

DIRECTOR OF PUBLIC PROSECUTIONS

v

TREVOR SPURRITT

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JUDGE: RIDDELL  
WHERE HELD: Melbourne  
DATE OF HEARING: 29 November 2019  
DATE OF SENTENCE: 12 February 2020  
CASE MAY BE CITED AS: DPP v Spurritt  
MEDIUM NEUTRAL CITATION: [2020] VCC 66

**REASONS FOR SENTENCE**

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**Subject:** Criminal Law  
**Catchwords:** Sexual Offending; Historical Offending; Multiple Child Victims; Indecent Assault; Teacher; Student; Breach of Trust; Plea Not Guilty; Trial; Delay; Ill Health; Age; Serious Sexual Offender  
**Legislation Cited:** s 68(3A) Crimes Act 1958 (Vic); Crimes (Amendment) Act 1967 (Vic); Sex Offenders Registration Act 2004 (Vic); Sentencing Act 1991 (Vic)  
**Cases Cited:** DPP v Dalgleish (a pseudonym) [2017] HCA 41; DPP v Dalgliesh (a pseudonym) [2016] VSCA 148; DPP v Toomey [2006] VSCA 90; Bromley v The Queen [2018] VSCA 329; R v Verdins; R v Buckley; R v Vo [2007] VSCA 102; DPP (Cth) and DPP v Swingler [2017] VSCA 305; DPP v Cocking [2017] VCC 1812; DPP v Wise [2018] VCC 462; DPP v Reed [2016] VCC 1461; DPP v De Dood [2017] VCC 1070; DPP v Bussey [2017] VCC 166; Morris v R [2016] VSCA 331; DPP v Goodison [2016] VCC 702; DPP v Edmondson [2018] VCC 252;  
**SENTENCE:** 5 Years 8 Months Imprisonment, 3 Years Non Parole Period

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<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Prosecution	Mr D Gray	Ms S Denham
For the Accused	Mr D Dann QC & Mr P Kouris	Mr J Wallis

## HER HONOUR:

### Summary

- 1 Trevor Alan Spurrirt you have been found guilty by a jury of 9 charges of indecent act with a child under 16.
- 2 Those 9 offences relate to 4 separate victims, all of whom were young boys aged 12 - 14 years old. You were aged approximately 26-28. Those boys were your students and you their teacher at Camberwell Grammar School during 1969-1971. The offending occurred in various settings; in the classroom, in the context of after school activity, and on school camps.
- 3 You pleaded not guilty to the offending and contested the allegations at a Trial. The jury however returned unanimous verdicts of guilty on 9 charges. It is now my task to sentence you for that offending in line with the jury verdicts.

### Circumstances of Offending

- 4 You were born on 25 October 1943. In 1964 you commenced teaching and soon after were employed at Camberwell Grammar School. You taught there in a full time capacity from 1965 until 1999.
- 5 While at Camberwell Grammar you were a Form Master and taught English, Drama and principally Mathematics. You were very involved in school theatrical productions, and also heavily involved in organising, attending and acting as a supervisor at various school camps.
- 6 Relevantly, three camps were held as follows. First, a camp was conducted by Camberwell Grammar on premises owned by the Church of England Boys' Society at Frankston. That camp became known by the acronym CEBS ("Church of England Boys' Society"). Second, a school camp held on grounds owned by Camberwell Grammar, known as Bambara at Mt Disappointment, Clonbinane. And third, hikes were organised by you and held at Cradle

Mountain in Tasmania.

## Individual offences

### Charge 1 – Victim Patrick Hogarth<sup>1</sup>

7 Patrick Hogarth was born in August 1957. He commenced in Grade 6 at  
Camberwell Grammar in 1969 as an eleven year old. He was a student there  
for four or five years.

8 During Grade 6, Form 1 and Form 2 Mr Hogarth attended camps at Bambara.  
He remembers you being a teacher on one of those camps, likely when he was  
in Form 1, though he could not be certain of the year.

9 At Bambara he slept in one of 4 huts, with 7 other boys sleeping in 4 sets of  
bunk beds. He recalled sleeping on the lower bunk on the left side of his room  
as one walked into it.

10 One night, at lights out, he said everything was very quiet. He wasn't sure if  
others in his room were awake or asleep. A light was on outside his cabin and  
he saw you come into the hut through the doorway. You crouched down next  
to him and put your hand inside his pyjama top. He could feel your hand moving  
slowly over his chest, down over his stomach and to below his belly button just  
above his pubic area. Mr Hogarth said he remembered thinking "What's going  
on here?" and that he rolled away from you and pretended to be asleep. You  
removed your hand and after moving around the cabin for a short time you left  
the room. He estimated you were touching him for one to two minutes. That is  
Charge 1. When asked in evidence if he said anything to you, he replied "No, I  
was frightened."

### Charges 2, 3 & 4 – Victim Nicholas Ward<sup>2</sup>

11 Nicholas Ward was born in February 1958. He commenced in Form 1 at

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<sup>1</sup> Pseudonym used.

<sup>2</sup> Pseudonym used.

Camberwell Grammar in 1970, turning 12 in February of that year. You were his home room teacher or Form Master. You also taught him mathematics during that year.

12 Mr Ward was not clear on the sequence of events, however he described three occasions when you offended against him during his Form 1 year.

13 On an occasion in class during the first six months of his Form 1 year, you called Mr Ward to your desk at the front of the class in order to mark a test or something similar. He stood next to you at the desk where you were seated. You put your arm around his waist and he felt your hand go into his pants' pocket. He felt you touch and stroke his penis through the pocket fabric. He said this lasted for a minute, maybe longer and as you did this you smiled at him. He tried to move away but described himself like a 'rabbit caught in headlights'. You removed your hand, whereupon he was able to move away and return to his seat. That is Charge 2.

