



# OPEN LETTER TO THE DISCIPLINARY TRIBUNAL

Figtree Anglican Church v the Dobbs family.

## SETTING THE BOUNDARIES ON CHURCH DISCIPLINE.

This article was sent to the Deputy Chair of the Disciplinary Tribunal of the Anglican church Sydney Diocese in November 2008. In response, the director PSU Mr. Phillip Gerber telephoned the writer one morning and treated me to a 45 minutes abusive harangue, to which I listened with some fascination that he would be so unprofessional as to telephone me and speak in such a way to a fellow lawyer. He was upset by this open letter and a previous open letter I sent to the Members of the Professional Standards Committee (PSC) and by a raft of other articles written and published along with the open letters on my then website, transferred to [www.churchdispute.com](http://www.churchdispute.com), which demonstrated that there had never been a viable case against Dr. Dobbs and that the responses of the FAC leadership and that of himself, other diocesan personnel, lawyers, committee members and senior clergy had been abusive, incompetent and unprofessional.

I have revisited this letter now in 2018 as the case of Figtree Anglican Church and the Dobbs family is under review by the present Archbishop of Sydney, who wishes to make an announcement to the FAC congregation and to give his personal apology to the Dobbs family for the injustice with which they have been treated. For them, it has been a long 10 years.

Louise Greentree 2008/2018

**Open Letter to the members of the Disciplinary Tribunal of the  
Anglican Church of Australia Sydney Diocese**

**Setting the Boundaries on Church Discipline**

*Dear Tribunal Members and other Readers -*

*This is an open letter about the diocesan abuse of boundaries. Not boundaries of touch, but the boundaries that honest, just and fair process requires and which those who were responsible for the drafting and administration of the Discipline Ordinance 2006 Sydney Diocese (and its predecessor the Church Discipline Ordinance 2002) have ignored, whether by design or otherwise it is hard to say.*

*This Open Letter presupposes that all those who are responsible for the administration of these diocesan processes are people who claim with humility that they serve a righteous and just God. Therefore, it presupposes that they will be appalled to find their good names and reputations, on earth and elsewhere sullied by failure to recognise and root out the unrighteous and the unjust in these processes and their administration.*

**Introduction**

Over the following few months (from November 2008 into 2009) the case of the complaint made by Lee Nicholls and Yvonne Gunning (Children's Minister of Figtree Anglican Church) on behalf of the then 20-year-old Emma Nicholls against Dr. Dobbs will be dealt with by the Disciplinary Tribunal of Sydney diocese <sup>1</sup>in what has already involved one procedural 'hearing', and which will most likely require a series of further preliminary hearings followed by a main 'hearing'.

**Louise Greentree**<sup>2</sup> has already examined the complaints – the 8 that were rejected by the intervening investigation and by the Professional Standards Committee (PSC) and the 5 that remain, which the PSC 'downgraded' to low level sexual harassment, by unwelcome touching, even if unintentional, of a single adult woman by a married man *or* sexual exploitation<sup>3</sup>. [Not even these few remaining complaints can be sustained, for the reasons carefully examined in the article '*Emma's Remaining Allegations*' and '*Trial by Committee*' which examines the failures of process and of rational intelligent assessment of evidence of the Professional Standards Committee (PSC), published 2017 and 2018 respectively.]

Dr. Dobbs has been forced to go these lengths over an excruciating 21 months to date (November 2008) in order to obtain something that might approach an objective, rational and fair process, where a Tribunal will have to be ready to take evidence in a proper form, including cross-

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<sup>1</sup> Not the Diocesan Tribunal which is how the Promoter of the charges appointed by the Archbishop, Mr. Phillip Gerber has entitled the documents he has prepared for the Tribunal. The Diocesan Tribunal only has jurisdiction over clergy and those who have held or hold an Archbishop's License, which is not the case in this matter.

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<sup>3</sup> See '*A Cautionary Tale*', '*A Cautionary Tale: the cover-up begins*' and '*Sex Lies and Videotape*' published 2008, now published on [www.churchdispute.com](http://www.churchdispute.com)

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examination, and make a series of findings of fact and church law about the case. Until now there has been no way of testing the so-called 'evidence' – really a grab-bag of hearsay to the 3rd and 4<sup>th</sup> degree, gossip, slander, and quotes from anonymous 'sources' - that the diocese has produced throughout the investigation. The insertion of a committee decision on the documents into the process to this point constituted an additional abuse of process. This is yet another reason why not only this writer, but a growing number of other Sydney Anglicans discern that in its treatment of its congregants Sydney diocese is moving towards a totally un-Christian, un-Anglican, unjust and unacceptable approach<sup>4</sup>.

This means that Dr. Dobbs and his whole family have had to endure abuse, harassment and bullying as a result of the malice of the persons who forced Emma Nicholls to make a statutory declaration when she did not wish to do so, and the incompetent, even malicious, handling of the case from well before the time that the Dobbs' family, and even Emma, knew about the existence of a complaint.<sup>5</sup>

### **A few words about the Anglican church Tribunals.**

Sydney Anglican church legislation allocates a different level of authority and power to each of the two tribunals – the Diocesan Tribunal, which deals exclusively with complaints against parish clergy and holders of an Archbishop's license, and the Disciplinary Tribunal for the rest of the church workers as defined by the Discipline Ordinance 2006. The former is specifically empowered by the application of State law, the Commercial Arbitration Act (NSW) so that, for example, it can compel evidence – issue subpoenas for the production of documents and for witnesses to attend a hearing to give personal testimony in its proceedings. The Disciplinary Tribunal is not in that position. And it has only a small range of disciplinary measures available to it because many of the people who could be brought before it are volunteers who can ignore it for the most part. It is not compulsory to be an Anglican and they can simply decide to go to another church or another denomination or drop out of Christian worship altogether.

Such is the hubris behind the drafting of this Ordinance and its predecessor. Why extend the application of church disciplinary law to ordinary people especially where the nature of the cases that will come before it are low-level if anything, where the Police will not act? Perhaps the reason is to justify (if that could be possible) the defamation of a person's character, first within the parish where the complaint is brought by the spread of ill-founded and malicious gossip, and then through the National Register (for which there needs only be a complaint, not a proven offence) and then through these proceedings. But complainants and others who appear in these proceedings (even the Tribunal members) are not protected from defamation actions, as they would be in a State or Federal Court or Tribunal. Therefore, they can be sued, and they then have to look to the diocese to indemnify them for any costs and damages.

This seems to be an unacceptable diversion of funds entrusted to the diocese for the furtherance of its mission – to bring people to the knowledge and love of Jesus Christ.

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<sup>4</sup> This has been developed in the article '*The Taliban meets Oliver Cromwell*'.

<sup>5</sup> See '*A Mother's Story*'.

***THE ABUSE OF BOUNDARIES BY THE DISCIPLINE ORDINANCE 2006 SYDNEY DIOCESE  
AND IT'S ADMINISTRATION***

Over the following pages the discussion focuses on just the preliminary boundaries that the church legislation fails to impose but which would be imposed in any properly conducted hearing in a civil or criminal Court, for example. These boundaries are important, as will be shown in the discussion. The purpose of this article is to put the Members of the Tribunal on notice that just because they meet in a room behind closed doors<sup>6</sup> this does not mean that they can do as they wish: they have to justify their actions and their conduct of the proceedings before the faithful of the church, before the community and before God.

