some sort of 'orders' (they called them 'recommendations' but whatever one calls them, they are equally ineffectual) that Dr. Dobbs *'be admonished'* (for what is not stated<sup>45</sup>), and go to counselling in *'self-awareness and the likely effect this may have on other people, regardless of his good intent'*.<sup>46</sup>

Otherwise, they said, there should be no further action.

### What happened next?

Under clause 36 of the Discipline Ordinance 2006, if Dr. Dobbs did not accept these 'recommendations' in writing within 14 days of the date of the letter from Archdeacon Howell then proceedings would be taken in the Discipline Tribunal. Dr. Dobbs not only did not accept them, but after some time had elapsed and nothing had happened he wrote to the Archbishop calling on him to appoint a Promoter of the charges to bring the matter before a diocesan Tribunal.

Eventually Dr. Dobbs received a letter advising that Mr. Gerber had been appointed to promote the charges before the Disciplinary Tribunal and that a date was set for directions to be made to put the matter in order for hearing. At that directions hearing Dr. Dobbs asked for the matter of the Tribunal's jurisdiction to be determined at a preliminary hearing, and for directions to be made for the production of evidence to be relied on by the Promoter to prove that Dr. Dobbs had been appointed to a position of leadership by the Rector or his delegate. Dr. Dobbs also put the Tribunal on notice that in the event that the Tribunal decided at the preliminary hearing that it did have jurisdiction and proposed to proceed to a hearing of the complaints, then Dr. Dobbs would seek even more directions concerning the state of the so-called evidence that was 95% irrelevant,

anonymous, and which included vicious attacks on Mrs. Dobbs and some of the Dobbs children and hearsay of anonymous accusations that had nothing to do with the complaint.<sup>47</sup>

At the first of what turned out to be a total of four preliminary directions ‘hearings’ before the Tribunal Deputy President Andrew Frank Mr. Gerber was represented by a barrister, Mr. Nicholson. Dr. Dobbs represented himself and handed up a document containing all the directions that would be sought, commencing with those in relation to the preliminary hearing of the issue of jurisdiction. Mr. Nicholson and Mr. Gerber consented to directions being made whereby Dr. Dobbs was to file a formal Answer merely disputing the jurisdiction of the Tribunal; that the Promoter Mr. Gerber would file all documents and statutory declarations on which he intended to rely to prove that there had been an appointment of Dr. Dobbs by the rector or his delegate, and that Dr. Dobbs have a period of time in which to reply to these statutory declarations in one of his own and file it and any other declarations or documents that he intended to rely on.

On that timetable, the matter should have been ready to be set down for a hearing in early February 2009. However, Mr. Gerber took a number of steps that meant that this process was dragged out even more.

The first step was to prepare and file just the one statutory declaration, by the Rector of the time the Rev. Rod Irvine, within the time allowed by the directions. This declaration was evidence, amid a great deal of irrelevant material, of (only) two highly relevant facts:

- The Rev. Irvine did not appoint Dr. Dobbs to anything.
- The Rev. Irvine delegated his powers to make such appointments to Mr. Clarke (and, in the absence of evidence to the contrary, only to Mr. Clarke).

Perhaps dismayed by this confirmation of what Dr. Dobbs had always maintained, Mr. Gerber then applied to the Tribunal for an extension of time to produce two more statutory declarations, one from the senior Assistant Minister of the time the Rev. Bruce Clarke, and the other from the Children’s Minister Yvonne Gunning, although why he would have thought the latter could possibly have anything relevant to say is hard to understand as the rector had not named her as a delegate of the power of appointment.

Mr. Clarke’s declaration was evidence, amid a great deal of irrelevant material, of (only) two highly relevant facts:

- Mr. Clarke was unable to produce any documents of appointment nor give evidence of any conversation with Dr. Dobbs in the nature of appointing him to any position; and,
- Again, in the absence of evidence to the contrary, that Mr. Clarke did not delegate this delegated power to anyone else (even if that were permissible, unlikely though that might be).

Yvonne Gunning in her statutory declaration claimed that she was the rector’s agent or representative, but this was not supported by the evidence of the Rector. Nor does it comply with the definition in the Discipline Ordinance 2006, which does not refer to an agent or representative of the Rector, only a delegate. In any event she could not give any evidence of having made any written or oral appointment of Dr. Dobbs. She annexed a vast amount of material relating to the instructions for the Kids Camps, but in these: (a) everyone who attended the camps to help run them was called a ‘leader’, including children, some as young as 12; and (b) Dr. Dobbs’ name did not appear on any document as a leader in the dictionary sense, unlike that of Yvonne Gunning herself.

Things rapidly descended into farce.<sup>48</sup> When preparing Dr. Dobbs’ statutory declaration in reply the writer noticed that each statutory declaration filed on behalf of Mr. Gerber was headed ‘Evidence Act 1906’ and some had purportedly been sworn rather than declared, and none were declared or sworn in proper form.<sup>49</sup> And upon consulting Austlii, an online legislation service, the writer (and one of her nephews) found that the only Evidence Act 1906 that existed in Australia was

in Western Australia, a state wholly unconnected with this case. And that Act did not provide for the proper preparation of statutory declarations. Dr. Dobbs called for Mr. Gerber to put his evidence in proper form.<sup>50</sup>

While attending to this, Mr. Gerber took the opportunity to take yet another bite of the cherry and, without any proposal to obtain yet another extension of time from the Tribunal produced yet another two statutory declarations, one by a former Assistant minister the Rev. Leigh Roberts and the other by Mrs. Jane Major-Smith (a Figtree Anglican Church staff member and the leader of the refreshment team). As neither of these had been appointed a delegate of the Rector, and neither of them could, even if they had been such a delegate, give evidence of documents or words of appointment of Dr. Dobbs, both of these statutory declarations were likewise irrelevant.

Dr. Dobbs made his statutory declaration in reply within the time allowed by the Tribunal directions.

What happened next was even more farcical. Dr Dobbs suggested that there be a process to narrow and define the actual issues that the Tribunal needed to decide by the exchange of a Notice to Admit Facts and Documents.<sup>51</sup> A comprehensive document prepared on his behalf was served by Dr. Dobbs on Mr. Gerber. Mr. Gerber's response was two-fold: firstly, he rejected the process and said that there was no provision for it in the Rules for the Tribunal; and secondly, he then produced a very carelessly drafted and inappropriate document of his own.

