REPORT FOR MINISTER OF JUSTICE

ON COMPENSATION CLAIM BY ALLEN HALL

BY

HON RODNEY HANSEN CNZM KC

TABLE OF CONTENTS

I. Introduction

1. Following trial by jury in September 1986, Allen Hall was found guilty of murdering Arthur Easton and intentionally wounding his son, Brendon. He was sentenced to life imprisonment. An appeal against conviction brought in 1987 was unsuccessful as were three subsequent applications for the exercise of the royal prerogative of mercy. However, after granting leave to appeal against conviction,[1] on 8 June 2022 the Supreme Court allowed Mr Hall's appeal, quashed his convictions and made an order under s 385(2) of the Crimes Act 1961 directing that a verdict of acquittal be entered.[2]

2. On 4 July 2022, Mr Hall applied for compensation for wrongful conviction and imprisonment under the *Compensation Guidelines for Wrongful Conviction and Imprisonment* issued on 19 August 2020 (the **Guidelines**). Pursuant to clause 20 of the Guidelines, the Minister of Justice decided the application merited further assessment and, pursuant to clause 22, to seek independent advice on the question of whether or not the applicant is innocent of the charges brought against him on the balance of probabilities. For this purpose the Minister has requested me to advise whether I am satisfied that Mr Hall has proven that he is innocent of murder and intentional wounding on the balance of probabilities.

3. Because there are ongoing enquiries into the conduct of the Police and Crown lawyers in relation to Mr Hall's trial, I have been asked not to comment on the propriety of actions or omissions by Police or Crown lawyers in relation to Mr Hall's case except as necessary to explain my assessment regarding Mr Hall's innocence.

[1] *Hall v R* [2022] NZSC 51.
[2] *Hall v R* [2022] NZSC 71.

II. Approach to application

Entitlement to compensation

4. There is no legal right to compensation for wrongful conviction or imprisonment in New Zealand. Compensation payments have always been treated as ex gratia and discretionary.

5. On 27 July 2020, Cabinet agreed to adopt the Guidelines, replacing the *Cabinet Criteria for Compensation and Ex Gratia Payments for Persons Wrongly Convicted and Imprisoned in Criminal Cases* which had been in force since 1998. The Guidelines came into effect on 19 August 2020. They apply to applications received on or after that date but also to applications made before the Guidelines came into force where the Minister had yet to decide the application merited further assessment.[3]

6. In order to be eligible to apply for compensation under the Guidelines, a person must:

    - Have been wrongly convicted of an offence.
    - Served all or part of a sentence of imprisonment in relation to that conviction.
    - Be alive at the time of the application.

7. Mr Hall meets those criteria. A person has been wrongly convicted if his or her conviction has been quashed and no retrial has been ordered. He had served part of his sentence when released following his successful appeal.

8. The criteria for compensation are set out in clause 17 which states as follows:

> 17 A person who is eligible to apply in accordance with paragraphs 13 – 16 may be compensated under these Guidelines only if Cabinet is satisfied on the relevant Minister's advice that:
>
> a The applicant is innocent on the balance of probabilities of the offence(s) in respect of which the application was made;
>
> b Compensation is in the interests of justice, having regard to the purposes of the compensation scheme, and taking into account:
>
> i The conduct of the applicant leading to the prosecution and conviction;
>
> ii All other relevant circumstances; and
>
> c The applicant has suffered losses that are compensable under these Guidelines.

[3] Clause 7b.

My responsibility is to advise the Minister on the first of those criteria.

9. By clause 18 the applicant is responsible for establishing that the application meets the criteria for compensation by providing any information reasonably required. The onus on Mr Hall is, accordingly, to demonstrate that it is more likely than not that he is innocent of the charges of which he was convicted.

10. Clauses 19–28 of the Guidelines set out the procedure to be followed including provision for the Minister to seek independent advice on the question of whether or not the applicant is innocent on the balance of probabilities.[4]

Process

11. The procedure that has been followed for the purpose of producing this report was settled after consultation with representatives of Mr Hall and the Crown. It was designed to ensure that Mr Hall had the opportunity to lay before me all information on which he sought to rely to establish his innocence and, through his counsel, to argue his case. The Crown's role, which has been undertaken by the Crown Law Office, has been to provide support where required, to ensure that all information that may be relevant to the enquiry is placed before me and to review and respond as appropriate to the materials and arguments put forward on behalf of Mr Hall.

12. I am satisfied that this approach has ensured that the rules of natural justice have been observed and I have been able to consider and evaluate all relevant materials.

13. The main source of information has been the full record compiled for the purpose of the Supreme Court hearing. That comprised the Case on Appeal and a separate bundle of documents filed on behalf of the appellant. These documents included much of the record of the trial and the decisions of the Court of Appeal and in relation to the three applications for the exercise of the prerogative of mercy. They also included affidavits filed in support of the appeal and documents, some from police files, which were relied on for the purpose of the appeal.

[4] Clause 22.

14. Written submissions have been made on behalf of Mr Hall and the Crown. Some additional documents have accompanied those submissions and others have been provided subsequently at my request.

15. I have not found it necessary to interview any witnesses or to speak to the Police. I have been advised that at this stage Police enquiries have not yielded any further information that would assist me with my enquiries.

Evidence

16. For the purpose of determining whether Mr Hall has established that he is innocent on the balance of probabilities, I am not confined, as the Courts were, to legally admissible evidence. I am able to consider any evidence that has a bearing on the issue I am required to determine. Whether or not evidence in any particular category should be taken into account and the weight it should be given will, however, be a matter of judgement.

17. The evidence I have considered includes evidence that was given at Mr Hall's trial, but it also extends to a considerable body of additional materials, much of it accumulated by Mr Hall's advisers for the purpose of his successful appeal.

Structure of this report

18. In the balance of this report, after reciting the undisputed facts, I review the evidence which may assist in the identification of the offender before undertaking the evaluation required to determine whether Mr Hall has discharged the onus on him.

19. I will review the evidence generally by reference to the way it emerged and was presented, discussing in order:

    - evidence of eyewitnesses
    - evidence obtained from Mr Hall and members of his family
    - subsequent police enquiries
    - evidence presented at trial; and

- fresh evidence adduced for the purpose of the appeal

20. I then analyse the evidence to determine what can safely be relied on before undertaking the final evaluation leading to my conclusion on the issue of innocence.

III. Undisputed facts

22. There is no dispute about the circumstances in which Arthur Easton was fatally injured and Brendon Easton was wounded. The injuries were sustained in the course of an altercation with an intruder who entered the house they shared with Brendon's elder brother, Kim, at [redacted] Grove Road, Papakura at about 8.00 pm on Sunday 13 October 1985.

23. Initial contact was with Brendon, then a 17 year old school boy, who had been studying in his bedroom. Attracted by a noise, he found the intruder in a spare bedroom close to the back door of the house. They struggled briefly before Brendon sought the aid of his father who was watching television in the lounge at the other end of the house. The intruder made no attempt to escape. He took up a position in the hall facing away from the back door waving his arms in what Brendon later said suggested familiarity with martial arts. Brendon and his father attempted to overpower the intruder before being joined by Kim, aged 18 years, who had been in his bedroom with the door closed listening to music. He punched the intruder in the genitals and two or three times in the head before leaving the scene at Brendon's suggestion to get a baseball bat. He could not find the bat, returning instead with a squash racket. He hit the intruder two or three times with it, striking the top of his forehead with sufficient force to break the racket. Kim then left to find the baseball bat. He returned with it but slipped and fell while trying to hit the intruder and did not engage further in the struggle.

24. In the course of the altercation the intruder was seen to be holding what was thought to be a knife. Arthur Easton first noticed it and said to Brendon 'get the knife'. Brendon was eventually able to wrench it out of the intruder's hand but not before both he and his father had been stabbed. The intruder then managed to escape out the back door. He was seen to leave the property through a hole in a hedge which took him onto an alleyway. The bayonet was left behind and also a woollen hat he had been wearing. The hat was grabbed by Arthur Easton as the intruder squeezed through the back door.

25. Arthur then subsided to the floor. He had received penetrating injuries to his right upper arm, his right side beneath the ribcage and to his upper abdomen. Brendon was stabbed in his upper back, right arm and left thigh. The wound to Arthur's abdomen proved to be

fatal, piercing his liver and causing severe blood loss. He died while being treated by ambulance officers.

IV. Evidence of eyewitnesses

Easton brothers

26. The first description of the offender was given by Brendon in a 111 call at 8.05pm. He described the offender as Māori, about eighteen years old, about six feet tall ('the same height as me'), with brownish hair, wearing jeans and a black balaclava.

27. An ambulance officer spoke to both Brendon and Kim in the ambulance that transported them to the hospital. He said both referred to the intruder as 'a black bastard' about six feet tall.

28. Brendon and Kim were interviewed by the police immediately after the incident and in the weeks and months that followed.

29. In his initial interview, Brendon described the offender as about the same height as him (six feet tall); 'fairly sturdy'; with medium length dark hair. He was unsure of his ethnicity. He thought he could have been wearing sneakers as he made no sound when he ran off.

30. Brendon provided further information in an extended interview the following day. He described the offender as of medium build and 'very strong'. He thought he may have had some experience of martial arts because of the way he waved his arms and kicked out during the struggle. Brendon said the offender held the knife in his right hand. He said the offender was wearing blue jeans that seemed new and in good condition. He confirmed that his face remained covered throughout the struggle.

31. On 20 October 1985, the police arranged for Brendon to be interviewed by a hypnotist. A few more details were elicited including Brendon's impression that the intruder had bushy hair and wore a sweatshirt that could have been blue or green.

32. A further interview by the police a few weeks later added some further detail including that the offender was much stronger than Brendon with 'big arm muscles'.

33. In his initial interview on the night of the attack, Kim described the offender as about six feet tall, 'pretty sturdy' and wearing blue jeans and a dark top. Subsequent interviews repeated those details but did not materially add to what Kim initially told the Police.

34. In January 1986 both brothers were interviewed again. The questioning was mainly about the struggle itself with a focus on the way in which the offender used his hands. By this time, Mr Hall had become the primary suspect. As he is left-handed, the issue of the offender's handedness had clearly become of particular interest. Brendon signed a further statement which concluded:

> 'Having gone through the reconstruction with the Police Officers tonight, it seems logical that the intruder had the knife in his left hand. I gained the impression that he had it in his right hand in the first place, because it was down by father's left-hand side, and I grabbed it from the intruder's right hand side.
>
> If he had it in his right hand, Kim would have been an open target and I would have fairly easily to get'. (sic)

35. When Kim was questioned further about the struggle, he added little to his earlier account. He reiterated that throughout his father was on the left-hand side of the offender.

36. When asked about their initial description of the intruder as Māori, both were adamant there was nothing they saw at the time that gave any clue to the intruder's ethnicity. They said any comment to that effect derived from their belief that Māori were responsible for suspicious activity around the house during the months leading up to the burglary. Kim said he thought his comment to the ambulance officer was 'Bet it was a black bastard'.

37. The police also received helpful information from three witnesses who had seen a man acting suspiciously in the vicinity at the time of the attack.

Ronald Brian Turner

38. In a statement made on 14 October 1985, the day following the offending, Mr Turner said that the previous evening he had been visiting his mother who lived in Alma Crescent which is in the immediate vicinity. It is linked to Grove Road by the walkway that ran past the Easton's house. He drove to the intersection of Alma Crescent and Shirley Avenue, turned left into Shirley Avenue and stopped at the intersection of Shirley Avenue and Clevedon Road. As he looked left along Clevedon Road, he said he saw a male running across Clevedon Road. He was 'really motoring'. He ran to a right of way on the other side of Clevedon Road which leads to Edmond Hilary Avenue. Mr Turner said the man stopped

at the right of way, looked behind him, walked a bit, kept looking behind him and then ran off.

39. Mr Turner described the man as Māori, between five feet seven inches and six feet in height. Mr Turner said he is five feet six inches and the man was definitely taller than him. He was dark skinned. He was wearing jeans and a dark blue sweatshirt with a hood pulled over his head.

40. Mr Turner drove to a bank which took him three or four minutes and withdrew some money. The time on the receipt was 8.10pm.