The boundaries that this article will discuss specifically in relation to the Dobbs' family case are these:

- Jurisdiction;
- Defining and describing the nature of the charge;
- The interpretation of the word 'vulnerable' (which does not appear in the legislation, but which appears in the statement of charges);
- The nature of the 'evidence' of facts to prove the charges, including the extension of 'evidence' to anonymous, irrelevant material concerning people and institutions unrelated to the church;
- the use of medical, in particular psychiatric expert evidence and the power (or lack thereof) to compel the complainant to have a consultation with an expert for the purposes of assessing the reliability of her evidence; and
- Procedural matters generally where the drafters of the Rules have sought to deny a proper process for testing the evidence by denying cross-examination in person (except with leave of the Tribunal) and limiting the number of cross-examination questions.

**PART 1: JURISDICTION**

'Jurisdiction' in these circumstances refers to the power given by the Discipline Ordinance 2006 to the Professional Standards Unit (PSU) and its Director, Phillip Gerber, to intervene in the case of a complaint. Mr. Gerber is only able to act in relation to complaints of a defined nature against certain defined persons. These are termed 'church workers' in the legislation, which then defines who is a church worker. The definition includes all clergy, past and present, all parish staff and employees of Anglican institutions and, somewhat controversially, certain 'volunteers' in parish activities such as wardens and members of parish council and, even more controversially, volunteers from among the congregation holding an appointment to a position of leadership in the parish from the Rector or his agent.

The issue that was raised right from the beginning was the question: is Dr. Dobbs a 'church worker' within the definition of the Disciplinary Ordinance 2006?

It is common ground that Dr. Dobbs is not a member of clergy, past or present; he has never held an Archbishop's license; he is not a member of staff of a parish in any capacity; he is not an employee of any Anglican Church institutions or organisations; he is not a warden or member of the parish council. Nor is he a volunteer for any of the parish activities in any form of leadership role; he has

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<sup>6</sup> Hearings are ostensibly held in public, but only if there is room for the public and they are not barred from attending by the Tribunal, which it has the power to do.

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never been appointed by the rector to a leadership role in the church. So how come Mr. Gerber has resolutely proceeded in accepting the allegations made by Lee Nicholls on behalf of her 20-year-old daughter Emma Nicholls?

*History of the challenges to jurisdiction:*

*[For an in-depth discussion see 'Leadership Ministry and a Coffee Machine'.]*

The history of this issue is that Dr. Dobbs submitted highly detailed submissions to the Director Professional Standards Unit (PSU), Phillip Gerber, arguing that as he was not clergy, not a parish or church organisation staff member, not a warden or member of parish council and not an appointee by the Rector or his agent to a position of leadership, he had no jurisdiction.

Surprisingly, in view of how he chose to deal with this formal challenge to jurisdiction, he had already flagged that there could be a problem with jurisdiction to the Executive minister of Figtree Anglican church (FAC) the rev. Bruce Clarke in an early communication.

*Mr. Gerber's response to the formal challenge:*

But once Dr. Dobbs objected to his jurisdiction, Mr. Gerber dealt with it simply by ignoring the need to obtain the 'evidence' that was required: i.e. evidence of an appointment by the rector or his agent. Instead he focused on whether bringing an espresso coffee machine to services and serving decent coffee to fellow-parishioners, and a past few instances of playing guitar in one of the several bands in someone's absence or until a permanent member could be found conferred jurisdiction by being a 'ministry' or 'up-front' role, and he made a pre-emptive 'decision' that it did.

When this was challenged, he attempted to ignore the issue until threatened with an approach to the Supreme Court for an injunction (which would necessitate the Court deciding whether the PSU had jurisdiction) whereupon he consulted the then Chancellor of the Diocese, Acting Judge Peter Grogan.

*The Chancellor, Acting Judge Peter Grogan's response:*

The Chancellor is reported by Mr. Gerber to have said that there was jurisdiction. But Acting Judge Peter Grogan also did not call for and consider actual evidence of the existence or otherwise of an appointment. He merely said that he was 'comfortable' that there was jurisdiction. However, his comfort is not the issue. When Dr. Dobbs called for written reasons he was rebuffed by Mr. Gerber who stated, surprisingly, that he did not feel able to approach the Chancellor to give reasons.

*Contributions to the jurisdiction debate by staff and clergy at Figtree Anglican church:*

There was a lot of nonsense flying around at parish level that was eventually stated in a signed statement by such as Yvonne Gunning about 'in-depth' discussions in parish meetings or staff meetings about Dr. Dobb's unsolicited offer to give the parish a commercial espresso coffee machine (but not to operate it), but not by the Rector whose signed statement does not address the evidence required and whose evidence is critical to the determination of this question<sup>7</sup>.

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<sup>7</sup> All that he says is this in his signed statement dated 24 September 2007 paragraph 4: '*Scott hasn't been on the payroll at any time but he has had all sorts of ministries here. He used to play in the band. More recently he had a coffee ministry in the church foyer.*' This, of course is not evidence – it is stating a conclusion without stating the evidence on which it is based. The statement '*he has had all sorts of ministries here*' is not supported by any

*The contribution of the PSC to the great jurisdiction debate:*

The PSC, which was warned in an Open Letter to its Chair, Archdeacon Deryck Howell that jurisdiction was still an issue<sup>8</sup>, ignored the need to call for evidence of the committee's power, merely stating that the committee was 'comfortable' that it had jurisdiction. They then went on to postulate that this arose under one of several heads of the definition even though none of the evidence in the documents that they were considering supported this view. This was despite the fact that among the committee members was a barrister, a University Professor and several professional people and there was no evidence before them to enable them to draw that conclusion.<sup>9</sup>

*[See 'Trial by Committee' for a full examination of the fatuousness of the conclusions drawn by the committee not only on the question of jurisdiction but also the existence of any sort of case against Dr. Dobbs.]*

There needed to be at the beginning and there still needs to be a formal finding on facts based on evidence from the Rector (or his delegate) and supported by parish council minutes and records of correspondence (which Dr. Dobbs will be given a chance to examine and refute) as to whether –

*firstly*, Dr. Dobbs was *appointed* to a position in Figtree Anglican church by the Rector or his delegate (and if so what were the terms of that appointment and when was it communicated to and accepted by Dr. Dobbs); and

*secondly*, was bringing his own espresso coffee machine, coffee beans and milk to such services as he or another family member was able to attend as a 'gift' to fellow parishioners (who made a donation towards the cost of the coffee beans) – serving them good espresso coffee instead of pale brown liquid refreshments, *a leadership position*, within the definition of 'church worker' contained in the Ordinance.

**What happened at the first directions hearing.**

At the preliminary hearing on 6th November 2008, Dr. Dobbs called upon the presiding Tribunal member to make directions for the production of evidence so that a hearing could be held to determine this fundamental point. Directions were made which included -

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evidence. As a lawyer Mr. Gerber should have insisted on production of evidence before proceeding. But he did not. Had he done so, Emma Nicholls could have been assisted with the medical intervention that she needed which her doctor recommended (see later discussion in this article).

<sup>8</sup> See the Open Letter to Archdeacon Deryk Howell on [www.churchdispute.com](http://www.churchdispute.com)

<sup>9</sup> But then the Committee also expressed its support for the way in which the matter had been handled even though Archdeacon Howell had been informed that among the actions taken by the Figtree Anglican church leadership, in particular the Rev. Bruce Clarke was the hounding of the Dobbs family children and young adults and Mrs. Dobbs out of the church, banning them from returning to attend church services and prohibiting people, even the children's friends and teachers at the local Anglican school from speaking to them. The committee seemed to be unaware or unconcerned that this could constitute child abuse and bullying and harassment by clergy, and a complaint under the Discipline Ordinance 2006 has now been made about those involved.