The document served by Mr. Gerber still clung to the language of 'ministry role', 'coffee-ministry' and the like, while still ignoring the first question discussed earlier, and clinging stubbornly to the second question which was irrelevant in all the circumstances. It is reasonable to conclude that Mr. Gerber was probably already all too aware of the deficiencies of his evidence and such a process would have called all too clear attention to this.

Dr. Dobbs objected to the form of the document and eventually he had to give up on this process.

The Tribunal in yet another preliminary conference directed each party to file and serve their submissions and set the matter down for a hearing on 3 and 4 June 2009.

### ***What happened next?***

The three persons sitting as the Tribunal on the first hearing day took an unprecedented step in involving themselves and the Diocesan Registrar Dr. Selden very significantly in settlement proposals without having to proceed to a hearing of the jurisdiction issue. These proposals involved the Tribunal members being willing to make a recommendation to the Archbishop that the original charges be withdrawn and dismissed, and that Assistant Bishop Al Stewart make another video presentation<sup>52</sup> to Figtree Anglican church as part of a good faith reconciliation process between the Dobbs family and the parish. Mr. Gerber was to write to the parish in terms to be settled between him and Dr. Dobbs.

At the time of writing (June 2009, and again in 2017) the leadership of Figtree Anglican church has resisted all involvement in the reconciliation process. It is appropriate to say that the situation so graphically described in '*A Mother's Story*' on this website remains unaltered. The complaints that have been made to the Archbishop (to by-pass Mr. Gerber) of mental and spiritual child abuse and bullying and harassment of adults against the Rev. Rod Irvine, the Rev. Bruce Clarke, Yvonne Gunning, Archdeacon Deryck Howell, Assistant Bishop Al Stewart, and Mr. Philip Gerber all

remain unresolved and will do so while the Archbishop refuses to appoint another person to deal with them. A complaint lodged with the Episcopal Standards Commission also remains unresolved and able to be 'revived' in the event that the Archbishop continues in this failure to deal with the complaint and make the appointment.

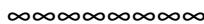
### **An update: 20 May 2017**

Since this article was written and reviewed from time to time, there has still been no relaxation of the hostile attitude of the Rev. Ian Barnett, Senior Minister of Figtree Anglican Church or former bishop of Wollongong Al Stewart towards the Dobbs family. In the intervening years, the parish leadership have maintained firmly that they have done nothing wrong, that they had an obligation to investigate Lee Nicholls' complaint, and that they acted in good faith. This is a lie. I have been writing a full examination of the development in the University of Wollongong of a lie against Dr. Dobbs to cause his application for permanent employment to be declined, and the actions of Helen Irvine to bring that lie into Figtree Anglican Church and the subsequent lies told by many involved in the case. This, '*The Evolution of a Lie*' is being published chapter by chapter on this website [www.churchdispute.com](http://www.churchdispute.com) and when finished will be issued as a book available for purchase (for a very modest price).

Already, '*A Mother's Story*' detailing Mabelle Dobbs and her family's abuse by Figtree Anglican Church and certain members of the diocesan hierarchy and the director PSU is available both as a download on that website and as a book.

The various articles compiled into the book '*A Synergy of Malice*' are available on that website and after review will soon be published as a book.

The only light at present has been the interest taken by the present Archbishop of Sydney Dr. Glenn Davies in trying to make good what he describes as the serious injustice visited on the Dobbs family by Figtree Anglican Church and certain diocesan officers and clergy. However, at this point his sincere efforts are being thwarted by advice given to him by people who have an interest in ensuring that the truth is not told and that no steps are taken towards reconciliation with the Dobbs family.



### **2018**

#### ***Final thoughts about what was done to the family not least by Phillip Gerber's refusal to consider the jurisdiction question with professional and competent objectivity.***

At the beginning of this article I posed the question:

*What are the limits on the power and authority of the clergy and lay leadership of a Parish and officers and senior clergy of Sydney Diocese of the Anglican Church of Australia to prosecute pseudo-criminal proceedings against an ordinary parishioner?*

*The answer:*

The limits are there, contained in the church legislation, in this case the Discipline Ordinance 2006. The ONLY persons who fall under the operation of the Ordinance are 'church workers', who, past or present, are either:

A member of the *ordained clergy*, or

A person in a position of *leadership* in a parish or church organisation.

All the rest of the definition clause sets out examples of people who, whether paid or volunteers, fulfil the description of being in a position of leadership.

It is as simple as that. And to find out whether a person is in a position of leadership by reference to some form of appointment as provided in the Parish Administration Ordinance (replacing the Church Administration Ordinance 1990 – the relevant sections are virtually identical) all one needs is evidence of the appointment, by reference to a letter, email, conversation, even minutes of a meeting of wardens or parish council, and preferably that evidence includes information given to the prospective leader not only includes details of duties and the terms and conditions of the appointment but also the implications of their acceptance, namely placing themselves under the jurisdiction of the PSU.

It is as simple as that. In the absence of some evidence of an appointment having been made, and especially if the position that the person is carrying out does not fall within any of those described in the relevant church legislation, such as making and serving espresso coffee did not fall within such positions, perhaps it would be better if the PSU acknowledges lack of jurisdiction earlier rather than on the steps of the tribunal on Day 1 of a hearing to determine that question.

