TASMANIA v LOUIS VICTOR DANIELS **13 MAY 2005**
COMMENTS ON PASSING SENTENCE **SLICER J**

Louis Victor Daniels has pleaded guilty to 4 counts of maintaining a sexual relationship with a young person, 8 counts of indecent assault, and one count of attempted indecent assault, contrary to the Criminal Code, ss125A, 127 and 299.

In all but one case, the sexual misconduct involved a youth under the age of 17 years. In that instance, Mr Daniels fondled a young man aged 18 - 19 and when resistance was offered, desisted. Alone that conduct (count 10) would not have warranted a sentence of imprisonment, but it gives colour to the charges involving the other youths. That colour shows a pattern of predation. The offender, with status, age and experience, would importune and manipulate young persons for sexual purposes. Their age, stage of maturation, trust and inability to comprehend the complex processes, occurring during adolescence, made them vulnerable and acquiescent, not by reason of choice, but through confusion and inexperience. In the absence of stated or physical resistance, the offender proceeded to escalate the degree of sexual impropriety. That escalation produced further acquiescence and acceptance that the behaviour was appropriate for a boy of that age. The process involves an assessment of vulnerability, insight into personality and the use of position and trust. It is predation, not a giving way to transient human passion.

The course of conduct occurred over some 20 years between January 1974 and December 1993 and while the offender was aged between 27 and 46 years. The ages of the youths varied between 11 and 17. Some 10 youths were the subject of predation.

Mr Daniels used his position as a deacon and later a priest of the Anglican Church to importune young boys who were involved in a church-based society and who were entrusted to that organisation by their parents. The method of approach and the escalation was relatively uniform. It involved the development of a social relationship or bond of trust and physical contact which developed into regular sexual activity. On many occasions the youth was reassured that the activity was normal and appropriate and told of the need to keep the activity secret. Intellect, psychology, insight and, above all, status and a betrayal of the tenants of faith held by the complainants were the vehicles of sexual predation.

In one instance, the predation was assisted by another, an acquaintance of the offender, who lived interstate. On the material placed before this Court by the State, it is only possible to assess that assistance as that provided by a friend or close acquaintance and the Court will assess penalty on the basis of individual responsibility on the part of this offender.

The crimes for which Mr Daniels is to be punished are those of maintaining a sexual relationship and acts of indecent assault. Four of those crimes involved repeated and ongoing acts of sexual impropriety. One of the acts giving rise to the crime of maintaining a sexual relationship was effectively a rape, whilst the others were those of physical, but not mental, acquiescence. The acts of indecent assault or its attempt probably were ones of the first stage of the method employed by the offender.

It is impossible to fully assess the harm done to each youth. Perhaps only one who has so suffered can "know" of those effects. Each of the victim impact statements tendered speaks of the feelings of betrayal, of lost years, difficulties with relationships and loss of innocence, confidence and self-worth. Commonly expressed are feelings of guilt and shame which persist even with the knowledge that each was not to blame. The impact of the predation has extended to the families of the victims. In one instance a person abused by the offender committed suicide. It is impossible, on the material placed before this Court by the State, to determine a direct causative link. The impact statement put to the Court on behalf of the young man's mother states:

"B committed suicide on the 11th May 2004.
B was then living in Melbourne.
B had told me, at age of 25 or 26, all about what Daniels had done to him.

My feeling towards Daniels are very bitter and show disappointment. He manipulated the family by pretending to be a father figure. He wasn't in fact he was just a predator."

The statement is articulate and compelling, but the complexity of the human experience makes it impossible to find, for the purpose of criminal sanction, a simple or singular correlation. However, it is accepted that the conduct of the offender had a significant effect on the life and well-being of a young man, which contributed to a decision that to leave life was less painful than to continue with it. That conclusion ought not be regarded by those who hold the memory of that youth dear as one of indifference or lack of understanding, but as one which reflects the role of a Court in the sentencing process to have regard to the material before it.

The same is said to each of the victims. No one who has not endured their experience can properly understand its enduring impact, which is not to say that others are indifferent to it. Here retribution for the harm caused is a response by society through the State to that suffering. It is hoped that retribution will also act as a form of vindication of their non-responsibility for the events and will assist in their attempts to regain their lives.

The offender, now aged 57, has, separate from his sexual predation, been a productive member of a community. His betrayal of his faith and the trust given to him, does not make him irredeemable. The faith which he betrayed has depths which include an acknowledgement that an individual such as he is, i. not beyond hope. He has already suffered shame, loss of status and imprisonment and he will further suffer loss of liberty.

