

**ROYAL COMMISSION INTO INSTITUTIONAL RESPONSES TO CHILD  
SEXUAL ABUSE**

**ROYAL COMMISSION ACT 1902 (CTH)**

**CASE STUDY 45**

**CHILDREN WITH PROBLEMATIC OR HARMFUL SEXUAL BEAHIOURS IN  
SCHOOLS**

**FURTHER SUBMISSIONS IN REPLY OF KATHERINE LUMSDAINE**

1. Ms Lumsdaine makes these further submissions in reply, in response to the submissions of Trinity Grammar School and Mr Milton Cujes, Mr Peter Green and EAA to the Royal Commission

**SUBMISSIONS OF TRINITY GRAMMAR SCHOOL AND MR MILTON  
CUJES**

2. Ms Lumsdaine submits to the Royal Commission, in response to paragraph 2 of Trinity Grammar School (“Trinity”) and Mr Milton Cujes’ submissions that Trinity did not respond appropriately to matters revealed on or after 11 August 2000.<sup>1</sup>
3. In response to point H in paragraph 2 of Trinity and Mr Cujes’ submissions to the Royal Commission, Ms Lumsdaine submits that Mr Paul Mayne, the other senior psychologist at Trinity did not, nor was he asked to, investigate the allegations of sexual abuse. As raised in Ms Lumsdaine’s statement, Mr Mayne suggested Ms Lumsdaine should conduct her own investigation into the allegations to provide the school leadership with evidence of the abuse.<sup>2</sup> In addition, this submission to the Royal Commission suggests that Trinity directed or encouraged Ms Lumsdaine to undertake this further investigation. Ms Lumsdaine

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<sup>1</sup> SUBM.1045.007.0001, Submissions on behalf of Trinity Grammar School and George Milton Cujes, 16 January 2017, paragraph 2.

<sup>2</sup> STAT.1227.001.0001\_R, Statement of Katherine Lumsdaine, Paragraph 17.

submits she acted of her own accord, without instructions from Trinity to do so.<sup>3</sup>

4. Ms Lumsdaine disagrees with paragraph 3 of Trinity and Mr Cujes' submissions to the Royal Commission regarding the steps taken following disclosures of sexual abuse, namely, the establishment of reporting mechanisms and education to staff and students.<sup>4</sup> Ms Lumsdaine submits that these actions were taken, however not immediately following the disclosures of sexual abuse in August 2000 as demonstrated by the evidence before the Royal Commission. In Term 4 of 2000 the alleged perpetrators returned to the boarding house and were not removed from Trinity until police intervention.
5. Ms Lumsdaine rejects Trinity and Mr Cujes' submission contained in paragraph 21 of submissions provided to the Royal Commission, that *"the school's senior psychologist was to continue to interact with the boys and investigate the events"*.<sup>5</sup> Ms Lumsdaine re-submits to the Royal Commission that her investigations occurred independently without direction from the school's leadership, and were disapproved of.
6. Ms Lumsdaine disagrees with paragraph 22 of Trinity and Mr Cujes' submissions, that Mr Cujes accepted the assessment and recommendations of his senior staff and counsellor.<sup>6</sup> Ms Lumsdaine asserts that she made no recommendations to Mr Cujes prior to her memo dated September 7, 2000.<sup>7</sup>
7. Ms Lumsdaine submits to the Royal Commission that Mr Paul Mayne was not involved in investigations or conclusions shown to Mr Cujes, and rejects the assertion made in paragraph 24 of Trinity and Mr Cujes' submissions, that Mr Mayne was involved in this process, prior to school resuming in Term 4, 2000, when Mr Mayne was directed to counsel the alleged perpetrators.

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<sup>3</sup> STAT.1227.001.0001\_R, Statement of Katherine Lumsdaine, Paragraph 17.

<sup>4</sup> SUBM.1045.007.0001, Submissions on behalf of Trinity Grammar School and George Milton Cujes, 16 January 2017, paragraph 3.

<sup>5</sup> SUBM.1045.007.0001, Submissions on behalf of Trinity Grammar School and George Milton Cujes, 16 January 2017, paragraph 21.

<sup>6</sup> SUBM.1045.007.0001, Submissions on behalf of Trinity Grammar School and George Milton Cujes, 16 January 2017, paragraph 22.