All that was required was for the limits contained in the terms of the Discipline Ordinance 2006 to be applied. If its' terms had been applied the case would have stopped dead right at the beginning. That would have meant –

- Emma Nicholls would have been looked after medically instead of exposed to the brutal and very public puncturing of her delusions and fantasies of love and sexual desire;
- Rebeca Clarke would not have been motivated to lie to her parents about the Dobbs' family;
- Bruce Clarke would not have gone right off the rails creating and disseminating the disgusting figment of his and his daughter's imagination, what I call the clandestine lie, that there was a culture of nudity and even incest in the Dobbs family (which neither the Police nor DOCS thought even worth investigating);
- Bruce Clarke and Yvonne Gunning would not have 'warned' other parishes against the whole family;
- Rod Irvine would not have exposed himself to contempt because of his actions allowing the whole family, wife and children to be 'thrown out' of church as if they were the perpetrators of some heinous crime;
- Helen Irvine likewise would not have attracted contempt for her gullibility and her ravenous desire to 'get something' on Dr. Dobbs, first by believing the lies cooked up by Corinne Cortese, Mary Kaidonis and others in the Faculty to protect its' reputation against the evidence he held of corruption and soft marking, and then spreading the lies around Figtree Anglican Church, and incidentally exposing her patronising attitude towards Mabelle and her disgusting attack on the daughters, especially the eldest, which has left them shattered by her duplicity;
- Yvonne Gunning would have been denied her moment of inflated importance, and prevented from demonstrating without doubt her total incompetence, her malice towards the Dobbs daughters, and her part in spreading the clandestine lie;
- And that is only the main 'players' within Figtree Anglican church: there were many others, infected with the poison emanating from the FAC leadership, who behaved badly themselves towards the family. They complied with directives from the leadership to shun the family, even teachers in the Anglican school (TIGS) towards Dobbs daughters who were their students, in a monstrous betrayal of their position of trust and authority. Some of them had enjoyed the Dobbs hospitality at their annual Thanksgiving dinner just that previous November, and yet like sheep followed mindlessly the malicious directives of their false shepherds. All of them ignored one of the fundamental principles of a democratic Western civilisation: a person is innocent until proved guilty.

Within the diocesan organisation, the office of the PSU, the Secretariat, among the senior clergy and members of the PSC and the church lawyer what was lacking was professionalism, competence and objectivity, especially among the church lawyers.

If these attributes had been present-

- the mass hysteria generated in the parish by the incompetence and malice of the FAC leadership and others infected by them would have been stopped.
- The director PSU, the Chancellor, the members of the PSC, even Philip Selden the Registrar and, finally, the members of the Tribunal would not have had to be forced to confront what was blindingly obvious right from the moment that Dr. Dobbs wrote his first objection to jurisdiction, and even before that, because of the obligation on the director PSU to establish his or her jurisdiction at the very outset when deciding whether to accept a complaint: he never had jurisdiction and everything that was done to Dr. Dobbs, his wife Machel and their children was unlawful as well as failing the standard of behaviour expected by God from Christian to Christian.

### **Where to now?**

The offer of Archbishop Dr. Glenn Davies is wonderfully welcome, and he wants to achieve the withdrawal of the unlawful 'excommunication' and the infamous letter of conditions on the family attending church at FAC (should they now wish to) and make his personal apology for what was done to them.

But the announcement needs to make clear that Dr. Dobbs never was guilty of child sex abuse, adult sex abuse, sexual harassment (even if mild) nor sexual exploitation of the unfortunately deluded Emma Nicholls. This is clear from the various articles examining the 'case' listed below. This fact is obscured by the jurisdiction issue, and it has allowed people like Yvonne Gunning and her cohort of women in the parish that refused to believe that there was no case, to announce loud and clear that 'Dr. Dobbs got off on a technicality' and that he was still guilty as charged.

It is notoriously difficult to turn people's minds around after they have been so thoroughly brainwashed by their leaders to believe these lies. It makes them uneasy and, as I wrote elsewhere, clinging to these lies 'keeps them warm at night'.

### **Articles:**

A Thumbnail Sketch of "the Figtree Matter."

A Cautionary Tale.

A Cautionary Tale – the Cover-up Begins.

A Mother's Story.

Whispers and Lies.

Sex, Lies and Videotape.

Trial by Committee (The PSC).

The Evolution of a Lie.

The First Stone Revisited.

Emma's remaining Allegations.

### **Open Letters:**

An Open Letter to Archdeacon Deryck Howell and the Members of the Professional Standards Committee.

An Open Letter to the Members of the Disciplinary Tribunal.



## Chronology

Date	Event
<b>2007</b>	
1 & 4 Feb	Mrs. Lee Nicholls makes complaint to Yvonne Gunning which includes information that her 20-year-old daughter Emma Nicholls has 'fallen in love' with Dr. Dobbs and will not stop trying to see him. There is no allegation of sexual activity between them.
6 Feb	Dr. Dobbs told that a complaint has been made but neither by whom nor as to any detail of the complaint. He is told not to make coffee after services any more. No notes are taken of the meeting.
20 Feb	Rev Bruce Clarke informs chaplain Jenni Woodhouse that Emma Nicholls does not want to make a complaint 'as yet' and asks if they can proceed against Dr. Dobbs without it. Jenni Woodhouse says no. That evening Yvonne Gunning spends a three-hour conference with Emma Nicholls and produces a signed statement, with some basic errors in it.
21 Feb	Email Yvonne Gunning to Philip Gerber refers to telephone conversation and assures Mr. Gerber that the statement is in Emma Nicholls own words.
23 Feb	Emma Nicholls signs an already amended statutory declaration with further amendments.
5 March	Dr. Dobbs makes formal objection to jurisdiction in telephone conversation with Mr. Gerber
12 March	Dr. Dobbs makes formal written objection to jurisdiction in letter to Mr. Gerber
28 March	Mr Gerber writes to Dr. Dobbs that 'inquiries have been made' in the parish and he has formed 'a preliminary view' that there is jurisdiction on the basis that there was a 'coffee ministry' that constituted an 'appointment by the Rector' under (b)(viii) of the Discipline Ordinance 2006 and in the terms of cl. 43 of the Church Administration Ordinance 1990.
22 April	Dr. Dobbs submits detailed and carefully argued formal submissions objecting to the preliminary view, including the information that he has never been appointed to anything by the Rector. Mr. Gerber does not respond to this.
1 May	At a meeting between Dr. and Mrs. Dobbs, the Rev. Bruce Clarke, the Rev. Rod Irvine and Mr. Gerber, intended to be a conciliation meeting to bring the complaints to a conclusion within the parish, the then Rector's wife Helen Irvine makes allegations against Dr. Dobbs that he had been a serial sexual predator of students at Wollongong University where both were employed in the Faculty of Business. (Subsequent investigations prove this to be totally false).
20 June	Mr. Gerber gives instructions to Kelly & Associates to commence an investigation in the parish still without having responded to Dr. Dobbs' arguments about the lack of jurisdiction.
August 2007	Dr. Dobbs writes to Mr. Gerber refusing to cooperate with the investigation until the matter of jurisdiction is properly addressed and proposing to commence proceedings in the Supreme Court for an injunction to prevent Mr. Gerber and the investigator from proceeding.
3 September	Mr. Gerber writes to Dr. Dobbs proposing to refer the question to 'an eminent lawyer' the then Chancellor Mr. Acting Judge Peter Grogan.
4 September	Mr. Gerber writes to the then Chancellor Mr. Acting Judge Peter Grogan
10 September	Dr. Dobbs emails Mr. Gerber saying he is not prepared to wait for this opinion to receive an answer to other matters raised in his letter

