

28 April 2009

Mr Scott Watson  
C/- Christchurch Prison  
PO Box 4726  
Christchurch

Dear Mr Watson

**Further correspondence regarding your application for the Royal prerogative of mercy**

Thank you for your letter of 2 April 2009 in which you clarify the following matters in relation to your application for the Royal prerogative of mercy:

- method of communication
- legal representation
- scope of application.

I also have your letter of 5 March 2009 in which you seek clarification of whether you have any appeal rights remaining, and the law in relation to regulation 193 of the Corrections Regulations 2005.

*What is the Royal prerogative of mercy?*

To answer your question about appeal rights it is useful first to outline how the Royal prerogative of mercy interacts with the court system.

The Royal prerogative of mercy is an important constitutional safeguard in New Zealand's criminal justice system. It provides a special avenue for convicted persons to seek review of their, case where an injustice may have occurred.

In New Zealand, the Governor-General, acting as the representative of the Queen of New Zealand, exercises the Royal prerogative of mercy. The Governor-General has the power to grant a pardon, to reduce a person's sentence, and to refer a person's case to the courts under section 406 of the Crimes Act 1961. The Governor-General does not hear appeals from the courts. What he does do is decide whether someone's case should be referred back to the court so that the court can hear another appeal.

For that reason, successive Ministers of Justice have advised that while the categories of miscarriage are not fixed, an applicant must normally provide "fresh evidence" not available at the time of trial that is relevant, credible, and of such a cogent nature that it is *capable* of pointing to a likely miscarriage of justice. In essence, the Governor-General's advisers are looking for evidence that is sufficiently strong that it *could* be entertained by the Court of Appeal. ,

If a person's conviction is referred back because of fresh evidence then the person will have an opportunity to place the evidence before the court and make submissions on it.

#### *Your application for the Royal prerogative of mercy*

In a letter received by the Governor-General on 1 November 2008, you applied to the Governor-General for the exercise of the Royal prerogative of mercy. You also enclosed a copy of Keith Hunter's book *Trial by Trickery*, and DVD *Murder on the Blade?*.

You have exhausted your ordinary appeal rights in the courts. In September 1999, you were convicted of the murders of Ben Smart and Olivia Hope. You appealed both of these convictions and the length of your minimum non-parole period to the Court of Appeal in December 1999. Your appeal was heard in April 2000 and judgment was delivered in May 2000. I understand that you also subsequently applied for leave to appeal your convictions to the Privy Council, but that this application was declined.

The position you are now in is that your application for the Royal prerogative of mercy is being considered. If your case was referred back to the Court of Appeal, the Court will hear the case as if it is another appeal under section 385 of the Crimes Act 1961.

The Ministry has now examined the evidence provided in support of your application. To further progress consideration of the application, we have requested the assistance of Kristy McDonald QC in relation to your application. Once we receive advice from Ms McDonald, we will be in a position to advise you of the next steps for completing our consideration of your application.

In the meantime, if there are any further submissions you wish to make in support of your application, can you please tell me what these submissions are and when I can expect to receive them.

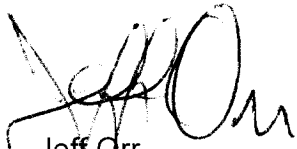
#### *Corrections Regulations*

You have also written to me about regulation 193 of the Corrections Regulations 2005 and provided some advice from the Ombudsmen's Office about the interpretation of this regulation. Your letter of 5 March 2009 about the same issue to Hon Judith Collins, Minister of Corrections, was referred to Hon Simon Power, Minister of Justice and he has asked me to respond to you directly.

As you know, the Corrections Regulations are administered by the Department of Corrections, and therefore, it would be inappropriate for me to give you legal advice about their application. However, from the correspondence you provided it appears that the Office of the Ombudsmen, Crown Law, and the Department of Corrections appear to agree that regulation 193 only applies when appealing a conviction in the Court system, not when applying for the exercise of the Royal prerogative of mercy. However, I note that the Office of the Ombudsmen also acknowledges that if you were proceeding with an application to the Governor-General for the Royal prerogative of mercy there could be

a case for considering whether refusal of access to a lawyer amounts to "administrative unreasonableness" under the Ombudsmen Act and the position may have to be revisited. In view of the fact that you have now made a formal application, you may wish to discuss this matter again with the Department of Corrections and the Office of the Ombudsmen.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jeff Orr", written over the typed name.

Jeff Orr  
Chief Legal Counsel  
Office of Legal Counsel