

DIRECTOR OF PUBLIC PROSECUTIONS

v

JOHN LAIDLAW

JUDGE: HIS HONOUR JUDGE BERMAN
WHERE HELD: MELBOURNE
DATE OF HEARING: 3 July 2019
DATE OF RULING: 18 July 2019
CASE MAY BE CITED AS: DPP v Laidlaw
MEDIUM NEUTRAL CITATION: [2019] VCC 1058

REASONS FOR SENTENCE

Subject: Criminal Law – Sentence.
Catchwords: Historical child sexual offences – Multiple victims – Offending over a protracted period - Objective gravity of offending and moral culpability high – Plea of guilty – Remorse – Delay – Good character – General deterrence looms large – Need for strong denunciation – Advanced age and ill health.
Legislation Cited: *Crimes Act 1958; Sentencing Act 1991.*
Cases Cited: *DPP v Toomey* [2006] VSCA 90; *Stalio v The Queen* (2012) 46 VR 426; *Morris v The Queen* [206] VSCA 331; *DPP v Bales* [2015] VSCA 261; *DPP v Klep* [2006] VSCA 98.
Sentence: Total effective sentence of 4 years and 6 months' imprisonment, with a non-parole period of 3 years and 2 months.

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the DPP	Ms D Piekusis SC	Mr J Cain, Solicitor for Public Prosecutions
For the Accused	Mr S Moglia	Lethbridges Barristers & Solicitors

HIS HONOUR:

Introduction

- 1 John Sutherland Laidlaw, for many years during the course of your career as a teacher and time as a Christian Brother you seriously harmed many children in your care. They were entitled to trust you, but you breached that trust repeatedly, merely to satisfy your own sexual desires. The harm you have caused is enormous. You took advantage of your position of authority over the victims of your crimes and abused them in serious ways for no better reason than that you simply wanted sexual pleasure.
- 2 Many years after you committed these crimes, you were charged and pleaded guilty. It is now my task now to sentence you.
- 3 The circumstances of the offences were outlined in a prosecution opening which was read to the court by Ms Piekusis SC who appeared for the prosecution.
- 4 I have anonymised my sentencing remarks so that the identities of the victims are not published. In these anonymised remarks, I refer to the victims by the pseudonyms Kevin Baker, Dermot Peterson, Brian Holt, Paul Bryson, Anthony Madison and Nicolas Clifton.

Kevin Baker

- 5 The first child you sexually abused was a student of yours while you were teaching at St Joseph's Christian Brothers College. The school is a Catholic boys school in Warrnambool, at that time being run by the Christian Brothers religious congregation.
- 6 In 1963 Mr Baker was in form 1. He and his fellow classmates noticed that you would take an individual student from the classroom to another location before returning with him and then nominating the next student to follow you. On one

occasion it was Mr Baker's turn to follow you. He did not know what was happening. You took him to the basement area of the building into a room which was used for choir practice. You closed the door behind you and told Mr Baker that the two of you were going to have a sex education discussion. You began talking whilst undressing Mr Baker until he was dressed only in his underpants. You then grabbed hold of Mr Baker's genitals and fondled his penis over his clothing whilst continuing to talk to him. Not surprisingly Mr Baker was scared and confused as to why you were touching his genitals.

7 After a short time you stopped and released your grip of his genitals. You told him to dress and informed him that both of you would be returning to the classroom. Once back in the classroom you told the next student to go with you. Mr Baker returned to his desk and sat quietly until the end of class. He felt confused and afraid while sitting there. He had not received any sex education and always did what was asked of him by the Catholic Church.

8 What you did to Mr Baker in the basement amounted to an offence of indecent assault upon a male person. The maximum penalty for this offence is 10 years' imprisonment.¹

9 Not only were you Mr Baker's teacher but from time to time you were his football coach. In 1964, after a football training session, you instructed him to remain back to assist with tidying up the equipment. After he had done what was required of him you asked him to massage you and suggested that you should do it "like two brothers in a shower, naked". You undressed yourself and stood naked in front of Mr Baker. You assisted Mr Baker to remove all of his clothing. You then lay face-down on an exercise mat whilst Mr Baker massaged your back. Mr Baker was feeling uneasy and afraid but of course, given your authority over him, he did as you instructed him.

¹ Contrary to s 68(3) of the *Crimes Act 1958*, as in operation between the 1st day of April 1959 and 7th day of November 1967. This is charge 1 on the Indictment.

10 A short time later you rolled over and Mr Baker noticed a discharge on the exercise mat and that your penis was partially erect. He stood up and so did you. You told him to touch your penis. Mr Baker was intimidated and scared so again he did as he was instructed. He reluctantly touched your penis with his forefinger and thumb for a few seconds before pulling his hand away. Mr Baker refused your repeated requests to continue. This act has not been the subject of any charge brought against you, but is relevant to show that the assault on Mr Baker which is the subject of count 1 was not isolated.