LEADERSHIP, MINISTRY & A COFFEE MACHINE

11 September	Mr. Gerber emails Dr. Dobbs saying he will get the opinion from the Chancellor and then he will answer the other matters
11 September	Mr Gerber has a telephone conversation with the then Chancellor Mr. Acting Judge Peter Grogan in which he is reported to say that he is comfortable that there is jurisdiction
October	Having received Mr. Gerber's report of the opinion of the then Chancellor Mr. Acting Judge Peter Grogan Dr. Dobbs asks for a copy of his reasons for the decision
18 October	Mr. Gerber replies to Dr. Dobbs that there are no written reasons and that he, Mr. Gerber is not able to ask the Chancellor for written reasons
To December	Kelly & Associates continue with the investigation and produce a report
<b>2008</b>	
January	The investigator's set of signed statements, documents and report comprising over 300 pages is sent to Dr. Dobbs
18 February	Dr. Dobbs writes to Mr. Gerber objecting (a) to the mass of irrelevant, hearsay, anonymous and scurrilous gossip not only against himself but his wife and children that comprise the documents and report; and (b) that the matter of jurisdiction has still not been properly addressed and suggesting perhaps a referral to a National Special Tribunal. Mr. Gerber does not reply
22 February	Archdeacon Deryck Howell, as Chair of the Professional Standards Committee, writes to Dr. Dobbs and suggests a referral to a senior lawyer nominated by the President of the Bar Association, at diocesan expense. Dr. Dobbs does not accept this offer
1 April	Archdeacon Deryck Howell, as Chair of the Professional Standards Committee advises that in the absence of a reply the Committee will consider the matter (of the substantive complaint as well as jurisdiction) at the next committee meeting on 2 May
12 April	Louise Greentree writes to Archdeacon Deryck Howell, as Chair of the Professional Standards Committee, advising the many areas of inadequacy and inappropriateness of the committee process especially in the absence of evidence from the respondent Dr. Dobbs
27 April	Dr. Dobbs emails Archdeacon Deryck Howell, asking him to have the investigator or Mr. Gerber produce the copies of more emails between Lance Wearmouth and Emma Nicholls in October 2006 which were sent to the investigator by Mr. Wearmouth, which had caused he and his wife to offer her a home in Queensland away from the situation in her own home that Emma Nicholls complains of which has caused them to suspect abuse in her home. After a while and a follow-up Archdeacon Deryck Howell replies that he must have deleted the email.
June	The Professional Standards Committee produces its report: it rejects the only remaining allegation when Emma was under 18, an alleged sideways hug at age 16, and downgrades the remaining few alleged incidents to low level harassment of an adult woman by a married man, by unwelcome touching, even if unintentional or sexual harassment. They recommend that Dr. Dobbs be admonished and undergo counselling in self-awareness as to his effect on other people notwithstanding his good intentions, and no further action to be taken.
	Dr. Dobbs has 14 days to accept the recommendations otherwise the Archbishop is required to appoint a person to Promote the charges to the diocesan Disciplinary Tribunal. Dr. Dobbs does not accept the recommendations and calls on the Archbishop to appoint a Promoter. The Archbishop after some delay appoints Mr. Gerber as Promoter.

LEADERSHIP, MINISTRY & A COFFEE MACHINE

Between June and November	Mr. Gerber sends Dr. Dobbs a form agreeing to the withdrawal of the charges. Dr. Dobbs declines to sign it.
Between June and November	Mr. Gerber attempts to arrange mediation between Dr. Dobbs and Figtree Anglican church and himself. Dr. Dobbs declines to be involved, stating that attending such a mediation would place him in the same position as a kitten tossed into a pit of wild dogs. More significantly, and less dramatically, the reason for declining the offer of mediation was that the instructions given in the forms to the proposed mediator was inadequate and in places misleading, and that the persons he proposed to be involved in the mediation were not the ones who were party to the complaint.
6 November	The preliminary directions hearing by the Deputy President of the Disciplinary Tribunal Mr. Andrew Frank. Directions made for the preparation and filing of statutory declarations and production of documentary evidence the diocese relies on to prove there was an appointment of Dr. Dobbs by the Rector or his delegate, and a statutory declaration by Dr. Dobbs in reply and any other material he relies on in relation to the question of jurisdiction.
Between 6 November and May 2009	There were three intervening teleconferences for more directions, including one for an extension of time for the Promoter to prepare and file more statutory declarations. At one of these, the matter was set down for hearing on 3 & 4 June 2009
<b>2009</b>	
3 June	The first day of the scheduled hearing of the issue of jurisdiction. After the day was spent negotiating a compromise at the request of the Promoter's barrister and on the strong urging and with the active involvement of the three Tribunal members and Dr. Selden, diocesan Registrar, a document was signed whereby the Tribunal recommended to the Archbishop that the charges be withdrawn and dismissed on the basis of the institution of a reconciliation process between Figtree Anglican Church and the whole Dobbs family.

