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2 July 2018 ABC Radio Adelaide: Drive program with Narelle Graham 12 mins

Attorney-General Vicki Chapman and Dr Bob Moles interview

Program transcript from 1:01.13 to 1:13:30

Vicki Chapman: South Australian Attorney-General,

Dr Robert Moles: Adjunct Principal Researcher, Humanities, Arts and Social Sciences,
Flinders University

Narelle Graham: First this hour though, the State Government's announced today that it will pay Henry Keogh 2.5 million dollars in compensation and this is because he spent 20 years in jail for a murder that he didn't commit. Mr Keogh was convicted of the murder of his fiancée Anna Jane Cheney in 1995 and the conviction was then overturned in December of 2014. And it was overturned because the Court of Criminal Appeal found that there had been a miscarriage of justice due to flawed forensic evidence. There was going to be a retrial in March of 2016 but four months before that, four months before the scheduled retrial, the Director of Public Prosecutions dropped the murder charge against Henry Keogh. So, today we have this announcement of compensation. Vicki Chapman is the State's Attorney General. Welcome to you.

Vicki Chapman: Yes, good afternoon Narelle.

Narelle Graham: Why make this payment?

Vicki Chapman: Well in essence the current status of this horrible, terrible, history of this legal case is one where a man has been in prison for 20 years and his conviction's been quashed. And so that's really the status of where we're at. Unsurprisingly, he's made a claim against the State and I suppose to some degree this is our 'Lindy Chamberlain' case, you know. For those of your listeners who are old enough to remember that 1980s case and her subsequent release. And look, no one's a winner in these cases, not least of which the Cheney

family whose daughter and sister died now nearly 25 years ago. And now we have a situation where we have to deal with the fact that someone has been in prison for a long time - unprecedented in the history of cases in South Australia - and then, unsurprisingly, seeks some redress to that. So, we've got legal advice that was provided actually to the previous government, from two independent senior counsel as to the risks to the tax payer basically, in relation to these types of submissions and we've taken that into account obviously. In coming into government this is on my desk to the extent of saying, well look where do we go from here.

Narelle Graham: OK was this amount, Vicki Chapman, was this amount negotiated, this 2.5 million? Or is this an offer that you have made?

Vickie Chapman: Oh no, this is a negotiated, agreed amount signed up late Friday between Mr Keogh and the State.

Narelle Graham: Are there any caveats on it, any conditions about what the money can be used for?

Vickie Chapman: Oh no, that's a matter for Mr Keogh of course.

Narelle Graham: Can Mr Keogh use it to sue the State of South Australia?

Vickie Chapman: No, the terms of the deed, and that's been published as well, is that that's in full satisfaction of any claim he may have against the State. So yes, he can use the money for whatever he wishes, but there's an exemption, the terms of settlement include no further claim against the state.

Narelle Graham: So, is this the State saying we believe you to be innocent, we need to compensate you?

Vicki Chapman: This is the State saying we acknowledge there has been a flawed process in relation to the prosecution of this case, largely for all the reasons that were set out in the court of Appeal and you've spent 20 years in prison and, you know, you can understand in the community with a case with such a public profile that there'd be some of your listeners who'd say, look that's hardly enough money for 20 years in prison. On the other hand, there'll be others who'll say, as far as I'm concerned, he shouldn't get one cent. So, of course, this is a polarising situation. I have to look at it as protection of the taxpayers.

Narelle Graham: Please, Vickie Chapman State Attorney General, stay with us because we do want to come back to you about what this means for other cases in South Australia and the precedent that may have been set. Let's go to Dr Bob Moles who's the Adjunct Associate Professor at the Flinders University who has been researching the Keogh case since the year 2000. Welcome to you Dr Bob Moles.

Bob Moles: Good evening, good to be with you.

Narelle Graham: Have you spoken with Henry Keogh?

Bob Moles: No I haven't had the chance to speak to him just yet.

Narelle Graham: What would this payment mean? Is it more about the compensation, or more about being believed?

Bob Moles: Well, it's both of those things really. From the point of view of compensation, it's relatively modest amount when taking into account other claims that have been made in similar circumstances. But look, it is a significant sum of money and Mr Keogh's perfectly entitled to make a decision about what suits him. He can draw a line in the sand and move on. But there still remains the issue about the cause of the wrongful conviction and we would be saying that we need to be having a proper inquiry into how this wrongful conviction came about and what the implications would be for the many other cases that would be involved.

Narelle Graham: So, you've said that 2.5 million is low ball. Let's put this in perspective for people who, some may think it is, and other might think that is a lot of money. You're able to put it in context for us - a compensation case in Western Australia where a man served 11.5 years?

