

GUIDELINES

COMPENSATION FOR WRONGFULLY CONVICTED AND IMPRISONED PERSONS

A. GUIDELINES FOR ELIGIBILITY TO APPLY FOR COMPENSATION

The following are prerequisites for eligibility for compensation:

1. The wrongful conviction must have resulted in imprisonment, all or part of which has been served.
2. Compensation should only be available to the actual person who has been wrongfully convicted and imprisoned.
3. Compensation should only be available to an individual who has been wrongfully convicted and imprisoned as a result of a Criminal Code or other federal penal offence.
4. As a condition precedent to compensation, there must be a free pardon granted under Section 683(2) [*now 748(2)*] of the Criminal Code or a verdict of acquittal entered by an Appellate Court pursuant to a referral made by the Minister of Justice under Section 617(b) [*now 696.1 and following of the Criminal Code*].
5. Eligibility for compensation would only arise when Sections 617 and 683 were exercised in circumstances where all available appeal remedies have been exhausted and where a new or newly discovered fact has emerged, tending to show that there has been a miscarriage of justice.

As compensation should only be granted to those persons who did not commit the crime for which they were convicted, (as opposed to persons who are found not guilty) a further criteria would require:

- a) If a pardon is granted under Section 683, a statement on the face of the pardon based on an investigation, that the individual did not commit the offence; or
- b) If a reference is made by the Minister of Justice under Section 617(b), a statement by the Appellate Court, in response to a question asked by the Minister of Justice pursuant to Section 617(c), to the effect that the person did not commit the offence.

It should be noted that Sections 617 and 683 may not be available in all cases in which an individual has been convicted of an offence which he did not commit, for example, where an individual had been granted an extension of time to appeal and a verdict of acquittal has been entered by an Appellate Court. In such a case, a Provincial Attorney General could make a determination that the individual be eligible for compensation, based on an investigation which has determined that the individual did not commit the offence.

B. PROCEDURE

When an individual meets the eligibility criteria, the Provincial or Federal Minister Responsible for Criminal Justice will undertake to have appointed, either a judicial or administrative inquiry to examine the matter of compensation in accordance with the considerations set out below. The provincial or federal governments would undertake to act on the report submitted by the Commission of Inquiry.

C. CONSIDERATIONS FOR DETERMINING QUANTUM

The quantum of compensation shall be determined having regard to the following considerations:

1. Non-pecuniary losses

- a) Loss of liberty and the physical and mental harshness and indignities of incarceration;
- b) loss of reputation which would take into account a consideration of any previous criminal record;
- c) loss or interruption of family or other personal relationships.

Compensation for non-pecuniary losses should not exceed \$100,000.

2. Pecuniary Losses

- a) Loss of livelihood, including of earnings, with adjustments for income tax and for benefits received while incarcerated;
- b) loss of future earning abilities;
- c) loss of property or other consequential financial losses resulting from incarceration.

In assessing the above mentioned amounts, the inquiring body must take into account the following factors:

- a) Blameworthy conduct or other acts on the part of the applicant which contributed to the wrongful conviction;
- b) due diligence on the part of the claimant in pursuing his remedies.

3. Costs to the Applicant

Reasonable costs incurred by the applicant in obtaining a pardon or verdict of acquittal should be included in the award for compensation.