11 After this incident Mr Baker avoided being alone with you. Some months later you asked him to massage you, but he refused.

12 It is important to understand how Mr Baker saw you. You were his teacher in the first year of high school. You were his football coach. You had befriended his parents and even attended the family home for various social occasions. You were a Christian Brother at a time when authorities in the Catholic Church exercised a powerful influence on its congregation. He perceived you to be a very powerful figure in his life. At the time of the offence he was aged only 13. You took advantage of these circumstances, causing harm to Mr Baker merely to satisfy your deviant sexual desires.

13 Mr Baker kept what you did to him a secret until he eventually disclosed the matter to his then wife in about 1973.

Dermot Peterson

14 The next student you abused was another one of your students at St Joseph's Christian Brothers College in Warrnambool. I will call him Dermot Peterson.

15 In 1966 you were his class master when he was in form 1. Mr Peterson was athletic and was involved in football, running, and track and field events. He played football for the college. You were his football coach that year. During

one match Mr Peterson injured his right upper leg. You replaced him with another player and told him to go to the change rooms where he was to wait for you. After a while you joined him in the change rooms, closing the door behind you. You told him to remove his football shorts and underpants. Of course given the position you held, he obeyed your instructions although he felt embarrassment at having his genitals exposed to you. You told him to lie on his back on the massage table in the change rooms. You put a hand towel over his exposed genitals and rested your left hand on top of that hand towel. You then proceeded to rub the back of Mr Peterson's injured thigh whilst massaging his penis over the hand towel causing it to become erect.

16 Mr Peterson froze. He did not understand what you were doing. Fortunately there was a knock at the door and an unknown person called you, saying that the game was about to recommence. You stopped massaging Mr Peterson's penis and thigh and told him to get dressed. Mr Peterson was only 12 when you did this to him.

17 This is another charge of indecent assault upon a male person. As before, the maximum penalty is imprisonment for 10 years.²

18 For the remainder of the school year Mr Peterson avoided being alone with you. After he left the college he would see you from time to time at sporting venues with the last occasion being a cross-country running event in 1972. It was in that year that Mr Peterson told his father about the incident I have just described on their way home from a local run. Regrettably his father responded in a hurtful way, something which was not uncommon at that time when complaints were made to family members about the behaviour of catholic authority figures. You are not to be punished for what others may or may not have done of course, but it was your abuse of Mr Peterson which put him in the position where he

² Contrary to s 68(3) of the *Crimes Act 1958*, as in operation between the 1st day of April 1959 and 7th day of November 1967. This is charge 2 on the Indictment.

told his father what you had done to him, with profoundly unhappy results.

- 19 In the mid-1990s Mr Peterson contacted the Melbourne Response helpline about his complaint of being sexually assaulted by you and his concerns that you were still interacting with children. Mr Peterson commenced counselling and wrote a letter to you. Sometime later he received a handwritten letter from you postmarked from the USA and dated 10 June 1994. You praised Mr Peterson for his courage and honesty and apologised for “the hurt you have been caused”. You told Mr Peterson that you were overseas reviewing your life.

The St Patrick’s Province Australia Visitation Report

- 20 Serious doubts were raised about you in 1973 in a St Patrick’s Province Australia Visitation Report. This report: identified you as being unfit for your job; noted revelations of improper conduct; queried whether it was a mistake sending you to Ballarat with your psychological problems; noted the revelation of a serious act of indiscretion involving two senior boys of which you were said to be guilty; noted that you required close supervision; commented that you did not realise the seriousness of your conduct, and expressed doubts about your ability to stay at St Kevin’s College which is where you began to teach after leaving St Joseph’s Christian Brothers College.
- 21 Despite those findings you remained teaching at St Kevin’s College and later at other schools which allowed you to commit more offences against a further five children. You are not to be punished for the actions of those who allowed you to teach children after such damning findings, but it is a sad reflection on those in authority over you that they allowed this to happen.

Brian Holt

- 22 Your next offence was committed against a boy whom I will call Brian Holt. In 1976 you were Mr Holt’s homeroom teacher at St Kevin’s College. Before that

you had been involved with Mr Holt because of his sporting activities. You committed an offence against him on a particular date in June 1976. [Redacted].³

23 The offence occurred when Mr Holt went on a “Christian living camp” where you were there to assist. Previously Mr Holt had suffered an injury and you offered him a “rubdown” which you told him would assist with his recovery. At dinner you arranged for Mr Holt to meet you in his your bedroom for that purpose.

