



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Compensation Package for Two Persons Wrongly Convicted and Imprisoned for Arson

Portfolio: Justice

On 4 April 2011, Cabinet:

- 1 **noted** that on 15 February 2010, Cabinet:
 - 1.1 agreed in principle to compensate Mr Phillip Johnston and Mr Jaden Knight for being wrongly convicted and imprisoned for arson;
 - 1.2 invited the Minister of Justice to seek submissions from Mr Johnston and Mr Knight on matters relevant to determining an appropriate compensation payment;
 - 1.3 invited the Minister of Justice to report back to Cabinet with a proposed compensation package;

[CAB Min (10) 5/6]
- 2 **agreed** that, subject to Mr Johnston's and Mr Knight's acceptance, ex gratia compensation payments be made as follows:
 - 2.1 Phillip Johnston - \$146,011.47 (consisting of \$110,082 for non-pecuniary losses and \$35,929.47 for pecuniary losses);
 - 2.2 Jaden Knight - \$221,936.08 (consisting of \$106,151 for non-pecuniary losses and \$115,785.08 for pecuniary losses);
- 3 **agreed** that the payments be a charge against the between-Budget contingency;
- 4 **agreed**:
 - 4.1 to re-establish the non-departmental other expense appropriation 'Compensation for Wrongly Convicted Individuals' in Vote Justice;
 - 4.2 that the scope of the appropriation be 'This appropriation is limited to compensation or ex-gratia payments for persons wrongly convicted and imprisoned';

- 5 **approved** the following changes to appropriations to provide for an ex gratia payment to Mr Johnston and Mr Knight for wrongful conviction and imprisonment, with a corresponding impact on the operating balance:

Vote Justice Minister of Justice	\$m – increase/(decrease)				
	2010/11	2011/12	2012/13	2013/14	2014/15 & outyears
Non-Departmental Other Expenses: Compensation for Wrongly Convicted Individuals	0.368	-	-	-	-

- 6 **agreed** that the change to appropriations for 2010/11 above be included in the 2010/11 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply;
- 7 **agreed** that a public statement of innocence and apology is made to Mr Johnston and Mr Knight by the Minister of Justice on behalf of the Crown;
- 8 **authorised** the Minister of Justice to offer the above compensation package to Mr Johnston and Mr Knight, with the timing of the offer being determined after consultation with New Zealand Police;
- 9 **noted** that if Mr Johnston and Mr Knight accept the compensation offer, they will be required to forego any further legal action against the Crown in respect of matters relating to their convictions for arson.

[Redacted signature block]

Secretary of the Cabinet

Reference: CAB (11) 152

[Redacted signature block]

Compensation package for two persons wrongly convicted and imprisoned for arson**Proposal**

1. Cabinet is asked to agree to a compensation package for Phillip Johnston and Jaden Knight for wrongful conviction and imprisonment.

Executive summary

2. On 15 February 2010, Cabinet agreed in principle to compensate Phillip Johnston and Jaden Knight for wrongful conviction and imprisonment under the Crown's residual discretion to award compensation in extraordinary circumstances where it is in the interests of justice. I was invited to seek submissions from the applicants on matters relevant to determining an appropriate compensation payment and return to Cabinet with a proposed compensation package (CAB Min (10) 5/6).
3. I now seek Cabinet's agreement to the following compensation package for Mr Johnston:
 - (i) an ex gratia payment of \$146,011.47 (consisting of \$110,082 for non-pecuniary losses and \$35,929.47 for pecuniary losses incurred); and
 - (ii) a public statement of innocence and apology by the Crown.
4. I seek Cabinet's agreement to the following compensation package for Mr Knight:
 - (i) an ex gratia payment of \$221,936.08 (consisting of \$106,151 for non-pecuniary losses and \$115,785.08 for pecuniary losses incurred); and
 - (ii) a public statement of innocence and apology by the Crown.

Background*The applicants' claim*

5. Phillip Johnston and Jaden Knight applied for compensation for wrongful conviction and imprisonment in relation to their convictions for arson in September 2004. They were both sentenced to six years imprisonment.
6. On 28 June 2005, the Court of Appeal quashed the applicants' convictions and ordered new trials on the basis that the trial Judge's summing up lacked adequate direction to the jury. The applicants served approximately nine and a half months of their sentence of imprisonment before their convictions were quashed by the Court of Appeal.
7. Mr Johnston was retried and found not guilty in August 2006. Mr Knight's retrial did not go ahead – he was discharged in February 2007 after new evidence came to light [REDACTED]

8. In March 2007 the New Zealand Police formally apologised to the applicants, stating that the Police had ascertained that the applicants had not committed the arson. The apology was based on the new evidence that came to light after Mr Johnston's retrial.
9. At the time of the arson, Mr Johnston was 28 years old. [REDACTED]
[REDACTED] Mr Knight was 27 years old and employed as a mobile security guard. Both applicants consistently denied being involved in the arson and had no previous criminal convictions.