41. In a further statement made on 19 February 1986 Mr Turner said the man he saw was definitely Māori based on his features and stance. He said he was '100 percent sure' of that.

Section (9)(2)(a)

42. Mr Section (9)(2)(a) was interviewed on 20 October 1985. He said that at about 8.00pm on 13 October he drove down Clevedon Road. He saw a male run across the road and disappear down a driveway. He came from near the intersection of Grove Road and Clevedon Road. He ran straight out, causing the car in front of Mr Section (9)(2)(a) car to slow down to avoid hitting him. His demeanour gave Mr Section (9)(2)(a) the impression he had stolen something from one of the shops there. Mr Section (9)(2)(a) described the man as Māori, about five feet nine inches tall with what he described as 'Indian' features. He said he was of thinnish build with black straight-ish hair. Mr Section (9)(2)(a) said the male was wearing blackish pants and a dark greyish coat. On the basis of Mr Section (9)(2)(a) description, the police prepared an identikit picture.

Section (9)(2)(a)

43. Mr Section (9)(2)(a) was interviewed on 24 October 1985. He said that on 13 October at about 8.00pm he drove along Clevedon Road and turned into Grove Road, parking his car by the main door of the dairy at the intersection of Clevedon and Grove Roads. As he emerged from the nearby dairy he saw a person running across the road in front of him. He said he was dark skinned with fuzzy black hair.

Police inquiries

44. Police were able to establish that the bayonet was of Swedish manufacture and one of 300 imported into New Zealand. The hat was one of 50 made by a West Auckland manufacturer all of which had been sold from retail shops in the vicinity of Mt Ruapehu. Photographs of both items were widely disseminated. The only other clues revealed by a scene search was a footprint identified as coming from a 'Bata' shoe and blue fibres caught on the hedge.

45. Within a matter of days, the police identified a suspect. He conformed to the descriptions provided by eyewitnesses. He was known to Police as actively engaged in criminal activities including burglaries in the locality and he was identified as the offender by a police informant. He and persons with whom he associated were interviewed by the Police. He denied involvement in the offending and provided evidence of his whereabouts at the time.

V. Allen Hall becomes a suspect

46. On 10 December 1985, in the course of conducting door-to-door inquiries in the immediate vicinity, the Police spoke to Allen Hall's brother, Gregory James Hall (**Greg**). He had moved from the family home at Section (9)(2)(a) Papakura where both he and Allen were living on 13 October. Greg told Police that the hat looked similar to a hat he had bought in about 1982 but had not seen since 1983. He thought one of his two brothers could have borrowed it. Greg also told the Police that his brother, Allen, owned some bayonets which he kept under his bed. He thought one was similar to the bayonet shown in the Police photograph. He said that after the murder he had gone to the family home to check that the bayonets were there and thought they were.

47. The Police interviewed other family members and first spoke to Mr Hall at his workplace at 10.25 am on 11 December 1985. He was taken to the Papakura Police Station where, sometime after 6.33 pm, he signed a written statement.

48. Mr Hall made a second written statement on 16 December. Again, the Police went to his workplace, at 7.45am on that occasion. He was questioned there and at the Police Station. A handwritten statement was made between 6.37 pm and 8.02 pm. He was released or taken home sometime after 10.30 pm.

49. In his first statement, Mr Hall said he was certain the bayonet used by the offender was his; he recognised rust marks on the handle and the blade. It was one of three he bought by postal order. He said he bought them for self-protection. He kept the Swedish bayonet under his mattress.

50. Mr Hall said he also recognised the hat found at the scene as the same as one his brother lent him for a ski trip. Afterwards he kept it in a drawer. Mr Hall said he believed both the bayonet and the hat to have been stolen from the sleepout he occupied at around the time his father died in September 1985. He explained how he had seen signs of a burglary of the sleepout. He did not tell family members because he did not want to cause his mother worry. After the murder, he said he was afraid to come forward as he feared retaliation from the person who committed the crime.

51. Mr Hall described his movements on 13 October. He said he went for a bike ride during the day and for a walk in the evening. The walk took 30-45 minutes. He described the route he took in detail. He was not sure of the time he left and returned. He said he was wearing brown corduroy pants and a red sweatshirt.

52. In his second statement, Mr Hall provided more information about the circumstances in which the articles went missing. He reiterated his fear of going to the Police when he recognised the murder weapon as the same as his bayonet.

53. He also gave more detail about his bike ride and walk on the day of the murder. He said he knew the 'murder house' as he often rode through the alley next to it and had done so on that day.

54. On 2 April 1986, Mr Hall was arrested and formally charged.

VI. Further inquiries

55. It appears the investigating officers were concerned by the discrepancies between the description of the offender given by Brendon and Kim Easton and the witnesses who saw a man apparently fleeing the scene at the time, on the one hand, and the physical appearance of Mr Hall on the other. He is a Pākehā, 171cm or five feet seven inches in height and, at the time, weighed 68 kilograms or 10 stone 10 pounds. Photographs taken at the time show him to be fair skinned and of slight build. He is an asthmatic and left-handed.

56. As earlier noted,[5] Brendon and Kim were interviewed again in January 1986. They participated in a reconstruction of the struggle with the offender. This led Brendon to revise his earlier assertion that the offender held the knife in his right hand.

57. In February 1986, Mr Turner was reinterviewed.[6] Questions focused on his statement that the man he saw was Māori. As earlier noted, he said he was '100 percent sure' that he was.

58. Subsequently, on 17 June 1986, the Police conducted an 'experiment' at the location where Mr Turner had seen the man running across the road. Using as models five police officers of differing appearance and ethnicity, it was concluded that an observer in Mr Turner's position could not have determined the ethnicity of the man. This appears to have led to a decision to omit any reference to the ethnicity of the person Mr Turner saw when his statement was read to the Court at trial.

[5] Para [34] above.
[6] See para [41] above.

VII. The trial

Prosecution evidence

59. At trial, the evidence of Brendon and Kim Easton was generally consistent with what they had told the Police. Brendon said when his father directed his attention to the knife, he 'grabbed the knife from the intruder's right hand side'. However, he went on to say that before this the offender had not had anything in his right hand and he did not know how the knife got into that hand.

60. In evidence in chief, Brendon said the intruder was the same height as Constable Russell Lamb, who had been present at the reconstruction. However, in cross-examination he confirmed the estimate of six feet in his initial statement. He accepted that the intruder was 'fairly strong' and of medium build.

61. Kim Easton's evidence was to the same general effect. He said the intruder was of similar height to Brendon and him but also about the height of Constable Lamb. In cross-examination he confirmed that after the incident he had described the offender as Māori but explained in re-examination that was a 'presumption' based on past experience.

62. Police officers gave evidence of statements made orally by Alan Hall, not all of which found their way into the written statements. On 11 December 1985, he had a conversation with Detective Sergeant James White in the police car en route to the station. At trial Detective Sergeant White read from notes of what was said that he subsequently recorded in his notebook. Mr Hall told him that the hat went missing while he was on a ski trip. Then he said he thought he had it at home. He volunteered that he had a Swedish bayonet like the one the Police were looking for. He said he had wrapped it up with two others and thrown them away soon after his father had died. However, when questioned at the station, he said that the hat and bayonet had been stolen from his room as later recorded in the written statement.

63. Detective Raymond Smith, who subsequently prepared the written statement, said that at the station he took the hat and bayonet to the interview room. Mr Hall confirmed they had been in his possession.

64. Constable Roy Parker said that at 2.00pm that day he had a conversation with Alan Hall. Mr Hall recounted an incident that had taken place a couple of weeks before the murder. He said he was about to go into his room when he was grabbed from behind. He was pushed inside by his assailant who asked him where he kept his money, knives and if he had any hats. He said he was forced to his knees. He told his assailant where the knives were and he took the one from under his bed.

65. When Detective Sergeant White returned and questioned him about what he had said to Constable Parker, Mr Hall said his assailant sounded Polynesian. When it was put to him that it was a completely different story from what Mr Hall had told him earlier, he replied 'well you won't believe my other story'.

66. Detective Sergeant David Ricket was one of the Police Officers who went to Mr Hall's workplace on 16 December 1985. He questioned him for most of the day and prepared the second written statement. In the course of the interview, he referred to the identikit picture that had been prepared on the basis of Mr Section (9)(2)(a) description. He told Mr Hall that the picture was like him. He rejected the suggestion put to him in cross-examination that the identikit picture was not at all like the accused.

67. Detective Senior Sergeant Kelvin McMinn gave evidence of two reconstructions that took place at the house on Grove Road on 30 January 1986. Five Police officers were present. He said when Brendon and Kim were asked which of the Police officers was most similar in height to the offender they pointed to Constable Lamb.

68. The prosecution called a pathologist, Dr Kenneth Thompson of Wellington, to provide support for the thesis that the intruder was left-handed. He expressed the view that the 'easiest grip' to inflict the three wounds suffered by Arthur Easton would be a 'left handed stabbing'.

69. The evidence of Mr Turner was adduced by way of a signed statement. However, it omitted any reference to the ethnicity of the person he saw running away and included an incorrect statement that he had seen a blue sweatshirt recovered from Mr Hall's home. The prosecution did not adduce evidence from the other two witnesses who reported seeing a man running across the road.

Defence evidence

70. Defence evidence focussed on four issues:

- injuries caused by squash racket;
- possession of blue sweatshirt;
- Mr Hall's movements on the night; and
- Mr Hall's physical attributes and nature.

71. As earlier noted, the offender was hit hard two or three times by Kim Easton with the edge of a squash racket, hard enough to break the racket.[7] A medical practitioner who plays squash gave evidence for the defence. He said blows to the forehead using the force described would likely cause visible injuries even if the victim's head had been covered with a woollen cap when the blows were struck. A supervisor and the head storeman at Mr Hall's workplace said he was at work the following day. They saw no visible sign of injury. His sister, Andrea, said that he had no injuries when she saw him the previous night.

72. The evidence of a men's clothing retailer and a friend of Mr Hall's established conclusively that a blue sweatshirt found in Mr Hall's possession was bought on 6 December 1985.

73. Mr Hall's sister, Andrea, said she saw him on the evening of 13 October 1985 at about 8.30pm. She saw him come through the back door. She recalled he was wearing a bright red sweatshirt and brown trousers.

74. Andrea and other family members spoke of Mr Hall as intellectually slow – 'somewhat backward' – shy and something of a loner. An uncle said he had been a 'very puny child', his physical development hampered by asthma and nutrition problems'. He and Andrea dismissed any suggestion that Mr Hall was physically strong.

[7] Para [23] above.

VIII. Successful appeal

75. Mr Hall's appeal to the Supreme Court was supported by a wealth of new material, much of it collated and analysed by Timothy McKinnel, a former Police Detective who has worked as an investigator for over twenty five years. He drew on information assembled for the purpose of earlier proceedings, including the unsuccessful applications for the exercise of the royal prerogative of mercy. He also obtained a great deal of information from Police files which had not previously been disclosed to Mr Hall's advisers.

76. Mr McKinnel and Mr Hall's counsel, Nicholas Chisnall KC, also initiated further enquiries which led to Mr Hall being diagnosed as suffering from Autism Spectrum Disorder (ASD). They obtained expert advice as to the way in which ASD affects sufferers with a particular focus on the way in which it may have impacted on Mr Hall's interactions with the Police.

77. The evidence presented to the Supreme Court by Mr Hall's advisers led to the Supreme Court upholding each of the three grounds of appeal advanced:

    (a) The changes made to Mr Turner's signed statement to omit reference to the ethnicity of the man he saw running away and to link the blue sweatshirt he said the man was wearing to the sweatshirt found at Mr Hall's home. On this issue the Supreme Court had this to say:[8]

> The Crown accepts that, if the statement had not been inappropriately and deliberately altered in the way it was then the jury would have heard evidence that a man who, on Mr Turner's evidence could not have been Mr Hall, was seen leaving the location of the fatality at the relevant time. Moreover the statement would not have linked Mr Hall to the scene through the identification of a sweatshirt seized from Mr Hall's home as the sweatshirt worn by the man fleeing the scene. Instead, the evidence that was before the jury misleadingly conformed with the Crown case. A substantial miscarriage of justice has resulted on this ground alone and there is no possibility, as is conceded, that any resort could be made to the proviso to s 385(1) of the Crimes Act 1961 or to other evidence at trial to remedy the omission.

