



Minister of Justice
cc Associate Minister of Justice

Miscarriages of Justice: Future Policy Work

Date:	19 May 2006	File Number:	CON 34-22
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Action Sought	Timeframe
For discussion with officials in context of 2006/2007 Policy Work Programme	

Contacts for telephone discussion (if required)

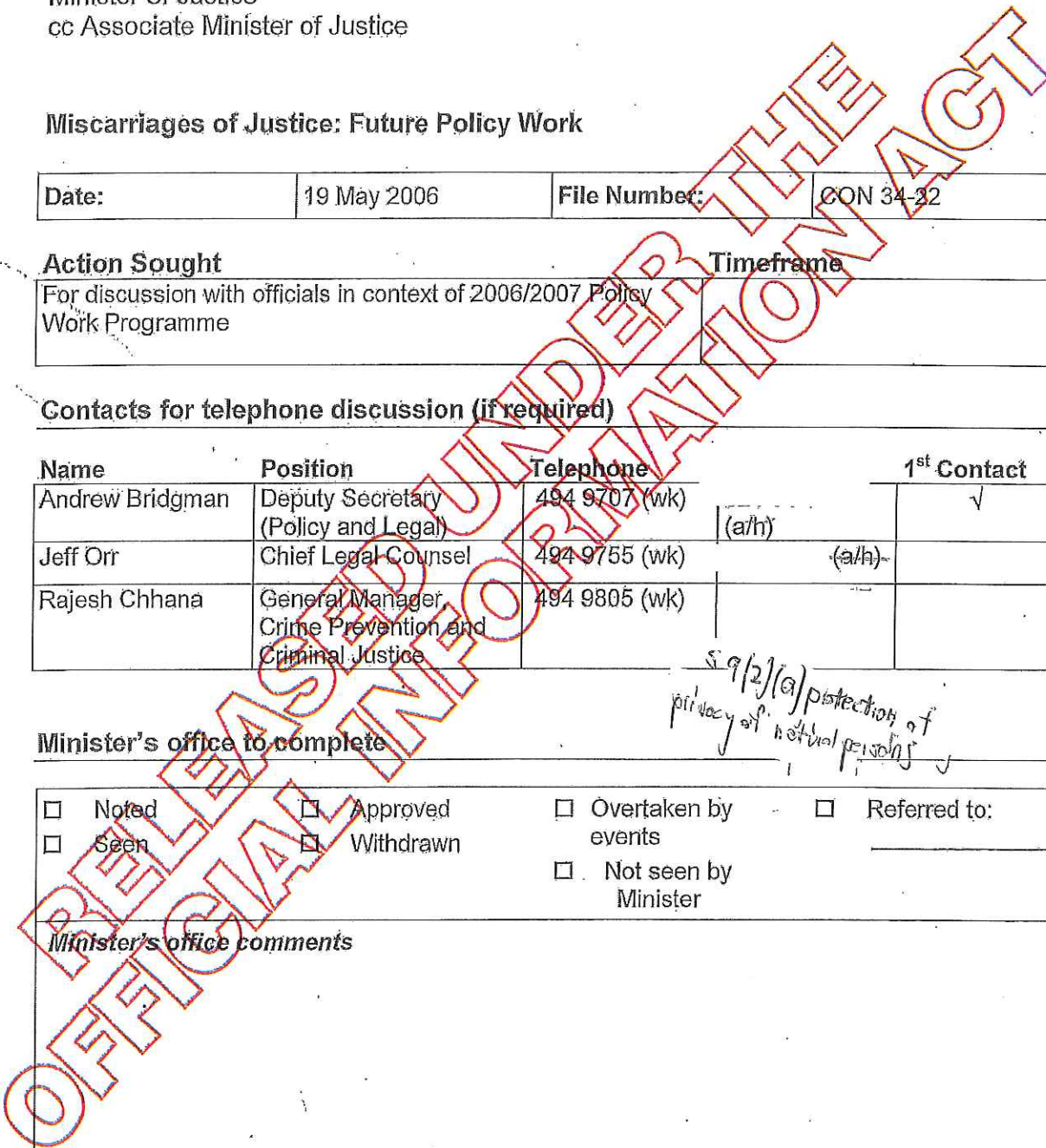
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Andrew Bridgman	Deputy Secretary (Policy and Legal)	494 9707 (wk) (a/h)	✓
Jeff Orr	Chief Legal Counsel	494 9755 (wk) (a/h)	
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Minister's office to complete