14 He described being shocked, 'in disbelief' and confused about what had happened. He did not know what to do and did not tell anyone what had happened to him.

15 Mr Ward attended a Form 1 camp conducted at CEBS. You were present as a teacher and supervisor at this camp.

16 Mr Ward slept in a hut containing bunk beds. There were four bunks, that is eight beds, in each hut.

17 Mr Ward recalled sleeping in a top bunk. He recalled you coming into the hut at lights out time. You approached him in the top bunk, putting your hand into his pyjamas. You stroked his thigh then started to touch and masturbate his penis. He says you did this for a short time until he ejaculated. He described being shocked and disgusted and that he 'just froze'. Those events are Charge 3.

18 Mr Ward also attended a school camp at Bambara during the winter of 1970. You were a teacher present at that camp. As with the CEBS camp at Frankston the sleeping arrangements were bunk beds with four bunks or eight beds in each hut.

19 He was again sleeping in a top bunk at the back left hand side. The lights were on outside the hut and he saw you come into the hut to tell the boys to go to sleep. You put your hand into his pants and started stroking his leg before stroking his penis. You played with it until he ejaculated. You left the room and he rolled over and went to sleep. Mr Ward said he felt sick and scared as a result of what was occurring. That is Charge 4.

#### Charges 5, 6 & 7 – Victim Alex Rofe<sup>3</sup>

20 Alex Rofe was born in October 1957. He commenced at Camberwell Grammar in 1963 and attended there until 1976.

21 In 1970 Mr Rofe was in Form 1. Shortly after school started he attended the Form 1 school camp at CEBS. It follows that this is the same camp described by Mr Ward. You were present as a teacher supervisor at that camp.

22 Mr Rofe had come to know you because you had taught his two older brothers who also attended Camberwell Grammar, and you had dealings with his parents who were heavily involved in the parents' association and the life of the school. You had attended their family home for school related events.

23 Late in the week of the Form 1 camp Mr Rofe was feeling unwell and while the rest of his schoolmates were out doing activities he was permitted to remain in the mess hall to work. He was sitting at a trestle table in the hall and was alone.

24 You entered the mess and asked Mr Rofe why he was not out with the other students. He told you that he was not feeling well and had permission to remain indoors. You then sat down to the left of him, then placed your right arm behind

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<sup>3</sup> Pseudonym used.

him, and put your hand inside his black football shorts touching his bare buttocks. Mr Rofe was not wearing any underwear and you asked him about this. He told you that he had run out of clean underwear. You left your hand on his buttocks for a number of seconds before removing it. That is Charge 5.

25 Mr Rofe said he was shocked and didn't understand what was going on, but he did not feel afraid of you given you were a trusted family friend.

26 You were the playwright and Director of the Junior School play during 1970. Mr Rofe was part of the cast playing a character called Wilfred. He described an occasion after a rehearsal where he and a group of boys were in a dressing room under the stage area. You came into the room and became angry. You told the other boys to leave, however instructed him to stay back. He was confused as he felt he hadn't done anything wrong. You told him to follow you to your classroom on the top floor of the junior school building, which he did.

27 Once alone with him in your classroom, you then punished him with 'the compass'. The compass was used to draw on blackboards and consisted of two pieces of wood joined at one end to form a hinge, with chalk at the end of one of the wooden arms. It was about 60 centimetres long. In an era where corporal punishment was accepted, the punishment of 'getting the compass' involved the student bending over to touch their toes while they were then hit on the backside with the compass.

28 You told Mr Rofe to bend over and touch his toes before hitting him twice on the backside. He said "It hurt, I mean it really hurt. I was crying ... I would have been 12 or 13."

29 After the second strike you put your arm around him and pulled him towards you so that you were next to him. You were talking to him. At the same time you put your hand down Mr Rofe's pants and commenced rubbing his buttocks. Those events form Charge 6. Mr Rofe could not recall whether your hand was inside his underpants but stated that it was definitely inside his pants.

30 Mr Rofe did not tell anyone about what had occurred because he says that what teachers did “was law” and would not be questioned.

31 Mr Rofe recalled a second incident similar to the Charge 6 incident. He could not recall the lead up context, but recalled a similar circumstance where he was singled out and made to go alone with you to your classroom. He again ‘received the compass’, once on this occasion. He started to cry, and you again put your arm around him and your hand down the back of his pants and rubbed his buttocks as if to comfort him. Again, Mr Rofe could not be sure whether the hand was inside the underpants but says that it was definitely inside the pants. Those events constitute Charge 7. For the purpose of sentencing I accept that on both of those occasions your hand was under his shorts but on top of his underpants.

32 During December 1971 Mr Rofe went on a school trip to Cradle Mountain in Tasmania. You were the organiser and teacher in charge on that camp.

33 At one stage on the trip Mr Rofe recalled that during free time he and a number of other boys were ‘mucking around’ though not doing anything wrong. You intervened, telling him he needed to settle down. You then removed him from the group, instructing him to walk a distance away from the other boys. You and he sat down side by side on a pine log fence, where you told him ‘You need to settle down. You’re getting too excited.’ You then put your arm around him and your hand down Mr Rofe’s shorts and touched him on the bottom. This is an uncharged act which was before the jury as other evidence of your misconduct.