    (b) The failure of the Crown to disclose documentation to the defence. Two categories were identified. The first related to identification evidence. It included the earlier statements by Mr Turner which would have alerted the defence to his firm belief that the man he saw was Māori and statements by the Easton brothers recording

[8] *Hall v R*, above n 2, at [24].

their initial impressions of the height, ethnicity and handedness of the intruder. The second category of documents related to police enquiries into another suspect. The Crown having acknowledged that the position advanced at trial that the suspect had been definitely excluded 'over simplified and overstated the position', the Court found documents which would have enabled the defence to test that proposition should have been disclosed.

(c) Mr Hall's statements to the Police. The Court referred to evidence filed for the purpose of the appeal which showed that Mr Hall has ASD and as to the impact of this on the way he answered questions. His vulnerability contributed to multiple breaches of the Judge's Rules 1912 which were the guidelines for acceptable Police questioning in place at the time Mr Hall was questioned. In the result, the Court concluded:

> [37] On the basis of what we now know, we consider the evidence should have been excluded. The concerning features of the interviews with Mr Hall include the following: their lengthy nature; the fact that they were conducted by multiple interviewing officers in the absence of a lawyer or support person and initially absent any caution; on at least one occasion a senior police officer was present for a period during which no record was kept of the interaction with Mr Hall; the questions asked about the identikit picture prepared as a result of interviews with a witness were misleading; and questions were asked and observations and opinions advanced which would certainly not now be permissible, for example, comment was made in various ways that Mr Hall was lying. We add that, with present day knowledge, Mr Hall's significant disadvantages are readily apparent on even a fairly cursory consideration of the statements. The Crown accepts that even at the time it was apparent he was a vulnerable person. In any event, the Crown concession as to the unfairness of the interviews is made despite differences in standards applicable to police interviews in the 1980s. We see that concession as entirely appropriate in the circumstances.

78. The Supreme Court's findings materially impacted on the Crown Case advanced at trial; its conclusion that the verdicts could not stand was inevitable.

IX. Reviewing the evidence: approach

79. I turn now to review the evidence available from all sources and to determine what will assist me to reach a view on the ultimate issue: that is, whether Mr Hall has proved he is innocent of the charges on which he was convicted on the balance of probabilities. In effect, as the issue boils down to one of identity, Mr Hall must prove it is more likely than not that someone else was the offender.

80. For this purpose, as earlier noted, I am not confined to considering only legally admissible evidence. I proceed on the basis that if the evidence is relevant (that is, if it has a tendency to prove or disprove anything of relevance to the inquiry)[9] it is available for consideration. Its probative value must then be considered. Can the evidence be relied on? If it cannot, it must be discarded. If, however, it appears to be worthy of consideration, it must be evaluated and weighed having regard to all relevant circumstances.

81. It is convenient to consider first the evidence that was primarily relied on at trial to establish that Mr Hall was the intruder.

82. Both Mr Hall and the Crown accept that the evidence which points to Mr Hall as the offender is in three categories:

    (a) His association with the bayonet and hat left at the scene;

    (b) His proximity to the crime scene at the time of the offending; and

    (c) The answers he gave under police questioning.

The context surrounding Mr Hall's statements to police

83. All of the evidence in the third category and most of the evidence in the other two categories derive from Mr Hall's oral and written statements to the Police. Some of what he said was corroborated by family members; his recent possession of a bayonet and hat similar to those found at the scene and his movements at the time of the offending are examples. But the prosecution was largely reliant on what Mr Hall himself told them.

[9] Evidence Act 2006, s 7.

Before considering this potentially incriminating evidence, it is therefore necessary to consider the context in which the statements were made with particular reference to the shortcomings in Police practice highlighted by the Supreme Court and the fresh evidence as to Mr Hall's intellectual disability.

84. The Supreme Court was clear that deficiencies in the way Mr Hall's interrogation was managed were so grave as to warrant exclusion of all of the oral and written statements he made. That would not be an appropriate course to take for present purposes. Most of what Mr Hall told the Police is of direct relevance and much of it is not in dispute. The challenge is to evaluate what was said in the light of all the circumstances and, on that basis, to determine what can be relied on and for what purpose.

Police practice

85. As earlier noted, the two written statements followed extended questioning of Mr Hall by Police officers on two separate occasions.

86. The first written statement was made between 5.25pm and 6.33pm on 11 December 1985 after Mr Hall had been interviewed at the Papakura Police Station since 10.37am. The Police had arrived at Mr Hall's workplace at 10.25am and transported him to the station. It was in the course of the journey that he first acknowledged that he owned a hat and a bayonet similar to those left at the scene. Subsequently, as the earlier summary of evidence given at trial shows, he gave conflicting accounts of the loss or disposal of the bayonet and hat.[10]

87. This included his account to Constable Parker of being attacked from behind by an assailant. When Detective Sergeant James White, who with Detective Smith had conducted the earlier part of the interview, subsequently challenged this account, the following exchange, recorded in Detective Sergeant White's job sheet, took place:

> Q Allen thats a completely different story to what you told me earlier today. Thats lies and you know it?
> A Well you won't believe my other story.

[10] Paras [62]–[65] above.

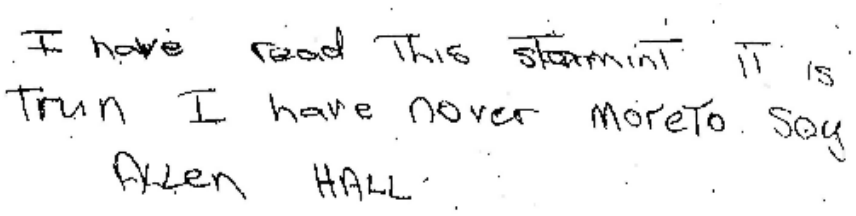
Q With all these lies, I've got to start taking a hard look at you. It's your bayonet that killed Arthur EASTON and it's your brothers hat left at scene. Did you lose the bayonet or what.
A I told you it was stolen from my room I think one of Geoffrey's friends must have taken it.

Q Who Allen?
A I don't know.

Q I think you do know. I think you are scared of retaliation and you don't want to say.
A I'm scared for my family.

88. As earlier noted,[11] the written statement signed by Mr Hall at the conclusion of the oral interview incorporated his final position that the bayonet had been stolen and the hat also went missing a short time before his father died (in September). The statement also incorporated detail of when he bought the bayonet, where he kept it and the circumstances which led him to believe it to have been stolen.

89. At the end of the statement, he wrote:



90. The second written statement made on 16 December also followed extensive questioning by police officers. Senior Sergeant SF Mills and Detective DG Ricket went to the premises of Mr Hall's employer at 7.30am. He agreed to accompany them to the Manurewa Patrol Base. Commencing at 9.47am he was questioned, mainly by Detective Sergeant Ricket, with few breaks until 4.45pm. At 6.37pm he agreed to make a statement. It was completed at 8.02pm.

91. The second statement confirmed the key elements of the first while providing additional detail of the purchase and storage of the bayonet, when and why Mr Hall thought it went missing and his movements on the day of the offending.

[11] Para [50] above.

92. In his interviews on both occasions, Mr Hall repeatedly protested his innocence. The concluding paragraph of his first statement captures what he told the police:

> 'I don't know anything about the man being killed. I don't go around doing things like that. I haven't been brought up that way.'

Intellectual disability

93. That Mr Hall suffered from some level of intellectual disability was put in issue at his trial and on appeal to the Court of Appeal. The way in which he signed his statement was cited as evidence that he was 'immature' and 'of limited intellectual ability'. At trial his sister described him as 'bit slow bit backward' and an uncle as 'somewhat backward'. But no psychological assessment was undertaken until initiated for the purpose of the appeal to the Supreme Court.

94. An initial diagnosis of ASD was made by Tanya Breen, consultant clinical psychologist. She interviewed Mr Hall and his brothers, Geoff and Greg. She reviewed a number of reports generated during Mr Hall's time in prison. She undertook psychological tests. She concluded Mr Hall to be of low average intellectual ability; has a specific learning disability; and, since childhood, had suffered ASD.

95. Doctor Clare Allely, an Associate Professor in Forensic Psychology at the University of Salford in Manchester, England, was asked to consider how Mr Hall's ASD would have affected his behaviour and responses during the police interviews in December 1985. She has special expertise in the role of autism in the criminal justice system. She has written extensively on the subject and is the author of a book *Austism Spectrum Disorder in the Criminal Justice System: A Guide to Understanding Suspects, Defendants and Offenders with Autism*.

96. Dr Allely's report notes the many challenges faced by a person with ASD. Of particular importance when considering Mr Hall's response to Police questioning are issues with memory and inappropriate responses including lack of outward emotional expression. She said individuals with ASD are often impaired or have difficulty in their ability to recall evidence in a sequential manner and with sufficient detail. She noted a number of instances during the police interrogation where Mr Hall demonstrated confusion, difficulty

and some inconsistency in his description of what he was doing on the evening Mr Easton was murdered.

97. She said persons with ASD often lack appropriate outward emotional expression, of which she noted numerous examples in the course of the interview. Doctor Allely also noted the tendency of ASD sufferers in some contexts to display greater than normal levels of compliance, eagerness to please and avoidance of confrontation. As a result there is an increased risk of complying with interrogative pressures with the consequence of making statements that are erroneous and self-incriminating. She identified the following features of the police questioning of Mr Hall which would have put him under particular pressure:

- positive confrontation;
- directly accusing him of his involvement in the crime;
- repetitive questioning;
- intimidation including accusations of lying and/or laughing in response to questions;
- suggesting alternative scenarios; and
- challenging the suspect's account.

98. Dr Allely said that for someone with a diagnosis of ASD such tactics can be experienced as distressing, overwhelming and anxiety-provoking and, among other things, would have impacted negatively on Mr Hall's ability to recall and correctly order events. She considered the pressure on Mr Hall would have been exacerbated during the first interview by the involvement of multiple police officers at different times of the interviewing process and, at the time of the second interview, a confrontation between Mr Hall and one of the arresting officers. Finally, Dr Allely identified a number of additional features prevalent in ASD sufferers which would explain some responses by Mr Hall which might be interpreted as suggesting guilt:

- Paranoia evidenced by Mr Hall's frequent expressions of concern for his personal safety and the safety of his family if he was seen to co-operate with the Police or enlist their assistance.

- Repetitive vocalisation such as his frequent claim that he had not 'been brought up that way'.[12]

- Repetitive interests or behaviour. Mr Hall's possession of bayonets and his interest in military paraphernalia is not uncommon in individuals with ASD and is likely to be directly related to Mr Hall's symptomology.

99. Having provided necessary context to Mr Hall's statements to the Police, I turn now to consider the three categories of evidence which provide the pillars of the case against him.

[12] An example is in the concluding paragraph of the first statement quoted at para [92] above.

X. The case against Mr Hall

Past possession of bayonet and hat

100. Notwithstanding the shortcomings in police practice associated with the interviews and Mr Hall's undoubted disability, there is no reason to doubt his acknowledgement that the bayonet and hat found at the scene had once been in his possession or were indistinguishable from the bayonet and hat that he had once had in his possession. Mr Hall does not suggest that his statements on this issue were inaccurate or extracted under compulsion. His account of the acquisition of the articles is corroborated by purchase records and the evidence of family members. While his ready acknowledgement that the bayonet was the selfsame one he had in his possession appears to have been over-hasty, it also seems likely to be true. The chances of the intruder having acquired the same two articles independently seems inherently unlikely. The critical issue is not whether the articles had been in Mr Hall's possession but whether there is a plausible narrative for their having been acquired and used by someone else.

101. The explanation put forward by Mr Hall at the time and which he still advances as the most likely explanation for their falling into the hands of another is that they were taken from his room either by the offender or someone who passed them on to the offender.