<sup>7</sup> TRIN.0006.001.0056\_R

8. With regard to paragraph 25 of Trinity and Mr Cujes' submissions, that Ms Lumsdaine did not attach any incident reports dated 11th August in her bundle of students' statements which she gave to Mr Cujes on September 7<sup>th</sup>, nor were they included in the bundle given to DoCS, Ms Lumsdaine rejects the inference drawn that, "*she did not view them in the same way as the material in the statements she obtained after 11 August 2000 and leading up to 6 September 2000*".<sup>8</sup> Ms Lumsdaine submits she did not have in her possession incident reports from 11 August 2000 relating to the allegations. Accordingly, Ms Lumsdaine could not attach these to her letter to DoCS. Ms Lumsdaine states Mr Green retained the incident reports and these were purportedly provided to Mr Cujes. Ms Lumsdaine could not provide these documents to DoCS.
9. Ms Lumsdaine rejects the submission by Trinity and Mr Cujes in paragraph 26 that her recollection has been "*overlaid with blame and emotionally loaded*".<sup>9</sup>
10. Ms Lumsdaine submits to the Royal Commission that the explanation to CLA detailed in her statement was explained to all other boys interviewed in the period following 11 August 2000. Ms Lumsdaine submits to the Royal Commission that paragraph 27 of Trinity and Mr Cujes' submissions asserting no evidence of this explanation to other boys is irrelevant.<sup>10</sup>
11. In furtherance of paragraph 28 of Trinity and Mr Cujes' submissions to the Royal Commission, Ms Lumsdaine states that this letter included, Mr Green, Mr Scott and Mr Cujes' likely awareness of the assaults.
12. Further to paragraph 3 and 6 above, in response to paragraph 31 of Trinity and Mr Cujes' submissions to the Royal Commission, Ms Lumsdaine asserts that Mr Cujes did not direct her to investigate the events. This is raised again in response to paragraph 33 of Trinity and Mr Cujes' submissions. Ms Lumsdaine submits it is unfair of Trinity Grammar School to submit and claim Ms Lumsdaine's personal actions as their own institutional response. Ms Lumsdaine rejects the assertion

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<sup>8</sup> SUBM.1045.007.0001, Submissions on behalf of Trinity Grammar School and George Milton Cujes, 16 January 2017, paragraph 25.

<sup>9</sup> SUBM.1045.007.0001, Submissions on behalf of Trinity Grammar School and George Milton Cujes, 16 January 2017, paragraph 26.

<sup>10</sup> SUBM.1045.007.0001, Submissions on behalf of Trinity Grammar School and George Milton Cujes, 16 January 2017, paragraph 27.

from paragraph 33 that Mr Scott and Mr Green did not have an obligation to personally conduct an investigation. Ms Lumsdaine submits that as Head of the Boarding House and Deputy Head Master these two members of the school leadership did indeed have an obligation to investigate the disclosures.

13. In response to paragraph 45 of Trinity and Mr Cujes' submissions to the Royal Commission, Ms Lumsdaine accepts that the situation at Trinity may have been complex, however submits that the law is clear and does not concern itself with "*competing concerns and interests to manage and balance*". Ms Lumsdaine submits that Trinity Grammar School's leadership should have taken accountability for a lack of duty of care afforded to boarding students, which allowed for an environment of sexually abusive behaviours to take place.

#### SUBMISSIONS OF MR PETER GREEN

14. Ms Lumsdaine disagrees with paragraph 4 of Mr Green's submissions to the Royal Commission, that, "*in his evidence to the Commission Mr Green was candid and truthful and doing his best to assist the Commission. Apparent differences in recollection between him and Ms Lumsdaine should be accepted as genuine and explained not only by the passage of time but also possibly by different inputs of information at the time and different perspectives at the time.*" Ms Lumsdaine re-submits to the Royal Commission that Mr Green placed the executive's concern for the school's reputation before the welfare of boys.<sup>11</sup>

Mr Green said that at the time they were allegations and that he did not believe that there had been dildos placed up boys bottoms. He said that he did not think that there had been attempted rape and that if he told CLB's grandfather it would have added to the grandfather's stress and this would have made the situation worse. Mr Green said that if more information became available [that showed that there were more things going on], he intended to give that information to CLB's grandfather.

15. In response to paragraph 9 to 11 of Mr Green's submissions to the Royal Commission, Ms Lumsdaine submits that Mr Green's statement regarding CLB's disclosures that, "*at the time they were allegations and*

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<sup>11</sup> SUBM.1045.016.0006, Submissions in Reply of Ms Katherine Lumsdaine, 24 January 2017, paragraph 24.

*that he did not believe that there had been dildos placed up boys bottoms*<sup>12</sup> as then further explained in Mr Green's evidence to the Royal Commission is unacceptable. Mr Green's "*genuine contemporaneous belief, or disbelief*" is irrelevant to the steps which, as a member of Trinity Grammar School's leadership, Mr Green should have undertaken in the institutional response to disclosures of sexual abuse.

