

## Q & A

### **What is the Royal prerogative of mercy?**

The Royal prerogative of mercy is a unique constitutional safeguard that provides an avenue for convicted persons to seek a remedy in cases where a miscarriage of justice may have occurred. It is usually sought only after rights of appeal have been exhausted.

The Royal prerogative of mercy will normally be exercised when fresh evidence becomes available that was not able to be properly examined by a court and which raises serious doubts about a person's conviction or sentence.

The Governor-General acts on the advice of the Minister of Justice. The Minister in turn seeks advice from the Ministry of Justice. In complex cases, such as Scott Watson's case, the Ministry often seeks assistance from Queen's Counsel or retired judges.

The Governor-General may:

- refer a person's conviction or sentence back to the appeal courts;
- pardon a person; or
- decline an application.

On average about 10 applications are received per year.

### **How is it different from the scheme for compensating persons wrongly convicted and imprisoned?**

The Royal prerogative of mercy enables convicted persons to challenge their convictions. Alongside the Royal prerogative of mercy system, there is an established process for compensating persons who have been wrongly convicted and imprisoned. The question of compensation only arises **after** a person's conviction has been quashed or a pardon is granted.

Cabinet guidelines were created in 1998 to govern the compensation process. A person may be eligible under the compensation scheme if they were imprisoned following a wrongful conviction that is then set aside.

### **What was Mr Watson's application about?**

In his application, Mr Watson claimed that he is innocent of the murders of Mr Smart and Ms Hope, and that he was wrongfully convicted.

Mr Watson's application relies on a wide range of grounds, including criticism of the police and court processes and the impact of the media coverage. Mr Watson also claimed that new evidence exists that is relevant to and impacts on a number of evidential matters at trial.

### **On what basis did Ms McDonald advise that Mr Watson had not met the test for exercise of the Royal prerogative of mercy?**

Generally speaking, evidence provided in support of an application for exercise of the Royal prerogative of mercy must be "fresh".

Ms McDonald advised that nearly all of the grounds of Mr Watson's application were not "fresh", they had either already been considered by the courts or were available to be relied on, had Mr Watson's trial counsel chosen to do so.

In respect of the remaining matters, where "fresh" evidence did arguably exist, Ms McDonald advised that such evidence was not cogent and credible enough to establish a real possibility that the jury would have acquitted Mr Watson, had the evidence been before them.

### **What about Mr Watson's claim that two key Crown witnesses have changed their trial evidence?**

A main ground of Mr Watson's application was his submission that two key Crown witnesses (Guy Wallace, a water taxi driver, and Roslyn McNeilly, bar manager) had made statements changing their trial evidence relating to the identification of Mr Watson.

Ms McDonald considered the information provided by Mr Watson in support of this submission, as well as interviewing both witnesses. She advised that the information provided by Ms McNeilly and Mr Wallace in support of Mr Watson's application was not "fresh". It would not have added significantly to the identification evidence both witnesses gave at trial, and had to be viewed in the context of the other trial evidence, including the DNA evidence which suggested that two hairs found on Mr Watson's boat came from Ms Hope.

### **Can Mr Watson challenge the Governor-General's decision?**

There are no rights of appeal against the Governor-General's decisions on applications for the Royal prerogative of mercy. However, applicants who are dissatisfied with the outcome of their application are able to make a further application to the Governor-General.

### **How long was Mr Watson's application under consideration?**

While Mr Watson's application was received in November 2008 a significant amount of material was submitted on behalf of Mr Watson in support of his application between that date and December 2012.

To ensure fairness of process, all material was forwarded to Ms McDonald, for her consideration.