102. Mr Hall offered varying accounts for the loss of the bayonet including his having disposed of it in the rubbish and its theft by an unknown assailant who held him from behind. However, at an early stage in the interview he provided the explanation that was recorded in the first written statement and further elaborated in the second. He said he kept the bayonet under his mattress. On the Saturday before his father died, he went into his room and noticed the bed was out of shape. He looked for the bayonet and could not find it. Also missing was $50.00 he had secreted under the mattress, a pair of blue jeans and some t-shirts. He noticed the hat was missing after his father died.

103. There is nothing to indicate that a burglary could not have taken place as suggested by Mr Hall. There was ready access to the sleepout in which the articles were kept. It was not usually secured; the key was often left in the lock and the door was sometimes left open. There is equivocal support from family members for the sleepout having been burgled

during the months preceding the offending. Greg told the police on 16 December 1985 that he remembered his mother mentioning to him in early August, shortly after he had returned home from Australia, that 'Allen had some things stolen from his room… She mentioned some money, a pair of jeans and one of those "bloody bayonets"'. However, he said Allen never mentioned anything about the thefts to him.

104. Mrs Shirley Hall, now deceased, provided little support for Greg's account. In a statement made on 11 December 1985 she said there had not been a burglary at the home or of the sleepout at any time. She did not qualify that statement when spoken to again on 16 December. In the circumstances, I do not attach any weight to the evidence of Gregory Hall on this issue. Mr Hall's account is, accordingly, uncorroborated and there are circumstances which, if anything, make his explanation unconvincing.

105. There was a Doberman dog at the Hall residence at the time which could be expected to deter intruders. There was valuable electrical equipment stored in the sleepout at the time. It might be thought unlikely that a burglar would select the low value items Mr Hall said were taken while ignoring much more valuable goods.

106. The theft of the bayonet, hat and other items was never reported. In the course of police interviews Mr Hall was asked about this. He said he did not report the burglary because he was afraid the burglar would retaliate against his family. He offered the same explanation for not coming forward when he recognised photos of the bayonet and hat published after the offending. At trial these explanations were deprecated by the prosecution. And in his summing up the trial judge suggested to the jury that it would perhaps have been natural for Mr Hall to report he burglary to someone, if not the police, then a member of the family.[13]

107. However, in light of Mr Hall's diagnosis of ASD and the paranoia associated with it, his explanation for not reporting the burglary seems plausible.

108. It is theoretically possible that the bayonet and hat found at the scene had never been in Mr Hall's possession. He could have been mistaken in identifying the bayonet as his; it is possible, for example, that the rust marks he observed arose from an intrinsic fault in the

[13] Summing Up p32.

design and manufacture of that model of bayonet and could be found on others from the same batch. There was nothing to distinguish the hat found at the scene from other hats made at the same time. That said, as previously observed, it seems highly unlikely that two such disparate items could have been acquired separately and independently by two different people. I proceed on the basis that the bayonet and hat found at the scene were the same as those Mr Hall had had in his possession. If he did not use them, they must have been used by someone who had acquired them or taken them from him sometime before the offending.

Proximity and opportunity

109. Mr Hall told the police that on the day of the offending he went for a bike ride in the afternoon. He said he usually did so on a Saturday and a Sunday. On this occasion his route included Grove Road and the alley next to the Easton's house. When he saw the media reports of the murder, he recognised the house as one he had ridden past.

110. Mr Hall said he went for a walk in the evening. He described the route in detail. He effectively walked around a block while cutting through a school at one point. The route did not include or take him in the direction of the crime scene. He could not put a time on his leaving the house. He was able to relate it generally to a television show – 'Benson' – he had been watching. He left before the end. He said he was out for 30-45 minutes. After returning he had a shower and went to bed.

111. On both occasions Mr Hall said he was wearing the same clothes – brown corduroy pants, a red sweatshirt and blue shoes with a white stripe that had belonged to this father.

112. As earlier noted, in evidence at trial, Andrea Hall said she remembered seeing Allen at about 8.30pm. She confirmed he was wearing a bright red sweatshirt and, she thought, brown pants. Her statement to the police made no reference to seeing Allen that night. In evidence, however, she was adamant that she had told the police, but it had not been included the statement.

113. Mrs Hall also told the police about the clothes Mr Hall was wearing that night and showed the interviewing officer the clothing in question. But neither she nor other family members reported seeing Allen leave or return that night. By his own admission he was absent from

the house for a period which could have coincided with the time of the offending. The two homes were about a kilometre apart by the most direct route. Mr Hall could have journeyed on foot to and from the crime scene without family members noticing. He had a good knowledge of the locality including the walkways utilised by the offender who, if he was the person seen by Mr Turner and the two others who saw a man hurrying away that night, was heading in the general direction of Mr Hall's home.

Incriminating answers

114. At Mr Hall's trial the way he conducted himself under questioning by the Police, in particular the inconsistent and confused answers he gave to their questions, were relied on as evidence of guilt. In his summing up the Judge referred to the 'truth or falsity' of Mr Hall's explanations as of 'critical importance' to the Crown case.[14] Though there was some evidence of his disabilities – his immature handwriting and spelling and the evidence of family members – it was not until the appeal to the Supreme Court that the full extent and implications of his ASD became apparent. It was only then, too, that the extent to which the police exceeded and misused their powers was fully exposed. Before the Supreme Court the Crown accepted that there is a reasonable foundation for the proposition that much of the content of Mr Hall's police statements was unfairly obtained.[15]

115. I am satisfied that Mr Hall, as a vulnerable person, was severely disadvantaged by his treatment at the hands of the police and that it would be unrealistic and unfair to draw any adverse inferences from the way in which he responded to police questions. As an ASD sufferer, he would have been especially susceptible to the way in which he was interrogated. I am satisfied that the false and misleading answers he gave to questions are readily explained by the pressure exerted by the duration and manner of police questioning. On the other hand, his frank admission that the incriminating articles were his may be seen as supporting the protestations of innocence he made from the beginning of the interview process.

[14] Summing up at p 17.
[15] Crown Submissions at para 36.

Summary

116. Mr Hall's acknowledged ownership of the murder weapon and his possession of a hat that was indistinguishable from the one worn by the offender, provide the most compelling evidence against him, ameliorated only by the possibility of both articles having been removed from his room before 13 October 1985. He was in the general vicinity of the crime scene when the offending took place. It would have been possible for him to get to and from the Easton house without family members noticing. His direct link to the offending and the evidence of opportunity are the foundation of the case against him. For the reasons already discussed, however, no adverse inference can be drawn from the way Mr Hall conducted himself during questioning by the Police.

117. I turn now to consider the rest of the available evidence, to decide what may safely be relied on and to assess its impact on the case against Mr Hall.

XI. Other available evidence

Descriptions of offender by the Eastons

118. The evidence of direct observation of the offender is plainly of critical importance. Three people saw him – Arthur, Kim and Brendon Easton. It is probable that he was also seen by Ronald Turner, Section (9)(2)(a) and, possibly, by Section (9)(2)(a). It is necessary to scrutinise the evidence of the five surviving witnesses with particular care. Their credibility is not in issue, but the accuracy of their observations is of crucial importance.

119. The evidence of Brendon and Kim Easton was closely aligned. They both described the offender as six feet tall – approximately the same height as all three Easton men – strongly built, and wearing blue jeans. Although both initially identified him as Māori, it became clear that was not based on observations made at the time.

120. As earlier recounted, the reconstruction carried out by the Police led Brendon to review his initial view that the offender was right handed. Both brothers were also prompted by the presence of Constable Lamb to suggest at trial that the offender may have been less than six feet tall. They did not, however, resile from their earlier estimate of six feet and I see no reason to revise the estimate they had consistently given to police and others.

Other sightings

121. The man Mr Turner saw running across Clevedon Road seems almost certain to have been the offender. The timing, confirmed by the time on Mr Turner's ATM withdrawal slip, fits perfectly with the known time of the offending, as fixed by Brendon's 111 call. The route taken by the offender as established by the evidence of a police dog handler, would have taken the offender to the location in Clevedon Road. The dark blue sweatshirt Mr Turner said the man was wearing ties in with the blue fibres found caught on the hedge at the crime scene. And, of course, the actions and demeanour of the man were clearly those of someone fearing pursuit.

122. Mr Turner's then wife, who was in the car with him, has recently been interviewed by the police. She recalled it was she who had initially identified the man as Māori, drawing her

husband's attention to 'that Māori guy there'. I do not think this detracts from the cogency of Mr Turner's evidence. He saw the man and reached his own conclusion.

123. While Mr Section (9)(2)(a) could not be as precise as Mr Turner as to timing, it seems highly likely that he saw the same man. He got a closer view as the man ran across the road immediately in front of the car in front of him. His description of the man was sufficiently detailed to warrant the preparation of an identikit picture. Although, in a passage of Mr Hall's interview with Detective Ricket, it was suggested to Mr Hall that he resembled the man in the identikit picture, it is undisputed that he looks nothing like him.

124. Section (9)(2)(a) evidence is of limited value. It is not clear from this statement that the man he saw was running across Clevedon Road to the walkway (or driveway as Mr Section (9)(2)(a) described it).

125. The law recognises that identification evidence must be treated with particular caution,[16] particularly when it comes into the 'fleeting glance' category.[17] There is a distinction to be drawn, however, between eyewitness evidence which purports to identify a particular person, and evidence of description, which is circumstantial evidence of identification rather than visual identification.[18] Evidence in the former category must be the subject of an express warning.[19] That requirement does not apply to evidence of description. It is important nevertheless to assess such evidence carefully. Particular regard must be had to the conditions in which the sighting took place – lighting conditions, the distance between the viewer and subject, and the like.

126. When the presumed offender was seen by Mr Turner and Mr Section (9)(2)(a) running across Clevedon Road, viewing conditions were far from ideal. It was dark. They would have relied on illumination from streetlights, neighbouring properties and passing cars. Both were driving and could not have given their full attention to the subject. That said, in Mr Turner's case in particular, the observations were more than a fleeting glance. He had

---

[16] See *R v Turaki* [2009] NZCA 310; *Deo v R* [2012] NZCA 484, [2013] 1 NZLR 45; and *Ponga v R* [2014] NZCA 496. See also E McDonald and S Optican (gen eds) *Mahoney On Evidence: Act & Analysis* (Thomson Reuters, Wellington, 2018) at [EV45.01(1)] and [EV126.01].

[17] See, eg, *R v Edmonds* [2009] NZCA 303, [2010] 1 NZLR 762 at [34], [101] and [111] (citing *R v Turnbull* [1977] QB 224 (CA); and *Sharpe v Police* [2019] NZHC 823.

[18] *Deo v R*, above n 16, at [18].

[19] Evidence Act, s 126.

stopped to give way at the intersection of Shirley Street and Clevedon Road. He watched the man cross the road and proceed down the walkway. His description of his movements is impressive in its detail. His description of the man's clothing is corroborated, as to his jeans by the evidence of the Easton brothers and as to the colour of his upper garment by the fibres found at the scene. His estimate of the man's height as taller than him (five feet six inches) and as tall as six feet is not inconsistent with the Easton brothers' evidence.

127. In submissions the Crown questioned whether Mr Turner's evidence of the offender's ethnicity should be treated as reliable. I acknowledge that caution is required when ascribing ethnicity based on appearance alone. But there is no reason to doubt his evidence that the man he saw was dark-skinned and with the appearance overall that would lead him (of Māori ethnicity himself) to conclude that the man was Māori. The accuracy of Mr Turner's observations in other respects has been vindicated by other evidence. I see no reason to question the accuracy of this aspect of his description alone.

128. Mr Turner's evidence is, furthermore, supported by Mr Section (9)(2)(a) evidence. I am satisfied they saw the same man and that, as to his overall physical appearance, their observations were accurate.

129. For completeness, I should add that I place no weight whatsoever and was not asked to have regard to, the 'experiment' in which the police sought to replicate the conditions under which Mr Turner viewed the man running across the road. I am satisfied that the exercise was unscientific, and the conclusions drawn of no probative value. By the decision not to introduce the evidence at trial the prosecution clearly recognised that.