**What the church legislation says.****Discipline Ordinance 2006 Sydney diocese**

Chapter 1 clause 2

**Church worker** means a person who –

- (a) Not relevant – it is agreed that Dr. Dobbs has never been a member of the clergy
- (b) ***Holds or has held any position of leadership within the Diocese and without limiting the generality of the foregoing a position of leadership includes –***
  - (i) An office (*not applicable to this case*), or
  - (ii) Membership of a body incorporated by or under the Bodies Corporate Act (*not applicable to this case*), or
  - (iii) A churchwarden (*not applicable to this case*), or
  - (iv) Membership of a parish council (*not applicable to this case*), or
  - (v) Membership of any other boards, council or committee established by the Synod, the standing committee, a regional council or a parish council (*not applicable to this case*), or
  - (vi) A chief executive officer of an organisation constituted by an ordinance of the Synod, the standing Committee, a regional council or a parish council (*not applicable to this case*), or
  - (vii) An officer of the kinds specified in part 6 of the church administration Ordinance 1990 (*not applicable to this case*), or
  - (viii) ***An appointment by a rector, curate-in-charge churchwarden or parish council or by any delegate or agent of such a person or body of persons,***

.....

**The Church Administration Ordinance 1990****Offices Within Groups and Organisations**

43. (1) Subject to the powers of the Archbishop, the minister has control of the policy, organisation and affairs of any Sunday school, bible class, study group, youth fellowship, guild or other organisation of the parish or any church of the parish and for those purposes may appoint and, subject to clause 45, remove such superintendents, teachers, leaders or other officers as he thinks fit.

(2) The minister may delegate all or any of the powers conferred by subclause (1).

(3) The treasurer or other officer acting for the time being as treasurer of each such organisation must -

- (a) prepare a statement of receipts and payments of the organisation for each financial year;
- (b) prepare statements of the assets and liabilities as at the last day of that financial year;
- (c) present the statements for audit to the auditor appointed or approved by the churchwardens of the principal or only church; and
- (d) present the statements duly audited to the minister within 2 calendar months of the last day of each financial year and also to the annual meeting (if any) of the organisation, or if there is no such annual meeting, to the parish council.

(4) Every person appointed to any office under this clause must perform the duties of the office in accordance with this Ordinance.

(5) Every such organisation exists for the furtherance of the work of the church or the parish, the Diocese and the missionary and other work of the Anglican Church of Australia and may raise funds only for such purposes and for its own internal purposes.

(6) If any such organisation ceases to exist for any reason, its remaining funds and property (not being the subject of any trust) become the property of the church or parish, and its books and records must be given to and remain in the custody of the minister.

**In the definition section 2 (1) "minister" means -**

- (a) in relation to a provisional parish, the person licensed thereto for the time being as curate-in-charge;
- (b) in relation to any other parish, the person licensed thereto as incumbent; and
- (c) except in clause 18(1), in the absence or incapacity of a person referred to in paragraph (a) or (b) or during any vacancy in office of the curate-in-charge or incumbent, the person authorised under clause 59 for the time being to exercise all or any of the functions of the curate-in-charge or incumbent, to the extent to which those functions are properly exercisable in accordance with his licence or other authority;

*In 2008 the Church Administration Ordinance 1990 was repealed and replaced with the Parish Administration Ordinance 2008. The relevant replacement section for cl 34 of the Church Administration Ordinance 1990 is as follows –*

Schedule 1

**Part 4  
Minister**

***Division 1 Spiritual welfare***

**Note:** *The minister has general responsibility for the spiritual welfare of the parish and each church in the parish and for this purpose has powers, rights and duties in accordance with his licence and authority from the Archbishop.*

***Division 2 Appointment of officers***

**3.18 Parish organisations**

- (1) The minister may establish any Sunday school, Bible class, home group, study group, youth fellowship or other organisation of the parish or any church of the parish to further the work of the parish or church.
- (2) Subject to the powers of the Archbishop, the minister has control of the policy, organisation and affairs of any organisation established under sub-rule (1) and for those purposes may appoint and, subject to rule 9.3, remove such superintendents, teachers, leaders or other officers (excluding any treasurer appointed under paragraph (b) of rule 3.10(1)) as he thinks fit.
- (3) The minister may delegate all or any of the powers conferred by sub-rule (2).
- (4) Every person appointed to any office under this rule must perform the duties of the office in accordance with these rules.

**The whole of Part 6 of the Church Administration Ordinance 1990  
(ref (b)(vii) definition of church worker in the Discipline Ordinance 2006)**

**Part 6 - Other Officers, Offices and Organisations**

**Organist, Choirmaster and Choir**

39. An organist, choirmaster and the members of a choir of a church may, from time to time, be appointed and, subject to clause 45, removed by the minister.

**Secretary of Parish Council**

40. A parish council may appoint one of its members to be its secretary for the time being and may remove any such person from the office.

**Treasurer, Accountant or Bookkeeper**

41. (1) The churchwardens of a church may appoint one of their number to act as treasurer or may, with the consent of the minister, appoint any other person to act as treasurer, accountant or bookkeeper to assist them in their functions and, subject to clause 45, may remove any such person from office.

(2) In connection with matters affecting the parish as a whole under clause 20(1)(b) the churchwardens of the principal church in a parish may appoint one of their members to act as treasurer for any money collected, expended or held, or may, with the consent of the minister, appoint any other person to act as treasurer, accountant, bookkeeper to assist them in such functions and, subject to clause 45, may remove any such person from office.

(3) Nothing in this clause has the effect of removing from the churchwardens or any of them, their, his or her responsibility for the charge and administration of any funds or property of the church.

**Verger, Cleaner, Gardener, etc**

42. The churchwardens of a church may, with the concurrence of the minister, appoint a verger, cleaner, gardener or other person to perform duties in or about the church, hall or other building used in connection with the church and may, with the concurrence of the minister and subject to clause 45, remove any such person from office at any time.

**Offices Within Groups and Organisations**

43. (1) Subject to the powers of the Archbishop, the minister has control of the policy, organisation and affairs of any Sunday school, bible class, study group, youth fellowship, guild or other organisation of the parish or any church of the parish and for those purposes may appoint and, subject to clause 45, remove such superintendents, teachers, leaders or other officers as he thinks fit.

(2) The minister may delegate all or any of the powers conferred by subclause (1).

(3) The treasurer or other officer acting for the time being as treasurer of each such organisation must -

(a) prepare a statement of receipts and payments of the organisation for each financial year;

(b) prepare statements of the assets and liabilities as at the last day of that financial year;

(c) present the statements for audit to the auditor appointed or approved by the churchwardens of the principal or only church; and

(d) present the statements duly audited to the minister within 2 calendar months of the last day of each financial year and also to the annual meeting (if any) of the organisation, or if there is no such annual meeting, to the parish council.