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That within 21 days the promoter (Mr. Gerber, the Director PSU) produce to the Tribunal and to the respondent Dr. Dobbs all material evidencing the assertion that Dr. Dobbs held an appointment by the rector in a position of leadership in Figtree Anglican Church, including -

- (1) Evidence on statutory declaration by the rector at the time, the Rev Rod Irvine succinctly stating –
  - (i) the date on which the appointment was made, the nature and parameters of the appointment, including the duties, the names of those under the trust and care of Dr. Dobbs;
  - (ii) the length of the appointment, if any;
  - (iii) the name of the office Dr. Dobbs allegedly held under the alleged appointment;
  - (iv) the remuneration of this position;
  - (v) notice of the date when Dr. Dobbs was informed of these things;
  - (vi) the date and method of Dr. Dobbs' acceptance of the terms and conditions of the alleged appointment including, but not limited to the notification of the imposition of the Diocesan Disciplinary Ordinance 2006 as the governing ordinance of this alleged appointment or position
- (2) The original parish minutes for the whole of the period within which that appointment is said to have been discussed, approved, made by the rector and recorded in those minutes
- (3) All and any other documents or evidence on statutory declaration relevant to the issue.
- (4) What is to happen after the production of the evidence is to be determined in a teleconference between Dr. Dobbs, the presiding Tribunal member and Mr. Gerber which must be held before 24 December 2008.

But Dr. Dobbs, in his written summary of the declarations and directions sought (which is in the Tribunal file now attached to a written copy of the above directions) has also requested the following directions and something to the same effect will need to be directed:

- 1.2 That within 14 days of production of the said material to Dr. Dobbs he prepare and produce to the Tribunal with a copy to the diocesan prosecutor all evidence on which he relies in response to the diocesan material.
- 1.3 That within 14 days thereafter the diocesan prosecutor may file any relevant material in reply.
- 1.4 That either side must give notice of intention to cross-examine all or any witnesses for the other side within 14 days of the filing of the last documents, whereupon directions will be given for the administration of cross-examination in person or absent cross-examination in person, cross-examination in accordance with Directions 6.1 below.<sup>10</sup>

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<sup>10</sup> See the later discussion in this article about the diocesan rules concerning cross-examination

1.5 That the matter be listed for a preliminary hearing on a date not less than 14 days thereafter for determination of the question of jurisdiction.'

**PART 2: THE BOUNDARIES OF THE 'CHARGES' and defining and describing these.**

There needs to be a definitive direction as to which 'charges' the diocese is actually proceeding with, so that Dr. Dobbs and his team do not spend time and effort answering material that was intended to support charges that have already been dismissed in the earlier process. They will have to ask the Tribunal to make directions on this aspect of the matter because all that Mr. Gerber has done is put the investigator's report, which includes his abbreviated<sup>11</sup> list of allegations and a description of each that does not actually reflect the state of the 'evidence' in the documents into the folder of material for the Tribunal. This means that no-one else on behalf of the diocese – particularly not Mr. Gerber - has considered the shambles that is the investigator's report, which ignores the content of some highly significant documents included with the report such as that containing significant admissions by Emma Nicholls of her 20-year-old delusional desire to entrap Dr. Dobbs into a sexual relationship with her and her medical practitioner's statement about the effect of Obsessive Compulsive Disorder on her perceptions.

And all of the material purporting to be 'evidence' that was put before the diocesan investigator, and then all the material gathered by the diocesan investigator and put before the PSC is now in the folder before the Tribunal, and yet in both of those processes a large number of the allegations (8 out of 13) were abandoned as '*unsustained*', to quote the rather ambiguous word utilized by the Investigator.

*The remaining allegations (5 out of 13 plus other complaints rejected out-of-hand):*

Attached to this article is a schedule of the original complaints and allegations, and the way in which these were dealt with by the Investigator and the PSC, to which the attention of Tribunal members is directed, and the few that remain after consideration by both the investigator and the PSC.

As can readily be seen from this document, the original complaint covered a much larger number of alleged 'incidents' which even the Investigator could not stomach: he kicked out one of only two alleged incidents when Emma Nicholls was aged under 18: a hug in the family kitchen when she had burned her hand on a saucepan at age 14 (in front of at least one other member of the family with others within view), and also excluded such 'allegations' as Dr. Dobbs giving the woman a compliment when she was aged 19 and wearing a skirt belonging to one of his daughters, and an 'allegation' that he blew her a kiss while she was on the phone<sup>12</sup>.

Then the PSC reduced the charges further by kicking out the second of only two alleged incidents when Ms Emma Nicholls was aged under 18, namely the 'sideways hug' at age 16 in the presence of Dr. Dobbs' children.

*Mr. Gerber tries to bolster the allegations and dumps all materials onto the Tribunal members:*

So, the PSC has rejected both of the under-age allegations; and the investigator has rejected all of the allegations except alleged incidents on only 4 isolated occasions when Emma was aged 20, falling

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<sup>11</sup> Abbreviated because he rejected 8 of 13 incidents as not sustainable.

<sup>12</sup> She got very upset in her next signed statement after she had been shown Dr. Dobbs' reply that he blew a kiss at his daughter, out of Emma Nicholls' sightline - and this is highly relevant because of the admissions she makes in another document, her email to her trusted friend, SanDee confessing how she had fallen in love with Dr. Dobbs.



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between November (or possibly December) 2006 and February 2007: and yet the age 16 'sideways hug' has reappeared in the diocesan prosecutor's documents. Why?

And all the other (now entirely irrelevant) material concerning other allegations rejected as unsustainable has simply been unceremoniously dumped before the Tribunal. Why?

It is important to mention at this stage that Emma Nicholls is, on her own admission, the sole witness of fact: that is, she says that there were no other people who witnessed the 'incidents' contained in the complaint. And this, she says is the case even where it is alleged that the actions took place in the presence of possible witnesses, including parishioners at the evening service at Figtree Anglican Church, Mrs. Dobbs, and even her mother<sup>13</sup>.

*Declarations and directions required by Mr. Gerber's failure to define the charges, place his evidence in order and to remove all irrelevant material from those placed before the Tribunal:*

Directions will have to be made requiring Mr. Gerber to do the following –

- (1) to list the charges in a proper form that actually reflects the whole of the documentary evidence, including admissions by Emma Nicholls;
- (2) to sign a document formally undertaking that these and only these are the relevant charges that will be proceeded with on the hearing: the reason for this is discussed further below in relation to setting boundaries on 'evidence' put before the Tribunal by Mr. Gerber;
- (3) to prepare these charges in accordance with the matters contained in the Schedule to this article;
- (4) to prepare the charges in the form as set out in Emma Nicholls' own documents, and -
  - (a) where there are inconsistencies between the different accounts of the same alleged incident in these documents, to indicate those inconsistencies and to elect the version on which he intends to base his charges, and
  - (b) where there are admissions by Emma Nicholls in those documents, to indicate those admissions.

Because Mr. Gerber refers to Emma Nicholls as a 'vulnerable person' (see the discussion of this below) a direction is required –

- (1) to prepare and lodge with the Tribunal ONE ONLY statutory declaration by Emma Nicholls containing all her evidence on which he intends to rely in relation ONLY to the charges which he intends to prosecute.
- (2) that the statutory declaration to be made by Emma Nicholls is prepared by her in conjunction with assistance from a neutral person approved by Dr. Dobbs, and without reference to the documents, declaration and signed statement already prepared on her behalf, (in an attempt to ensure that the content of the latest statutory declaration should represent as far as possible her own recollection, unprompted and uninfluenced).

Up until this time Dr. Dobbs has been presented with only the first statutory declaration by Emma Nicholls and a later diffuse signed statement by her along with signed statements by Yvonne Gunning and Lee Nicholls which purport to say what they (not direct witnesses) can only say is what Emma Nicholls has told them. The veracity of these (for whatever reason) has to be called into question

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<sup>13</sup> Her mother Lee Nicholls in her signed statement says that she saw nothing despite observing them for about an hour in company with other parishioners at the evening service at Figtree Anglican church on 28 January 2007.