Conclusion on description

130. The totality of the evidence establishes to my satisfaction that the offender was:

    (a) Approximately six feet tall. The most reliable estimates were given by the Easton brothers who, engaging with him at close quarters, would have noticed if the offender was significantly taller or shorter than them.

    (b) Strongly built, again as described by the Easton brothers.

(c) Either of Māori ethnicity or of dark complexion as observed by Mr Turner and Mr Section (9)(2)(a).

(d) Wearing jeans and a blue top, probably a sweatshirt, based on the evidence of the Easton brothers, Mr Turner and the clothing fibres found at the scene.

(e) Possibly, having knowledge or experience of martial arts.

Handedness

131. A distinct issue which assumed importance only after Mr Hall was identified as a suspect is that of the handedness of the offender.[20] Immediately after the incident, Brendon expressed the view that the offender was right-handed. He said the offender held the knife in his right hand.[21] He revised his evidence after the reconstruction in January 1986.[22]

132. For the purpose of the appeal, Mr Hall's advisers filed an affidavit by Mr Alexander Kolar, a pathologist practicing in the United Kingdom. He reviewed the relevant evidence including Dr Thompson's evidence at trial. He reported that on the basis of the evidence there is not 'anything meaningful [that] can be put forward on the handedness of the assailant…'. He said it was 'dangerous' for Dr Thompson to provide an opinion on how the weapon was handled based on the wounds inflicted alone. As a pathologist who undertakes reviews in historic cases, Dr Kolar observed that forensic pathology is practiced very differently these days. Forensic pathologists are generally more cautious and 'migrate with far less frequency into other areas than they did in the past'.

133. I accept, as does the Crown, that the evidence does not permit any firm conclusions to be drawn on the handedness of the attacker. Brendon's initial impression that he held the bayonet in his right hand may suggest that the offender was right handed. But, in the absence of corroborating evidence, it is not a conclusion that can safely be drawn.

[20] See para [34] above.
[21] Para [30] above.
[22] Para [34] above.

Additional evidence from the scene

134. In addition to the blue fibres found in the hedge, there was the shoe print left beside the gap in the hedge. It's make could be established but not its size. As already noted, evidence that Mr Hall bought a blue sweatshirt found at his home after the murder, eliminated any link with the fibres at the scene. Nor was there any link between the footprint and shoes owned or worn by Mr Hall.

Incinerator

135. There was an incinerator at Mr Hall's house which had been used to burn clothing among other things. Nothing was recovered from the incinerator which linked Mr Hall to the offending.

Injuries

136. Based on the evidence given at trial, it seems reasonable to expect that the offender would have shown some visible sign of injury on his forehead as a result of the blows from the squash racket. Mr Hall appeared unmarked that evening and the following day.

Other suspects

137. At trial, Detective Sergeant White, who was officer in charge of suspects, said that in the course of the inquiry over three hundred persons were interviewed who were either nominated or otherwise identified as suspects. He said each one 'was inquired into as far as possible' and he was satisfied that they were not involved.

138. The Court of Appeal found that evidence should not have been led. It was irrelevant and did not 'advance one iota, a case against the accused'.[23] As it turns out, however, the evidence was also inaccurate. In his painstaking analysis of the information now available, much of it withheld from the defence at the time of the trial and initial appeal, Mr McKinnel demonstrates that one suspect at least was never excluded from involvement.

[23] At page 627.

139. Section 6(c), who lived in the area at the time and was identified as the offender by an informant, was the subject of extensive enquiries. Although he was able to advance an alibi that was corroborated by others, a number of other factors point to his possible involvement. They include an extensive record of criminal activity in the area including burglary; a resemblance to eye witness descriptions of the offender; and blood traces on clothing and a car associated with him that are not incompatible with his involvement.

140. I am advised that in the course of continuing enquiries, the police have identified other persons of interest who also fit the broad profile of the offender.

XII. Evaluation and conclusion

Evaluation

141. Mr Hall had the opportunity to commit the crimes of which he was convicted. The assault weapon used by the offender and the hat he wore seem almost certain to have been those previously in his possession. There is, however, no other reliable evidence to link him to the offending. There is, instead, a substantial body of evidence to indicate that he was not the offender.

142. The offender was dark skinned, possibly Māori, about six feet tall and strongly built. Mr Hall is fair complexioned, Caucasian, a little over five foot seven and of slight build. He does not bear any resemblance to the man described by the Easton brothers and those who saw the offender flee the scene.

143. It seems likely that, having been hit forcefully with the squash racket, the offender would have shown signs of injury to the upper forehead. There was no sign of injury to Mr Hall.

144. The offender wore a blue sweatshirt and 'Bata' sports shoes. There is nothing to suggest Mr Hall owned or wore such items of clothing at the time of the offending.

145. The offender entered a house that was plainly occupied, armed with a bayonet. It was a brazen, highly risky criminal act. When his presence was detected, he chose to confront the occupants, adopting an aggressive martial arts stance rather than fleeing. He was able to hold three burly men at bay before escaping.

146. There is nothing in Mr Hall's history, circumstances or personal attributes to suggest a propensity to act in this way. There is no apparent motive for his doing so. He was in steady employment. There is no suggestion he needed money. He is of a retiring disposition. He was not robust physically. He had no martial arts training. It is difficult to accept that he could have presented to the Eastons and challenged them in the way they described.

147. The way in which Mr Hall conducted himself in the hours, days and weeks following the offending was inconsistent with involvement in the offending. He followed his normal evening routine. He went to work the following day showing no sign of trauma.

148. There is at least one other person who fits the profile of the offender and who has not been finally excluded from involvement. Mr Hall does not need to point to a suspect in order to establish his innocence but the ongoing police enquiries into the identity of the offender is consistent with his case that someone else committed the crimes.

149. The evidence pointing to the offender being someone other than Mr Hall is overwhelming. The circumstantial evidence is compelling. The offender's possession of his bayonet and hat is troubling but there is an available and not implausible explanation as to how that occurred. In my view, for the reasons I have outlined, Mr Hall has shown that on the balance of probabilities he is innocent of the crimes of which he was convicted.

Conclusion

150. I am satisfied that Mr Hall has proven on the balance of probabilities that he is innocent of murder and intentional wounding.

21 February 2023
Rodney Hansen CNZM KC
Shortland Chambers
Auckland

SECOND REPORT FOR MINISTER OF JUSTICE

ON COMPENSATION CLAIM BY ALAN HALL

BY

HON RODNEY HANSEN CNZM KC

TABLE OF CONTENTS

Introduction

1. In my report of 21 February 2023 (**first report**), I advised the Minister of Justice that, in my opinion, Alan Hall had proved on the balance of probabilities that he was not guilty of murdering Arthur Easton and intentionally wounding his son, Brendon, on 13 October 1985.

2. In accordance with the *Compensation Guidelines for Wrongful Conviction and Detention* 2023 (the **Guidelines**), the Minister has requested that I provide advice on an appropriate amount of compensation for Mr Hall.

3. Although the Guidelines were updated on 28 February 2023, they apply to Mr Hall's claim.[1] Since his application for compensation was made, there have been no changes to the Guidelines that affect his eligibility to compensation.

4. An applicant for compensation is responsible for establishing that their application meets the stipulated criteria for compensation and for providing any information reasonably required to consider the application.[2] For these purposes a timetable was agreed with Mr Hall's counsel and Crown counsel for the filing of submissions and any supporting materials. The submission of Mr Hall's counsel, Nick Chisnall KC, was accompanied by affidavits from Mr Hall himself, his brothers Gregory and Geoffrey, and Mr Chisnall's employed barrister, Luke Elborough. Crown Law made helpful submissions in response. In addition, I have been able to access any relevant evidence filed in support of the first stage of the compensation application.

Criteria for compensation

5. Under the Guidelines, compensation is payable only if Cabinet is satisfied on the Minister's advice that:[3]

    (a) The applicant is innocent on the balance of probabilities of the offence(s) in respect of which the application was made;

---

1 *Compensation Guidelines for Wrongful Conviction and Detention* (28 February 2023) at [5]–[8].
2 Guidelines at [18].
3 Guidelines at [17].

(b) Compensation is in the interests of justice, having regard to the purposes of the compensation scheme, and taking into account:

i. The conduct of the applicant leading to the prosecution and conviction;

ii. All other relevant circumstances; and

(c) The applicant has suffered losses that are compensable under the Guidelines.

Interests of justice

6. The first criterion having been addressed by my first report, I will first consider whether compensation is "in the interests of justice" before assessing the applicant's claim in relation to each category of compensation available to him.

7. The purposes of the compensation scheme described by the Guidelines are to:[4]

(a) Vindicate innocent defendants;

(b) Provide reasonable compensation for losses arising from wrongful conviction and consequent loss of liberty;

(c) Enhance public confidence in the justice system.

8. There is no doubt that a grant of compensation would serve each of those purposes. Self-evidently, it would vindicate an innocent defendant and compensate him for losses arising from his wrongful convictions. Having regard, in particular, to the deficiencies in police and prosecutorial practice highlighted by the Supreme Court,[5] compensation is clearly important to restore and enhance public confidence in the justice system.

9. While Mr Hall's conduct in the course of the Police investigation was the subject of adverse comment at his trial, seen in the light of his subsequent diagnosis of Autism Spectrum Disorder,[6] it would be wrong to see his behaviour as a disqualifying consideration.

---

4 Guidelines at [3].

5 *Hall v R* [2022] NZSC 71, [2022] 1 NZLR 131.

6 As to which, see the first report at [93]–[98].

10. There are no other relevant circumstances which, in my view, require consideration. A grant of compensation is clearly in the interests of justice.

Categories of compensation

11. The Guidelines provide:[7]

> Compensation under these Guidelines may comprise:
>
> a A monetary amount of $150,000 per year for each year of imprisonment, or $75,000 for each year serving a sentence of detention;
>
> b A monetary amount of up to $100,000 per year for loss of livelihood during the period of imprisonment or serving a sentence of detention;
>
> c A monetary amount of $75,000 per year for time spent on restrictive bail or parole;
>
> d Reasonable costs incurred in obtaining a pardon or having the wrongful conviction set aside;
>
> e Reasonable costs incurred in pursuing the application for compensation;
>
> f A transition allowance of up to $50,000, in cases of imprisonment, or up to $25,000, in cases of detention, to aid reintegration into society and recognise loss of future earning capacity;
>
> g A monetary amount of up to $250,000 to compensate for any other significant pecuniary losses exceeding $50,000 in total, in cases of imprisonment, or $25,000 in total, in cases of detention;
>
> h An adjustment, by way of increase or decrease to the total amount of compensation, of up to $150,000, in cases of imprisonment, or up to $75,000, in cases of detention, to reflect aggravating and mitigating features;

12. I deal with each of these categories in turn.

Monetary amount for each year of imprisonment

13. Compensation category (a) provides for "A monetary amount of $150,000 per year for each year of imprisonment, or $75,000 for each year serving a sentence of detention".[8]

14. The applicable base rate is $150,000. It provides compensation for the following losses:[9]

> a Non-pecuniary losses, being:
>
> i Loss of liberty;
>
> ii Loss of reputation;
>
> iii Loss or interruption of family or other personal relationships;

---

7 Guidelines at [29].

8 Guidelines at [29(a)].

9 Guidelines at [32].

iv Loss or interruption of school or study opportunities;

v Mental or emotional harm; and

b Pecuniary losses below the threshold for significant loss specified in paragraph 36, being $50,000, in cases of imprisonment, or $25,000, in cases of detention.

15. It is helpful to begin with a chronology of relevant dates.

2 April 1986	Mr Hall arrested, charged and remanded in custody
19 September 1986	Found guilty of murder and wounding
26 September 1986	Sentenced to life imprisonment
14 November 1994	Released on parole
9 May 2012	Recalled to prison
2 March 2022	Released on parole
8 June 2022	Convictions quashed

16. In computing time in prison, time spent on remand prior to conviction is excluded.[10] The time spent by Mr Hall in prison was accordingly:

(a) From 19 September 1986 until 14 November 1994, a period of 8 years, 1 month and 26 days. The time of conviction is the appropriate starting point as the Guidelines provide that, in addition to a claimant's sentence of imprisonment, the period of imprisonment may include any associated period of imprisonment following conviction such as a remand in custody.[11]

(b) From 9 May 2012 to 2 March 2022 when he was again released on parole, a period of 9 years, 9 months and 21 days.