(4) Every person appointed to any office under this clause must perform the duties of the office in accordance with this Ordinance.

(5) Every such organisation exists for the furtherance of the work of the church or the parish, the Diocese and the missionary and other work of the Anglican Church of Australia and may raise funds only for such purposes and for its own internal purposes.

(6) If any such organisation ceases to exist for any reason, its remaining funds and property (not being the subject of any trust) become the property of the church or parish, and its books and records must be given to and remain in the custody of the minister.

**Appointments to be for 12 Months Unless Otherwise Specified**

44. A person appointed to any office under this Part is to be taken to have been appointed for a period of 12 months unless, at the time when the appointment is made, some other period is specified in writing by the person or persons making the appointment.

**Removal of Employees**

45. The removal of an employee is subject to the applicable laws relating to termination of employment.

## ENDNOTES

<sup>1</sup> See [www.churchdispute.com](http://www.churchdispute.com)

<sup>2</sup> Louise Greentree BA LLB LLM(Hons) ProfCertArb. Louise can be contacted on [louise@greentreeaustralis.com](mailto:louise@greentreeaustralis.com). Other articles written by her examining the documents and the processes of this case and also the related case now brought by Mrs. Dobbs against certain past clergy and a staff member as well as senior clergy and a senior staff member of the diocesan secretariat accused of carrying out and/or condoning child abuse and bullying and harassment of Mrs. Dobbs and the Dobbs family children and young adults are available on her website [www.churchdispute.com](http://www.churchdispute.com)

<sup>3</sup> 'Jurisdiction' means the act of conferring authority to intervene, to make a decision, in a particular case. The limits of jurisdiction thus defining the only cases in which the Director is given authority to act are set out in a definition section in the Discipline Ordinance 2006 which is set out in full in the Annexure 1 to this paper.

<sup>4</sup> In particular readers are referred to the article 'A Cautionary Tale' revised 2017 on the website.

<sup>5</sup> There were only two: of hugging her when at the age of 14 she had burnt her hand on a saucepan and was crying hysterically in the Dobbs family kitchen with other people present or nearby; and a 'sideways hug' at the age of 16 with one of his daughters sitting beside Emma on the same lounge and while Dr. Dobbs was either standing beside the lounge or sitting perched on the arm of the lounge (Emma says she cannot remember which!). The actual design and the location of the lounge as described by Emma means that either version would be physically impossible.

<sup>6</sup> Such as giving her a compliment '*That looks good on you*' when, at age 19, she was wearing a skirt borrowed from one of the Dobbs daughters! This was in the presence of his four daughters as they were all walking down the front path of the Dobbs' home. The skirt in question was an ankle-length full-skirted brown peasant-style skirt.

<sup>7</sup> Her pathetic fantasies are contained in her email to her email friend SanDee on 5 December 2006. See 'A Cautionary Tale' revised 2017 on [www.churchdispute.com](http://www.churchdispute.com)

<sup>8</sup> She was very demanding, such as: inviting herself over to the house, and then forcing the Dobbs family to accommodate her overnight (even though her home with her parents was at most 10 minutes away); borrowing clothes from the girls; ringing up and demanding someone drive over to her house and collect her and take her to church (even though her parents could have driven her themselves). It is only a family as strongly committed to Christian principles as the Dobbs' that would have put up with her.

<sup>9</sup> It is part of the 'evidence' produced by the then Director PSU, Mr. Philip Gerber that Emma Nicholls has a variety of physical, personality and mental disorders and has been consulting a range of practitioners and undergoing a number of 'treatments' and therapies.

<sup>10</sup> The 'worst' of the allegations is a kiss on the back of the neck, on two different occasions in January 2007, each time, according to Emma Nicholls in the presence of other people (one in the presence of two of his daughters and the other in the presence of members of the evening congregation and her mother); yet she says that no-one saw it, and there is no evidence from anyone, including her mother, to say that they did.

<sup>11</sup> See an examination of the 'charges' that would have gone forward to the Disciplinary Tribunal had there been jurisdiction in the article '*Emma's Remaining Allegations*' on [www.churchdispute.com](http://www.churchdispute.com)

<sup>12</sup> Mr. Gerber resigned from the position of Director PSU (of which he was the founding Director) and the announcement was made on 2 June 2009, stating that he would be leaving on 3 July 2009.

<sup>13</sup> See '*A Mother's Story*' on [www.churchdispute.com](http://www.churchdispute.com)

<sup>14</sup> Fax by Yvonne Gunning to Philip Gerber dated 25 February 2007 responded to by Philip Gerber by fax by return: '*surprised you should be talking about the matter to your brother....Our procedure is to notify Police where criminality is obvious but I would think it is not so clear cut in this case.*'

<sup>15</sup> In his fax dated 26 September 2007 to Philip Gerber the Rev. Bruce Clarke said the following: '*I have only mentioned it (the accusations against Dr. Dobbs) to one pastor in a nearby church (Sam Reeve – Wollongong Baptist church). Scott's name was not given out – just that we had 3 allegations against a man – 1 from church and 2 from uni and he should be wary of him if he turns up. I have no problems doing this – for me it is a duty of care issue.*' Apart from the staggering sanctimoniousness of the last statement, and leaving aside the principle of innocence until proved guilty, it is difficult to believe that the Rev. Clarke had been able to satisfy his alleged 'duty of care issue' without giving the name, so that the pastor could be 'wary of him'.

<sup>16</sup> In November 2006 *'She mentioned that she wasn't getting on with her family and we were discussing fights with her parents, being angry with her mother, fighting with her father who was reacting with anger. So the relationships weren't good. She wanted to move out, but she had no money.'* Signed statement by Dr. Richard Schloeffel dated 15 October 2007 paragraph 24.

