

SENSITIVE

Office of the Associate Minister of Justice

Cabinet

Compensation for a wrongly convicted and imprisoned individual

Proposal

1. This paper seeks agreement to a compensation package for Aaron Lance Farmer for wrongful conviction and imprisonment.

Executive summary

2. On 5 May 2010, the Cabinet Domestic Policy Committee agreed in principle to compensate Mr Farmer 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 [DOM Min (10) 6/7; CAB Min (10) 16/5]. I was invited to seek submissions from Mr Farmer on matters regarding an appropriate compensation payment and to return with a proposed compensation package.
3. I now seek agreement to the following compensation package for Mr Farmer:
 - (i) an ex gratia payment of \$351,575 as compensation for his wrongful conviction and imprisonment; and
 - (ii) a public statement of innocence and apology to Mr Farmer by the Crown.

Background

Mr Farmer's claim

4. Mr Farmer applied for compensation for wrongful conviction and imprisonment in relation to his conviction in April 2005 for sexual violation by rape. Mr Farmer was sentenced to eight years imprisonment for the rape.
5. Mr Farmer served approximately two years and three months of his sentence of imprisonment before the Court of Appeal quashed his conviction in June 2007 and ordered a retrial.
6. Mr Farmer's retrial never went ahead. Further DNA testing excluded Mr Farmer as being the donor of male DNA found on samples from the complainant. In addition, the complainant was unwilling to give evidence at a retrial. For these reasons, the Crown Solicitor decided not to proceed with the retrial and Mr Farmer was discharged in April 2008.
7. At the time of the rape, Mr Farmer was 33 years old, [REDACTED]

Cabinet's in principle decision

8. Mr Farmer falls outside Cabinet guidelines that govern compensation for wrongful conviction and imprisonment because the Court of Appeal, when quashing his conviction, ordered a new trial. This means Mr Farmer's claim 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.
9. The Hon Robert Fisher QC provided advice on Mr Farmer's application for compensation. Mr Fisher concluded that the evidence available, including the new DNA evidence, established Mr Farmer's innocence of the rape beyond reasonable doubt.
10. On 5 May 2010, the Cabinet Domestic Policy Committee agreed in principle to compensate Mr Farmer for wrongful conviction and imprisonment under the Crown's residual discretion to consider claims outside the Cabinet guidelines [DOM Min (10) 6/7; CAB Min (10) 16/5]. I was invited to return to the Committee with a proposed compensation package after seeking submissions from Mr Farmer on matters he considered relevant to determining an appropriate compensation payment.

The proposed compensation package

What can be included in a compensation package?

11. Compensation may include an ex gratia payment, a public statement of the applicant'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.
12. 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).
13. While Mr Farmer's case falls outside of the Cabinet guidelines, I propose that he be compensated for the same types of losses. I sought submissions and evidence from Mr Farmer on his pecuniary and non-pecuniary losses as defined in the Cabinet guidelines.

Payment for non-pecuniary losses

14. I recommend that Mr Farmer be paid \$351,575 for non-pecuniary losses arising from his wrongful conviction and imprisonment.

15. Mr Farmer was wrongly imprisoned for a total of 819 days (approximately two years and three months). The recommended payment recognises the significant mental or emotional harm Mr Farmer suffered as a result of his wrongful imprisonment.

I accept his submission that he found imprisonment much more distressing than the average person.

16. Sexual violation by rape is a serious offence with considerable social stigma attached. In terms of his loss of reputation, Mr Farmer has provided evidence of being publicly harassed following his release from prison because of the conviction.

17. I have also taken into account the period after Mr Farmer's conviction was quashed and prior to his discharge when he faced retrial proceedings and restrictive bail conditions.