17. The aggregate period that Mr Hall spent in prison was accordingly 17 years, 11 months and 17 days.

18. The Guidelines provide for compensation based on an annual rate of $150,000 for each year or part year. It is clear from the examples given in the Guidelines that where part of

10 Guidelines at [30(a)] and [30(c)].

11 Guidelines at [33]–[34] ("Explanation").

a year has been spent in prison, the annual rate is to be apportioned accordingly.[12] That would require a compensation payment of $2,694,000 being 17.96 years at $150,000 per year.

19. The Guidelines provide that losses are compensable only to the extent that they are attributable to the applicant's wrongful conviction and consequent sentence of imprisonment or detention.[13] Having regard to this requirement, I have been specifically asked to advise what impact, if any, Mr Hall's recall to prison and the reasons for the recall should have on the assessment of compensation.

20. Section (9)(2)(a) [redacted]

21. Section (9)(2)(a) [redacted].

22. I see no reason why the circumstances associated with Mr Hall's recall to prison should affect his right to compensation. He would not have been subject to the parole condition or liable to be recalled to prison were it not for his wrongful convictions. While the breach of a parole condition was the instrumental cause of his recall, the non-pecuniary losses the annual rate is intended to compensate are entirely attributable to Mr Hall's wrongful conviction and sentence.[15] And Mr Hall sustained those losses during this second term of imprisonment just as he did during the first.

---

12 Guidelines at [34] ("Examples").

13 Guidelines at [30(a)].

14 Mr Hall admitted the offending to the Police while being interviewed in relation to the Easton homicide. For the reasons given by the Supreme Court on appeal, it is almost likely that, had it been challenged, evidence of the admission would have been inadmissible.

15 Guidelines at [32(a)].

23. I recommend compensation of $2,694,000.00 for this category of compensation.

Loss of livelihood

24. Compensation category (b) provides for "A monetary amount of up to $100,000 per year for loss of livelihood during the period of imprisonment or serving a sentence of detention".[16]

25. The Guidelines provide that the base rate may be adjusted to reflect annual loss of livelihood while imprisoned to a maximum of $100,000.[17] Loss of livelihood is defined as:[18]

> loss of earnings, or earnings-related, income for the period from when the applicant is imprisoned or commences a sentence of detention until the applicant is treated as wrongly convicted under paragraph 14. It does not include loss of an unemployment benefit or similar government assistance.

26. Mr Hall seeks compensation of $82,500 per annum under this head.

27. Mr Hall was aged 24 and in fulltime employment when he was arrested. He had been in paid employment for most of the time since leaving school at aged 16. For five years he was employed as a process worker at the Cadbury factory in Papakura. He left after being disciplined for answering back to a supervisor. He had difficulty finding a new job due, he said, to anxiety[19] and was unemployed for several months. He secured employment with Stirling Pharmaceuticals after his father arranged an interview for him. He worked there for about two and a half years until his arrest. He was well thought of by his employers. His supervisor described him as a good and honest employee.[20] His factory manager told the Police he was reliable and dependable.

28. After his release on parole in 1994, Mr Hall sought employment. He says he wanted to work but could not get a job "because no one wanted to have a guy convicted of murder".[21] Eventually, in October 1995, he obtained part-time employment as a shelf-stacker at a supermarket. He lost that job in June 1996. Section (9)(2)(a) [redacted]

16 Guidelines at [29(b)].
17 Guidelines at [33].
18 Guidelines at [10].
19 Interview with Tanya Breen, Clinical Psychologist.
20 Trial transcript at 137.
21 Affidavit of Alan Hall (2 May 2023).

Section (9)(2)(a) [redacted]

[redacted] He says that after losing his job, he became "really depressed". His doctor helped him to secure a sickness benefit which since then has been his sole source of income when not incarcerated.

30. Mr Hall's counsel has provided evidence in the form of advertisements and the government careers website,[22] which indicate that wage rates for the sort of jobs Mr Hall had before his conviction are in the range of $23 to $28 per hour. He submits that it is likely that Mr Hall's skills were transferrable, and he could have shifted to a more lucrative industry, such as meat or seafood, where a process worker can expect to earn up to $31.73 per hour. On the assumption that Mr Hall would have been more generously rewarded than in his existing job and would have likely been able to apply his skills to a higher paying sector, it is said that the higher rate should be adopted and, further, it should be assumed that Mr Hall would have worked an average of 10 hours overtime per week. That would equate to $82,500 per annum or $1,485,000 over the 18 year period.

31. Based on his record of steady employment before his arrest, I consider it reasonable to proceed on the assumption that, had he not been incarcerated in 1986, Mr Hall would have remained in fulltime employment. His inability to find work while on parole is readily explained by the resistance he experienced from potential employers and the effect of imprisonment on his fragile mental state.

32. I am not convinced, however, that his skills would necessarily have been readily transferred to a higher-paying sector of industry. The physical and mental attributes, and

22 New Zealand Government (2023) <www.careers.govt.nz>.

level of educational attainment required,[23] could have impeded that. Health and safety requirements are more stringent. Often, the work is seasonal.

33. That said, I accept that it is reasonable to suppose that, with time and experience, Mr Hall would have enhanced his skills and could be expected to have been remunerated accordingly. I consider an hourly rate which averaged $30.00 in 2023 rates would appropriately reflect his likely earnings over the two periods.

34. I accept that some overtime can be assumed but not an average of ten hours per week which would effectively have Mr Hall working a ten-hour day. I consider it reasonable, however, to assume that generally he could have expected to supplement his basic wage with overtime. I propose to allow five hours per week.

35. On that basis, Mr Hall's annual loss of livelihood for the period of his incarceration would be $70,200 per annum. When adjusted for income tax as required by the Guidelines, this amount is $55,039.94.[24] The Guidelines require the base rate (of $150,000) to be adjusted by this amount ($55,039.94),[25] leading to a total compensation of $3,682,517.32 being 17.96 years at $205,039.94 (the adjusted annual rate) per year.

Time spent on parole

36. Compensation category (c) provides for "A monetary amount of $75,000 per year for time spent on restrictive bail or parole".[26]

37. Restrictive bail or parole is defined as:[27]

> (a) a period of bail with an electronic monitoring (EM) condition imposed under the Bail Act 2007; or
>
> (b) a period of parole with a residential restriction condition imposed under the Parole Act 2002;
>
> occurring during the time between conviction and when the applicant is treated as wrongly convicted under paragraph 14.

---

23 The careers.govt.nz website refers to the need to pass a literacy and numeracy test.
24 PAYE and ACC deductions totalling $291.54 per week using the tax calculator from moneyhub.co.nz.
25 Guidelines at [33]–[34].
26 Guidelines at [29(c)].
27 Guidelines at [10].

38. When Mr Hall was first released on parole in 1994, the Parole Act 2002 was not in force. He was released under the provisions of the Criminal Justice Act 1985, the relevant parts of which were repealed on 30 June 2002.

39. I am satisfied the Guidelines should be interpreted to include parole under the Criminal Justice Act which governed release on parole prior to the passing of the Parole Act 2002. It cannot have been intended to exclude otherwise eligible applicants merely because they were on parole under the predecessor legislation. In Mr Hall's case it would lead to the anomalous outcome of entitlement to compensation for time on parole after 1 July 2002 but not for the period before.

40. The more difficult question is whether Mr Hall was subject to a "residential restriction condition" as required by the Guidelines' definition of "parole".

41. Mr Hall's release on parole on 14 November 1994 was subject to the following standard conditions:

> (a) You shall report in person to the probation officer for the district in which you are to reside as soon as practicable and not later than 72 hours after release:
>
> (b) You shall report to the probation officer under whose supervision you are as and when required to do so by the probation officer, and shall notify the officer of your residential address and the nature and place of your employment when requested to do so:
>
> (c) You shall obtain the consent of the probation officer before moving from your residential address; and, if you move to any place within the district of another probation officer, you shall within 72 hours after arriving in the district, notify that other probation officer of your address, and the nature and place of your employment:
>
> (d) You shall not reside at any address at which the probation officer has directed you not to reside:
>
> (e) You shall not engage, or continue to engage, in any employment or occupation in which the probation officer has directed you not to engage or continue to engage:
>
> (f) You shall not associate with any specified person, or with persons of any specified class, with whom the probation officer has, in writing, directed you not to associate.

42. His parole was also subject to special conditions, which were to:

> 1. Reside with Mrs S Hall at Section (9)(2)(a) or at an address approved by the Probation Officer; and

2. Undergo any psychological or other counselling as directed by the Probation Officer.

43. Both standard and special conditions were stipulated to continue for the duration of Mr Hall's time on parole, that is, for the rest of his life. As earlier noted,[28] a non-association condition was added in 2005.

44. In 2022, the special conditions included:

> (1) To reside at Section (9)(2)(a) , or any other address approved in writing by a probation officer, and not move from that address unless you have the prior written approval of a probation officer.
>
> …
>
> (5) To comply with the requirements of electronic monitoring and provide unimpeded access to your approved residence by a Probation Officer and/or representatives of the monitoring company for the purpose of maintaining the electronic monitoring equipment as directed by a Probation Officer.
>
> …
>
> (10) For three months from your release date, to be at your approved address between the hours of 10pm – 6am daily unless you have the prior written approval of a Probation Officer.
>
> …
>
> (12) To submit to electronic monitoring as directed by a Probation Officer in order to monitor your compliance with any conditions relating to your whereabouts.

45. For Mr Hall, it is submitted that for both periods of parole he was subject to a residential restriction condition and is entitled to compensation at the prescribed rates.

46. The reference in the definition of "restrictive bail or parole" to a "residential restriction condition" appears to be a reference to s 15(3) of the Parole Act which relevantly provides:

> **15 Special Conditions**
>
> …
>
> (3) The kinds of conditions that may be imposed as special conditions include, without limitation,—
>
> (a) conditions relating to the offender's place of residence (which may include a condition that the offender reside at a particular place), or his or her finances or earnings:
>
> (ab) residential restrictions:

[28] Above at [20].

Of relevance also is s 15(3)(f) which permits special conditions to include:

> (f) conditions requiring the offender to submit to the electronic monitoring of compliance with any release conditions or conditions of an extended supervision order, imposed under paragraph (ab) or (e), that relate to the whereabouts of the offender:

47. Residential restrictions are defined as "the special conditions described in section 33".[29] The obligations of a parolee on whom residential restrictions have been imposed under s 15(3)(ab) of the Parole Act are set out in s 33 of that Act. Section 33(2) provides:

> **33 Residential Restrictions**
>
> …
>
> (2) An offender on whom residential restrictions are imposed is required—
>
> (a) to stay at a specified residence:
>
> (b) to be under the supervision of a probation officer and to co-operate with, and comply with any lawful direction given by, that probation officer:
>
> (c) to be at the residence—
>
> (i) at times specified by the Board; or
>
> (ii) at all times:
>
> (d) to submit, in accordance with the directions of a probation officer, to the electronic monitoring of compliance with his or her residential restrictions:
>
> (e) to keep in his or her possession the licence issued under section 53(3) and, if requested to do so by a constable or a probation officer, must produce the licence for inspection.

48. It is clear that when releasing Mr Hall in 2022, the Parole Board was imposing residential restrictions under s 15(3)(ab). That is apparent from the conditions noted above.[30] For Mr Hall, it is submitted that the residential condition imposed in 1994 was equivalent to a "residential restriction condition". It is said to have significantly encroached on his freedom of movement, exacerbated by the continuing risk that he would be recalled to prison. The Crown is sympathetic to that submission, suggesting that "restrictive" is not a rigid test; that it does not necessarily require electronically monitored detention or its equivalent; and requires an assessment in the round about what the conditions of parole mean for each individual. On that basis, the Crown suggests that a more expansive

---

29 Parole Act 2002, s 4(1) definition of "residential restrictions".

30 Above at [44].

interpretation of what is restrictive may be warranted which recognises the physical, social and psychological restrictions consequent upon Mr Hall's life sentence.