24 Mr Holt was instructed to lie on his back on your bed and pull his pants down which he did to just below his knees. You asked Mr Holt where the injury was and he indicated the underside of his upper right thigh. You slid your hand under Mr Holt’s right leg and began to massage the injured area. Mr Holt noticed that your breathing changed. At the same time, you stopped massaging the area of the injury and slid your left hand down the front of Mr Holt underpants, touching his penis. This is a charge of indecently assaulting a male person for which the maximum penalty is 5 years’ imprisonment.⁴

25 Mr Holt, who was 17 the time, reacted immediately. He jumped off the bed, pulled up his pants and left the bedroom without speaking. He was horrified by what you had done and avoided you for the rest of the camp. He never participated in sports after that year ended.

26 He kept what you did to him a secret until he gave a presentation at teachers college. He didn’t give details, but just alluded to being sexually abused by a teacher. Mr Holt has confirmed to his mother that you sexually abused him whilst a student at St Kevin’s College but has not given details to her.

³ All redactions in these sentencing remarks are made to ensure compliance with section 4 of the *Judicial Proceedings Reports Act 1958*.

⁴ Contrary to s 68(3A) of the *Crimes Act 1958*, as amended by the *Crimes (Amendment) Act 1967*. This is charge 3 on the Indictment.

Paul Bryson

27 The next boy you sexually abused I will give the name Paul Bryson. He was also abused whilst a student at St Kevin's. This offence occurred in either late 1976 or early 1977 when Mr Bryson was 16 years of age.

28 [Redacted] and at the end of the 1976 school year you and he arranged to have a game of tennis. After the game was over you both returned to the school grounds where, because it was during the school holidays, there were not many people about. You suggested to Mr Bryson that you both shower. He agreed and followed you to a change room. Once you were both inside you locked the door, telling Mr Bryson that this would stop the cleaners from coming in.

29 Mr Bryson had injured his leg during the tennis match and you suggested that you examine it. After prodding his leg for a short time both of you undressed. Mr Bryson was naked and about to get into the shower when you approached him and, standing face to face, put your arms around him in a hugging fashion and pulled him towards you. Mr Bryson was shocked and immediately pushed you away. This caused Mr Bryson to feel dirty. He quickly showered, trying to wash away the "dirt" caused by what you had done to him then dried himself, dressed and left the college.

30 What I have just described represents an offence of indecent assault upon a male person for which the maximum penalty is 5 years' imprisonment.⁵

31 [Redacted]. He returned to St Kevin's the following year. He hurt his leg playing football on one occasion and you told him to go to the first aid room for treatment. You insisted that you massage Mr Bryson's injured leg but he asked to be allowed to apply the ointment himself. You were not to be deterred however - you insisted that you apply the ointment and that you needed to

⁵ Contrary to s 68(3A) of the *Crimes Act 1958*, as amended by the *Crimes (Amendment) Act 1967*. This is charge 4 on the Indictment.

massage Mr Bryson for the treatment to be effective. As a result of what had occurred earlier Mr Bryson left his underpants on. As you were treating him you pulled the side of his underpants and made a comment about the unusualness of the material before stopping and leaving Mr Bryson alone.

32 Some years later when Mr Bryson [redacted] disclosed what you had done to him after the tennis match. He was encouraged to, and did, report the incident to Christian Brothers at Treacy College in Parkville in 1981 and again by way of letter to the Christian Brothers congregation in 1996. You acknowledged the truthfulness of his complaint and wrote a letter to him in March 1997 praising him for his “courage and honesty” and referring to the “hurt that you have been caused”.

Anthony Madison

33 Between 1981 and 1983 you were a staff member at Christian Brothers College in St Kilda which at the time was run by the Catholic religious congregation of the Christian Brothers. You committed an offence against a person I will call Anthony Madison during your time there.

34 In 1981 Mr Madison [redacted]. He wasn't able to participate in sport for some time thereafter but he nevertheless used to attend training after school. He would assist with the setting up or packing away of the sporting equipment. Whilst the boys were training he would often stay in the change rooms which gave him access to the bags and belongings of other boys. One time he found a \$5 note in a shoe and was in the process of pocketing it when you came in. You took the \$5 note from him and began to search his pockets. You told him that there had been complaints about money being stolen, but that if he was good everything would be okay. You thus took advantage of Mr Madison's childish indiscretion in a way which gave you even more power over him than would otherwise have been the case.