It is said on behalf of Mr Daniels that he, too, had been sexually abused when young. Research suggests such often to be the case, namely repetition of conduct from one generation to the next. The assertion was not challenged by the State and, given the passage of time and the difficulty in revisiting the claimed events, understandably so. The matter was advanced as a mitigating factor and absent contradiction will be accepted. It has some, but not significant, weight. These events occurred when Mr Daniels was an adult and had the benefit of an education which permitted him, as a rational adult, to take steps to deal with his inclinations. The conduct was persisted with for many years and until detection no steps were taken by the offender to attempt to modify his behaviour. He was well aware that his conduct was abhorrent to both the social values and the tenets of his religion.

In 1999 Mr Daniels was sentenced to a 12 month term of imprisonment following his conviction for acts of sexual predation on a 15 year old youth in 1992. A copy of the comments on passing sentence made on 28 May 1999 in relation to those matters is annexed to these comments. Some of the history of the offender and the events which followed detection are stated in those comments and are repeated here. Investigation of some of these matters commenced before that sentence, but the full investigation was not completed until early 2004. Mr Daniels was arrested and charged in July 2004 and Crown counsel has indicated that there are no outstanding or continuing investigations. Mr Daniels is entitled to the benefit of his plea and the sparing of the complainants of the ordeal of testifying. He is entitled to the benefit of his attempts at rehabilitation since his resignation as a priest of his church in 1994.

The sentence imposed will take into account that already served. Had all matters been dealt with following a single sentencing hearing, it would have reflected the totality of conduct. Here some small allowance will be made for the fact that he will serve a sentence which has been broken by his release in 2000. It is difficult to determine the appropriate sentence by reference to a range. There are, fortunately, I hope, few cases of this nature which have been brought before Tasmanian courts. I regard the recent decision of the Court of Criminal Appeal in Director of Public Prosecutions v Farmer [2005] TASSC 15 as being of assistance in assessing penalty. Although it is impossible to equate the circumstances of each particular case, the statements of general principle and their application can assist in setting the parameters of a sentencing regime. The predation occurred over a long period of time and involved the exploitation of young persons. The acts of rape committed by Farmer were also a misuse of status and use of power. Here the complainants were much younger and were entrusted to the care of the offender.

However there remains in law some difference between the crime of rape and non-violent sexual predation. In Hawkins v The Queen [2004] TASSC 55, the Court of Criminal Appeal dismissed an appeal by a minister of religion against a sentence of imprisonment of 7½ years' imprisonment following his convictions of sexual abuse on 7 youths aged between 13 and 17 over a 10 year period. In that case there had been a lapse of 20 years between the last act of abuse and the prosecution. Here, less time has elapsed and the crimes committed over a longer period of time. Here, in addition to the misuse of power and physical acquiescence, there was an identified act of forceful sex. This case can be assessed as coming between those of Farmer and Hawkins. On 26 November 2004, Mr Hawkins was sentenced to a further term of imprisonment for 9 months following conviction for a further act of sexual misconduct which occurred during the period encompassed by the 7½ year sentence. Although the sentencing process was converse, an equivalent total sentence to this was imposed. Had I dealt with all of the matters at the one sentencing hearing, I would have imposed a sentence of 9 years' imprisonment. He has already been sentenced to one year's imprisonment, reducing it to 8 years, and allowance of 6 months will be made to take into account the break in the sentence in that he is to commence it twice. Thus, the appropriate component of this sentence will be 7½ years' imprisonment.

The question of parole in this case is not simple. Parole and earlier release involve an assessment of future risk to the community. The history of behaviour by Mr Daniels suggests an underlying pathology, although his conduct over recent years might indicate change. At this vantage, it is impossible to assess future risk and that question is best left to the Parole Board. There is a perception that the fixing of a non-parole period is tantamount to early release. Such is not the case. Parole simply permits a more accurate assessment of change and future risk at a time closer to any date of release. It is a more accurate process than one conducted at the time of sentence. Retribution requires the imposition of a non-parole period greater than the statutory minimum. The fixing of a more lengthy non-parole period will still afford the Parole Board to properly assess future risk. It is the risk to the community which ought be central to any consideration of early release. Making some allowance for parole might assist in the process of change. The non-parole period will be fixed at 5½ years.

Orders:

(1) Louis Victor Daniels be convicted of the crimes of maintaining a sexual relationship with a young person, indecent assault and attempted indecent assault.

(2) Louis Victor Daniels be sentenced to a term of imprisonment for a period of 7½ years, such sentence to commence as and from 2 May 2005.

(3) That Louis Victor Daniels not be eligible for parole before the expiration of 5½ years.

The victims of crime compensation levy will be fixed in the composite amount, namely $500 and is to be paid within 9 months of the date of release from prison.