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given that Emma Nicholls contradicts parts of these hearsay statements in her later statements as well as parts of her own earlier statements.<sup>14</sup>

Then, within a further 28 days after receiving the sole statutory declaration of Emma Nicholls that will be relied on by the diocese Dr. Dobbs will be able to prepare and lodge with the Tribunal his personal statutory declaration responding to it.

### **PART 3: WHAT IS THE DEFINITION OF 'VULNERABLE'?**

The 'charges' as drafted by the Investigator keep referring to Emma Nicholls as 'vulnerable'. Indeed, the correspondence and conversations right from the beginning referred to Emma Nicholls as 'vulnerable' as if this was a special category of person who came under the protection of the Ordinance. But where does this term appear in the definitions of the Code of Conduct Faithfulness in Service and the Discipline Ordinance 2006? It does not appear as a defined term. As it does not appear in these documents as a defined term then how can it be relied upon as a foundation for the charges by Mr. Gerber?

There seems to be an undefined assertion that despite the fact that all the allegations, let alone the very few that remain after consideration by the Investigator and the PSC, are so slight, there is something about Emma Nicholls that requires an entirely different, undefined approach. It is rather like allowing criminal charges against some hapless person for murder despite the fact that the victim is still alive. Just as the death of the victim is fundamental for the charge of murder to lie, so it is fundamental to this case that unless Emma Nicholls suffers from a defined legal disability<sup>15</sup> she is responsible for her actions and responsible for the prosecution of the case, and that at age 20 at the time of all of the incidents (except the ludicrous 'sideways hug' when she was 16) she is responsible for her consent to such touching as might have occurred (such as a hug, which she admits was common behaviour between all members of the Dobbs' family and which she enjoyed).

What Mr. Gerber is attempting here is a covert redefining of the Ordinance. He should not be allowed to do this. Therefore, there needs to be some finding as to why the word 'vulnerable' should not be removed from the 'statement of charges' as justification for claiming lack of viable consent of an adult woman.

*The effect of Emma Nicholls' OCD and other disorders on her reliability as the sole witness:*

Yet, while on the one hand parish clergy, staff and Mr. Gerber were all referring to Emma Nicholls as 'vulnerable' from the beginning, as if this strengthened the very slight complaints, they were rejecting Dr. Dobbs' and Mrs. Machele Dobbs' statements that Emma Nicholls suffers from a number of personality disorders including Obsessive Compulsive Disorder which combined will make her an unreliable witness.

Mrs. Dobbs' statements to this effect were cited as one reason for the Rev. Bruce Clarke to ban her and her children from the church.

And eventually the diocesan investigator produced a signed statement by her treating doctor Dr. Richard Schloeffel confirming that she indeed has a number of personality disorders, an inability to relate to people, that she comes from a dysfunctional family and she suffers from Obsessive Compulsive

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<sup>14</sup> This is discussed in 'A Cautionary Tale'.

<sup>15</sup> The Ordinance lists legal disabilities which include being underage and being of unsound mind or otherwise incapable of managing their affairs. Yet Emma Nicholls was aged 20 when the complaint was made on her behalf, she was provided with a flat by the parish for her to live in alone away from her family, a disability pension was organised for her support, and she has been enrolled in TAFE courses. So, clearly, she does not fall anywhere within such a definition.

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Disorder and therefore, he says that it is possible that her 'recollections' are delusional and unreliable and that she can be delusional about the meaning of ordinary behaviour.

If that is the meaning of 'vulnerable' then Dr. Dobbs and his family could only wholeheartedly agree.

It would mean also that she was easily pushed into making a statement to Yvonne Gunning in a three-hour interview on the very same day she was reported to have said she did not want to make a complaint 'at this stage.'<sup>16</sup> This was 20 days after her mother Lee Nicholls had purported to make a complaint on her behalf, and had asked Yvonne Gunning not to tell Emma that a complaint had been made and who made it.

What in fact is happening here is that Mr. Gerber wants to characterize Emma Nicholls as 'vulnerable' to suggestion from Dr. Dobbs that she was desired by him (which she was not, and he had never said so nor acted as if she was) and yet to deny that her real vulnerability lies in her debilitating personality and other mental disorders and consequent delusions which make her (the only witness of fact) an unreliable witness.

### *Directions required in respect of 'vulnerable':*

If it is a finding of the Tribunal that the word properly remains in the statement of charges then there needs to be a preliminary hearing as to the manner or condition of Emma Nicholls' alleged vulnerability both as a matter of fact and as a matter of law in relation to the charges: the effect of this condition of 'vulnerability' upon such issues as personal responsibility, reliability as a witness and the extent to which Dr. Dobbs is to be held responsible for any misconceptions and distortions and delusions arising from her alleged vulnerability.

The directions that need to be made in relation to this 'boundary' will need to include referral of Emma Nicholls for consultation and assessment for the purposes of an expert report from a forensic psychiatrist.

## **PART 4: THE SETTING OF EVIDENTIARY BOUNDARIES**

### ***PART 4.1 SCANDALOUS & MALICIOUS GOSSIP IS NOT EVIDENCE***

One of the most scandalous aspects of the conduct of this matter by Mr. Gerber, his investigator, Ken Taylor, and clergy, staff and parishioners of Figtree Anglican church has been the encouragement and gathering of widespread irrelevant gossip, all hearsay and some of it anonymous, which has been included in the signed statements placed before the PSC in the first instance and now again before the Tribunal. Therefore, the Tribunal has to be asked in a specially designated preliminary

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<sup>16</sup> Confidential file Note 20 February 2007 Jenni woodhouse telephone conversation with Bruce Clarke: '*Emma is not prepared, at this stage, to make a complaint herself. Bruce wanted to know what is the best way forward from here ... what could PSU do if we only received a complaint from the mother ... how would it be dealt with if the mother does not make a complaint ... I have explained to Bruce that the best way forward would be for Emma to make a formal complaint, and what would be likely to happen if she were able to do that.*' In fact Emma never made a formal complaint to the PSU. The next document is Yvonne Gunning's report of the interview with Emma on 20 February 2007, headed 7.20pm then follows a Contact Person's Report 23 February 2007 by Margaret Fuller of a telephone call from Lee Nicholls: '*Lee reported that she disclosed to her daughter that there were concerns about Scott Dobbs behaviour following a child protection seminar at the church recently. Emma then decided to make her own complaint about his behaviour towards her and spent 3 hours with Yvonne Gunning.*' By 23 February 2007 Yvonne Gunning had faxed the statement to the PSU to draft Emma's statutory declaration, had it amended, then approved and signed by Emma.

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hearing to set boundaries on the evidence that it will receive in this matter. This is not only because of the need for the Tribunal to conduct its process in accordance with established understanding and practice of fair process, but also because the range of this gossip affects the amount of material that would need to be answered by Dr. Dobbs and, based on the material dumped on the Tribunal at present, his myriad witnesses.

The state of the material prepared by the diocese is an embarrassment given that, at the very least, 95% of it is –

- (1) irrelevant,
- (2) hearsay (to the 3<sup>rd</sup> and 4<sup>th</sup> degree),
- (3) malicious gossip,
- (4) a litany of vicious personal attacks not just on Dr. Dobbs but on his wife and children,
- (5) anonymous material reported in the said hearsay to the 3<sup>rd</sup> and 4<sup>th</sup> degree,
- (6) material concerning an institution which is totally unrelated to the Anglican Church of Australia (the University of Wollongong), and
- (7) by and about people (some of whom are anonymous) who are not even members of any Anglican Church of Australia and who have not made any complaint to the PSU.

