



The Salvation Army

AUSTRALIA EASTERN TERRITORY

Graham Sapwell

10th July, 1997

Lt. Colonel E. Schmidtke,
Secretary for Personnel,
SOUTHERN TERRITORY

SECRETARY

14 JUL 1997

Dear Colonel,

FOR PERSONNEL

re: **COMPENSATION PAYMENTS**

I am now able to respond to your letter of 20th June.

1. The Parker and Parker recommendations are appropriate for the circumstances of the Smith case. Clearly compensation is inevitable and a response is inescapable.
2. However, in cases where there has been a complaint to the Army but no criminal proceedings have been instituted, the situation is different as there is not nearly the same amount of certainty concerning the facts. In those cases we see the recommendation for the offering of counselling and associated costs is seen to be appropriate.
3. In regard to awards for breach of fiduciary duty, the relationship of The Salvation Army in caring for a child imposes an equitable duty not to take advantage of the child in any way. However, we are not aware of any cases where damages have been awarded for personal injury based on breaches of fiduciary duty and we are advised the concept to date is unknown in Australian Law.

Cases which deal with breaches of fiduciary duty to date have dealt solely with economic loss or the accounting of profit made by the person who is in a fiduciary relationship with the complainant. This is not to say that damages are incapable of being awarded for breach of fiduciary duty for personal injury suffered by a person, but merely that the whole issue is unexplored.

The issue is relevant in Western Australia in particular because there is no provision for extension of time in bringing common law actions, contrary to the position in New South Wales, so the only way such actions can be brought is by alleging breach of the fiduciary duty.

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If a case were to develop into one of importance it may be worthwhile to agree to the victims pleading a case in negligence and not pleading the statute of limitations in response, rather than have the issue of fiduciary duty damages tested.

I acknowledge that this needs further consideration and discussion and will be happy to have your response to the above observations.

Kind regards.

God bless you.

W. Higgins for



Derrick Jessop
Lt. Colonel
SECRETARY FOR PERSONNEL

DJ:dh