<sup>17</sup> He might have spent some more time, more professional thought and even prayer on this aspect of the matter also. As it was he seems to have been overwhelmed by the overriding malice of the leadership of Figtree at the time, in particular the determination of the Rector's wife Helen Irvine to push through another agenda involving false, anonymous and just downright ridiculous complaints that she said meant that Dr. Dobbs was a serial sexual abuser of young women at the university where both of them had been employed. And instead of excluding consideration of discipline matters relating to another institution wholly unconnected with the church, he placed the diocese in the position of having to run a case on this also. For an in-depth discussion of this please see *'The First Stone Revisited'* on [www.churchdispute.com](http://www.churchdispute.com)

<sup>18</sup> Her 'rank' as Captain is of Church Army, an Anglican Church organisation which originated in England at around the time of other 'Christian armies', pre-dating the Salvation Army, which have an emphasis on evangelistic outreach to people in the street.

<sup>19</sup> That Philip Gerber was aware of this and concerned about it is evident from Yvonne Gunning's email to him on 21 February 2007 which indicates that he has raised concerns that the statement is what Emma says and not what someone else says. In fact, there were material errors in the statement, later corrected, such as that Emma first met the eldest Dobbs daughter at Figtree church 'at Choir'. Neither of these assertions was correct. Where did they come from if not from Capt. Gunning and/or Mrs. Lee Nicholls?

<sup>20</sup> There are three main problems: (a) the lack of power to compel cooperation when a person's livelihood is not at risk; (2) the limited range and nature of penalties that can be applied; because they are not recognisable by state law they are unenforceable other than by excluding the person from the congregation, which leads to the third problem: (c) setting up an underhand process to excommunicate people where they have not done anything to which the church legislation concerning excommunication applies. The idea of excommunicating the ordinary parishioner can be seen as inappropriate both in terms of Christian mission as well as principles of Anglicanism. It also violates the National Church guidelines for the Christian treatment of such persons.

<sup>21</sup> This ordinance has since been repealed and replaced by the Parish Administration Ordinance 2008, which contains a Part in almost identical terms to Part 6 of the Church Administration Ordinance 1990. The full text of the applicable part is set out in Document at the end of this article.

<sup>22</sup> Now Rector of the Anglican parish of Bulli.

<sup>23</sup> The evidence of both this lady, the Assistant minister the Rev. Bruce Clarke, and the minutes of a staff meeting at Figtree Anglican church make it clear that these people were happy to slander Dr. Dobbs even at this time, criticising his personality and accusing him of being over-bearing. They certainly did not regard him as being a member of the refreshment team, let alone in a position of leadership in relation to that team.

<sup>24</sup> This was not mentioned by Phillip Gerber in any of the earlier correspondence with Dr. Dobbs nor in the referral to the then Diocesan Chancellor. It only appeared in documents attached to the statutory declaration of Yvonne Gunning when, in November 2008 the deputy President of the Disciplinary Tribunal made directions that the Promoter, Mr. Gerber produce all evidence and statutory declarations that he intended to rely on to prove that there had been an appointment of Dr. Dobbs by the Rector or his delegate. Could it be that by November 2008 (if not well before this) he had realised the paucity of the case, not only in respect of establishing jurisdiction but also in respect of Emma Nicholls' pathetic fantasies?

<sup>25</sup> When the documents to be handed up to the Tribunal on behalf of Mr. Gerber for the diocese on the hearing of the preliminary point of jurisdiction were formally 'served' a few days before the hearing date, he or someone in his behalf had blacked out the word 'music' in the column titled Ministry that Dr. Dobbs had written and signed at the time. This constitutes tampering with evidence, something regarded as a serious breach of professional ethics if carried out by a legal practitioner in the secular world.

<sup>26</sup> It is also particularly appropriate to maintain the common meaning of the words because the two pieces of legislation, and in particular the Church Administration Ordinance 1990 existed for the guidance of people who are not church lawyers (nor indeed lawyers of any kind) but persons who were wardens and parish councillors, as well as parish clergy, and they were required to act appropriately in relation to other persons such as



vergers, church repairmen, gardeners, organists and choir members and the like, ordinary people from a wide variety of backgrounds and educational qualifications.

<sup>27</sup> When pressed to produce all documents, witness statements, file notes or any other 'evidence' that this enquiry produced Mr. Gerber was forced to admit that there were none. Clearly the so-called inquiry was nothing more than a telephone conversation with one or more of the people who had a vested interest, in one manner or another, in the outcome of the matter adversely to the whole of the Dobbs family (as appears in the companion articles on this case on [www.churchdispute.com](http://www.churchdispute.com) )

<sup>28</sup> The evidence finally produced indicated that this had not been 'endorsed' by the Rector; indeed, he seems to have been unaware of it for most of its existence. Statutory declaration of the Rev. Rod Irvine made 10 February 2009: '*2. Sometime around 2007, I became aware that Scott Dobbs was operating a coffee ministry in the foyer of the church after some of the services.*' Dr. Dobbs last served coffee in late January 2007 (a mere 4 weeks into 2007) and was banned from the so-called coffee ministry in the first week of February 2007.

<sup>29</sup> He might well say that he was misinformed, misled even, by members of the Figtree leadership of the time. As noted before he was certainly on notice of the extent of their malice against the Dobbs' family and their determination to get something on Dr. Dobbs (which is what it has all proved to be).

<sup>30</sup> It was at that meeting, finally held 1 May that the rector's wife raised in public what she had been saying since before December 2006 behind Dr. Dobbs' back, that he was accused at Wollongong University of being a serial sexual predator. This was not true. Readers should look at 'A Cautionary Tale' and 'The First Stone Revisited' on [www.churchdispute.com](http://www.churchdispute.com) for a full discussion of her false report.

<sup>31</sup> The full text of Part 6 Church Administration Ordinance 1990 is at the end of this article.

<sup>32</sup> In his statutory declaration dated February 2007 the then Rector the Rev. Rod. Irvine states (1) that he did not make any appointments under cl. 43 Church Administration Ordinance, and (2) the delegate of his power of appointment was the Rev. Bruce Clarke (only – by absence of any other name). So Trevor Hodge did not have power to make any appointment under that clause, apart from the issue that Dr. Dobbs' position in the band most emphatically (on Mr. Hodge's say-so) was not a position of leadership.

<sup>33</sup> This was the lowest point of the overall mishandling of the matter by Figtree Anglican Church leadership and by Mr. Gerber. See articles on [www.churchdispute.com](http://www.churchdispute.com) for a discussion of these false allegations.