**One has to ask the tribunal members this: how much time do you have to consider the answers to every allegation such as the following -**

*‘When I initially spoke to her (an anonymous woman) she told me that Mabelle had become pregnant and that Scott had to marry her.’ Helen Irvine (the wife of the Rector Rod Irvine)<sup>17</sup>*

Witnesses needed to refute this claim: Dr. Dobbs, Mrs. Dobbs, her medical adviser at the time(?) The marriage certificate, the birth certificate of her eldest child, her bridesmaid(?) her mother(?) photographs (duly authenticated by the photographer) of her in her wedding dress to show there is no betraying bulge about the abdomen(?)

Does the Tribunal care about this? But Dr. and Mrs. Dobbs care about it and if Mr. Gerber insists on this remaining in the materials to be considered by the Tribunal they will want to bring witnesses to refute it.

**Or this: again Helen Irvine quoting gossip from an anonymous woman:**

*‘I gained the impression that one of the reasons that Mabelle kept Scott on such a short lead was because he had done something inappropriate with someone before and that Mabelle had heard about it, or Scott had told Mabelle something. That would fit in.’<sup>18</sup>*

Witnesses required to refute this allegation: Firstly, there is already available in several of the signed statements by diocesan witnesses that in the 12 years of his attendance at Figtree church there has never been any allegation or even the merest suggestion of inappropriate behaviour on the part of Dr. Dobbs.

Other witnesses: Dr. Dobbs, Mrs. Dobbs, testimonials from former employers that there were never any complaints made; cross-examination of Helen Irvine and a challenge to name the anonymous woman; cross-examination of the anonymous woman.

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<sup>17</sup> Helen Irvine (the wife of the Rector Rod Irvine) in her signed statement dated 18 September 2007 paragraph 17.

<sup>18</sup> Helen Irvine signed statement dated 18 September 2007 paragraph 20.

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**Or this: again, Helen Irvine, about a young woman she calls Anna Maria (who has not made any complaint to Helen Irvine or the PSU) about Scott's wish not to share a room with her when they were PhD students.**

*'As a Christian I could understand why Machelles wouldn't have wanted him to share a room with a young attractive girl'.<sup>19</sup>*

Witnesses required:

Firstly, how can one accept that Helen Irvine is a Christian? It is hard to do so considering the vitriolic and poisonous attacks she has made on Machelles Dobbs and her children as well as Dr. Dobbs as discussed below.

And also see **James 1:26** *'Those who consider themselves religious and yet do not keep a tight rein on their tongues deceive themselves, and their religion is worthless'* TNIV.

Theological evidence will suggest that the tenets of Christianity have nothing to do with sharing or refusing to share a PhD student room with 'a young attractive girl'. Helen Irvine should be challenged under cross-examination to prove her statement that she is a Christian on the basis of this issue and in the light of her malicious attack on the whole family.

Dr. Dobbs would also have to produce records from University of Wollongong that Anna Maria lodged, and then withdrew within a week, a complaint of sexual discrimination.

He would also need to get evidence from the two men and one woman who shared his room.

**Or this: Helen Irvine (who is not a trained psychologist), yet again**

*'I would describe Machelles Dobbs as extremely insecure'<sup>20</sup>*

Witnesses: psychologist's report as expert evidence that Machelles Dobbs is not extremely, or even slightly insecure.

**Or this: Helen again**

*'The only concern I had was that his (Dr. Dobbs') daughters dress in a very sexy way, even when they're very young. Their hair is bleached blond. It looks bleached.'<sup>21</sup>*

Witnesses required: baby photos (duly authenticated by the photographer ) showing that the girls were born blond; a chemist to give evidence of the reaction between blond hair, sunshine and salt water (the family live close to the beach and are part of the swimming and surfing culture of Wollongong – perhaps some friends would need to give evidence of this fact also?); photos (duly authenticated by the photographer) of the girls at various stages of their development showing the clothes that they are wearing; expert evidence from (say) the children's fashion buyer for a chain of department stores; perhaps a psychologist to give an expert opinion as to whether the clothes are 'very sexy'. Perhaps Helen could answer questions to define and explain what she actually means by 'very sexy' when referring to children's clothing. Perhaps the expert

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<sup>19</sup> Helen Irvine signed statement dated 18 September 2007 paragraph 21

<sup>20</sup> Helen Irvine signed statement dated 18 September 2007 paragraph 22

<sup>21</sup> Helen Irvine signed statement dated 18 September 2007 paragraph 36

psychologist should have a consultation with her as to why she sees children's clothing as very sexy.

**Or this: Helen yet again**

*'..there were a couple of incidents with (she names a Dobbs' daughter) who would go and sit on the laps of male teachers.'*<sup>22</sup>

This is totally denied by that daughter who also feels that she has been utterly betrayed by Helen Irvine, whom she used to look up to as an example of good Christian womanhood. No more.

Witnesses: the daughter's evidence to deny the allegation; cross-examination of Helen Irvine and directions to name male teachers and produce their direct evidence; cross-examination of the male teachers.

*(A thought added in 2018: was Helen, instead of being critical of this Dobbs daughter who would have been at the time referred to aged somewhere between 4 and about 8, accusing the male teachers of being unreliable and being sexually aroused by a very young child sitting in their laps? And I wonder how these men would feel about that criticism.)*

**Or this: Helen again**

*'I heard at one stage that (she names one of the Dobbs' daughters) had self-harmed. ...she was always very attention-seeking, very long blonde hair, another dramatic person, a very dramatic person...'*<sup>23</sup>

This is totally denied by that daughter and her parents and the rest of her family and friends.

Witnesses: The daughter, Dr. Dobbs, Machel Dobbs, siblings, family and friends.

**In fact, the whole of Helen Irvine's signed statement is irrelevant and mostly hearsay. The only significant relevant thing she says in that signed statement is the phrase contained in paragraph 36: 'I don't know Emma Nicholls ...'**

**Leaving that vitriolic lady Helen Irvine<sup>24</sup> for the time being we can go on to such as the following:-**

There is mention of discussions in staff meetings about someone's child telling someone who told people in the meetings that there was no door on the Dobbs' downstairs toilet and someone says that Dr. Dobbs leered at someone who was washing her hands in the toilet handbasin. Mrs. Goodhew, in her signed statement is moved to refute this and point out that some bathrooms are designed with an open wash area and a toilet area with a door.

Witnesses: photographs (duly authenticated by the photographer); Dr. Dobbs to deny leering at anyone washing their hands; friends and home stay students over the years that the

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<sup>22</sup> Helen Irvine signed statement dated 18 September 2007 paragraph 36.

<sup>23</sup> Helen Irvine signed statement dated 18 September 2007 paragraph 37.

<sup>24</sup> One of the major disappointments about Helen Irvine's 'evidence' is that she is a senior academic, formerly at University of Wollongong (as a colleague of Dr. Dobbs) and now at Queensland University of Technology, and therefore one would expect her to apply to giving this 'evidence' the intelligent analysis and a scrupulously objective approach expected of her in publishing her research.

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configuration of the downstairs toilet is still the same and has always, while they were resident or visitors, had a door.

**[Postscript added in 2018:** this was based on a scurrilous lie told by Rebecca Clarke, elder daughter of the rev. Bruce Clarke to him and repeated by him to DOCS (which declined to investigate) and then spread around the parish and beyond in the form that it indicated an inappropriate culture of nudity and sexuality in the household. However, Rebecca Clarke when interviewed by the investigator declined to have anything to do with the case, but withdrew this allegation, saying that the downstairs toilet had a screen door that was pushed back.]

**Or this:**

*'I've had a comment made to me by a woman in our church who expressed how she didn't like how Scott would take babies out of prams, one of which was her own grandchild, without permission and kiss it and hold it. She said that made her feel uncomfortable'.<sup>25</sup> Yvonne Gunning*

Witnesses: ????? apart from Dr. Dobbs' denial of ever doing this; cross-examination of Yvonne Gunning to name the anonymous woman and cross-examination of that woman.