18. The recommended payment reflects an amount of \$150,000 per annum pro-rated to the two years and three months Mr Farmer spent in prison. The payment also includes an additional \$15,000 to recognise improper conduct by a Police Detective when interviewing Mr Farmer as part of the Police investigation. Under the Cabinet guidelines, improper conduct in a Police investigation is a relevant factor when assessing compensation. In Mr Farmer's case, the Detective's questioning clearly suggested that DNA evidence identified Mr Farmer as the rapist when that was not the case. The Detective also gave a misleading account of the complainant's description of the offender's clothing, wrongly suggesting that it matched some of Mr Farmer's clothing. The Detective's questioning was criticised by the trial Judge and Court of Appeal. I am advised that this individual remains with the New Zealand Police but no longer works as a detective.

19. The Crown Law Office agrees that the former detective's conduct contributed to Mr Farmer's non-pecuniary loss and should be factored in for the purposes of compensation.

20. Although Mr Farmer's claim has been assessed outside of the Cabinet guidelines, the recommended payment is broadly consistent with what he would be entitled to under the guidelines. 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 women had served approximately seven months in prison. Three other payments have been made under the Cabinet guidelines (for non-pecuniary losses, "M" received \$400,000 in 2000, David Dougherty received \$700,000 in 2001 and "F" received \$116,500 in 2005).

No payment for pecuniary losses

21. Mr Farmer provided incomplete submissions detailing loss of property or financial losses he and his family incurred. No evidence was provided for any of the pecuniary losses being claimed and some claims were not assigned a monetary value.
22. Mr Farmer was advised that his claims for pecuniary losses could not be accepted without some form of evidence. Mr Farmer confirmed that he was unable to provide any evidence and would forgo his claims for pecuniary losses. This means the recommended ex gratia payment compensates Mr Farmer for only his non-pecuniary losses.

Public statement of innocence and apology from the Crown

23. Mr Farmer seeks a 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. To the extent that the press release touches upon deficiencies in the conduct of the former detective involved in Mr Farmer's case, New Zealand Police will be consulted.

Agreement to forego proceedings

24. The recommended ex gratia payment and Crown apology would be subject to Mr Farmer agreeing to forgo any further legal action against the Crown in respect of matters relating to his conviction.

Consultation

25. 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

26. 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).
27. 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

28. The proposed compensation package is consistent with the New Zealand Bill of Rights Act 1990 and Human Rights Act 1993.

Legislative implications

29. There are no legislative implications.

Regulatory impact analysis

30. Not required.

Publicity

31. There is media interest in Mr Farmer's case and claim for compensation. I propose to issue a media statement once he accepts the compensation package.
32. 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 payment will be included in the media statement.

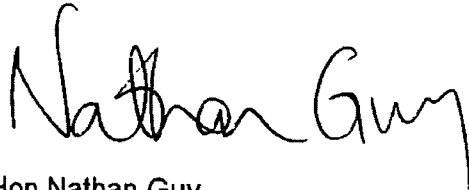
Recommendations

33. The Associate Minister of Justice recommends that Cabinet:
1. **note** that on 5 May 2010, the Cabinet Domestic Policy Committee:
 - 1.1. agreed in principle to compensate Mr Farmer for being wrongly convicted and imprisoned for sexual violation by rape;
 - 1.2. invited me to seek submissions from Mr Farmer on matters relevant to determining an appropriate compensation payment; and
 - 1.3. invited me to report back to the Committee with a proposed compensation package [DOM Min (10) 6/7; CAB Min (10) 16/5];
 2. **agree** that an ex gratia payment of \$351,575 be made to Mr Farmer for his wrongful conviction and imprisonment and that this be a charge against the general contingency;
 3. **approve** the following changes to appropriations to provide for an ex gratia payment to Mr Farmer 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	0.352	-	-	-	-

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 Farmer by the Associate Minister of Justice on behalf of the Crown;

6. note that if Mr Farmer accepts the compensation offer, he will be required to forego any further legal action against the Crown in respect of matters relating to his conviction for sexual violation by rape.



Hon Nathan Guy
Associate Minister of Justice

Date signed:

5, 3, 11