Bob Moles: That's right, Andrew Mallard. So, he spent around 12 years in prison. When he went to prison, he had had mental health problems and he had difficulties getting employment. And so he got 3.25 million dollars after being in prison for 12 years for a crime he didn't commit. Henry Keogh was a senior bank executive when he was charged with this offence and spent 20 years in prison. His potential loss of earnings would have been substantially greater than that of Mr Mallard. He's served a longer term in prison and he's agreed to settle for a lesser sum of money. So, I think that represents a good settlement for the State and obviously it represents a satisfactory settlement for Mr Keogh because he has agreed to that amount.

Narelle Graham: We heard Vicki Chapman say that, while there are no strings attached, there's no conditions on this money, that it can't be used to retain lawyers to pursue more money. What's your take on that? Is that the case?

Bob Moles: Well obviously, if he has signed a deed of settlement as has been disclosed in the media today, then he's agreed that he will not be taking further proceedings against the State for a greater sum of money. And look, to be perfectly honest, if you've spent 20 years in prison and, you know you'd like to be getting on with your life, you have to make a judgement about how much more legal wrangling and to-ing and fro-ing you'd like to be involved with. And obviously Henry Keogh has said, look, I've had enough of that. This is a sufficient sum of money for me to be able to turn around and try and make something of the years left to me.

And I think that we should not be judgmental about any decisions he might make in that regard. I think we should all wish him good luck and yes, get on with it and enjoy what time you've got left.

Narelle Graham: Dr Bob Moles is with me. He's an Adjunct Associate Professor at Flinders University. He's been researching Henry Keogh's case since the year 2000. Given that research that you have put in, what have you discovered as to why Henry Keogh forged Anna Jane's signature on the insurance policies?

Bob Moles: Well, look there's a lot of misunderstanding about that. There were claims made at the time of his trial that he'd forged insurances, and he certainly had signed her name of the insurance proposal forms. But then after he went to prison a claim was made on behalf of the estate of Anna Cheney and it was said in those legal proceeding that Anna Cheney did know about the insurances being in force and that's why her estate wanted to make a claim against those insurances. And a sum of money was paid to her estate in settlement of that claim.

The essential thing that we're involved with in this case is whether or not a criminal event had occurred. Because insurances and affairs and lies that were all said about Henry Keogh at the time of his trial, might go to the question of motive, but the essential question is, has a crime occurred. And the evidence given in the Court of Criminal Appeal by a unanimous group of eminent experts was that there was no evidence that a crime had occurred at all and that the evidence given against him at his trial had been false and misleading.

That's really the issue that we need to address now because the same forensic expert has given false and misleading evidence, as the High Court said, in the case of Mr Van Beelen. We know that he'd given false and misleading evidence in many other cases so the question I would ask the government to address now is whether they'll have an inquiry into what happened, not only in Mr Keogh's case, because we did say from the year 2001 that this was a wrongful conviction and so it didn't really need to take another 18 years to sort it out. But what about the other cases now that need to be addressed?

Narelle Graham: Thank you very much Dr Bob Moles there, Adjunct Professor at Flinders University researching this case for at least 18 years. Let's go back to the State's Attorney General Vicki Chapman on that point. Attorney General, you heard Bob Moles about that asking about the inquiry there and I put that to you. Of course, this case against Mr Keogh, the retrial, was dropped because of evidence put forward by SA's chief forensic scientist at the time. He said there were bruises on Anna Jane Cheney's leg suggesting that her legs had been lifted over her head in the bathtub leading to her drowning. Dr Manock later said there was no thumb bruise to support this grip theory. So Manock's evidence has been used in many cases. Are the floodgates now open?

Vicki Chapman: There are two issues. One is this question of having an inquiry as to what happened. I think it is very clear from the Court of Criminal Appeal exactly what happened. Dr Manock's evidence as an expert was relied upon. It was completely unreliable, in fact manifestly so, for the purposes of making it simply unsustainable to have a conviction be maintained. Clearly, this was a person who for whatever reason had been appointed, you know, decades before who was discredited and dismissed and his evidence wholly, you know, rejected in that way.

The real question then is, well look, how many other cases in which he's given an expert opinion as to a cause of death or circumstances surrounding it, that might come to the surface? Well, in short, we don't know the answer to that. Certainly a lot of cases have been raised but whether any litigation that comes from them or a request that there be some reopening of review.

But they're not always just in cases where there might be an alleged murder scene but there are a number of baby cases, for example, where reports were given by Mr [sic] Manock. I can recall one where there was a decision of a child, an infant, ostensibly dying of pneumonia but then had massive bruising over the child's body. And you start to wonder about the reliability

of the evidence given. Now, to my knowledge there are no other known cases of which there is any flow on, overturning of a decision, that's resulted from that evidence, or compensation pending. But, we can't rule it out, obviously. We're talking about a huge number of cases some of which may never be reviewed because the relevant parties are dead or disappeared.

Narelle Graham: Vicki Chapman, State Attorney General. Thank you for being available this afternoon.

END OF SEGMENT