#### Charges 8 & 9 – Oliver Wells<sup>4</sup>

34 Oliver Wells was born in October 1958. He commenced Form 1 at Camberwell Grammar in 1970 and was a student at the school through to 1975 when he

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<sup>4</sup> Pseudonym used.

finished Form 6. He recalled you teaching him maths in 1970 and 1971.

35 On one occasion in class Mr Wells was seated in a shared wooden desk with another student. You squeezed yourself into the left of the shared desk where he was sitting. He recalled you talking to him about his work and as you did so you placed your hand between his thighs and moved it up his leg until you were touching his penis on the outside of his pants. Those events form the basis of Charge 8. The incident lasted a short time, up to a minute, after which you got up and went back to teaching the class.

36 Mr Wells recalled a second occasion when he was sitting alone at his desk in class. You again sat beside him at his desk, placing your hand on the inside of his thighs and sliding it up until you touched his penis. That is Charge 9.

37 Mr Wells described this type of behaviour where you would sit next to him and touch his penis under the desk, occurring on a number of occasions. Beyond charges 8 and 9 those acts were not the subject of specific charges. They formed part of other misconduct evidence before the jury. I take them into account not as aggravating the charged acts, but in order to make a more realistic assessment of those behaviours in their true setting<sup>5</sup> – namely, these events were not isolated incidents but that this was something which you did on several occasions to Mr Wells.

Richard Tucker<sup>6</sup>

38 A fifth complainant Richard Tucker gave evidence at Trial and was originally the subject of 3 charges on the Indictment. His evidence related to occasions where he described you approaching him from behind in class and putting your hands down his shirt, or rubbing your lips against his neck or putting your hand into his shorts pocket.

39 After the close of the Prosecution case, and after hearing submissions I entered

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<sup>5</sup> *Weininger v The Queen* (2003) 212 CLR 629; *R v Dunne* [2003] VSCA 150

<sup>6</sup> Pseudonym used.

verdicts of acquittal on those three charges. The evidence however was still before the jury as part of what the Prosecution relied on as tendency evidence. It is not possible for me to discern from the jury verdict whether they took that evidence into account as tendency evidence as the Prosecution contended. Therefore, I do not take that evidence into account for the purpose of sentence.

### Sentencing Principles

- 40 It is trite to say that sexual offending against children is serious. Courts and the community far better understand the immediate but also the potentially far-reaching consequences. Where, as here, offences are committed against young boys on the brink of puberty, such offending against them can be confronting and confusing, impacting their identity and self-confidence.
- 41 Offending by a person in authority over them adds a layer of gravity to those issues. It represents a gross breach of trust by a person who is tasked with their care. That power imbalance has capacity to add to the feelings of confusion and humiliation, to create a powerlessness in the victim, and to seriously impact their ability to trust others.
- 42 The breach of trust here is against each victim, but also against their parents and the school who employed you.
- 43 Your offending was repetitive, committed against multiple victims in a number of settings. It was brazen, committed in front of other students or where there was a real risk of discovery. At times it was subtle and manipulative, adding to the confusion for the victim. These were acts of power and control over innocent children.
- 44 You behaved in such a way no doubt safe in the knowledge that the power imbalance fell in your favour; and as Mr Ward said in evidence, safe in the knowledge that 'teachers were gods' at that time. That is, it was most unlikely in that era that any of these boys would make a complaint about what you had

done.

45 Again, the law better understands the reluctance of victims of sexual offences to complain immediately or even after many years.

46 As higher courts have said many times, it does not matter that these offences occurred a long time ago.<sup>7</sup> They must be met with a punishment which denounces the behaviour, which deters others from so acting, and which protects the community. Those principles must be at the forefront of any sentence for sexual offending against a child.

#### Gravity of offending

47 In assessing where your offending sits on the continuum, I must make an assessment of the subjective gravity of these offences. I must do that in order to consider where this offending sits vis à vis the level of seriousness, and in an effort to achieve consistency in sentencing.

48 The context of this offending means they are all serious given the relationship of teacher and student and the consequent breach of trust, and given the tender age of these boys.

49 In relation to Mr Ward, your counsel rightly conceded that the offending against him is the most serious of those before me. I agree. It was repeated and apparently escalating.

50 It involved manipulating a situation where you brazenly touched him in the classroom with others present, a real demonstration of your power.

51 It involved stroking his penis to ejaculation on two school camps. Places which should be a high point of fun for a young student; places where children do not have ready access to their parents; and places where parents grant an extra responsibility to teachers supervising and caring for their children.

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<sup>7</sup> *DPP v Toomey* [2006] VSCA 90

52 That offending at both CEBS and Bambara occurred at night in a bunk room  
under the guise of coming to say lights out.

53 In involved direct contact with his penis and masturbation of him.

54 It was distressing to your victim who described the ejaculation as his first sexual  
experience. The confusion of a physical pleasure response to such abuse is  
real for a child at that age.

55 He was clearly traumatised still as he described those events.

56 It was brazen and predatory.

57 The camp episodes in particular are serious examples of indecent act against  
a young boy.

58 In relation to Mr Rofe there is an added layer of breach of trust by virtue of the  
family friendship. His particular confusion was hinged in that relationship.

59 While the incident in the mess hall was opportunistic and unplanned given you  
found him there alone, in relation to the occasion during the school production  
and the occasion reflected by Charge 7, both times you manipulated a situation  
to isolate him from other students.

60 You then administered physical punishment against him as a ruse so that you  
could disguise your touching of him as comfort or affection.

61 Telling him he had misbehaved and your infliction of physical punishment  
reinforced your authority over him and perhaps guaranteed he would not tell his  
parents about what occurred. Those are aggravating features of your offending  
against him on those occasions.