- 35 As part of your search of Mr Madison you put your hand down the front of his trousers slipping it inside his underpants and grabbing hold of his penis. Mr Madison was only 14 years old. He froze and noticed that you were looking down towards his penis. You said “nice one” and continued stroking his penis until it became erect. Again you said “nice one” and asked him whether anyone had ever performed oral sex on him including his sisters, suggesting it was common for sisters to suck their brothers’ penises. He told you that no one had ever done this at which you appeared surprised but continued to stroke his erect penis and continued to discuss oral sex with him. Mr Madison was scared and answered questions you asked of him simply by shaking or nodding his head “yes” or “no”. You offered to suck his penis but Mr Madison declined.
- 36 After a short time you stopped fondling Mr Madison’s penis and gave him the \$5 note, telling him that he had been good, to go home and not tell anyone about what happened or there would be trouble. Mr Madison left the change room and went home as you had told him to. Given the threat of trouble it is not surprising that Mr Madison did not tell his family what you had done to him, first disclosing this incident to a counsellor.
- 37 What I have just described is an offence of indecent assault carrying a maximum penalty of 5 years’ imprisonment.⁶

Nicolas Clifton

- 38 The two final offences for which you are to be sentenced were committed upon the person I will give the name Nicolas Clifton. They are clearly the most serious crimes for which you are to be sentenced, but carry the lowest maximum penalty. Mr Clifton was a student of Parade College, a secondary Catholic college in Bundoora which was run by the Christian Brothers. You were a staff member there in 1984 and 1985, committing two offences in July 1984 against

⁶ Indecent assault contrary to s 44(1) of the *Crimes Act 1958*, as amended by the *Crimes (Sexual Offences) Act 1980*. This is charge 5 on the Indictment.

Mr Clifton when he was 16 and a student of yours as well as being coached by you.

39 One day Mr Clifton was absent from school because he was unwell. His parents worked and so he was home alone. He heard a knock at the door. When he opened it you were there. He trusted and respected you. You questioned him as to the reason he was home, and when he explained why you expressed concern for his well-being. You came in and asked to see Mr Clifton's bedroom. After you and he went into his bedroom there was at first some general discussion before you offered to massage Mr Clifton who had told you that there was a little tightness in his legs. Mr Clifton declined the offer of a massage but you stood and moved to sit next to him on his bed.

40 You started to rub his right leg commenting that he had great legs for an athlete. After a short time you stood in front of Mr Clifton who noticed that your penis was erect. You began to undress whilst reassuring Mr Clifton that everything would be "all right". Mr Clifton froze and couldn't comprehend what was occurring. He knew what was happening was wrong but felt numb because what you were doing was, to him, incomprehensible. Within a short time you were naked in front of him with an erect penis stroking it with your right hand. You were continually reassuring Mr Clifton that you cared about him and that everything would be all right.

41 You asked Mr Clifton to kiss your penis, moving forward so that it was directly in front of his face. Mr Clifton turned his face away and tried to say no, but he was so scared that the words wouldn't come out so he shook his head instead. You grabbed his head with both hands and held it, still pushing your penis forward so that your penis was up against his closed mouth. You continually instructed him to kiss it as you were moving your pelvis back-and-forth in a thrusting manner.

42 Mr Clifton continued to resist until you grabbed hold of his hair with one hand and became more aggressive. You threatened Mr Clifton by saying that you didn't want to hurt him and that he should do as you asked before you again pulled his hair.

43 Mr Clifton was terrified and so complied with your demands. He opened his mouth and you thrust forward, pushing your penis inside. You let go of his hair and gripped Mr Clifton's head. You told him to open his mouth wider as you could feel his teeth. Mr Clifton did what you asked because he was afraid of you and didn't want to agitate you further. You continued to thrust your penis in and out of Mr Clifton's mouth until you ejaculated inside. He began coughing to the point where he was gagging.

44 This is an offence of sexual penetration of a child aged between 16 and 18 years and under your authority for which the maximum penalty is 3 years' imprisonment.⁷

45 You weren't finished with Mr Clifton however. You told him to stand and you took his clothes off. You then fondled his genitals with one hand until his penis was erect before kneeling down in front of him holding either side of his hips. You moved your mouth forward placing it around Mr Clifton's penis. He did not want to ejaculate and tried to push you away. Eventually you stopped and stood up.

46 This is another offence of sexual penetration of a child aged between 16 and 18 years where the child was under your authority.⁸

47 Not surprisingly, given the awfulness of what you had just done to him, Mr Clifton was crying and couldn't speak. He fell onto the bed and curled into a foetal position. You got dressed and told Mr Clifton that everything would be

⁷ Sexual penetration with a person aged between 16 and 18, contrary to s 49(1) & (3) of the *Crimes Act 1958*, as amended by the *Crimes (Sexual Offences) Act 1980*. This is charge 6 on the Indictment.

⁸ *Ibid.* This is charge 7 on the Indictment.

okay. You told Mr Clifton as you were leaving that he needn't tell anyone as he wouldn't be believed. That parting gesture eloquently demonstrated the power you had over Mr Clifton. Your callous indifference to his suffering is remarkable.

48 It is appropriate to consider what you had done to Mr Clifton in a little more detail. He was in his own home, a place where he was entitled to feel safe and secure. He was unwell. You used violence against him. You forced him to submit to your demands by threatening him. He was afraid of you and terrified at what you were doing. You ejaculated into his mouth, a particularly intimate act, which was revolting in the circumstances I have described. And finally, while Mr Clifton was crying on his bed in a foetal position, you thought only of protecting yourself when you told Mr Clifton that if he made any complaint against you, he would not be believed. Mr Clifton was only 16 at the time of this incident and what you did to him represented his very first sexual experience.

