

SUPREME COURT OF QUEENSLAND

CITATION: *RTE v Brown* [2013] QSC 166

PARTIES: **RTE**
(applicant)
v
DENNY JOHN BROWN
(respondent)

FILE NO/S: SC No 682 of 2010

DIVISION: Trial

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 4 June 2013

DELIVERED AT: Brisbane

HEARING DATE: 27 March 2013

JUDGE: Atkinson J

ORDERS: **Applicant awarded \$75,000 by way of compensation against the respondent pursuant to the Criminal Offence Victims Act 1995**

CATCHWORDS: CRIMINAL LAW – PROCEDURE – CRIMINAL INJURIES COMPENSATION – QUEENSLAND – where the respondent pleaded guilty to three counts of unlawful wounding of a 10 year old child – where the respondent injected the applicant child with a needle containing a morphine based substance on three occasions – where the applicant child suffered serious post-traumatic stress disorder and attempted suicide on a number of occasions – where the applicant child suffered severe mental or nervous shock, puncture wounds and infection with hepatitis C – where applicant seeks criminal compensation for injuries sustained – whether the infection with hepatitis C is comparable as an adverse impact of a sexual offence under section 1A of the *Criminal Offence Victims Regulation 1995*

Victims of Crime Assistance Act 2009 (Qld), s 154, s 155
Criminal Offence Victims Act 1995 (Qld), s 20, s 21, s 24, s 25
Criminal Offence Victims Regulation 1995 (Qld), s 1A, s 2

R v Brown; ex parte Attorney-General of Queensland [2009] QCA 342, related

COUNSEL: R M O’Gorman for the applicant
No appearance for the respondent

SOLICITORS: Howden Sagers for the applicant
No appearance for the respondent

- [1] The applicant is a child who was the victim of terrible offences committed against him by the respondent Denny John Brown. The details of the offences committed are found in sentencing remarks imposed by me on Mr Brown on 16 July 2009 and referred to in the appellate decision *R v Brown; ex parte Attorney-General of Queensland* [2009] QCA 342.
- [2] The respondent was convicted on his own plea of guilty of three counts of unlawful wounding of the applicant when the applicant was only 10 years old.
- [3] The application for criminal compensation is brought pursuant to section 24 of the *Criminal Offence Victims Act 1995* (COVA) for an injury pursuant to section 20 of that Act as a result of a personal offence as defined in section 21 of COVA.
- [4] The respondent was convicted prior to the commencement of the *Victims of Crime Assistance Act 2009*. Sections 154 and 155 of the *Victims of Crime Assistance Act* provide that in the circumstances that apply here the application for compensation may be brought under COVA, and if brought within time, as this application was, the court must, pursuant to section 155(3), decide the application under the relevant provision of COVA.
- [5] The counts of unlawful wounding occurred on dates unknown between 30 April 2007 and 4 July 2007.
- [6] The applicant was the son of the respondent's then de facto partner. As I have mentioned, he was aged 10 years old, having been born in November 1996. The respondent lived in the household and assumed the position of father figure to the applicant and his older sister. The respondent was a drug addict and a frequent intravenous user of heroin.
- [7] As I said in the sentencing remarks, what happened was that the respondent deliberately and without the consent of the child injected him using a needle and syringe with a morphine based substance.
- [8] The offending came to light as a result of comments made by the child applicant to one of the other adults living at the address when he became aware that the respondent and the applicant's mother had been arrested with regard to other offences. The child blamed the respondent for his mother's situation and said, "He even sticks needles into my arm", and thereafter rolled up his sleeve to reveal the marks in his veins. He talked about the effect of what had happened and how it made him feel. He said that the respondent had injected him with heroin. He then directed the adults to a bag that contained needles, spoons and slimy substances. Those adults telephoned the maternal grandparents of the applicant and drove the children to meet them. The applicant then made further disclosures to his grandparents and they

immediately took him to see a doctor on 9 July 2007 and reported it to the police on the following day.

- [9] The three offences occurred on three different occasions. On one occasion the respondent asked the applicant if he wanted some and the child said no, but he was nevertheless injected. On another occasion, the applicant said that after returning from going to the toilet, the respondent grabbed him at the door and injected him. After that injection he described feeling, "makes you scratch a lot, and my little beat, my little heart, stopped". He told the police he slept for three days after this injection.
- [10] Other evidence supported the child's allegations. A number of Crown witnesses described seeing marks on the child's arms consistent with needle marks, including the arresting officer who arranged for photographs to be taken, and those photographs are in evidence before me on this application.
- [11] There was also medical evidence given by two doctors who confirmed scarring consistent with needle trauma over the course of the veins in his left cubital fossa. The paediatrician who saw the child on 12 July 2007 noted two small papules over two different veins. The residual lumps at the injection sites were not consistent with the ordinary markings left from pathology collection which was relevant because this child has a kidney disorder, but rather appeared to be from someone not particularly competent with a needle that was not particularly sterile.
- [12] The respondent, when he went to prison, described himself as being hepatitis C positive, and it appears that he used dirty needles when he injected the child and the applicant is now hepatitis C positive.
- [13] The effects on the child have been extremely significant. He has suffered from serious chronic post-traumatic stress disorder as a result of this offending upon him as well as, of course, the puncture wounds to his arms and the infection with hepatitis C.
- [14] Some of the adverse effects on the child were set out in my sentencing remarks. As I there said, between October and December 2008 he made repeated attempts at suicide at a time when he was only 10 and 11 years old. He was put into involuntary hospitalisation from the middle of December 2008 to the middle of January 2009. When he was released from hospital, it was not considered safe to return him to the care of his mother, or even of his very supportive maternal grandmother because of concerns about self-harm. He was then put in a "live-in" program, Safe Places For Children, not with a family, but under a situation where he was monitored 24 hours a day by youth workers.
- [15] He then became a patient of Community Youth Mental Health Services to receive ongoing care and treatment for post-traumatic stress disorder. Unfortunately, now at the age of 16, he is serving a sentence in the Brisbane Youth Detention Centre.
- [16] I have been assisted by two reports from the psychologist, Nick Smith. Mr Smith carefully delayed seeing the applicant because there was concern that

having to repeat to a psychologist the nature of the offences and the suffering that the applicant had undergone, might trigger an even more serious reaction.