Cabinet's in principle decision

10. The applicants fall outside Cabinet guidelines established to govern compensation for wrongful conviction and imprisonment because the Court of Appeal, when quashing their convictions, ordered new trials. This means their claims for compensation must be dealt with under the Crown's residual discretion to consider claims outside the Cabinet guidelines. The residual discretion can be exercised in extraordinary circumstances where it is in the interests of justice to do so.
11. On 15 February 2010, Cabinet agreed in principle to compensate the applicants for wrongful conviction and imprisonment under the Crown's residual discretion to consider claims outside the Cabinet guidelines (CAB Min (10) 5/6). This decision was on the basis that (i) the new evidence which came to light post-trial establishes that Mr Johnston and Mr Knight are innocent on the balance of probabilities of the arson and (ii) their case involves extraordinary circumstances such that compensation is in the interests of justice.
12. I was invited to return to Cabinet with a proposed compensation package after seeking submissions from the applicants on matters they considered relevant to determining an appropriate compensation payment.

The proposed compensation package

What can be included in a compensation package?

13. Compensation may include an ex gratia payment, a public statement of the claimant's innocence and in appropriate cases a public apology by the Crown. Any ex gratia payment is at Cabinet's discretion: there is no legal obligation to make a payment.
14. Under the Cabinet guidelines, a successful applicant may be compensated for the following types of losses arising from their wrongful conviction and imprisonment:
 - non-pecuniary losses (loss of liberty, loss of reputation, loss or interruption of family or other personal relationships, and mental or emotional harm); and
 - pecuniary losses (loss of livelihood, loss of future earning capacity, loss of property or other consequential financial losses, and costs in obtaining a pardon or acquittal).
15. While the applicants' case falls outside of the Cabinet guidelines, I proposed that they be compensated for the same types of losses. I sought submissions and evidence from the applicants on their pecuniary and non-pecuniary losses as defined in the Cabinet guidelines.

Payment for non-pecuniary losses

16. I recommend that Mr Johnston be paid \$110,082 and Mr Knight \$106,151 for their non-pecuniary losses.
17. These recommended amounts take into account factors in the Cabinet guidelines, for example the seriousness of the offence of arson, the severity of their sentences and the fact that neither of the men had previous criminal convictions. They also take into account the period after the convictions were quashed when the men were subject to retrial proceedings and restrictive bail conditions. They reflect amounts of \$140,000 (Johnston) and \$135,000 (Knight) per annum pro-rated to the nine and a half months the applicants spent in prison.
18. The differing amounts for Mr Johnston and Mr Knight recognise that:
 - Mr Johnston was identified as the alleged arsonist (Mr Knight was charged as a party to the arson);
 - there is evidence that Mr Johnston [REDACTED] which would have made him more vulnerable to prison life than the "average prisoner"; and
 - Mr Johnston went through a second full trial, which resulted in him being acquitted.
19. As part of their submissions on non-pecuniary loss, the applicants made allegations of bad faith or misconduct on behalf of the Police and the Crown prosecutor. Many of the allegations have been raised previously in proceedings before the Courts or as part of the applicants' complaint to the Independent Police Conduct Authority and were found to be unsubstantiated. The allegations do not justify an increase in the payments for non-pecuniary losses.
20. By way of comparison, the most recent payment under the Cabinet Guidelines was in 2006, when three young women wrongly convicted and imprisoned for aggravated robbery received between \$135,000 and \$137,500 each for non-pecuniary losses under the Cabinet Guidelines (the *Akatere* case). The women had served approximately seven months in prison.

Payment for pecuniary losses

21. I recommend that Mr Johnston be paid \$35,929.47 and Mr Knight \$115,785.08 for their pecuniary losses. Both men have provided sufficient evidence to support these losses.
22. Mr Johnston's pecuniary losses relate largely to costs his parents incurred to support him in prison (for example, cash payments into his prison trust and travel costs to visit him in prison), costs associated with his retrial (for example, travel and expert witness fees) and legal costs incurred in pursuing his claim for compensation.
23. Mr Knight's pecuniary losses include losses similar to those set out above for Mr Johnston. In addition his recommended payment includes an amount for loss of earnings in the period between his conviction and discharge (\$62,618.67) and a further amount for loss of future earning capacity (\$17,142.17). Since his discharge Mr Knight has been re-employed as a security guard. The recommended amount for loss of future earning capacity is a representative figure to recognise that Mr Knight was initially re-

employed on a lower wage but that his wage should improve over a reasonable "catch-up period".