ANNEXURE

R v Louis Victor Daniels 28 May 1999
Comments on Passing Sentence Slicer J

Louis Victor Daniels has pleaded guilty to four counts of indecent assault contrary to the Criminal Code, s127, and two counts of unlawful sexual intercourse contrary to the Criminal Code, s124, with a 15 year old youth in 1992. The crimes were committed on two occasions in February and April 1992. The offender, then aged 45, was an Archdeacon of the Anglican Church and the incumbent of the Anglican Parish of Burnie. The complainant, a member of a family strongly attached to the Anglican Church at the relevant time, was involved in church activities and had become a member of the Church of England Boys Society. In February 1992, the offender invited the complainant and two other youths to spend a weekend at his holiday shack at Meander. The sexual misconduct alleged in counts 1 to 5 occurred during

the course of that weekend spent at Meander. Although no force or coercion was employed, the disparity in age and status, and the existing relationship between the offender and the complainant rendered the compliance of the complainant one of simple acquiescence to the will of another. In the complainant's words:

"I wasn't physically scared of Lou, but I felt pressured that I had to and if I got in with him this once he would leave me alone. I was alone, there was really no one I could tell about this and he was two steps below a bishop and well respected. I didn't think that anyone would believe me even if I did say anything."

Further sexual misconduct occurred in April following attendance at a concert in Launceston. There had been some instances of sexual contact between the two during the interval between the counts set out in the indictment. That conduct does not permit the crimes alleged to be viewed as a lapse of judgment or an isolated incident committed by an accused of essentially good character (Abel v R A94/1994; H v R (1981) 3 A Crim R 53). However, the offender can only be punished for the crimes alleged and to which he has pleaded guilty. The intervening misconduct cannot be regarded as an aggravating matter (R v Di Simoni (1981) 147 CLR 383), but operates simply to deprive the offender of the benefit of particular mitigatory matters.

During the course of the sentencing hearing the Crown stated that following the events of April 1992, th sexual misconduct continued on a regular basis, until after the youth had turned 17. A further indictment was filed alleging acts of indecent practice contrary to the Criminal Code, said to have occurred in 1994 after the complainant had reached the age of 17. A nolle prosequi was subsequently filed since the operation of the Code, s7, rendered such conduct lawful as of the date of trial or hearing. No further charges have been laid (see Newman and Turnbull v R (1995) 81 A Crim R 191). Nevertheless, the Crown contends that a sentencing court can pay regard to subsequent acts of sexual misconduct in the determination of penalty. It is said that those acts are relevant in that they are the product of and show the long-term effects of the initial act of seduction, and might give colour to the offender's original purpose. It is further said that the persistence of conduct demonstrates that the events of February and April should not be viewed in isolation. Mr Daniels concedes continuing sexual contact, but contests some of the particulars referred to by Crown counsel. In the event of a ruling adverse to the offender, it might be necessary to take further evidence. The Court will not, except in one limited way, have regard to subsequent conduct in the determination of penalty. An offender is entitled to be punished only for the crimes to which he has pleaded. A court, consistent with the reasoning of the sentencing judge, considered by the Court of Criminal Appeal in Abel v R (supra), is entitled to pay regard to intervening conduct in its consideration of mitigating matters. It is not entitled to pay regard to conduct additional a subsequent to that set out in the indictment.

It is said that the court can pay regard to the consequences of criminal conduct (Inkson v R (1996) 6 Tas R 1), but in circumstances such as these the only relevant consequence is the effect on the well-being of the victim. The consequence of further sexual conduct, physically accepted by the complainant, is not one which can be taken into account in the determination of penalty. A further approach was suggested by counsel for the prosecution. It was contended that evidence of subsequent sexual contact can be used to infer that the initial act of seduction was designed to achieve further compliance (Newman and Turnbull v R (supra)). Accepting, for the purpose of this determination only, that such a proposition is tenable, there is no evidence which supports that inference. There is no evidence that the initial sexual contact was intended to produce an ongoing and compliant partner. Such an inference would be tantamount to a finding of procuration. The effect would be the use of subsequent conduct to show the commission of a more serious crime than the one charged (R v Sessions (1997) 95 A Crim R 151; Gipp v R (1998) 155 ALR 15). The Queensland Court of Appeal has examined in detail the relevant principles and authorities in its decision in R v D [1996] 1 Qd R 363. In the course of its review the court quoted with approval Duggan J, who, in Godfrey (1993) 69 A Crim R 318, said:

"That is not to say that the sentencing judge cannot take into account the context and surrounding circumstances of the crime charged. It may be that in a particular case the court will be required to consider whether it is entitled to extend leniency on the basis that it is dealing with an isolated offence. But it cannot increase the sentence by reason of a finding on a disputed facts hearing that offences not admitted or asked to be taken into account have in fact been committed. To do this would be to deprive the accused of a proper trial on those counts. The line between the two situations will sometimes be a thin one."