**Or this:**

Here we have another interesting example of the way hearsay evidence develops in the telling (just like Rebecca Clarke's initial lie):

*'I know that Scott spoke to the husband of one of our staff members Faye Brampton. Faye later spoke to me about it. Her husband Des had spoken to Scott and Scott had apparently made some comment about how he was possibly launching into an affair. I presume that Scott was talking about Emma. Scott was sort of seeking Des's counsel and Des said something like 'Don't be an idiot.'<sup>26</sup> Yvonne Gunning*

Now look at what Des Brampton says in his signed statement made 24 September 2007: (after detailing a conversation with Scott which Des Brampton assumed was about Scott having trouble with his wife.)

*'10. Scott didn't mention his wife or any other woman. Not from my memory. Afterwards I talked to my wife Faye about my conversation with Scott Dobbs and I understand that Faye later told Yvonne Gunning that Scott Dobbs told me that he was about to launch into an affair or something to that effect.....*

*11. I think that Scott Dobbs might have given me the impression that there was another woman involved but he didn't tell me anything about an affair. He didn't say that he was going to have an affair. He didn't say that.....'* Des Brampton

Des, incidentally, says at first that he has Alzheimer's Disease, but later retracts that but says he has problems with his memory. His wife confirmed to the investigator that Des had not told her that Dr. Dobbs had told him that he, Dr. Dobbs, was embarking on an affair.)

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<sup>25</sup> Yvonne Gunning signed statement dated 11 September 2007 paragraph 34.

<sup>26</sup> Yvonne Gunning signed statement dated 11 September 2007 paragraph 24

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Yet despite all this, his statement and the investigator's note of his conversation with Faye Brampton remain in the folder of material dumped on the Tribunal members. What is the Tribunal going to do with this piece of 'evidence' and what is Dr. Dobbs expected to do about it?

### Or this:

With what can only be a Freudian slip the anonymous writer says *'She doesn't want to be named because she is very intimidated by him and thinks she (sic) is mentally unstable'*<sup>27</sup> (Emphasis added)

Oh, Dr. Dobbs and his team do so agree with the last phrase. But what is the Tribunal going to do with this and what is Dr. Dobbs expected to do about it?

### Or this:

*'Bill Clarke has no knowledge of a person of the name of Scott Dobbs. The name did not ring a bell for him. He felt certain that he would have recalled the name if any complaints had been made about inappropriate conduct.'*<sup>28</sup>

What is the Tribunal going to do with this and what is Dr. Dobbs expected to do about it?

### It is possible to go on and on.

It is possible to and it will be necessary to produce a gigantic document of all the allegations made in the huge quantity of irrelevant material that Mr. Gerber has put before the Tribunal and Dr. Dobbs and his team can list the two or three or more witnesses that would have to give evidence to refute each piece of this irrelevant and malicious material.

But it also has to be asked: why should Dr. Dobbs be put to the enormous expense of having to track down witnesses to refute all of this when it is irrelevant?

### **PART 4.2 THE BOUNDARIES IMPOSED BY THE RULES OF EVIDENCE**

While Tribunals like to regard themselves as free from the irksome restrictions of the rules of evidence, these rules exist for a serious purpose: to ensure that a person is only 'convicted' or has a finding against them made on relevant evidence that has been properly proved. Malicious gossip is never regarded as acceptable in any serious and competent process. The rule against the consideration of irrelevant material is also a rule against the undue protraction of proceedings where the respondent is put to the time and expense of producing witnesses to refute the irrelevant material. The rule against hearsay where direct evidence is available is one that acknowledges the way in which the story changes each time it is told to someone else, as witness the Des Brampton – Faye Brampton – Yvonne Gunning example cited above.

The rule against admitting hearsay evidence where first-hand (or direct) evidence is available also guards against the deliberate interpretation and re-interpretation of 'facts' by the listener.

It does no good to the reputation of the PSU of Sydney Diocese, nor that of the investigator, that they have produced and now seek to rely on a mass of material at least 95% of which has no evidentiary

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<sup>27</sup> Page 285 in the materials: Girl Y handwritten notes? Who by? Who about?

<sup>28</sup> Page 300 in the materials: Ken Taylor (diocesan investigator) 'Enquiries of Bill Clarke' following up a 'lead' provided by the Rev Bruce Clarke (presumably no relation).



value in relation to the 'charges'. It is as if they acknowledge that they do not in fact have reliable evidence to prove the charges and need to throw up as much irrelevant and anonymous muck as they think the Tribunal will stomach to attempt to hide this fact.

*Directions required:*

Dr. Dobbs is now forced to apply to the Tribunal for directions that it will ONLY receive any material of fact or evidence that is relevant to prove or deny the charges and that it will NOT receive and consider any material or evidence that is –

- (a) Hearsay to the 1<sup>st</sup> degree (in order to prove that C had kissed B, relying on A's evidence that B told this to A where direct evidence is available ie evidence from B) with the exception of evidence (by such as Yvonne Gunning and Lee Nicholls) of what Emma Nicholls is said to have told other people because the bearing this has on issues of her reliability as a witness;
- (b) Hearsay that is to any remoter degree;
- (c) Gossip;
- (d) Anonymous 'evidence'.

#### ***PART 4.3: THE BOUNDARIES OF THE CHURCH AND ITS INSTITUTIONS AS OPPOSED TO THE WORLD AT LARGE***

There is also a serious issue of how far into the community an Anglican Church Tribunal has or should have any pretense to power and authority. If as is stated so copiously in the materials accompanying the Code of Conduct Faithfulness in Service and the Discipline Ordinance that the intention is make the church safe to attend, then to what extent should the Tribunal extend boundaries into considering and making findings about internal matters related to another institution unrelated to the church and about people who have no relation with the Anglican church.

Because a lot of the irrelevant material concerns spurious claims by a woman Corinne Cortese, an anonymous woman 'Girl Y' and 'Anna Maria' all of whom were or are at present students or staff at Wollongong University<sup>29</sup> Dr. Dobbs has given notice to the Vice-Chancellor of Wollongong University that this Tribunal would appear to be being asked to purport to exercise jurisdiction to make findings in respect of matters internal to the University and in relation to a defense that will include evidence concerning certain university practices for the benefit of overseas students at the relevant time. It is expected that the University Solicitor will want to keep a watching brief, if not to intervene in relation to public hearings of these issues should the Tribunal decide to receive them.

***The boundaries of so-called 'similar fact allegations' which have never been made or sustained in the other institution.***

It is also significant that the only time a formal complaint of a sexual nature was made to the University of Wollongong it was by Corinne Cortese and it went no further than the EEDU office, and it was never presented to Dr. Dobbs nor investigated by the University. It therefore seems to have fallen into the area where the UOW Director EEDU Robyn Weekes made a preliminary assessment that it was of no substance. Why, and how, can an Anglican Tribunal go beyond this internal assessment of this sole informal complaint?

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<sup>29</sup> For a discussion of these claims see '*The First Stone Revisited*'.

*Directions required:*

Dr. Dobbs is forced to apply to the Tribunal for directions –

- (1) that it will ONLY receive material of fact or evidence from persons who are or were at any material time members or at the least regular attenders of Figtree Anglican Church, with the exception of expert evidence, and only in relation to the charges, and each statutory declaration (other than by an expert witness) is to contain a statement of the fact of being a member or regular attender of Figtree Anglican Church and the period of time this has been the case;
- (2) that Mr. Gerber removes from the Tribunal materials all material that offends the terms of the Tribunal's declaration on the boundaries of evidence that it will receive and consider;
- (3) that he prepares fresh, compliant documents in the form of statutory declarations for all material on which he intends to rely, including the reports of conversations with Emma Nicholls in the material of Lee Nicholls, Yvonne Gunning and Mrs. Pam Goodhew, and that he lodge these with the Tribunal with copies for the respondent Dr. Dobbs.