49 Mr Clifton didn't tell anyone and indeed was afraid that his peers would know about what you had done to him. He decided to pretend that it never happened until he first disclosed what you had done to him during a motivational course he was attending in 2009. Soon afterwards he told his parents and his sister and then again spoke about the abuse in 2012 during a Parliamentary enquiry.

Arrest

50 You were arrested by police on 18 August 2017 after you attended Box Hill Police Station by appointment. You participated in a record of interview. Notwithstanding the letters you had earlier written to some of the victims of your offending, what you told police in that interview amounted essentially to denials of the allegations made against you.

51 In particular you told police that: you denied offending against Mr Baker; that you denied intending to touch Mr Peterson's genitals; that you couldn't recall the matter the subject of Mr Holt's complaint; that you couldn't recall the matter

the subject of Mr Bryson's complaint; and that while you had been to Mr Clifton's house and had been in his bedroom you implicitly denied that his complaint was true when you told police that your penis had never been in the mouth of any other person.

52 Each of those denials was of course a lie as is made clear by your pleas of guilty. It is worth mentioning at this stage that your false denials have continued, with you telling a psychologist only a few weeks ago that you had never penetrated a mouth, anus or vagina – again a claim clearly inconsistent with your plea of guilty to count 6.

Objective gravity of offending

53 I want to speak about the objective gravity of your crimes.

54 You abused the significant power you held over the children you assaulted and what you did represented a gross breach of trust. Your considerable power over the boys came from your position as a teacher, a sporting coach, and as an authority figure within the Catholic Church. The victims of your crimes had been entrusted to your care by families who were entitled to expect you to act in a way which was consistent with the teachings of the Catholic Church.

55 You befriended the families of some of the victims. You took advantage of the powerful position the Catholic Church held at the time of your offending, a time when as one of the victims of your crimes put it "you did whatever the church said".

56 The victims of your behaviour remained at the schools where you had abused them and where you continued to teach. This added to their suffering.

57 Your offending took place over a significant period, from 1963 to 1984. You did not offend merely when you were sexually immature or naïve, instead you continued to offend as you approached middle age.

58 Indeed the criminality of your behaviour escalated so that your later offences
involved more serious sexual acts which were accompanied by threats and
aggression.

59 The objective gravity of your crimes is high as is your moral culpability.

60 For these reasons a significant overall sentence of imprisonment is required.
On the other hand I am significantly constrained by the maximum penalties
which applied to your crimes at the time you committed them. Had you done
recently what you did so long ago, much longer sentences would have been
imposed.

Victim Impact

61 I began this judgment by referring to the harm that your offences have caused.
I will now speak about that harm in a little more detail. Some of the victims of
your crimes have prepared victim impact statements. They eloquently describe
the effect that your criminal behaviour has had on them over many years.
Those effects have been profound and ongoing.

62 Whilst you had past periods of depression in the 1990s you have not had any
serious mental health issues beyond that. In particular you have never
attempted suicide or had any suicidal ideation. This contrasts markedly with the
experiences of some of your victims. They speak of suicide attempts, fear of
intimacy, ongoing depression, loss of self-confidence, self-medication on
alcohol and drugs, and the breakdown of relationships.

63 I am now going to refer to some specific things that were said in the victim
impact statements. I cannot, of course, quote each statement in its entirety.
There is a risk that by quoting some parts of a victim impact statement but not
other parts it may be felt that I have ignored some of the consequences of the
assaults. I listened as the statements were read to me and I have reread them

in preparing this judgment.

64 I acknowledge the serious harm which these offences caused and want to assure everyone that I have taken into account all admissible material contained in the victim impact statements in deciding the appropriate sentence in this matter.

65 The Victim Impact Statements included the following:

- “I was left with the belief that sex was “dirty” and that sexual thoughts were wrong.”
- “My first marriage failed because of my inability to express emotion and I was inhibited sexually and felt that sex was a “dirty” thing.”
- “The one constant thing that remained with me all my life and remains still, is what Laidlaw did to me.”
- “I have suffered phobias and fears that left me running away and avoiding crowds, friendships and job opportunities.”
- “The challenges within the intimate relationship of my marriage... included a consistent feeling that I was imposing myself – as I had been imposed upon; physically and sexually.”
- “The... abuse by brother Laidlaw impacted on me in an intense psychological way, impacting on the development of my life and my perceptions about myself. I’ve found it very difficult to rise above a poor self-image and react internally to any attention, including family, friends and acquaintances.”
- “I lived in fear because someone I initially liked and trusted, who had a friendly smile, seemed kind, turned out to be someone who was creepy, a person to avoid, not trustworthy, a fake.”
- “My self-esteem, self-confidence, natural enthusiasm to want to learn, play sport, be freely and enthusiastically involved in so many aspects of school life was severely damaged.”
- “The impact of this crime on me has been immense, after it occurred I stopped wanting to go to school and had massive issues and falling out with my family directly due to the vile questions and suggestions that were made to me.”

