

Damages for stolen generation case

Trevorrow v State of South Australia (No. 5) [2007] SASC 285 (1 August 2007)

By Claire O'Connor

In August 2007, Justice Gray of the Supreme Court of South Australia delivered the judgment in *Trevorrow v The State of South Australia*,¹ the first successful stolen generation case. The findings have implications not only for children removed from their families by the state, but also for the duty of care owed to children once they were removed.

In 1956, Bruce Trevorrow was born to Thora and Joseph, members of the Ngarrindjeri people. They had two other boys and a daughter. Joseph also had other children from a previous relationship, Bruce's half-brother and half-sisters. On Christmas Day 1957, when Bruce was 13 months old, he was living with his parents at One Mile Camp outside of Meningie. Meningie is about 150kms south of Adelaide on the Coorong. Thora was visiting relatives about 50kms away, and Joseph was looking after the children. Bruce came down with gastroenteritis and, after some effort, Joseph got relatives who lived in Meningie to drive Bruce to the Women and Children's Hospital in Adelaide, where he was admitted. On 5 January 1958, without notifying his parents, Bruce was given to Mr and Mrs Davis, who had wanted to foster an Aboriginal girl (it was not until they got Bruce home that they realised they had a boy).

No effort was made to return Bruce to his own family, who missed him. His mother wrote at least one letter that year to the Department of Aboriginal Affairs, asking about Bruce's whereabouts. She was told, wrongly, that Bruce wasn't well enough to go home. She didn't see him again until his 10th birthday. By then, his father had passed away. Just before he turned 11, Bruce was returned to his mother and siblings. Within a year he was in boys' homes, where he remained on and off until he turned 18.

Bruce exhibited early signs of emotional distress. He had speech problems; at the age of three he was seen at the hospital because he was pulling out his own hair, a classic sign of distress; and he developed a limp, first in one leg, and then the other.

In SA, at that time, children could be removed from their parents if the Children's Court was satisfied that they were in need of care. The Aborigines' Department, however, was removing Aboriginal children in the absence of any court processes – and, in circumstances such as Bruce's, where there were no concerns about the family. A police officer had visited Thora and Joseph a few months after Bruce was fostered, and noted that their children were happy and healthy, and that Joseph was in work and provided well for his family.

The Aborigines' Department also knew that to remove children without process was illegal. It had obtained two Crown Law opinions; one in 1949 and one in 1954, both

confirming that it was unlawful to so remove children.

By the time Bruce was about 40 he sought legal advice about his claim. Proceedings were issued in the Supreme Court seeking damages for negligence, false imprisonment, misfeasance in public office and declarations about the unlawfulness of the state's conduct. Justice Gray awarded him \$525,000, which included a sum of \$75,000 for misfeasance and false imprisonment. The Court found that there had been negligence in Bruce's removal, placement and return to his family; that his removal was unlawful; and that the state had known it was unlawful at the time of his removal.

Bruce has led a troubled life. He has had a drinking problem since he was about 16, and has suffered – and continues to suffer – from depression and unhappiness. He is married with children, but gave evidence that he never felt close to them. He told the Court that he couldn't love and feel loved. He also has a criminal history.

In marked contrast, Bruce's siblings have lived rich and rewarding lives. Both his brothers run Ngarrindjeri businesses and are spokespeople for their nation. Both have travelled overseas representing Australia at First Nation conferences, and have written about their culture and communities. Bruce's sister, Hilda, gave evidence of the love and support she gives and receives from her extended family.

The Court also heard from psychiatrists and other experts, who told of the detrimental effects on the wellbeing of children if you remove them from their carers at a young age. The Court also heard that this was known about in the 1950s. Studies on the effects of removing children from their families during World War II had been published, and formed part of the teaching syllabus in the nursing, social work and psychological areas at the University of Adelaide at the time Bruce was removed.

Trevorrow has far-reaching implications for those who have been removed by the state – and not just where the removal was unlawful, as in this case. The decision says that a duty of care is owed when making decisions about removing and placing children. It also found that the harm that could result from such removals was well-known in the 1950s. ■

Note: 1 *Trevorrow v State of South Australia (No. 5)* [2007] SASC 285 (1 August 2007). Claire O'Connor was junior counsel for the plaintiff in this case; Julian Burnside QC was senior counsel and Joanna Richardson the solicitor. The state has not indicated whether it will appeal the decision, but has indicated that it will make the payment ordered regardless.

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