62 You connived a similar scenario at Cradle Mountain to touch him again.

63 Those 2 charged acts represented by charges 6 and 7 are particularly  
manipulative and predatory.

64 The offending against Messrs Ward and Rofe is more serious and clearly not low level.

65 In relation to the offences committed against Mr Hogarth and Mr Wells it is less serious, though I take into account the camp setting in relation to Mr Hogarth, and the brazenness and repetitiveness of touching Mr Wells in the classroom under cover of checking his school work.

66 Although submissions were made to the effect that some of the offending was at a lower end of the spectrum and that therefore a suspended sentence would not be out of the range, I cannot look at each of the offences in isolation. In order to assess your moral culpability and the seriousness of your offending I must look not only at the facts and surrounding circumstances of individual offences, but must consider the overall offending.

67 Your offending involved two episodes on the one CEBS camp; it involved two other episodes at Bambara camps, likely in the same year; it involved repeated, manipulative and brazen offending in the classroom and at after school activities in the same time frame. When considered globally, in my view your moral culpability in the circumstances of repeated offending against multiple victims in your position as their teacher is very high.

#### Victim Impact

68 The impact of such offending as I have said can be immediate but also long lasting. I received on the plea a number of victim impact statements from several of the victims, and also in their evidence at trial some described the impact.

69 Mr Hogarth elected not to provide a victim impact statement. I take into account however his description of fear at the time of your offending. I take into account generally the fact that sexual offending against a child in those circumstances is likely to have had an immediate effect, and has the potential for lasting

consequences including a lack of trust of those in authority.

70 Mr Ward stated in evidence that your offending caused him to feel unsafe; as a result he started missing school; started playing up and drinking alcohol at an early age; while he says his natural ability allowed him to continue, it is clear he did not feel he reached his full potential.

71 Years later when his own son reached secondary school age, the rising tide of those memories became a flood causing him grief and the pain of recollection. He stated "... you need to get on with your life, and that's what I was trying to do..."

72 In his victim impact statement he reiterates that history. He says he struggled in life to form lasting and meaningful relationships, submerging himself into drugs and alcohol to cope. Having eventually met his wife and mother of his son he describes the triggering effect of his son starting secondary school. His drinking spiralled out of control and his health deteriorated. He started having nightmares and night sweats. His relationship faltered and his libido disappeared. He felt pain and anxiety and could not cope with small tasks. He became deeply depressed and hopeless, experiencing suicidal thoughts. He felt compelled to leave England where he had been living so that those close to him did not watch him suffer.

73 He has been living in Melbourne but at great loss and says the abuse and legal process has taken a toll on him. He says "I wish I had my childhood, the one I deserved, over again. I want to put this behind me but I'm not sure I can."

74 Mr Rofe described the fact that he managed to stay away from anything to do with you as he progressed through the school. However, he never returned to school reunions despite the fact he wanted to, but because there was a likelihood you would be present. He ceased going to old boys' football games because your sons played and he didn't want to run into you. The old boys football club was a massive part of his family's lives, so not attending those

events because of your presence he says 'took a large part of my life away from me.'

75 He describes his young self as naïve, and the fact that this type of abuse was not publicised and nor were children educated about it. He describes finally telling his aging parents about what you had done. He says it was 'extremely difficult and to see the pain on their faces when they realised that they had sent three sons to a school where they expected them to be in a safe environment, and for the perpetrator to be not only a teacher, but one who had become a trusted family friend, and one who had been in our home many times for parent parties.'

76 The lengthy legal process has brought him down. It has brought back vivid memories which he had wanted to forget. He stated "I relive it every day, the thought of his hands pawing over me for his own pleasure.' He believes he will be constantly reminded of these matters for a very long time to come.

77 Mr Wells stated that over the last 40-50 years the incidents of your offending were 'never ever far from [his] conscience'. Your offending created for him a mixed and confusing period – on the one hand he was a teacher's pet, while at the same time that same teacher was fondling him. No doubt his young age meant his confusion extended to the fact that he did not know whether he had done something to encourage your attention. He referred to his parents who held teachers in such high regard.

78 From the time of the offending he says he has always suffered a hidden level of depression, struggling particularly in the year that followed junior school. He says the impact has been profound and forever lasting.

79 Your offending has 'shattered' his trust in 'the system' and people in positions of trust. It has tainted his views of his school and sadly caused him to become cynical towards the school which has not acknowledged your offending.

80 He describes carrying a secret that he has lived with for close to 50 years. Very obviously it has been a heavy burden. The jury verdict has come as a relief and vindication for him. Better still he says would be an admission by you of your offending against him.

81 The jury accepted the evidence of each one of those men. They accepted them as honest and reliable accounts of what had occurred to them as children.

82 You answered questions about offending against Mr Ward and Mr Rofe in a record of interview and you gave evidence at your trial in relation to all offending. By virtue of their verdict, the jury rejected your denials of offending against those boys.

#### Plea of Not Guilty and Lack of Remorse

83 You have not expressed any remorse or any empathy for those victims. You have not admitted any wrongdoing or demonstrated any insight.

84 As is your right, you ran the matter to trial. That is not an aggravating matter, but of course, you do not receive the benefit of any plea of guilty or of any demonstration of remorse or insight.