**PART 5: EXPERT WITNESSES**

As discussed earlier, it is agreed that Emma Nicholls suffers from moderate to severe eating disorders and Obsessive Compulsive Disorder amongst other personality and mental disorders and she comes from a dysfunctional family. In the materials prepared by the diocese there is a signed statement by Emma Nicholls' treating doctor Dr. Richard Schloeffel in which he describes the strong possibility that her perceptions are delusional, and her recollections are unreliable.<sup>30</sup>

***The need for an assessment of Emma Nicholls by a forensic psychiatrist:***

Emma Nicholls' personality disorders – her sexualisation of ordinary life incidents<sup>31</sup>, her relationship issues and family dysfunction and her Obsessive Compulsive Disorder and other mental disorders – and the effect of these on her reliability as a witness is central to this case, especially given that she is the sole witness of fact.

Dr. Dobbs' advisory team has consulted an acknowledged expert on Obsessive Compulsive Disorder both as practitioner and researcher. From the material furnished to him the expert is already able to make some useful observations on the case. He has recommended that Emma Nicholls be assessed by a forensic psychiatrist.

*Direction required:*

- (1) Therefore, for the sake of the proper preparation of this and other expert evidence for the guidance of the Tribunal it will be requested that there be directions facilitating the examination and assessment of Emma Nicholls by an acknowledged expert forensic psychiatrist.

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<sup>30</sup> There is another signed statement of a peculiarly rambling kind by a Dr Pratt who is not and never has been Emma Nicholls' treating doctor and who has no expert knowledge of the disorders and the diseases from which Emma Nicholls' is described as suffering in general nor in particular concerning Emma Nicholls. This statement should be removed from the materials as being of no evidentiary value and again it contains irrelevant and hearsay 'evidence' that Dr. Dobbs would be put to enormous time and expense to answer.

<sup>31</sup> As is demonstrated in her email correspondence with her trusted friend SanDee (Sandra Hedwig).

- (2) Further, because Emma Nicholls' suggestibility is an aspect of the interpretation of 'vulnerable' as applied to her by Mr. Gerber, a direction is being sought that tapes and notes of her interviews with Yvonne Gunning and the diocesan investigator be produced for assessment of the degree of undue influence that they might disclose.<sup>32</sup>

#### **PART 6: THE PRESENTATION OF EVIDENCE TO THE TRIBUNAL**

Under the 'Rules of the Tribunal' made by the Archbishop there is the extraordinary statement that not only will all evidence-in-chief be presented in writing in a statutory declaration or affidavit, but also, unless the Tribunal orders otherwise, the cross-examination will be in the form of written questions. This completely undermines the effectiveness of cross-examination as a well-accepted manner of determining the truth or otherwise of the witness' evidence. It becomes a blatant attempt to protect the lying diocesan witness at the expense of uncovering truth.

Clearly Dr. Dobbs will be seeking an order that witnesses for the diocese present themselves in person for cross-examination. If that is denied, then the following directions would have to be sought in order to ensure something approximating a fair process:

##### *Direction required:*

That all written cross-examination will be administered in the following fashion:

- a) by a neutral person approved by the cross-examining party, and
- b) held under close supervision by that person in a neutral place, and
- c) that the questions will not be disclosed to the witness until the answer is to be given, and
- d) no other person will be in the room at the time that the answers are given other than the neutral supervisor, and
- e) the administration of the cross-examination be visually recorded and the visual record submitted with the written answers, and
- f) that the answers must be declared by the witness in the manner of a statutory declaration as true and correct and signed in the presence of the neutral person who shall administer the declaration according to law before they are admissible into evidence in the case, and
- g) that in the event of any of the answers disclosing ambiguities and contradictions that the witness then be ordered to appear personally for further cross-examination.

#### **SOME CONCLUDING THOUGHTS**

It has to be clear from the above discussion how inappropriate, unjust and lacking in fair process are the various stages of the diocesan approach to dealing with allegations of child abuse and adult harassment. The processes also will not obtain the truth of any given case. This is cause for considerable concern when the church is under scrutiny in relation to its dealings with genuine complaints, let alone with dealing with spurious complaints such as in the Dobbs' case.

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<sup>32</sup> 2018: this direction was made, and the interviews disclosed very useful material, both as to the manner in which Ken Taylor conducted the interviews and the way in which this tainted the evidence, and what people said in the interview which was varied in their signed statements. Much of the analysis of the case in later articles draws on this material.

### **Sexual harassment of an adult or sexual exploitation?**

The PSC made the surprising claim that the 'charges' would be sexual harassment or sexual exploitation. This was in the teeth of the evidence that Emma Nicholls had consented to all contact between her and Dr. Dobbs (and very little there was because the whole family were strenuously trying to get her out of their lives because she had been behaving unacceptably in their house: see *A Thumbnail Sketch of the "Figtree Matter"*).

#### ***Failure of the evidence to establish 'sexual harassment':***

It is fundamental to the definition of sexual harassment that such contact of a sexual nature be unwelcome, even if unintentional. Emma's evidence in the documents in front of the PSC showed that

- Emma Nicholls was only alone with Dr. Dobbs twice, and on both occasions she sought him out.
- The investigator was scathing of her actions in going through the master bedroom to accost him in his study. She said, although she retracted this in her later statement, that she went to call him to dinner. The investigator said that in that case she could have stood at the door of the master bedroom and called out.
- She did not need to remain in the house after everyone had left (taking her story at face value for the moment). Clearly, she stayed waiting to accost him again.
- When she accosted him while he was preparing to make coffee for the congregation, along with one of his sons, she again initiated the contact.
- In fact, Dr. Dobbs never initiated any contact with her.
- Emma Nicholls' rapturous email to SanDee dated 5 December 2007 expresses her consent, and also the extent of her delusional ruminations over whether she has correctly interpreted him as being in love with her.
- Her doctor, Dr. Schloeffel says that he was encouraging her to find somewhere to live on her own – hardly the advice one would give to someone who was so 'vulnerable' as to be unable to cope with this. Thus, he would not say that her consent was not valid.
- The few other occasions are also with her seeking him out and her consent.

#### ***Failure of the evidence to establish sexual exploitation:***

It is also fundamental to the definition of sexual exploitation that there has been '*sexual contact or invitation to sexual contact with an adult, with whom there is a pastoral or supervisory relationship*'.

There is nothing in the evidence to support either.

- There had been no sexual contact (Emma contradicted the highly sexed-up versions of her mother and Yvonne Gunning).
- Dr. Schloeffel says that she was still a virgin at age 21.
- There had been no invitation to sexual contact., and nor was it alleged that there had been.
- Dr. Dobbs was not in any pastoral or supervisory relationship with her: she was a friend of his daughters. She came and went from visiting the daughters whom she met through home-schooling and mostly Dr. Dobbs was at work. She was not a parishioner of Figtree Anglican church: the family had just started taking her to church to meet other people her own age (the eldest daughter was 4 years younger than Emma) and to get her away from her dependence on them and her fixation with Dr. Dobbs.
- Dr. Dobbs held no position in or outside Figtree Anglican church that placed him in such a position and nor was it alleged that he did.

***SCHEDULE OF COMPLAINTS, ALLEGATIONS AND 'CHARGES'***

These are the allegations that are taken from Emma Nicholls' own documents – her email to SanDee December 2006, her statutory declaration made 23 February 2007 and her signed statement dated 13 November 2007.