Public statement of innocence and apology from the Crown

24. In March 2007 the New Zealand Police apologised to the applicants, stating that after the applicants had partially served their prison sentences, Police had ascertained that the applicants had not committed the arson. The apology was widely reported in the media at the time.
25. The applicants seek an additional public statement of innocence and apology by the Crown. I agree that a public statement of innocence and apology is appropriate. I propose that I make the statement by way of press release on behalf of the Crown.

Agreement to forego proceedings

26. The recommended ex gratia payments and Crown apology would be subject to the applicants agreeing to forgo any further legal action against the Crown in respect of matters relating to their convictions for arson.

Consultation

27. The New Zealand Police, Crown Law Office, and Treasury have been consulted on this paper. The Department of the Prime Minister and Cabinet has been informed.

Financial implications

28. When establishing the Cabinet guidelines, Cabinet agreed that it would decide on a case by case basis to appropriate funds for each compensation payment (STR (98) M 39/6) (Other Expenses to be Incurred by the Crown: Compensation for Wrongly Convicted Individuals).
29. The Ministry of Justice is not funded for any ex gratia or compensation payments and is unable to make any cost reductions to absorb this payment. The payment will be a charge against the general contingency.

Human rights

30. The proposed compensation packages are consistent with the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993.

Legislative implications

31. There are no legislative implications.

Regulatory impact analysis

32. Not required.

Publicity

33. There has been considerable media interest in the applicants' case and claim for compensation.

34. I will offer the compensation package to the applicants on behalf of the Crown. New Zealand Police will be consulted on the timing of the offer. I propose to issue a media statement once the applicants accept the compensation package. The media statement will include a statement of innocence and public apology on behalf of the Crown. In accordance with the practice in past compensation cases, the amount of the ex gratia payments will be included in the media statement.

Recommendations

35. The Minister of Justice recommends that Cabinet:

1. **note** that on 15 February 2010, Cabinet:
 - 1.1. agreed in principle to compensate Mr Johnston and Mr Knight for being wrongly convicted and imprisoned for arson;
 - 1.2. invited me to seek submissions from Mr Johnston and Mr Knight on matters relevant to determining an appropriate compensation payment; and
 - 1.3. invited me to report back to Cabinet with a proposed compensation package (CAB Min (10) 5/6);
2. **agree** that ex gratia compensation payments be made as follows:
 - 2.1. Phillip Johnston - \$146,011.47 (consisting of \$110,082 for non-pecuniary losses and \$35,929.47 for pecuniary losses);
 - 2.2 Jaden Knight - \$221,936.08 (consisting of \$106,151 for non-pecuniary losses and \$115,785.08 for pecuniary losses);

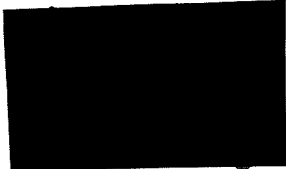
and that the payments be a charge against the between-Budget contingency;

3. **approve** the following changes to appropriations to provide for an ex gratia payment to Mr Johnston and Mr Knight for wrongful conviction and imprisonment, with a corresponding impact on the operating balance:

Vote Justice Minister of Justice	\$m – increase/(decrease)				
	2010/11	2011/12	2012/13	2013/14	2014/15 & Outyears
<i>Non-Departmental Other Expenses:</i> Compensation for Wrongly Convicted Individuals	0.368	-	-	-	-

4. **agree** that the proposed change to appropriations for 2010/11 above be included in the 2010/11 Supplementary Estimates and that, in the interim, the increase be met from Imprest Supply.
5. **agree** that a public statement of innocence and apology is made to Mr Johnston and Mr Knight by the Minister of Justice on behalf of the Crown;

6. **authorise** the Minister of Justice to offer the above compensation package to Mr Johnston and Mr Knight, with the timing of the offer being determined after consultation with New Zealand Police; and
7. **note** that if Mr Johnston and Mr Knight accept the compensation offer, they will be required to forego any further legal action against the Crown in respect of matters relating to their convictions for arson.



Hon Simon Power
Minister of Justice

Date signed:

14/3/11