16. Ms Lumsdaine disagrees with paragraph 16 of Mr Green's submissions that the Royal Commission is not in a position to determine the physical nature of assaults upon CLB and CLA.<sup>13</sup> Ms Lumsdaine submits this assertion is contradictory, and that due to the comprehensive and detailed evidence now before the Commission, the Commissioners are in a position to determine certain details of the nature of the assaults against CLA and CLB.
17. Ms Lumsdaine submits to the Royal Commission that paragraph 34 of Mr Green's submissions cannot be deemed accurate. Particularly, Ms Lumsdaine submits that Mr Green's "*own personal experience and belief of the culture in the boarding house (being) very caring and supportive*" could not be accepted by the Royal Commission.<sup>14</sup>
18. Ms Lumsdaine further disputes paragraph 37 of Mr Green's submissions, which allude to Ms Lumsdaine not keeping Mr Green "*in the loop*". Ms Lumsdaine submits that Mr Green had read CLB's incident report and the description of allegations contained in this report, Mr Green then discussed this matter with Mr Scott and herself. Ms Lumsdaine re-submits to the Royal Commission that Mr Green then did nothing to investigate or report this event.<sup>15</sup> Mr Green's statement that Ms Lumsdaine did not inform Mr Green of ongoing investigations into these disclosures indicates his attitude and lack of interest or action at the relevant time. This is further raised in response to paragraph 17 and 18 of Mr Green's submissions. Ms Lumsdaine disagrees with the submission that "*CLB was circumspect in his description of the lurid details of the assaults upon him and upon the*

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<sup>12</sup> SUBM.1045.002.0001, Submissions for Mr Peter Green in response to submissions of Counsel Assisting, 23 December 2016, paragraph 9.

<sup>13</sup> SUBM.1045.002.0001, Submissions for Mr Peter Green in response to submissions of Counsel Assisting, 23 December 2016, paragraph 16.

<sup>14</sup> SUBM.1045.002.0001, Submissions for Mr Peter Green in response to submissions of Counsel Assisting, 23 December 2016, paragraph 34.

<sup>15</sup> Submissions in reply Katherine Lumsdaine

*other boys*<sup>16</sup> and submits to the Royal Commission that Mr Green was in a position to have full knowledge and understanding of this event.

19. Paragraph 38 of Mr Green's submissions to the Royal Commission are refuted by Ms Lumsdaine for similar reasons. Ms Lumsdaine re-submits that Mr Green was not in a different position from herself to respond to the allegations but he chose not to.

## SUBMISSIONS OF EAA

20. Ms Lumsdaine supports the submissions of EAA to the Royal Commission, that there was a lack of supervision in the Trinity boarding house.<sup>17</sup> Ms Lumsdaine agrees with the acceptance by Mr Scott of a "code of silence" in the boarding house, as raised in EAA's submissions. Ms Lumsdaine submits to the Royal Commission there was a true culture of silence with regard to incidents of sexual abuse. Ms Lumsdaine re-submits to the Royal Commission that Mr Green was not in a different position from herself however he chose not to investigate.

21. Paragraph 15 and 16 of EAA's submissions to the Royal Commission refer to the term "rumble". Ms Lumsdaine submits to the Royal Commission that in CLB's disclosures of sexual abuse, he clearly stated he was raped, not rumbled. Ms Lumsdaine disagrees with Mr Green's testimony that Mr Green understood CLB's disclosures to pertain to 50 occasions of rumbling, as was raised in EAA's submissions.<sup>18</sup>

22. Paragraph 17 of EAA's submissions references Mr Cujes' acceptance of "*a problem with a subculture in the boarding house*".<sup>19</sup> Ms Lumsdaine submits to the Royal Commission that Mr Cujes was incorrect by referring to a subculture of bullying in his evidence, rather than candidly admitting a full culture of bullying existed in the boarding house. Ms Lumsdaine supports EAA's opinion that, "*Trinity had a culture and a tolerance of roughing up and bullying at the school,*

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<sup>16</sup> SUBM.1045.002.0001, Submissions for Mr Peter Green in response to submissions of Counsel Assisting, 23 December 2016, paragraph 17.

<sup>17</sup> SUBM.1045.015.0008, Submissions in Response on behalf of EAA, 17 January 2017, paragraph 11.

<sup>18</sup> T21759:33-39, Transcript of P Green, Case Study 45, October 2016.