- “To have my first ever sexual experience with a gay Christian brother who I was taught to obey and respect was something that has haunted, frustrated, burnt me inside all the years of hiding and suppressing my pain, sadness and anger.”
- “Not long after being thrown out of home I attempted suicide and lived on the street for months until my brother came to find me. The shame for me was unbearable.”
- “I am forever in pain in my heart and head with a loss of my family and education and the years of being lost in my identity sexually and as a Catholic I totally lost faith in religion and all to do with it to the dismay of my beloved mother, something I was never able to repair tragically.”
- “From the moment he left me in my room, sobbing, and in complete shock; confused, disbelief and utter despair, he took my soul. In that moment, he took everything that I believed in. In that moment, he took away my innocence. In that moment he took away my joy and happiness for life!”
- “He left me in fear, a fear that still lives within me today. The fear comes in many forms: from not wanting to leave my home, a fear of rejection, a fear of ‘REAL’ intimacy, a fear of ‘REAL’ LOVE, a fear of TRUST, a fear of being HURT again and again and a fear of simply Living and getting through every single day without wanting to DIE.”
- “Some of the ripple effects of that fear are anxiety, depression, PTSD, SUICIDE ATTEMPT, CONSTANT SUICIDAL THOUGHTS, SELF-LOATHING, INSECURITY AND ANGER.”
- “This has affected everything and all aspects of my life and I believe it will until I die.”

66 Of course the harm caused for any offence is an important part in determining the appropriate sentence for that offence.

67 In *DPP v Toomey* [2006] VSCA 90, Vincent JA spoke of the notion of social rehabilitation. His Honour’s remarks have been widely endorsed. What his Honour said was this:

It is well to bear in mind that the rehabilitation of the victim of sexual abuse may often be more difficult to achieve than that of the perpetrator. Frequently the damage will be profound and a long time will pass before it can be addressed at all. In the meantime, childhood will be destroyed, self-esteem damaged, educational and career opportunities lost and the capacity to form and maintain relationships seriously impaired. The notion to which I have adverted

underpins, I believe, such concepts as restorative justice, just punishment, the vindication of rights and the attribution of responsibility based on moral culpability. The vindication of the victim in cases of this kind, in particular, is profoundly important if the criminal justice system is to perform its role properly.⁹

68 It is possible that you did not fully realise the extent of the harm that your behaviour would cause. It is likely that you gave no thought to the consequences for the boys of your abuse of them. You did not appear to care about their welfare – as I have said repeatedly, all you wanted was sexual gratification.

Offender's background

69 My understanding of your background largely comes from a psychological report tendered during the proceedings of Simon Candlish of 25 June 2019. I have had to exercise some circumspection, however, about the accuracy of what you told the psychologist. The report notes that your responses for 'Impression Management' fell into the above average range and your:

[self-deceptive enhancement] fell into the slightly below average range. This type of profile usually being found in individuals who are aware of their shortcomings but want to appear publicly acceptable.

70 I will return to this feature of the psychological report in a little while.

71 With that qualification, as a child you were not exposed to any violence within the family home and you were not physically or sexually abused. You did well academically, winning a scholarship to attend a prestigious boarding school. You told the psychologist that your attendance at this boarding school probably gave you an unnatural and misshapen view of sexuality because you were brought up around boys and rarely had contact with females. After leaving school you joined the Christian Brothers and completed three years of training during which you said you were "segregated from society". You then completed

⁹ *DPP v Toomey* [2006] VSCA 90 [22].

two years of teacher training and began teaching.

- 72 You were less than honest with the psychologist in some respects. Perhaps consistent with the personality profile I mentioned earlier you said that you were “never attracted to children as sex objects” and that your penis “had never penetrated a mouth”. Your account of your offending, under the heading “psychosexual history” significantly minimises the nature of your crimes. What you told the psychologist is inconsistent with your pleas of guilty.

Remorse

- 73 This brings me to the question of whether you are truly remorseful for what you did. I do not believe that you have fully accepted responsibility for your crimes. If it is necessary to confirm, I confirm that I find this beyond reasonable doubt. You have pleaded guilty, and of course there is a utilitarian benefit to such pleas which I will deal with later, but any suggestion that your pleas of guilty reflect true remorse has to be examined in light of your false denials, first to police, and then to the psychologist of many aspects of your behaviour

- 74 Of course I should not give undue weight to this failure on your part to fully accept responsibility for your misconduct. One of the most important reasons sentencing judges consider whether an offender is remorseful is because a remorseful offender is, other things being equal, less likely to commit offences in the future than one who is not remorseful. For other reasons, discussed shortly, I am satisfied that your risk of further offences is extremely low.