Noted Approved Overtaken by events Referred to: _____
 Seen Withdrawn Not seen by Minister

Minister's office comments

s.9(2)(a) protection of privacy of natural persons ✓





MISCARRIAGES OF JUSTICE: FUTURE POLICY WORK

Purpose of Report

1. This paper proposes that further policy work on organisational arrangements for dealing with complaints about miscarriages of justice be deferred during the 2006-2007 year.

Background

2. Earlier this year, a paper by Sir Thomas Thorp entitled "Miscarriages of Justice" was released at a Legal Research Foundation conference in Auckland. Sir Thomas advocated the establishment of an independent body to investigate complaints of miscarriage. We provided you with a report summarising the conference deliberations on 13 March 2006.
3. In view of Sir Thomas' paper, you asked the Ministry to prepare a draft Cabinet paper on the organisational arrangements for dealing with complaints about miscarriages of justice. You have publicly stated your intention to submit a Cabinet paper in response to Written Questions from Katherine Rich MP.
4. The Ministry has been working on a draft Cabinet paper that sets out the current organisational arrangements, the main features of Sir Thomas' paper, and identifies the key policy and operational issues that require detailed examination before decisions are taken on possible organisational changes, including the option of a new body.

Further policy development

5. If further consideration was given to changing the organisational arrangements for dealing with alleged miscarriages, there are essentially four options that could be examined:

- Strengthen/increase the Ministry's capacity;
- Strengthen/increase the Ministry's capacity and increase external review of Ministry work, as required;
- Strengthen/increase the Ministry's capacity and set up an external panel or body with formal oversight;
- Establish an external panel or body with its own staff.

6. The broad policy issues and comparisons with overseas models have been well canvassed in a 2003 Ministry discussion paper and in Sir Thomas' paper.
7. The next stage of policy work would need to take a hard look at the strengths and weaknesses of the different reform options against agreed policy objectives and

then cost the options in light of expected volumes and machinery of government implications. The option of shifting decision-making responsibility to a new body would require legislation. The constitutional fit with the Royal prerogative of mercy would also need to be considered.

Timing of policy work

8. The current position is that there are no short term pressures requiring urgent action. The existing rate of Royal prerogative applications (about 10-12 a year) is relatively low. While some are complex, with help from external counsel they are being managed effectively by the Ministry to a high standard. The Ministry has addressed many of the procedural issues that were identified 3 years ago, is building up expertise in its staff, and is currently reviewing its procedures with a view to making further operational improvements. Pending decisions on possible reform, the Ministry is well placed to continue in its current role.
9. Before any further steps are taken, we would like to discuss with you the priority this project should receive in the context of the 2006/2007 Policy Work Programme.

Recommendations

I recommend that you:

- 1 **note** that the Ministry is well placed to manage consideration of Royal prerogative of mercy applications pending decisions on possible reform of organisational arrangements for dealing with complaints about miscarriages of justice;
- 2 **agree** that before any further policy work on miscarriages of justice is done, we would like to discuss with you the priority this project should receive in the context of the 2006/2007 Policy Work Programme.

Andrew Bridgman
Deputy Secretary, Policy and Legal

Hon Mark Burton
Minister of Justice

1 / 2006

APPROVED / SEEN / NOT AGREED

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OFFICIAL INFORMATION ACT