

**The Solicitor-General, Dr David Collins QC, will read the following statement. He will make no further comment and will not be answering questions.**

**MEDIA STATEMENT: SOLICITOR-GENERAL**

21 June 2007

**Decision of the Solicitor-General in Relation to the Retrial of David Cullen Bain**

1. I have determined that it is appropriate that the retrial of Mr Bain continues as ordered by the Privy Council.
2. It will be for the High Court to determine when and where the trial takes place. There are indications that the trial may be able to commence in Dunedin early next year.
3. Because of the public interest in this case, and because of a considerable degree of misreporting of information, I am taking the very unusual step of explaining in general terms why I do not intend to intervene. Having made and explained my decision, I cannot and will not engage in public debate about this decision or the case.
4. The starting point is the Privy Council judgment. The following points need to be understood:
  - 4.1 The Privy Council did not acquit Mr Bain. The Privy Council explained that its judgment makes no comment at all on whether or not Mr Bain is guilty or innocent. The Privy Council said his guilt or innocence in the light of the new evidence he has advanced can only be decided by a jury.
  - 4.2 The Privy Council had the option of allowing Mr Bain's appeal and causing a verdict of acquittal to be recorded. This is what the Privy Council did on the two previous occasions that it allowed criminal appeals from New Zealand.
  - 4.3 What the Privy Council did in this case was order a retrial.
5. It is not appropriate that I go into the details of every factor that I have considered in determining that these proceedings should not be stayed. The following is a very brief list of many of the factors that I have taken into account:

- 5.1 The seriousness of the crimes. By any analysis, the murders which took place in the Bain household were extremely serious. It is one of the most horrific cases in New Zealand's history.
  - 5.2 The time Mr Bain has spent in prison; about three-quarters of the minimum parole period.
  - 5.3 The availability of witnesses.
  - 5.4 The availability of exhibits.
  - 5.5 The length of time that has elapsed since the murders occurred.
  - 5.6 The ability of Mr Bain to obtain a fair trial.
  - 5.7 The strengths and weaknesses of the prosecution case.
6. Although after Mr Bain's release on bail both Mr Reed QC and Mr Karam publicly said that they had no issue with me being the person who has to make the decision on whether or not the prosecution of Mr Bain shall continue, I have taken the step of consulting senior and experienced lawyers outside of Crown Law about the process that I have followed and the factors I have taken into account in reaching this decision. I have also paid very careful attention to detailed points made on Mr Bain's behalf by his lawyers, who consider that there should be no retrial.
  7. Following Mr Bain's release on bail, a number of persons commented about the respective strengths and weaknesses of the Crown and defence cases. I was at that time not prepared to consider contempt proceedings as I had still to consider whether or not the prosecution would continue. Now that decision has been made, I wish to make it very clear that it is not appropriate for there to be further public debate about the evidence or any other public comment that is calculated or likely to influence a future jury.
  8. I want to emphasise, that under our system of justice, it is a jury which determines guilt or innocence in a case such as this. The jury reaches its conclusion after it has considered all of the evidence and after receiving directions on the law from the trial Judge. Guilt or innocence of an accused person is not decided by the media or public opinion polls. Those who attempt to usurp or otherwise influence the trial process risk facing a charge of contempt of Court.

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