Delay

- 75 You are now to be sentenced for offences you committed many years ago. Such a lapse of time is far from unusual in cases of this kind. There is no evidence that you have spent these years in constant fear of the knock at the

door which would signal that you would be finally called to be punished for your crimes. You most likely lived your life since your offending stopped confident that this day would never come.

76 In a real sense you were the architect of this delay. You used your power and authority, apparently confident that these would protect you from discovery and prosecution as an abuser of children.

77 The last offence you committed was in 1984. In the years between then and now you have been of good character. You have helped alcoholics. You have been a carer for the elderly and men living with HIV. You have been a volunteer at the MCG and the Collingwood football club. The substantial delay between your last offence and today has allowed you to demonstrate that there is no need for me to take into account your specific deterrence in formulating the appropriate sentence to impose upon you. Nor is there any need for me to do anything to promote your rehabilitation. The absence of offences over the last 25 years suggest that this has already been achieved.

78 You are not someone who presents as having a considerable risk of re-offending, and whatever risk there is will be considerably diminished should you ever be released from prison.

79 There is another aspect of delay which I should mention. The fact that the victims of your crimes continue to suffer as a result of what you did to them demonstrates that they will never be able to rid themselves of the consequences of your abuse. You will be going to jail for a finite number of years. Your victims will never be free from the effects of your exploitation of them.

Relevance of age

80 Given your age, and the need to impose a substantial sentence of imprisonment

on you, there is a risk that you will die in jail. At the very least, you will serve a substantial part of your remaining years in prison.

81 Any man of your age would find time in jail harder than would otherwise be the case, but in addition there are the medical conditions from which you suffer. I have taken them into account when I assess the impact of imprisonment on you. Prisons are not comfortable places at the best of times. They are full of violent and unpredictable people. As an elderly man convicted of sexual offending against children and who suffers from Parkinson's disease and a heart condition with its associated problems, prison will be a decidedly unpleasant place for you.

82 I received evidence today about the difficulties that you have experienced in custody with your various medications and the consequences for your health of those difficulties. I have taken this new evidence into account.

83 Your age and ill health will result in a shorter overall sentence and non-parole period than would otherwise be the case.

84 On the other hand, I should not give excessive weight to these factors. In other words the mitigating effect of your age and medical conditions should not be allowed to bring about a sentence which fails to reflect the objective gravity of your very serious criminal behaviour.

Serious Sexual Offender provisions

85 Consistent with the concession by your counsel Mr Moglia, a concession I accept, I will be sentencing you to imprisonment on counts 1 and 2. The effect of section 6D of the *Sentencing Act 1991* is that when sentencing you as a serious sexual offender on the remaining counts I must have regard to the protection of the community as a principal purpose for which your sentences are imposed.

86 As Mr Moglia submitted, and Ms Piekusis conceded, this section is concerned with the risk that you as an individual present to the community and not with the principle of general deterrence. I have however found that you do not currently pose a significant risk to the community.

87 The sentence I impose upon you for all offences will not therefore be disproportionate to the gravity of your offences.

Totality and accumulation

88 Section 6E of the *Sentencing Act 1991* provides that there should be a presumption of cumulation between charges when sentencing serious sexual offenders such as yourself. The principle of totality still applies however so I am to ensure that your overall sentence remains appropriate for the whole of your offending.

89 It is appropriate that there be a measure of accumulation on each count to reflect the rather obvious fact that for each offence, apart from counts 6 and 7, there was a separate victim who has been harmed.

90 In the case of counts 6 and 7, which involved a single victim, your conduct after using violence and threats to ejaculate into his mouth was seriously criminal and a distinct act, such that it added to the overall criminality of your conduct.

91 No offender should ever feel that having committed a significant number of crimes, he or she can effectively commit more crimes for free. Nor should any victim of a crime feel that his or her suffering has been ignored.

92 It is for these reasons that I find that the presumption of cumulation has not been rebutted. Each individual sentence for each offence will add to your overall sentence, but the accumulation will be partial to reflect the principle of totality.

Relevance of section 5AA of the Sentencing Act 1991

93 It is conceded by your counsel that I should ignore any good character of yours prior to your last offence in 1984.¹⁰

94 As I have already mentioned your conduct since then, in particular the absence of further offences, demonstrates that there is no need for a disproportionate sentence in order to protect the community.

General deterrence

95 Whilst specific deterrence does not have any part to play in this sentencing exercise, given the harm that offences such as yours cause and given the vulnerability of the victims of such offences, general deterrence looms large when I come to consider what sentence to impose upon you, even if the principle of general deterrence is moderated somewhat because of your age and medical conditions.