49. In my view, the Guidelines simply do not permit the degree of flexibility I am urged to adopt. Residential restrictions under the Parole Act impose severe restrictions on an offender's freedom of movement as the conditions imposed on Mr Hall in 2022 illustrate. Similarly, a period of bail will qualify only if an electronic monitoring condition is imposed. The Guidelines are plainly concerned to ensure that those subject to quasi-custodial restrictions while on bail or parole should be compensated. Those who retain largely unrestricted freedom of movement, without conditions such as a curfew or electronic monitoring, are not eligible. The test is whether the conditions imposed on Mr Hall in 1994 under the Criminal Justice Act are in substance commensurate with residential restrictions. The conditions to which he was subject do not reach that threshold.

50. For Mr Hall, it is submitted that, were I to conclude that he does not qualify for compensation under [29(c)] of the Guidelines for the period on parole 1994–2012, there is a discretion to compensate him for non-pecuniary losses while on parole. It is argued that [29] of the Guidelines does not exhaustively list the relevant heads of compensation and that by analogy with the approach adopted in the case of *Teina Pora*,[31] I could recommend that Mr Hall be compensated for non-pecuniary losses while on parole. The Crown agrees that the non-exhaustive drafting of [29] – the use of the words "may comprise" – could permit compensation under a heading not specifically provided for.

51. It is further submitted that, although the Guidelines make no provision for loss of livelihood while on parole, Mr Hall should be compensated for his net loss of earnings over the period on the same basis as he is compensated for the time he spent in prison. It is said to be anomalous that a person sentenced to home detention should be compensated when those on parole facing equivalent restrictions are denied compensation.

52. The Crown, while acknowledging that the wording of the Guidelines would appear to preclude a claim for loss of livelihood while on parole, suggests that Mr Hall could be

---

[31] Rodney Hansen KC *Second Report for the Ministry of Justice on Compensation Claim by Teina Anthony Pora* (31 May 2016).

compensated under this head by increasing the amount paid to him for the time he was in prison.

53. I am sympathetic to Mr Hall's claim under this head. He spent an extraordinarily long time on parole before being recalled to prison. In ways not captured by residential restrictions, he endured ongoing non-pecuniary losses: his status as a convicted murderer, his exposure to recall, and, as highlighted by the Crown, the effect on his confidence, ambition, relationships and sense of self. These in turn affected his ability to secure and hold down a job.

54. But the Guidelines are clear and the suggested solutions would do violence to their words and apparent intent. The process by which compensation is calculated is quite different from that which prevailed when Mr Pora's application was considered. The basis on which compensation is payable for time on parole is carefully delineated. Significant restraints on liberty and freedom of movement are required. There is no room to create an additional category by giving [29] of the Guidelines an extended meaning. Compensation *may* but not *must* comprise payments in the listed categories. The use of the permissive "*may*" is not a licence to create additional heads of compensation. To do so, would be to rewrite the Guidelines.

55. That said, the circumstances of Mr Hall's case are truly exceptional and, in my view, justify an *ex gratia* payment to recognise the losses he suffered while on parole. While the restraints on his freedom of movement were relatively minor, for the more than 17 years he was on parole, he was branded a convicted murderer and was at constant risk of recall to prison. The social and psychological consequences of his status would have been exacerbated by his disabilities. The effect on his prospects of employment have already been alluded to. Except for the brief period as a part-time supermarket worker, he was unemployed for the entire period he was on parole between 1994 and 2012. He received a benefit, but this would have been significantly less than the wage he could have expected to received as a process worker.

56. I suggest that Mr Hall could be compensated for his losses while on parole by an *ex gratia* payment related to the annual rate prescribed by [29(c)] of the Guidelines. An annual sum of two thirds of the prescribed rate – $50,000 – could be seen as appropriately recognising

his losses over the period. Mr Hall was on parole between 1994 and 2012 for a total of 17 years, five months and 24 days which, at $50,000 per annum, would total $874,000. This would be additional to the compensation for the 98 days he spent on parole on restrictive conditions in 2022 which, at the annual rate of $75,000 is $20,137.

Inflation adjustment

57. For Mr Hall, it is submitted that I should consider an adjustment to the annual base rate to reflect the decline in value of money since the rate was set in 2020. I do not think that is justified. As submitted by the Crown, rates would have been reviewed when the most recent iteration of the Guidelines was issued. The Cabinet Paper envisaged five-yearly reviews to allow inflationary changes to be adopted.[32] That will avoid the concern that arose out of Teina Pora's application for compensation,[33] and ensure base rates keep pace with inflation.

Transition allowance

58. Compensation category (f) provides for "A transition allowance of up to $50,000, in cases of imprisonment, or up to $25,000 in cases of detention, to aid reintegration into society and recognise loss of future earning capacity".[34]

59. This category of compensation is elaborated as follows in the Guidelines at [39]–[40]:

> **Transition allowance**
>
> 39 A transition allowance of up to $50,000, in cases of imprisonment, or up to $25,000, in cases of detention, may be made to cover some of the costs of reintegration into society, such as counselling, vocational counselling or re-training, education costs or health costs for a transitional period. The allowance is also intended, where applicable, to provide a catch-up period to compensate for loss of future earning capacity.
>
> 40 Payment of a transition allowance may be conditional on the production of receipts for any specific anticipated costs for which the allowance is made.

60. For Mr Hall it is submitted that he should receive a transition allowance in relation to his release from prison in 1994 as well as in 2002. It is said that he faced the need to

---

32 Cabinet Paper, Office of Minister of Justice *New Compensation Guidelines for Wrongful Conviction and Imprisonment* (MOJ, 20 August 2020), at [46].

33 *Pora v Attorney General* [2017] NZHC 2081, [2017] 3 NZLR 683.

34 Guidelines [29(f)].

reintegrate into society on both occasions and it would be unfair to narrowly interpret the Guidelines to deny him redress.

61. The Crown accepts that an entitlement to the allowance could in principle be triggered twice while cautioning against the risk of double counting if Mr Hall is generously compensated for the time he spent on parole including loss of earnings over the period.

62. In my view neither approach would be appropriate. The allowance is clearly intended to aid reintegration following acquittal. It is prospective in nature. Its purpose is to aid the claimant after his or her conviction has been set aside. In Mr Hall's case, that did not occur until 2022. When he was released in 1994 he was a convicted murderer and plainly ineligible under this head.

63. I am satisfied, however, that Mr Hall should receive the maximum allowable sum. His well-documented mental health difficulties have been exacerbated by two lengthy periods of imprisonment separated by a challenging period on parole. At the age of 61, his prospects of securing gainful employment will be further limited. He will require professional support as recognised by the Parole Board in conditions requiring assessment, counselling and treatment imposed on his release in 2022.

64. Mr Hall deposes that his fears that people will stare at him and talk behind his back have discouraged him from seeking work.[35] His dream is to run his own business. Whatever he does, his loss of income and the costs of necessary counselling and support will be well in excess of $50,000.

65. I recommend payment of $50,000 under compensation category (f).

Reasonable costs

66. Compensation category (d) provides for "Reasonable costs incurred in obtaining a pardon or having a wrongful conviction set aside".[36] Compensation category (e) provides for "Reasonable costs incurred in pursuing the application for compensation".[37]

---

35 Affidavit of Alan Hall (2 May 2023).
36 Guidelines at [29(d)].
37 Guidelines at [29(e)].

67. The Guidelines make the following further provision for costs under these heads:

> 37 Reasonable costs, as specified in paragraph 29(d) and (e), can include:
>
> a Legal costs;
>
> b Costs of engaging other professionals such as private investigators, medical specialists, accountants, or actuaries.
>
> 38 Reasonable legal costs should be assessed with reference to the Crown Solicitor rates set by the Solicitor-General for work on criminal prosecutions on instructions from departments. These rates are to be used as a guide only and higher (or lower) rates may be reasonable in the circumstances of an individual application.

68. The costs claimed are in three sub-categories:

(a) Costs incurred by Mr Hall's family.

(b) Legal costs.

(c) Private investigator's costs.

Costs incurred by Mr Hall's family

69. The battle to overturn Mr Hall's convictions was fought tenaciously by family members with expert help when they could afford it, or when it was on offer. For many years, Mr Hall's mother dedicated herself to clearing his name. His brothers, Greg and Geoff, attest to her abiding belief in Alan's innocence and her single-minded devotion to the cause. Geoff says that, though his mother's faith in Alan never flagged, by 2002 her efforts had taken their toll. For the next 12 years Geoff took primary responsibility for the family's campaign. Greg took over from him in 2012.

70. Mr Hall was legally aided for his trial and the appeal which followed. Bruce Stainton of the law firm Mason Lawrie and Stainton (**Mason Lawrie**) was instructed and paid privately by Mrs Hall for the purpose of the appeal. He also assisted with the first of two applications for the exercise of the Royal prerogative of mercy (**Royal prerogative**) and was responsible for preparing and lodging the third.

71. Mr Elborough, the barrister assisting Mr Chisnall, has analysed the accounts of Mason Lawrie and exhibited key documents to his affidavit. His evidence shows that Mrs Hall paid Mason Lawrie a total of $20,081.08 made up as follows:

(a) $5,484.42 for the appeal;

(b) $14,030.89 in legal/investigation expenses mainly in relation to Royal prerogative applications;

(c) An additional charge of $565.77, likely to comprise interest on overdue balances.

72. Geoff Hall deposes that Mason Lawrie's accounts are not a complete representation of the legal fees paid by Mrs Hall for the appeal and the Royal prerogative applications. He says that about half of the proceeds of the sale of Mrs Hall's home in Section (9)(2)(a) – $89,000 – was used to pay legal expenses and to repay loans made by family members who contributed towards costs. On that basis, Mr Hall seeks reimbursement in the sum of $88,283.46 which is $44,500 adjusted for inflation.[38]

73. Alternatively, it is submitted on Mr Hall's behalf that it is "open to me to recommend" that compensation in relation to legal and investigative expenses should be fixed at $337,824. The case for compensation at that level is put as follows in the written submissions of Mr Hall's counsel:

> 68 Allowing for inflation, the approximately $44,500 that the Halls state was expended between 1988-1993 on legal and investigative expenses, equates to $88,283.46 when the consumer price index is applied.
>
> 69 The true impact of Mrs Hall's sale of the family home to meet the legal expenses incurred in the lead-up to the third prerogative of mercy application must be measured by reference to the current value of money. It is worthwhile comparing the median house price in 1992 vis-à-vis 2023. In 1992, the median New Zealand house price was $110,000. As such, the Section (9)(2)(a) house sold for a price below that median. In 2023, the median house price is $987,000. Assuming that Section (9)(2)(a) remains valued at about 80 per cent of the median house value, it is currently worth about $790,000. The alternative is to rely upon the CV for the property, which is $880,000. To recapitulate, Mrs Hall paid about half of the sale proceeds to the professionals assisting with Alan Hall's case. She sold her main asset to do so. Looked at using 2023 house prices, Mrs Hall deprived herself and her children, including Alan, of about $395,000 (if the more conservative median value is adopted).
>
> (footnotes omitted)

[38] Using the inflation adjustment calculator on the website of the Reserve Bank of New Zealand.

74. I am unable to accept that compensation under this head should be calculated on either of the bases put forward. The immediate and critical obstacle is that it has not been shown that half of the proceeds of sale – $44,500 – was used to pay legal and investigative expenses. I accept that the loss of records puts the family at a serious disadvantage establishing this part of the case. Only the lawyer's records have been retrieved. But they appear to account for all legal services rendered from and including the appeal in 1987 until the third application for the Royal prerogative was made in 1991. Disbursements include payments totalling $2,237 for investigator's fees. Over the period, Mrs Hall made numerous payments on account. By February 1992 when she was still living at Section (9)(2)(a), the balance outstanding had been reduced to $2,677.13. The final payment of $3,242.87 (which includes the $565.77 presumed to comprise interest) was paid after the sale of the family home.

75. There is nothing to show that there was additional expenditure on legal fees or the costs of investigations. When the house was sold, the balance outstanding was relatively modest. While I do not doubt the decision to sell was motivated in part by a desire to pay off debts, there is no principled basis for recovering any loss on sale as compensation. There is no evidence, in any event, that the sale price was below market value,[39] or that the replacement home bought by Mrs Hall did not enable her to maintain the value of her investment.