To do so would be to misapply the evidentiary principles governing the use of similar fact evidence on a trial (which upon conviction would entitle the sentencing court to punish for the "similar fact") and to punish an accused for matters not specified at the time of the entry of a plea. The sentencing court might pay regard to events occurring during the dates between the first and last acts specified in the indictment in the manner discussed in Abel v R (supra) and R v F 74/1998, and might be able to pay regard to previous conduct to place the accused's acts within a factual matrix and rebut any suggestion that the conduct was a casual isolated instance (H v R (1981) 2 A Crim R 53), but not otherwise. In relation to subsequent conduct, the following statement of Hunt CJ in R v Beserick (1993) 30 NSWLR 510 at 525:

"It could not usually be said that the evidence of subsequent sexual activity is relevant in order to place in its proper context the evidence of the earlier activity upon which the offence charged is based. I am not prepared to say that it could never be relevant for that purpose, but the cases in which it would be relevant for that purpose must surely be unusual ones."

is apposite. There is one exception. A sentencing court may pay regard to the effects of the misconduct on a victim. In doing so it might be required to discount some of the effects of harm because the harm was caused in part by repetition. That approach might, in some circumstances, advantage the offender. Conversely, the court might be able to discern consequences of the original act or acts by reference to subsequent events. That approach will be taken in the determination of the penalty to be imposed on Mr Daniels. The seduction of the complainant rendered him more susceptible to the sexual advances of an older male. To that extent only regard is had to the subsequent sexual contact.

Effect on complainant

The complainant has been significantly affected by the conduct of Mr Daniels. In a statement provided to prosecuting counsel he stated:

"Since 1995 I have gradually been on the mend. I have begun to be able to sleep through a full night however I have still been suffering from nightmares. I have had trouble holding a relationship together until recently. I also have suffered bouts of depression. Other than this I started off forcing myself to try and forget what had happened. I also have suffered from bouts of depression. I have been trying to live a normal life and over the last year of [sic] so have begun to succeed in doing so."

It would appear that he has been able to put his life in order and thereby reduce the severity of long-term harm. Some, but not significant, weight will be given to the degree of long-term harm caused.

Post disclosure events

In 1994, the complainant made a series of allegations to police and the matter was investigated. Mr Daniels was interviewed in September 1994 and denied the allegations. No proceedings were commenced.

Following the investigation and the involvement of church authorities, Mr Daniels resigned his parish position and left the priesthood. It is fair to say that his life began to disintegrate from that point. In February 1998, the investigation recommenced following a special church inquiry and the offender was re-interviewed. He again denied wrongdoing. Following committal proceedings, an indictment was laid in

early 1999, following which an indication of plea was given to the prosecution. The offender is not entitled, as a mitigating matter, to the benefit of co-operation and early plea. He has spared the complainant having to give evidence on the trial, but any benefit is, in part, offset by the requirement of examination in the course of committal proceedings. The Court accepts that the offender first realised the harm which he had caused when he saw the complainant give evidence during the course of committal proceedings. To that extent, the Court accepts some element of remorse.

Effect on offender

Following disclosure by the complainant, Mr Daniels left the priesthood and lost the benefits and solace of his position. He had been active within the general community and held positions of trust and responsibility. He has suffered public shame, loss of status and has lost income and assets. He left Tasmania and commenced employment as a teacher in the Australian Capital Territory. Following the church inquiry his new employer was advised of the nature of the allegations made against the offender and his employment within the education system ceased. He obtained casual work and then completed a Diploma of Librarianship. He might experience some difficulty in obtaining future employment. The Court takes into account the fact that the offender has already received punishment through public exposure, loss of position, status and income. His long record of public service and commitment has been destroyed by misconduct. However, the loss of status reflects the degree of breach of trust placed in the offender by the community, his church and friends. The abuse of position and trust warrants, despite the punishment already endured, the imposition of a significant sanction.

The appropriate penalty is a sentence of imprisonment for a period of 12 months. Had the subsequent conduct been taken into account, the sentence would have been significantly greater.

Suspension

Mr Daniels has a long history of service to the community. He is now aged 51. The Court is permitted to take into account his conduct and state of life following disclosure (Smith v R (1981 - 1983) 7 A Crim R 437; R v Todd (1982) 2 NSWLR 517; Duncan v R (1982 - 1983) 47 ALR 746). His circumstances permit the suspension of portion of the sentence. Three months of the sentence will be suspended.

Orders

(1) That Louis Victor Daniels be sentenced to a term of imprisonment for a period of 12 months, such sentence to commence as and from 23 April 1999.

(2) That the operation of the last three months of the sentence be suspended upon condition that Louis Victor Daniels commit no crime or offence of a sexual nature for a period of two years following release from prison.

I direct that the Victims of Crime Compensation Levy of $300 be paid within four months of the date of release from prison.