96 Children are vulnerable in the extreme to predatory behaviour such as yours. At least at the time you committed your offences a child who made an allegation of sexual misconduct against a person in some form of religious authority such as a Christian Brothers teacher was rarely believed. Victims of sexual assaults by authority figures are reluctant to complain, often because of threats made against them by their abusers. Factors such as these demonstrate the need for courts to impose sentences upon offenders which may hopefully serve as a deterrent to others who may be tempted to act as you did.

97 It is important that the sentence I impose amounts to a public denunciation of you and your misconduct and punishes you adequately for what you did.

Applying current sentencing practices

¹⁰ Pursuant to section 5AA of the *Sentencing Act 1991*.

98 I am required to have regard to current sentencing practices, but the principal of equal justice requires that I also take into account sentencing practices at the time of your offending, if they can be ascertained, because those practices are relevant to the determination of a sentence that is just in all the circumstances.¹¹

99 However, neither party provided me with any material concerning sentencing practices in earlier times. I hasten to add that this is not meant as a criticism.

100 I should also emphasise perhaps that the maximum penalties for the offences are those which applied at the time of offending and I have ignored any increased maxima in the intervening years.

Comparative cases

101 I was assisted by counsel's reference to a number of other cases decided by the Court of Appeal¹² as an aid to deciding the sentences to impose in this matter. Of course no two cases are identical, but I was able to make appropriate allowances for such differences as there were. I found the comparative cases helpful.

Sentence

102 I now turn to sentence you. Mr Laidlaw would you please stand.

103 On count 6, which is the base sentence, I impose a sentence of imprisonment for 2 years and 3 months.

104 On count 1, I impose a sentence of imprisonment for 18 months.

105 On count 2, I impose a sentence of imprisonment for 21 months.

¹¹ *Stalio v The Queen* (2012) 46 VR 426, 445 [78].

¹² *Morris v The Queen* [206] VSCA 331; *DPP v Toomey* [2006] VSCA 90; *DPP v Bales* [2015] VSCA 261; *DPP v Klep* [2006] VSCA 98.

106 On count 3 I impose a sentence of imprisonment for 15 months.

107 On count 4 I impose a sentence of imprisonment for 15 months.

108 On count 5 I impose a sentence of imprisonment for 18 months.

109 On count 7 I impose a sentence of imprisonment for 24 months.

110 After applying both section 6E and the principle of totality, I order that the sentences for counts 1, 2, 3, 4, 5 and 7 are accumulated on the sentence for count 6 to the following extent:

- count 1 – 4 months' imprisonment;
- count 2 – 5 months' imprisonment;
- count 3 – 4 months' imprisonment;
- count 4 – 4 months' imprisonment;
- count 5 – 4 months' imprisonment;
- count 7 – 6 months' imprisonment.

111 Therefore, your total overall sentence is one of imprisonment for 4 years and 6 months. I set a non-parole period of 3 years 2 months.

Pre-sentence detention

112 As I revoked your bail at the conclusion of the plea hearing on 3 July, you have served 16 days pre-sentence detention.

113 Therefore, I declare 16 days' imprisonment as pre-sentence detention, reckoned as time already served against the sentence I have just imposed.

Sex Offenders registration

114 Under the provisions of the *Sex Offenders Registration Act 2004* you are a

registerable offender for life.¹³

115 This means that in the event that you do not die in jail you must report your personal details to the Chief Commissioner of Police upon your release from custody. Details of your obligations will be provided to you in writing.

116 My associate will now have you sign an acknowledgment of your reporting obligations.¹⁴

Forensic Sample

117 The prosecution made an application to obtain a forensic sample from you,¹⁵ which was not opposed by your counsel.

118 I direct that you undergo a forensic procedure for the taking of an intimate sample. I am required to tell you that police officers may use reasonable force to enable the procedure to be conducted to obtain a sample from you.¹⁶

Section 6AAA

119 Finally, in order to demonstrate that I have taken into account the utilitarian benefit of your pleas of guilty, I indicate that if you had not pleaded guilty I would have imposed an overall sentence of 6 years' imprisonment with a non-parole period of 4 years 2 months.

¹³ By virtue of being found guilty of five Class 2 offences (charges 1-5) and two Class 1 offences (charges 6-7), pursuant to s 34(1)(c)(ii) or (iii) of the *Sex Offenders Registration Act 2004*, the offender is to be registered and comply with reporting obligations for life.

¹⁴ Pursuant to s 50 of the *Sex Offenders Registration Act 2004*, the Court provides notice of reporting obligations under the Act.

¹⁵ Pursuant to s 464ZF of the *Crimes Act 1958*.

¹⁶ Section 464ZF(9) of the *Crimes Act 1958*.