76. I am satisfied that the costs incurred by Mrs Hall were reasonable and are properly recoverable; [30(b)] of the Guidelines expressly provides that losses are compensable to the extent that they had been incurred by or on behalf of the applicant. While the Guidelines make no specific provision for adjusting historical costs to present value, I consider that reasonable compensation for costs incurred will not be achieved unless they are inflation-adjusted. A CPI adjustment to the costs incurred by Mrs Hall, using a midpoint of the first quarter of 1990, would require an inflation-adjusted payment of $42,609.59.[40] I recommend payment of that sum.

---

39 It was bought by the Housing Corporation.

40 Reserve Bank of New Zealand | Te Pūtea Matua "Inflation calculator" (3 May 2023) <www.rbnz.govt.nz>.

77. Mr Hall also asks that compensation cover time spent and costs incurred by his brothers comprising, in summary:

(a) Time spent by Geoff reviewing the files uplifted from his mother in 2002 – 250 hours.

(b) Time spent by Geoff working with a television journalist, Bryan Bruce, who produced a documentary that aired on public television in 2009 – 156 hours.

(c) Time spent by Geoff between 2006 and 2008, meeting with the Innocence Project of New Zealand – not quantified.

(d) Time spent by Geoff in 2017–2018 with Michael Wesley-Smith on his "Grove Road"[41] podcast – 55 hours.

(e) Time spent by both Geoff and Greg attending meetings with Tim McKinnel. Both took leave from work for this purpose. They estimate there were 20 such meetings, each averaging four hours – 160 hours in total.

78. Mr Hall proposes that his brothers' time is compensated at $30 per hour which, for a total of 621 hours, would be $18,630.

79. Mr Hall also seeks reimbursement of the cost of his and family members' flights to Wellington and accommodation for the Supreme Court hearing. Geoff paid $2,911.25 for Alan's and his travel. Greg paid $1,984.60 for his own costs and those of two other siblings.

80. There are other related costs incurred by Greg and Geoff that are acknowledged not to be compensable. They include a psychologist's report that cost $4,400.00 and the fees of a barrister retained to represent Mr Hall at parole hearings and to oppose his recall to prison in 2012.

81. Reasonable costs are not confined to those particularised in [37] of the Guidelines.[42] The question that arises is whether the costs claimed:

(a) Have been incurred by or on behalf of Mr Hall;

---

41 The crime scene.

42 The use of the words "can include" make it clear the list is not exhaustive.

(b) For the purpose of having the wrongful conviction set aside; and

(c) Are reasonable.

82. In my view it is only realistic to acknowledge that the successful appeal to the Supreme Court was the culmination of years of dedication, sacrifice and sheer hard work by members of the Hall family. They did not confine themselves to their strict legal remedies, appreciating no doubt that the media and the court of public opinion can play a key role in the pursuit of justice.[43] Recognising that and having regard to the purposes of the scheme, I accept that reasonable costs under this head may include the costs of ancillary steps taken for the ultimate purpose of having the convictions set aside. I accept that time spent briefing Mr McKinnel, engaging with the media, and the preparation necessary for those tasks, meet that criterion. The difficulty for Mr Hall is the requirement that to be recoverable, costs must have been incurred. The Guidelines clearly contemplate that there was expenditure for which reimbursement can be claimed. While fully recognising the sacrifices made by members of the Hall family, the cost of their time does not qualify. Costs in this category were not incurred.

83. In contrast, the costs claimed for the attendance of the Hall family at the Supreme Court meet all three requirements. The Supreme Court hearing was the culmination of 35 years devoted to the dogged pursuit of justice for their son and brother. In the circumstances, it does not seem unreasonable that the cost of their attendance – both Alan's and his siblings – should be reimbursed. I recommend payment of the sums claimed totalling $4,895.85.

84. In total, I recommend payment of $47,505.44 for the costs incurred by Mr Hall's family on behalf of Mr Hall.

Legal costs

85. Mr Hall was legally aided for his appeal. Legal costs of $53,800 plus GST ($61,870) claimed are those of Mr Chisnall for pursuing the claim for compensation.

---

43 The Hall family's efforts in this regard and the difficulties they faced as a result of the passage of time were acknowledged by the Supreme Court: *Hall v R* [2022] NZSC 71, [2022] 1 NZLR 131 at [41].

86. Mr Chisnall has provided detailed time records for the period 14 June 2022 to date. Time spent totals 134.5 hours. I am satisfied that the time spent is reasonable. Much of it was for the preparation of the two sets of submissions provided for the purpose of my report. Both were comprehensive and constructive. Mr Chisnall has continued to provide Mr Hall with legal services of the highest standard.

87. He has charged an hourly rate of $400. This is somewhat higher than Crown Solicitor rates which are to be used as a guide.[44] I am satisfied, however, that the rate is justified. As the Crown has acknowledged, the successful appeal and the pursuit of compensation required counsel of high calibre. The hourly rate appropriately recognises Mr Chisnall's experience and expertise. The rate is considerably less than routinely charged by counsel of equivalent seniority and skill.

88. It should also be noted that Mr Chisnall has not charged for the services of his assistant, Mr Elborough, who has worked closely with Mr Chisnall on the claims.[45]

Private investigator's costs

89. Timothy McKinnel, former police detective and private investigator, with his assistant, Katya Paquin, has provided assistance, advice and support to Mr Hall and his family since 2018. Mr McKinnel's inquiries and evidence were critical to the successful appeal.[46]

90. Much of Mr McKinnel's time was covered by legal aid but he and Ms Paquin spent a great deal of time assisting the Hall family in various ways in their pursuit of justice for Mr Hall and, more recently, for compensation. These have included liaising with the media; assisting the family with parole hearings; and engagement in the compensation process, the inquiry by Nicolette Levy KC and the inquiry by the Independent Police Conduct Authority.

91. Mr Chisnall says Mr McKinnel's support had a tangible impact on the progression of Mr Hall's appeal and the compensation applications. His familiarity with the Police

---

44 Guidelines at [38].

45 He was responsible for examining and collating the records for legal services: see above at [71].

46 See my first report at [75].

investigation allowed Mr Chisnall to effectively marshal the evidence in support of the application and the inquiries associated with it.

92. Mr Chisnall makes particular reference to Mr McKinnel's role in liaising with the media. He says the media played a vital role in inviting public scrutiny of the miscarriage of justice suffered by Mr Hall and more generally the failure of the criminal justice system to provide a remedy. Mr Chisnall affirms that Mr McKinnel materially aided the Hall family in its dealings with the media.

93. Mr McKinnel has submitted an invoice for a total of 204 hours over the five-year period at an hourly rate of $200. Ms Paquin's time is not separately charged. The only expenditure for which reimbursement is sought is Mr McKinnel's airfare for the Supreme Court appeal hearing. Other disbursements such as office and travelling expenses are not charged.

94. Having reviewed Mr McKinnel's detailed account, I am satisfied (as is the Crown) that his costs are reasonable and incurred for the purpose of having the wrongful conviction set aside or pursuing the application for compensation. I recommend payment in full in the sum of $47,695.99 (GST inclusive).

95. In total, I recommend payment of $157,071.43 for reasonable costs under compensation categories (d) and (e).

Other significant pecuniary losses

96. Compensation category (g) provides for "a" monetary amount of up to $250,000 to compensate for any other significant pecuniary losses exceeding $50,000 in total, in cases of imprisonment, or $25,000 in total, in cases of detention.

97. There are no losses for which compensation in this category is payable.

Aggravated and mitigating features

98. Compensation category (h) provides for "An adjustment, by way of increase or decrease to the total amount of compensation, of up to $150,000, in cases of imprisonment, or up to $75,000 in cases of detention, to reflect aggravating and mitigating features".[47]

---

47 Guidelines at [29(h)].

99. The Guidelines further explain aggravating and mitigating features as follows:

> **Aggravating features**
>
> 42 An applicant's compensation may be increased by an amount up to $150,000, in cases of imprisonment, or up to $75,000, in cases of home detention, to reflect:
>
> a Misconduct or negligence in conducting the investigation that led to the applicant's prosecution and conviction;
>
> b Bad faith by the prosecution in bringing or continuing the prosecution.
>
> **Mitigating features**
>
> 43 An applicant's compensation may be decreased by an amount up to $150,000, in cases of imprisonment, or up to $75,000, in cases of home detention, to reflect blameworthy conduct by the applicant contributing wholly or in part to the prosecution or conviction.

100. Mr Hall claims an increase in compensation by the maximum amount to take account of aggravating factors. He points to the findings of the Supreme Court that:[48]

- The statement of a key witness at trial was deliberately altered.
- Relevant documents were withheld from the defence.
- Police interviews of Mr Hall involved multiple departures from applicable standards.

101. The Supreme Court noted that the Crown accepted that these departures from accepted standards must either have been the result of extreme incompetence or of a deliberate and wrongful strategy Section 6(c) to secure conviction.[49]

102. Section 6(c) Nicolette Levy KC who reported her findings to the Solicitor-General on 17 November 2022.[50] I will be selective in my references to the report as the Minister has asked that, in light of ongoing reviews and investigations into the conduct of the Police and Crown lawyers, I not comment on the propriety of actions or omissions by them in relation to Mr Hall's case except as is necessary to explain my assessment of quantum.

103. Section 6(c)

48 Summarised in the first report at [77].

49 *Hall v R* [2022] NZSC 71, [2022] 1 NZLR 131 at [40].

50 Nicolette Levy KC *Inquiry into the Crown's prosecution role in certain matters concerning the obtaining and upholding of the conviction of Alan Hall* (17 November 2022).

Section 6(c) [redacted]

104. I agree.

105. The Crown accepts that, Section 6(c) [redacted], the full amount of $150,000 is payable in the particular circumstances in Mr Hall's case.

106. A downward adjustment for mitigating factors does not arise. There was no blameworthy conduct by Mr Hall contributing wholly or in part to the prosecution or conviction. He co-operated with the Police and, as the Crown acknowledges, advanced his defence properly at trial and consistently over the years.

107. Mr Hall should be paid $150,000 under this head.

Summary

108. In summary, I recommend payment of compensation to Mr Hall, in accordance with the guide on page 9 of the Guidelines, as follows:

Step	**Calculation element**	**Amount**	**Assessment**
A	Annual rate for the period of imprisonment	$150,000.00	$150,000.00
B	Annual loss of livelihood during time in prison	$0 - 100,000.00	$55,039.94
C	Add A and B (adjusted annual rate)	$150,000.00-250,000.00	$205,039.94
D	C x years and part years of imprisonment (17.96)	Subtotal D	$3,682,517.32
E	Annual rate for time on bail or parole following conviction	$75,000.00	$75,000.00

F	E x years or part years on bail or parole following conviction (98 days)	Subtotal F	$20,137.00
G	Transition allowance	$0 - 50,000.00	$50,000.00
H	Reasonable costs in challenging conviction and seeking compensation:		
	(i) Family's costs	$47,505.44	
	(ii) Legal costs	$61,870.00	
	(iii) Private investigator costs	$47,695.99	
	Total for H	$157,071.43	$157,071.43
I	Significant pecuniary losses	N/A	N/A
J	Add D, F, G and H		$3,909,725.75
K	Adjustment for aggravating features	$0 - 150,000.00	$150,000.00
L	Combine J and K	**Final total**	**$4,059,725.75**

Possible further provision

109. As earlier noted, the Guidelines make no provision for compensation while on parole unless the claimant has been subject to a residential restriction condition. In the exceptional circumstances of this case, I have recommended that consideration be given to making an *ex gratia* payment, outside the Guidelines, of $874,000.00 for the period Mr Hall spent on parole between 1994 and 2012.

Disposition

110. Mr Hall's counsel advises that it is proposed to settle a trust for Mr Hall. He and close family members will be the only discretionary beneficiaries. The intention is that any compensation payment will be held by the trustees of that trust.

14 June 2023
Rodney Hansen CNZM KC
Shortland Chambers
Auckland