- [17] The symptoms suffered by the applicant that support the diagnosis of post-traumatic stress disorder include nightmares every night, frequent and persistent thoughts of the trauma, spacing out and losing time, poor memory of early life events, avoidance of the suburb where some of the offences occurred, avoidance of talking about the abuse experiences, feeling emotionally detached, hyper-vigilance and exaggerated startled response, feeling like he is living in a dream, inexplicable and sudden feelings of fear and dread, and irritability and sudden outbursts of anger and violence.
- [18] It is apparent from the applicant's own affidavit that he has also fallen into substance abuse, dropped out of school in year 7, and, as I said, is now in custody while still a child for criminal offences that he has committed.
- [19] Whilst I said at the commencement of the sentence imposed upon the respondent that he was almost an object lesson on the dreadful effects of illegal drugs on individuals in our community, unfortunately this case is almost an object lesson of the dreadful and far reaching effects of criminal offending on children and then on the community.
- [20] It is appropriate to compensate the applicant for the injuries which he has suffered. Nothing will give him back his childhood. Nothing will give him back trust. Unfortunately no award of compensation will make it less likely that he falls into criminal offending himself. But the object of compensation is to recognise that the applicant suffered dreadfully as a result of these criminal offences and that the community recognises the suffering of victims of crime.
- [21] The scheme of COVA is essentially to set out a number of possible injuries suffered as a result of crime and to set out the percentage of the scheme maximum to be awarded for such an injury depending on the severity of the injury within that table. The compensation table is set out in schedule 1 of COVA.
- [22] With regard to two of the injuries suffered by the applicant, they fall within the types of injuries referred to in that table. With regard to the wounding, there is an item, item 24, which deals with "gunshot/stab wounds minor" and the needle injuries suffered by the applicant fall within that category. They are, of course, the most serious example of that, so he should be awarded 10 per cent of the scheme maximum for that injury.
- [23] Given that there were three separate woundings on three separate occasions, it is appropriate that he is compensated to 10 per cent of the scheme maximum for each of those. Accordingly, he is entitled to \$7,500 for each of the needle injuries or wounds suffered by him.
- [24] There is no doubt that he has suffered from severe mental or nervous shock and given his youth and the lifelong impact of that, and the fact that it caused someone so young to self-harm and attempt suicide on a number of occasions, I should have thought this was in the most serious category of severe mental and

nervous shock, entitling him to 34 per cent of the scheme maximum of \$75,000, or the amount of \$25,500.

- [25] The third injury suffered was the fact that the child was infected with the chronic disease of hepatitis C by the criminal actions of the respondent. The schedule in COVA containing the table of compensation does not contain a table for disease. That does not mean that it cannot be compensated for under COVA. Section 20 of COVA defines injury as "a bodily injury, mental or nervous shock, pregnancy or any injury specified in the compensation table or prescribed under a regulation."
- [26] Section 25(1) of COVA provides that when making a compensation order a court is limited to ordering the payment of an amount decided under section 25. The compensation order may not be more than the prescribed amount, that is the scheme maximum, which, as found in the *Criminal Offence Victims Regulation 1995*, section 2, is \$75,000. If more than one amount is payable for different injuries, the amounts must be added together, and if the total is more than the scheme maximum, only the scheme maximum may be ordered to be paid.
- [27] Section 25(4) deals with the payment for injury specified in the compensation table. Section 25(5) deals with injuries specified under a regulation. Section 25(6) provides that in deciding the amount that should be ordered to be paid for an injury to which subsections 4 and 5 do not apply, the court must decide the amount by comparing the injury with injuries to which subsections 4 and 5 apply and having regard to the amounts that may be ordered to be paid for those injuries.
- [28] This is a case to which subsections 4 and 5 do not apply. However, I may compare the injury to injuries to which they do apply for guidance as to the amount that can be ordered.
- [29] In section 1A of the *Criminal Offence Victims Regulation 1995* an adverse impact of a sexual offence is said to include disease. While this was not a sexual offence, disease as therein set out is the most closely comparable to the injury of the infection with hepatitis C suffered by the applicant in this case. It is appropriate to have regard to that as comparable to the effect of disease on this applicant, and therefore compensable under section 25(6) of COVA.
- [30] The applicant has sought compensation at 50 per cent of the scheme maximum for that impact and that does seem to be an appropriate figure. That is the figure of \$37,500.
- [31] I have already determined that the amount of \$7,500 should be awarded for each of the woundings and that the amount of \$25,500 should be awarded for the post-traumatic stress disorder suffered by the applicant.
- [32] The total of compensation that would therefore be awarded would be \$85,500. However, COVA provides that no more than the scheme maximum can be awarded. The scheme maximum is \$75,000. Therefore, I award the amount of \$75,000 to the applicant.

- [33] Because the applicant is a child, and because he is in custody, it is my view that he is not capable of managing that amount of money. His litigation guardian is his mother who has unfortunately been shown historically not to be able to properly look after his interests. In those circumstances, it is appropriate that the amount of \$75,000 awarded be paid to the Public Trustee on trust to manage on behalf of the applicant.