85 In assessing the need for specific deterrence and your prospects of rehabilitation, I do not therefore have the benefit of any explanation from you as to why a young man of previous good character would offend in this way. In light of the numerous testimonials attesting to your subsequent good character, I can only conclude that this period of your life was one where you behaved in a most out of character fashion. I heard evidence at the trial from you and from your wife about your life at that time. Namely, you were recently married, and your wife was pregnant. Her pregnancy was not easy but resulted in the birth of your first child in June 1970. In May her father died unexpectedly and her mother needed support. In 1971 she suffered a miscarriage which required hospitalisation, before she became pregnant again. It was undoubtedly a

stressful period. Perhaps those circumstances played a part in your behaviour. But I cannot draw any concrete conclusions.

#### Personal Circumstances

86 You are now 76 years of age. You were born and grew up in Murrumbidgee and Brighton.

87 Your mother was involved in home duties. She died of kidney cancer at age 68 in 1985. Your father was a member of the police force and was a participant in World War II. On his return he worked as a travelling salesperson and was often away. He died of a heart attack at age 65 in 1986. You were very close to your parents.

88 You had a brother who died in 2012. You have a sister to whom you are very close.

89 You married your wife Diana in 1969. She is now 75 years old and has been present throughout these proceedings. She is a qualified physiotherapist, and was previously a lecturer in physiotherapy. She is now retired. You and she have shared the better part of your lives together.

90 You have three adult children, two sons and a daughter. They are in their 40s and are each married or partnered with children of their own. They are all successfully engaged in professional employment. You are very close to your children and to your grandchildren. I will return to this.

91 You attended Brighton Grammar, competing in tennis, swimming and football. You were a sergeant in school cadets. You maintain a number of close and meaningful friendships from your school days.

92 You passed Matriculation and then worked for a year before commencing an Arts degree at Monash University with a focus on mathematics. You soon decided to pursue a teaching career. You attended Mercer House and over two

- years completed a Diploma of Teaching with the Australian Teacher Training Institute.
- 93 Very soon after graduating you commenced teaching at Camberwell Grammar in 1965. Whilst teaching full time at Camberwell Grammar you also managed to complete a Bachelor of Education and a Master of Health Sciences at Deakin University.
- 94 In your role at Camberwell Grammar you became Form Master and House Master, having a role in pastoral care.
- 95 You later developed an interest in teaching drug and alcohol education and you worked closely with the Australian Drug Foundation. After retiring from full time teaching in 1999 you ran school programs in alcohol and drug education for two years for students in Year 10.
- 96 You were then employed as a mathematics teacher at Mentone Grammar from mid-2003 through to the end of 2005, and subsequently from 2006 at Brighton Grammar teaching English, Maths and Drama until 2012. In 2012 the first of these allegations were made, with some resulting publicity. This resulted in your immediate suspension from teaching and effectively the finish of your teaching career.
- 97 You have played a significant role in the Powerhouse Lord Somers Camp and organisation. You joined as a junior staff member in 1967 and subsequently became a Deputy Camp Chief. You were heavily involved with Lord Somers Camp for over 40 years between 1967 and 2007; and between 2008 and 2014 you held the honorary position of Chef de Cuisine. You were made an honorary life member of Lord Somers Camp in 2013/2014. You were forced to cease that involvement in 2016 when an article concerning these matters appeared in The Age newspaper.
- 98 In your retirement you have undertaken maintenance work at Powerhouse and

you have intermittently attended family camps at Lord Somers Camp. You are committed to playing a game of golf each week, although mobility issues which I will come to are hampering your physical capacity. You and your wife are actively involved in supporting your children and looking after your 6 grandchildren.

99 Your wife had a kidney removed in the late 1990s and a brain aneurysm clipped in 2005. In the mid-2000s she had a hip replacement. Your wife is prescribed Valium. She is receiving treatment for stress related to your legal situation.

100 I heard argument in relation to whether s.5AA of the *Sentencing Act* 1991 applies in this case. Ultimately the prosecution conceded that it does not. While there is some uncertainty regarding the scope of that provision, I am prepared to proceed on the basis that it does not apply. I therefore take into account your prior good character as at and up to the time of the offending.

101 I was provided with a significant number of references, written from a wide variety of people who have come to know you in your personal and professional capacity. Those people include your lifetime friends, your past students some of whom became your colleagues, numerous teaching colleagues, your employers, persons involved in Lord Somers, as well as your family.

102 With one voice they described you as a deeply caring, generous and honest man, passionate about the education and betterment of children and young persons. They talk of your professionalism, your dedication to the pursuit of education within and well beyond the classroom. They talk of your love and devotion to your wife and family. Universally they express their dismay at your proven offending, and the fact that this is totally out of character with the person they know. I cannot do justice in a short summary to the extensive and impressive commentary those materials make about your life, however I can assure you I have read each one closely.

103 I accept what your counsel submitted on your plea, namely that they attest to

“quite an exceptional level of community involvement that [you have] had over an exceptional period of time. .... This is a wide ranging body of people who speak of [your] achievements and contributions and [your] involvement in the community.”

104 I accept that your good character and the weight and contents of the reference material must form an important part of my consideration of the appropriate sentence.

105 Yet again this is a case where the offending and that lifetime of contributions lie in stark contrast to each other. Yet again this demonstrates the complexity of human behaviour.

#### Prospects of Rehabilitation

106 Despite a lack of remorse, empathy or any expression of insight into your offending, I accept that your prospects of rehabilitation are excellent given what I have read in the reference material and given you have not reoffended in 50 years. You have maintained that status despite your close contact with what must be thousands of children and young people since that time.

107 Hand in glove with your positive rehabilitation, in my view there is no real part to play for specific deterrence here.

108 For completeness I note Mr Cummins assessed you as low risk of reoffending.

#### Delay

109 Delay is a significant matter on your plea.

110 As the higher courts have outlined, delay is relevant for a number of reasons. It is relevant in a number of ways here.

