

SOLICITOR-GENERAL'S TERMS OF REFERENCE

INQUIRY BY NICOLETTE LEVY QC INTO THE CROWN'S PROSECUTION ROLE IN CERTAIN MATTERS CONCERNING THE OBTAINING AND UPHOLDING OF THE CONVICTION OF ALAN HALL

13 July 2022

Objectives of inquiry

1. The Crown submitted in 2022 that Mr Hall's convictions in 1986 for the murder of Mr Easton and the aggravated wounding of his son Brendan Easton were unsafe because of non-disclosure of relevant information by the prosecution. The Supreme Court has quashed those convictions and acquitted Mr Hall.¹ Mr Hall has suffered a significant miscarriage of justice on account of the non-disclosure.
2. In the 1980s, as now, the Solicitor-General was responsible for the prosecution of serious crime in New Zealand. This responsibility included the appointment and high-level supervision of Crown Solicitors² and also the employment of lawyers in the Crown Law Office who provided advice to the Solicitor-General and represented the Solicitor-General on criminal appeals in the Court of Appeal.
3. It is critically important that public confidence in the integrity and impartiality of the prosecution process is maintained. Now that Mr Hall is acquitted, this inquiry is established to determine, as swiftly as possible, how the non-disclosure that contributed to this significant miscarriage of justice occurred.
4. Because of the limits of the Solicitor-General's oversight responsibility, this inquiry is restricted to the acts, omissions and conduct of Crown Prosecutors, Panel prosecutors, and lawyers employed at the Crown Law Office (collectively referred to in this Terms of Reference as "Crown Lawyers"). The assessment made by, and actions or omissions of, officials advising the Secretary of Justice in three Royal Prerogative of Mercy applications are outside the scope of this inquiry, except to the extent that any Crown Lawyer, as defined above, played any part in those processes.

¹ *Hall v R* [2022] NZSC 71.

² Lawyers in private practice, responsible for prosecuting serious crime in their districts.

5. Accordingly, the inquiry will:
 - 5.1 Identify how the disclosure failings came to occur in Mr Hall's case, thereby leading to a miscarriage of justice;
 - 5.2 Indicate at what points this miscarriage could have been identified by Crown Lawyers, and what steps should have been taken to correct it;
 - 5.3 Identify the actions or omissions of Crown Lawyers who were involved over the years from 1985 to 2022 in any of the relevant legal events relating to the obtaining and upholding of Mr Hall's conviction.
6. The result of the inquiry will be two-fold:
 - 6.1 The Solicitor-General will have an independent, expert report from which she can form a view as to whether any further steps should be taken in relation to anything a Crown Lawyer may have done, or omitted to do, to contribute to this miscarriage, or its delayed resolution, and to identify any lessons from Mr Hall's case for Crown Lawyers.
 - 6.2 The inquiry will assist the Solicitor-General to identify whether any other processes or inquiries should be undertaken.

Terms of Reference

7. The Terms of Reference for this inquiry seek answers to the following questions:

Part 1: Trial and Appeal

8. How did the failure to disclose relevant documents to defence counsel occur? This includes:
 - 8.1 Mr Turner's original statements to Police,
 - 8.2 Other Police documentation related to Mr Turner's statements, and
 - 8.3 Other material non-disclosure.
9. What did Crown Lawyers know, before trial, at trial and at the time of Mr Hall's first appeal, about the content of Mr Turner's several statements?

10. What involvement did Crown Lawyers have in the creation of a statement, then signed by Mr Turner, that omitted reference to the ethnicity of the person Mr Turner saw running near the scene of the murder, and included reference to Exhibit 31?
11. What were the circumstances in which Mr Turner's evidence came to be read at the depositions hearing and at the trial, rather than Mr Turner appearing as a witness, and what involvement did the Crown prosecutor have in those decisions?
12. What involvement, if any, did any Crown Lawyers have in matters which the Supreme Court has said constituted a miscarriage of justice?

Part 2: Events post-appeal

13. What involvement, if any, did any Crown Lawyer have in the Department of Justice's processes in response to Mr Hall's three applications for the Royal Prerogative of Mercy?
14. Important material about the case, establishing the basis for a miscarriage, was disclosed to Mr Hall in 1988 under the Official Information Act 1982. This was after his unsuccessful appeal. What knowledge did any Crown Lawyers have about Mr Hall's case over the years since 1988?
15. Crown Law received material about Mr Hall's case from a journalist in 2018 and in 2020. How did Crown Lawyers handle that information, and what, if any, other steps should have been taken?

Any other matters

16. The inquiry should report on any other relevant matters considered material to the objectives of the inquiry set out above.

Report

17. The inquiry will result in provision of a written, confidential report to the Solicitor-General.
18. The Solicitor-General will consider whether the report, or a summary of it, may be made available to Mr Hall, the Easton family, or other interested parties including the public.

19. This report is to be provided four months after the date these Terms of Reference are finalised. To the extent this is not possible, a progress report is to be provided at that time, with the final report to be provided no later than 9 December 2022.

Conduct of inquiry

20. You will conduct the inquiry, within the Terms of Reference, as you see fit, subject to the obligation to comply with the principles of natural justice.
21. You may have regard to the findings of any other relevant inquiry and may engage with Police and the Ministry of Justice as you consider necessary and appropriate.
22. Subject to the need for this inquiry to be independent, the Crown Law Office will provide any documents or material it holds, and will provide any other information it reasonably can to support you in this inquiry.
23. These Terms of Reference will be published.
24. If there is occasion to amend these Terms of Reference, this will be done by agreement in writing. Whether any amendment to these Terms of Reference is published will be a decision for the Solicitor-General.