**1. The first collection of allegations contained in the Statutory Declaration of Emma Nicholls made 23rd February 2007 that were dismissed by the diocesan investigator as '*unsustainable*':**

- 1) At age 14: Dr. Dobbs hugging her in the family kitchen when she was crying convulsively after burning her hand on a saucepan. One of the accounts says that one of the Dobbs' sons came into the kitchen during the hug.
- 2) At age 19: Dr. Dobbs giving her a compliment. He said, 'You look good in that' when he saw her wearing a skirt belonging to one of his daughters. The skirt proved to be a long, brown, flowing and flounced peasant-style skirt.
- 3) At age 20: Dr. Dobbs taking her hand to help her into a car. She said that 'it didn't feel normal'.
- 4) At age 20: Dr. Dobbs touching her hand as she stumbled and fell against the side of the family vehicle.
- 5) At age 20: Dr. Dobbs blowing her a kiss when she was on the telephone.
- 6) At age 20: Dr. Dobbs giving her a hug and blowing her a kiss.
- 7) At age 20: Dr. Dobbs giving her a hug and a compliment 'You're looking good' when they were at church.
- 8) At age 20: Dr. Dobbs touching her hand to guide it when teaching her, at her request to operate the commercial coffee machine. This took place in full view of his son, members of Figtree congregation, staff and clergy, Mrs. Mabelle Dobbs and Mrs. Lee Nicholls.

**2. The allegation contained in the Statutory Declaration of Emma Nicholls made 23rd February 2007 and her signed statement dated 13 November 2007 that was dismissed as '*unsustained*' by the Professional Standards Committee**

- 9) At age 16: Emma Nicholls says Dr. Dobbs gave her a 'sideways hug' with both arms around her, and breathed heavily on her ear while she was seated on a lounge with one of the Dobbs' daughters sitting beside her, other Dobbs' daughters just through the doorway in the next room, and Dr. Dobbs was 'either standing up (!) or sitting on the arm of the lounge' or even, in another version, seated on a chair next to the lounge, (Emma Nicholls admits she cannot remember which)!

**This is the allegation that Mr. Gerber has '*reinstated*'.**

Dr. Dobbs has a photograph of the lounge in situ and any version of the alleged actions is physically impossible, as will be demonstrated in a video.

**3. Some of the remaining allegations after the investigation, the investigator's report and the attentions of the PSC, that should be abandoned taking into account Emma Nicholls' admitted**

consent, and those that should be excluded as they do not disclose touching or any sexual contact by any stretch of the imagination:

**Admitted consent which negates the 'charge' of sexual harassment:**

9) At age 20: (Probably late November or early December 2006 – her mother says it was in February 2006!) Emma Nicholls admits that she went downstairs, through the TV room and the master bedroom and into Dr. Dobbs' darkened study where he was working on his computer, without invitation and in breach of the 'house rules'. She says stood beside him and leaned over him to look at the computer screen he was working on. She says he put his arm around her waist. In her first account she says she placed her hand over Dr. Dobbs' hand on her waist and placed her other hand on his hair, which would indicate consent of an adult person. She reproaches herself for being at least 50% responsible. (This would be an underestimate on any rational view.)<sup>33</sup> Her version is in any event denied by Dr. Dobbs.

10) At age 20: later on the same evening as allegation 9) Emma Nicholls says she was sitting in a lounge chair in the upper lounge room; a home-stay student was sitting on one of the lounges and Mrs. Dobbs and one of her daughters on the other lounge. There were other people in the house who had come home to have a meal with the Dobbs' family after evening service and some had been out on the deck to which this lounge room is open on two sides feeding a baby possum. It is alleged that Dr. Dobbs moved the home stay student over, so he could sit on the end of the lounge adjacent to her chair and he held her hand and massaged her fingers. She writes to SanDee about this in delirious terms. Her version is in any event denied by Dr. Dobbs.

11) At age 20: (*Explanatory note: on 26 January 2007 Emma Nicholls had written and delivered to the Dobbs' letter box a letter to each of Mrs. Dobbs and Dr. Dobbs. In the letter to Mrs. Dobbs she apologised for breaking the house rules by going into the Dobbs' eldest son's bedroom at night and lying down on his bed and staying there all night. In the one to Dr. Dobbs she talked about how she had misinterpreted his behaviour and she had not set boundaries and she apologised for this.*)

On 28 January 2008 in the foyer of Figtree Anglican Church towards the end of and after the evening service: Dr. Dobbs and one of his sons were setting up the coffee machine and then serving coffee to the parishioners:-

(a) Emma Nicholls came over to talk to Dr. Dobbs about her letters and she says that he said he had made a joke about them to Mrs. Dobbs.

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<sup>33</sup> This latter detail is contained in an email from Emma Nicholls to a trusted friend sent in December 2007, close to the alleged incident, and produced by Emma Nicholls to the diocesan investigator and it appears among the documents available to the diocesan prosecutor, Mr. Gerber and now the Tribunal members. Despite the fact that it is an admission of consent by an adult woman and her welcome of any touching that might have occurred, this has not been referred to in the 'charges'. This is an example of unacceptable selectivity on the part of Mr. Gerber. The same comment applies to incident 2): Emma's own account in the email admits consent of an adult woman to welcome touching. This fact would preclude a *prima facie* case in any properly constituted civil or criminal jurisdiction.

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(b) Emma Nicholls says Dr. Dobbs hugged her and said he loved her and she was a great lady and that these words sounded heartfelt but 'not sexual or romantic' (her words).

(c) Emma Nicholls says Dr. Dobbs apologised to her and she did not know what he was apologising for. She assumed he was apologising for disturbing or confusing her.

(d) Emma Nicholls says that while Dr. Dobbs and his son were making coffee (ie while the machine was surrounded by parishioners getting their coffee from Dr. Dobbs and one of his sons) Dr. Dobbs touched her on her waist, hip or back. She also says there were no witnesses. The issue here, apart from Dr. Dobbs' denial of anything other than incidental pushing past her, was why she chose to stand beside Dr. Dobbs and his son behind the coffee machine, placing herself in their way while they were busy. This would also indicate consent of an adult woman to any accidental touching.

#### **4. The only remaining allegations that Dr. Dobbs might be asked to meet despite the slightness of the allegations, which are denied by him:**

- 1) At age 20: (Probably some date in early-to-mid January 2007). After Dr. Dobbs drove Emma Nicholls home from church along with two of his daughters in the car: Emma Nicholls says she had started walking up the driveway to her parent's home where she resided at that time. She says that Dr. Dobbs called her back to where he was standing near the car (with his two daughters) and kissed her 'lingeringly' on the neck. She says that there were no witnesses. And none have been produced.
- 2) At age 20: on 22 January 2007 Emma Nicholls says that when she had been left alone in the house, reading, Dr. Dobbs came home and greeted her and hugged her hard and rubbed his hand up and down her spine. By the nature of it, there could not have been any witnesses.
- 3) At age 20: on 28 January 2007 in the foyer of Figtree Anglican Church at the evening service Emma Nicholls says Dr. Dobbs gave her a quick double kiss in the one action on the back of the neck (in front of the parishioners and Dr. Dobbs' son). She says there were no witnesses, and none have been produced.

**For the record:** Dr. Dobbs denies all allegations and says that he has done nothing that could possibly have led Emma Nicholls, an adult woman not under a legal disability, to think that he was in love with her. He denies kissing her anywhere, let alone on the back of the neck. It is also denied that at any time was Emma Nicholls allowed to sleep over, and certainly not to remain alone in the Dobbs' family house, and that particularly after her strange and unacceptable behaviour in November – December 2007 in seeking out first one of the sons in the middle of the night and going to sleep on his bed, and then invading Dr. Dobbs' study when she knew he was alone there working on his computer, Scott and Mabelle Dobbs were taking active steps to exclude her from the house and from their family circle.