111 First here there is the passage of time since the offending in which you have not re-offended, and where you have carried out extensive acts of professional

- and community service, mostly directed to assisting young people.
- 112 Those matters are relevant to my considerations of your rehabilitation, to your risk of re-offending and to whether there is any need for specific deterrence. All of those matters fall in your favour.
- 113 Secondly, delay is relevant in relation to the period of time in which these proceedings have been foreshadowed.
- 114 The first complaint to police about your offending was made in 2012. Mr Ward made his first statement on 19 July 2012.
- 115 There was publicity in the press about the allegations. At that time you were working at Brighton Grammar. As is appropriate, your principal suspended you from teaching at that time.
- 116 On so becoming aware of the allegations, you made contact with the informant, offering information. You were told you would soon be contacted, however no further contact occurred.
- 117 18 months later, on 10 December 2013, Mr Rofe made his statement. I understand the investigation was ongoing, however you were not interviewed by police in relation to the allegations made by Mr Ward and Mr Rofe until 12 February 2016. I invited the Prosecution to call evidence or make submissions as to the reason for a delay of over 3 years before you were interviewed. No explanation was given.
- 118 Mr Ward made a further statement on 29 Nov 2016. Mr Hogarth made a statement on 8 December 2016 and Mr Wells on 15 December 2016. No information was provided to me as to how those statements came about.
- 119 You were offered but declined a further record of interview in relation to those allegations.
- 120 Charges were not laid until 6 July 2017. No explanation was given for this delay.

- At that time charges related only to offending against Mr Ward and Rofe.
- 121 The matter was listed for a committal hearing on 20 October 2017. On day 1 of that committal the prosecution indicated further charges would be laid. Those charges related to the offending against the other victims but stemming from statements in possession of police in December 2016. No satisfactory explanation has been given as to why those matters did not already form part of the brief. At prosecution cost, the committal was then adjourned until June 2018.
- 122 The matter then proceeded through this Court to Trial in August 2019. Further delay was occasions when a witness notified the informant that he was in possession of numerous school records. He had never been asked to look for or provide any such documents.
- 123 The jury verdict was returned on 6 September 2019, some 7 years after the initial complaint and after you first became aware of the investigation.
- 124 At your plea I again invited the Prosecution to call evidence about this series of what amounted in my view to extraordinary delay. It is particularly so given allegations of historical sexual offending invariably rest on the evidence of the complainants. No reason has been given, beyond workload, as to why such delay was occasioned.
- 125 I emphasise, delay is completely unhelpful for victims in these matters – not only are they being examined on events which are historical, but they are also being challenged on the contents of statements made years earlier. The impact of years of delay in bringing the matter to court on a person who has finally made the brave step of coming forward must surely compound their stress and anxiety. So much was attested to in the victim impact statements of Messrs Ward and Rofe.
- 126 In a sentencing sense, I must take into account the effect of this 7 year delay

on you.

127 It is relevant in two ways generally and in three ways in your case.

128 First, you have continued your positive rehabilitation in that time as I have outlined.

129 Secondly, you have had the spectre of this prosecution hanging over you for 7 years. That is recognised to be a difficult, stressful and anxiety provoking state of affairs for any person facing serious allegations. It creates uncertainty for the future and in your case I accept has led to moderate to severe depression and anxiety.

#### Extra-Curial Punishment

130 Thirdly in your case, the publicity and spectre of prosecution led to the immediate suspension of your employment as a teacher.

131 Now that a number of the allegations have been found proven, the negative publicity and damage to your reputation may be seen to be deserved. While I accept the submission made by your Counsel that not all persons facing serious criminal charges lose their employment and reputation, suspension from your profession as a teacher, where that role gave you access to your victims, is not ordinarily considered as a circumstance in mitigation.

132 It is a little different in your case in this way. There are additional considerations here because of your age and because of the delay in finalising these matters. That is, your suspension occurred 7 years ago. It occurred at a time in life where your age meant you were unlikely to obtain other employment easily. That has had financial and personal consequences. It is a lengthy period in which to have lost employment and to remain ousted from your chosen career. For those reasons I accept in your case it constitutes extra curial punishment, although it is deserving of modest weight.

## Age and Health

- 133 You are now an older man falling to be sentenced at age 76.
- 134 Your age is a relevant factor in my sentencing task. Any term of imprisonment I impose will constitute a proportion of the remainder of your life.
- 135 Although you do not have any illness of a terminal nature, you are not in good health. I must allow for the reasonable possibility that you may not survive a term of imprisonment.
- 136 I received several reports outlining your medical conditions, as well as a summary in the report of Mr Cummins who had access to all source material.
- 137 You have been attending your general practitioner Dr White for over twenty years. He provided a letter detailing the effects on your health if you were to be imprisoned and had reduced access to health services. I do not accept that in custody you will have reduced access to health services, although I accept it may not be optimal or at your own convenience and will not be with practitioners of your choosing.
- 138 In 2016 you had a squamous cell carcinoma on your head which required radiotherapy and you have had repeated biopsies. You require ongoing check-ups for melanomas and non-melanotic skin cancers.
- 139 You have had a previous diagnosis of prostate cancer for which you required radical surgery and androgen deprivation therapy. Annual check-ups with an oncologist are required.
- 140 You suffer from osteoarthritis in your right knee, for which you underwent knee replacement surgery in December 2019.
- 141 You have bilateral foot and ankle osteoarthritis with marked deformity of the ankles and feet with associated pain and muscle dysfunction. You require podiatry care. Reports from your podiatrist Mr Hughes and orthopaedic surgeon