<sup>34</sup> In his letter in August 2007 he wrote: 'I deplore your failure to respond to my second submissions made on 22 April 2007 as to your want of jurisdiction in this matter.' He said he would not cooperate with him or anyone on his behalf (such as an investigator) until the jurisdiction issue is resolved in a full and complete manner by a body exercising a judicial function.'

<sup>35</sup> I raise this because it seems to be not the first indication that Mr. Gerber was far from 'in control' of this case.

<sup>36</sup> This was because he had still not approached Figtree clergy and leadership for proofs of evidence of an appointment of Dr. Dobbs under cl 43 Church Administration Ordinance 1990.

<sup>37</sup> Again, there has been an impression of a certain resistance by Mr. Gerber to producing these to Dr. Dobbs. They came to light when Mr. Gerber referred in recent correspondence to documents in the Tribunal folder of documents which were of a page number higher than the last page number of the copy document in the folder furnished to Dr Dobbs. It is also certain that these documents were likewise part of the folder of documents provided by Mr. Gerber to the Professional Standards Committee, and again, they were 'omitted' from the copy of the folder given to Dr. Dobbs. To be fair, Mr. Gerber maintains that they were forwarded separately at some earlier time, unspecified, and unaccompanied by a letter.

<sup>38</sup> Dr. Dobbs wrote to the former Chancellor Peter Grogan in May 2009 to ask him what documents were sent to him with Mr. Gerber's letter. Mr. Grogan did not answer that letter, and he did not return Dr. Dobbs' telephone calls.

<sup>39</sup> Mr. Gerber's file note is typed and therefore is most likely to be a typed up version of some handwritten note, if any, made at the time, or perhaps merely prepared (when?) from memory. It is headed: '*Re: Dobbs, Nicholls, Figtree date: 11 September 2007*

*1. Phone call from the Chancellor.'*

<sup>40</sup>This culture pervaded the civil litigation area of legal practice in the 1980's and changed, disastrously from the ethical point of view, the way in which solicitors and barristers conducted themselves. The ethical approach of former years was based on an intrinsic understanding of what was ethical and what was not. The now substantial number of Conduct Rules, including the Advocacy Rules, of the NSW legal profession and the Model Conduct Rules promoted by the Federal Attorney-General are largely re-statements of what was

understood to be the position back before the development of excessive adversarialism which flourished in the 1980's, particularly among civil litigation lawyers. This gung-ho attitude was one of ignoring the law and ethics in order to go on until stopped; that the law and ethical implications were irrelevant until someone instituted a complaint to the Law Society or obtained an injunction or some other formal sanction. The legal profession has continued to lose credibility as an ethical institution in the conduct of civil litigation (including in the field of Family Law) because of excessive adversarialism. Calls for submissions (May 2009) in respect of a reference by the Federal Attorney-General and an issues paper developed by the office of the Attorney-General of NSW both of which deplore excessive adversarialism and call for even more ways of introducing Alternate Dispute Resolution into the conduct of civil cases demonstrate how community concerns about high-paid lawyers (unaffordable by the average person) pushing court cases to the limit have reached the ears of the legislators.

<sup>41</sup> An analysis that highlights some of the flaws in the investigation is contained in '*A Cautionary Tale*' and '*The First Stone Revisited*'

<sup>43</sup> The timing of the disclosures by Emma to Mr. and Mrs. Wearmouth coincides with the period October – November 2006 when Emma Nicholls' treating doctor, Dr. Richard Schloeffel reports that Emma has disclosed that she is having fights with both of her parents in the home. See '*A Cautionary Tale*' on [www.churchdispute.com](http://www.churchdispute.com)

<sup>44</sup> As far as Dr. Dobbs is aware it was only this activity that was put to the Committee as being that which was said to attract jurisdiction. It appears that Dr. Gerber had already abandoned the 'singing role' as mentioned in his letter to the Chancellor (an erroneous reference to Dr. Dobbs playing guitar in 'band a'), and at no time did Mr. Gerber indicate he was relying on the discrete activities of being a houseparent at two Kids Camps, which arose for the first time in the statutory declaration of Yvonne Gunning made 3 February 2009 in support of the diocesan case to be argued before the Disciplinary Tribunal.

<sup>45</sup> It seems a bit harsh to admonish someone for somebody else's misinterpretation of acts of kindness that the diocesan evidence shows was extended by all of the Dobbs family members not only to each other but to all visitors to the house, and particularly (a) when the misinterpretation is made by a woman with known mental incapacities and (b) the fantasies of the woman are clearly documented so that it is clear that even if she was touched as she alleges - hugged (x3), hand-held (x1), had an arm put around her waist (x1) and kissed on the back of the neck (x2) she would welcome it, and even sought it out. And all this at the age of 20. What a grey, unloving, unkind and self-righteous world such a recommendation envisages.

<sup>46</sup> Such a nonsensical recommendation could only be construed as an attempt at justification of what was clearly a case of a false complaint and gross-overreaction in the parish fuelled by the malicious men and women behind it, as discussed in other articles. The Committee would have earned itself more respect had it recommended that Emma Nicholls undergo the counselling (although an equally ineffectual recommendation), except that psychiatric attention was what one of her succession of treating doctors thought she needed, as appears from her own evidence.

<sup>47</sup> For a discussion of this please see '*Setting the Boundaries on Church Discipline. Open Letter to the members of the Disciplinary Tribunal of the Anglican Church of Australia Sydney Diocese*' on [www.churchdispute.com](http://www.churchdispute.com)

<sup>48</sup> Although far from funny for Dr. Dobbs and his wife and family.

<sup>49</sup> As any good lawyer knows, an affidavit or statutory declaration that is not made in proper form cannot be relied on. Dr. Dobbs wanted documents that would stand up in any Court or proceedings.

<sup>50</sup> Perhaps a little unkindly, Dr. Dobbs referred to the fact that such documents must have been prepared by a year 10 work-experience student.

<sup>51</sup> This is a process used in the civil secular courts in order to save time in the hearing and to focus the attention of the parties and their legal advisers on the real issues and to cut out all the deadwood.

<sup>52</sup> For details of his first one, see '*Sex Lies and Videotape*' on [www.churchdispute.com](http://www.churchdispute.com)