<sup>19</sup> SUBM.1045.015.0008, Submissions in Response on behalf of EAA, 17 January 2017, paragraph 17.

*where senior students saw it as their right to bully younger, more vulnerable boys. The school did not have adequate procedures in place to deal with serious matters and the school held a ‘boys will be boys’ attitude, failing to identify harmful and bullying behaviours”*.<sup>20</sup> However, in agreeing with this statement of EAA’s, Ms Lumsdaine submits to the Royal Commission that there was not a culture of bullying throughout the entirety of Trinity Grammar School, but rather the boarding house itself.

23. Ms Lumsdaine supports the further Available Finding offered by EAA in paragraph 19 of submissions made on his behalf. Ms Lumsdaine endorses EAA’s submission that inadequate pastoral care was provided to boarding students at Trinity Grammar School by boarding house staff.

24. Ms Lumsdaine further submits to the Royal Commission, a separate finding should be made regarding the cover-up the school’s leadership perpetuated through failing to inform the caregiver’s of students who made disclosures of sexual abuse. Ms Lumsdaine supports paragraph 19 of EAA’s submissions, *“Trinity Grammar’s omission in both CLB and CLA’s circumstances to provide any information or intelligence to their caregivers of their knowledge or suspicion that either child had been sexually abused.”*<sup>21</sup> In a memo dated 7 September 2000 from Ms Lumsdaine to Mr Cujes,<sup>22</sup> Ms Lumsdaine drew Mr Cujes’ attention to the emotional state of CLA and wrote; *“I feel that we need to discuss the entire situation with his parents as soon as possible”*.<sup>23</sup> As stated in Ms Lumsdaine’s submissions in reply, Ms Lumsdaine re-submits to the Royal Commission that she advocated for CLA and CLB’s carers to be informed as soon as practicable of the allegations, however the school leadership continued in their omissions of the abuse.<sup>24</sup>

25. Ms Lumsdaine endorses paragraph 22 of EAA’s submissions to the Royal Commission, that; *“CLA was not offered any support when he returned to the boarding house at Trinity after the assaults were made*

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<sup>20</sup> SUBM.1045.015.0008, Submissions in Response on behalf of EAA, 17 January 2017, paragraph 17.

<sup>21</sup> SUBM.1045.015.0008, Submissions in Response on behalf of EAA, 17 January 2017, paragraph 19.

<sup>22</sup> TRIN.0006.001.0056\_R

<sup>23</sup> Ibid.

<sup>24</sup> Submissions in Reply of Ms Katherine Lumsdaine, 24 January 2017, paragraph 16-18.

*public. He was left unsupervised to fend for himself and ‘this resulted in a number of senior boarders seeking retribution.’ He was bullied and he removed himself from Trinity a few days later. CLA said that Mr Cujes and Mr Scott, the persons his parents put their trust in to be his guardian at school, failed to protect him at Trinity.”*

26. Ms Lumsdaine supports EAA’s submissions, from paragraph 33, that had Ms Lumsdaine not conducted further investigations, it would be unlikely that more information would have come to light regarding the allegations.<sup>25</sup> Ms Lumsdaine agrees with EAA, in supporting Available Finding 6 and 7, that *“despite having knowledge of CLB’s allegations on 11 August 2000, both Mr Scott nor Mr Green did not conduct proper investigations into those allegations.”*<sup>26</sup>

27. Ms Lumsdaine further endorses the submissions of EAA that there was no “joint effort” between her, Mr Green, Mr Scott and Mr Cujes in investigating allegations of sexual abuse.<sup>27</sup> Ms Lumsdaine reemphasises to the Royal Commission, that there was no evidence of a delegation of responsibility from the school’s leadership to Ms Lumsdaine, but rather opposition to the process she undertook.<sup>28</sup> Ms Lumsdaine agrees with paragraph 37 of EAA’s submissions and re-submits the Royal Commission should find her investigations were performed of her own initiative.<sup>29</sup>

Peter O’Brien  
Counsel for Katherine Lumsdaine

4 February 2017

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<sup>25</sup> SUBM.1045.015.0008, Submissions in Response on behalf of EAA, 17 January 2017, paragraph 33.

<sup>26</sup> Counsel Assisting submissions

<sup>27</sup> SUBM.1045.015.0008, Submissions in Response on behalf of EAA, 17 January 2017, paragraph 36.

<sup>28</sup> SUBM.1045.015.0008, Submissions in Response on behalf of EAA, 17 January 2017, paragraph 36.

<sup>29</sup> SUBM.1045.015.0008, Submissions in Response on behalf of EAA, 17 January 2017, paragraph 37.