- Mr Devitt from September 2019 indicated that foot surgery was seen as a distinct possibility in the future.
- 142 Your feet and ankle conditions mean you suffer resultant reduced balance and an increased propensity to fall. Podiatrist Mr Hughes opined that yours is one of the most severe cases of foot deformity he has treated. He stated your condition is likely to deteriorate even further over time which will decrease your mobility and ultimately affect your general health.
- 143 I have received a report dated 10 February 2020 from your physiotherapist Mr Coulson. He states the December knee surgery has now put more burden on your right ankle and you are suffering a lot of pain and difficulty with weight bearing and balance. You now require a permanent crutch to walk and will need that until your ankle can be surgically fixed. Mr Coulson states you require ongoing treatment and rehabilitation to recover and to prepare for ankle surgery.
- 144 Mr Hughes provided an updated report confirming your knee surgery has exacerbated your right ankle and foot pain and you are at risk of falls. He says your present condition will not improve without surgery and that incarceration is likely to be unsafe given the state of foot instability and fall risk.
- 145 At the time of requesting your bail continue so that you could have the knee reconstruction in December 2019, it was accepted that recovery would be an unknown. I do not believe those factors warrant further delay of sentencing, however your ongoing health in relation to your knee, feet and ankles and the likely difficulties they will cause you in custody are matters I take into account.
- 146 You are diagnosed with obesity, hyperlipidaemia and mild hypertension and with mild diverticulitis, asthma, acne rosacea and psoriasis. It is likely that you will require anti-hypertensive medication. It will be necessary to continue to monitor kidney, glucose and cholesterol levels, and heart risk. You continue to need preventer and reliever medication for your asthma. You suffered an

- episode of diverticulitis in 2018 without warning, requiring clinical imaging, pathology testing and antibiotic therapy. This is a known recurrent medical condition.
- 147 You have had an inguinal and umbilical hernia repair. These are mesh repairs in the lower abdomen and according to your General Practitioner there needs to be an awareness of this detail given risk of complications. One area of the mesh was compromised as a result of the prostate surgery.
- 148 Dr White noted you currently report significant stress, anxiety and insomnia, for which you required at least supportive counselling. You are medicated at night on Amitriptyline and are prescribed Diazepam on an as needed basis. Dr White concluded - "It is expected that Trevor's capacity to cope will be detrimentally affected if imprisoned".
- 149 Through testing, Mr Cummins assessed you as moderately-severely depressed, and moderately-severely anxious. You have expressed some suicidality since the jury verdicts. Mr Cummins opined – “Based upon my assessment of Mr Spurritt I would expect his mental health would inevitably deteriorate if he were incarcerated - by virtue of his concern about his various physical medical problems and his overwhelming feelings of embarrassment and shame concerning the jury verdict.”
- 150 In conclusion, you have a cluster of physical and mental health problems which require ongoing monitoring and treatment. Your treating practitioners express their concern that if there is less than optimal care within the custodial setting that would likely contribute to a deleterious effect on your health and may lead to a reduction in your life expectancy.
- 151 Your counsel submitted that limb 5 of *Verdins*<sup>8</sup> applies. That is, that any time you spend in custody will likely be more onerous for you given your age and state of health. There is no issue taken by the prosecution with that submission.

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<sup>8</sup> *Verdins*; *Buckley*; *Vo* [2007] VSCA 102; (2007) 16 VR 269; (2007) 169 A Crim R 581

I accept that is the case and I take that matter into account in sentencing you.

152 Limb 6 of *Verdins* was ultimately conceded by the Prosecution, though not in relation to all of your conditions. In my view, common sense dictates that at your age and in particular the osteoarthritic conditions of your knees, feet and ankles, are likely to decline with age. I take those matters into account, including the most recent information about those conditions.

### Family

153 I also accept that you are a man with close family relationships. You and your wife have been married over half a century. She has been present throughout these proceedings. Your three children have also been present along with your sister and other family members. They all support and love you. It will no doubt be very difficult for you to be apart from your wife, children and grandchildren if you are incarcerated. It does not reach a state of exceptional hardship, but nonetheless is a matter I take into account.

### Legislation

154 The maximum penalty for indecent act with a child under 16, at the time of your offending was 5 years imprisonment. Although there has been a marked increase in that maximum since that time, it is the maximum applicable at the time of the offending which is relevant. I take into account that maximum penalty of 5 years imprisonment.

155 In sentencing you I must also take into account current sentencing practices.<sup>9</sup> Those are the practices currently applied rather than those at the time of your offending.

156 As far as they can be ascertained, in general, sentences for offending such as this were lower at the time of your offending. I take those matters into account.

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<sup>9</sup> *DPP v Dalglish (a pseudonym)* [2017] HCA 41; (2017) 262 CLR 428; (2017) 91 ALJR 1063; (2017) 349 ALR 37; *DPP v Dalglish (a pseudonym)* [2016] VSCA 148

157 However, I also take into account the fact that there is a much better understanding by the courts and the community of the significant and often lasting impact of sexual offending against children. That must be reflected in my sentence.<sup>10</sup>

## Case Law

158 Your counsel referred me to a number of cases decided both in this Court and considered in the Court of Appeal.<sup>11</sup> I have considered each one, along with other authorities.<sup>12</sup>

159 Case law, as was accepted on your behalf, can only be of limited value given each case turns on its own facts of offending, the circumstances of the offending, and the personal circumstances of an offender at the time of the sentence.

160 In relation to the cases your counsel proffered, I note in all of those matters there were pleas of guilty. In sentencing that is a significant matter which warrants a real discount. It is often a reflection of remorse and insight.

161 A plea of guilty also has a utilitarian benefit of saving the court and community time and expense of trials. Importantly it saves victims the additional trauma of being cross examined at committal hearings and then again at a trial in front of a jury. Each of your victims endured that process.

162 The Victim Impact Statements in this case resound with the themes expressed by Vincent JA in 2006 in the case of *DPP v Toomey*<sup>13</sup>. His Honour stated "The vindication of the victim in cases of this kind ... is profoundly important if the criminal justice system is to perform its role properly ... it is incumbent upon the

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<sup>10</sup> *Bromley v The Queen* [2018] VSCA 329

<sup>11</sup> *DPP (Cth) and DPP v Swingler* [2017] VSCA 305; *DPP v Cocking* [2017] VCC 1812; *DPP v Wise* [2018] VCC 462; *DPP v Reed* [2016] VCC 1461

<sup>12</sup> *DPP v Dalgleish (a pseudonym)* [2017] HCA 41; *DPP v Dalgliesh (a pseudonym)* [2016] VSCA 148; *DPP v De Dood* [2017] VCC 1070; *DPP v Bussey* [2017] VCC 166; *Morris v R* [2016] VSCA 331; *DPP v Goodison* [2016] VCC 702; *DPP v Edmondson* [2018] VCC 252

<sup>13</sup> *DPP v Toomey* [2006] VSCA 90

courts, however long ago the offences were committed, to express the denunciation of the community of such behaviour through the sentences imposed on perpetrators. They must be seen to vindicate the values of the society that they represent, fundamental to which is the protection of its children.”<sup>14</sup>

163 You fall to be sentenced as a serious sexual offender for a number of these offences<sup>15</sup> although the prosecution did not urge on me, and I will not impose, a disproportionate sentence.

164 Although submissions were made to the effect that a wholly suspended sentence would not be out of the range, in my view on its own the most serious offending here would preclude that outcome. In any event I cannot look at each of the offences in isolation. In order to assess your moral culpability and the seriousness of your offending I cannot distil into silos the facts and surrounding circumstances of individual offences, but I must consider the overall offending. When considered globally in my view the only appropriate outcome is one of immediate imprisonment.

165 I have given consideration to whether that immediate term should be one which is followed by a period of suspended sentence – in other words whether it is a partially suspended sentence. The difficulty with that proposition is that there is a ceiling of three years imprisonment on the total sentence. In my view that imposes a limitation on the sentence which is incompatible with the appropriate outcome. Three years total is not enough to meet the sentencing principles in this case. In all the circumstances therefore I will impose a term of imprisonment with a non-parole period.

166 I propose to impose a non-parole period which is lower than I might have otherwise imposed in recognition of the following factors - your lack of offending since that time, your contribution to community, the delay, your age and your ill

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<sup>14</sup> *ibid.* at [17]

<sup>15</sup> From Charge 3 onwards once terms of imprisonment are imposed on Charges 1 and 2

health.

167 I propose to sentence you as follows:

168 On Charge 1 committed against Patrick Hogarth at the Bambara camp, you are convicted and sentenced to 14 months imprisonment.

169 On Charge 2 committed against Nicholas Ward in the classroom you are convicted and sentenced to 8 months imprisonment.

170 On Charge 3 committed against Nicholas Ward at the CEBS camp in Frankston you are convicted and sentenced to 2 years 6 months imprisonment. This is the base sentence.

171 On Charge 4 committed against Nicholas Ward at the Bambara camp you are convicted and sentenced to 2 years 6 months imprisonment.

172 On Charge 5 committed against Alex Rofe at the CEBS camp in Frankston you are convicted and sentenced to 6 months imprisonment.

173 On Charge 6 committed against Alex Rofe in the context of the theatre rehearsal and using the compass you are convicted and sentenced to 15 months imprisonment.

174 On Charge 7 committed against Alex Rofe in the context of isolating him and using the compass you are convicted and sentenced to 15 months imprisonment.

175 On Charge 8 committed against Oliver Wells at his desk when he was seated next to another boy in the classroom you are convicted and sentenced to 8 months imprisonment.

176 On Charge 9 committed against Oliver Wells at his desk in the classroom you are convicted and sentenced to 8 months imprisonment.

177 You are sentenced as a Serious Sexual Offender on charges 3 to 9. I direct that

be entered into the record.

178 I make the following orders for cumulation on the base sentence. On Charge 1 against Mr Hogarth I order 4 months cumulation. On Charge 2 against Nicholas Ward I order 2 months cumulation. On Charge 4 against Nicholas Ward I order 12 months cumulation. On Charge 5 against Alex Rofe I order 2 months cumulation. On Charge 6 against Alex Rofe I order 6 months cumulation. On Charge 7 against Alex Rofe I order 6 months cumulation. On Charge 8 against Oliver Wells I order 3 months cumulation. On Charge 9 against Oliver Wells I order 3 months cumulation.

179 The Total Effective Sentence I impose is therefore 5 years 8 months imprisonment

180 I direct that you are to serve a minimum period of 3 years imprisonment before becoming eligible for parole.

181 Pursuant to the *Sex Offender Registration Act 2004*, you are now liable to registration as a sex offender. The mandatory period for this offending is one of life. I will have the papers provided to you shortly.

182 The prosecution sought and you did not oppose provision of a forensic sample pursuant to s.464ZF of the *Sentencing Act 1991*. I propose to make that order. I am required to inform you that involves police taking a forensic sample which is usually done by a cheek scrape. If you refuse to provide that sample reasonable force can be used to take it.