



Office of Hon Rick Barker

Minister of Internal Affairs
Minister of Civil Defence
Minister for Courts
Minister of Veterans' Affairs
Associate Minister of Justice

14 MAR 2008

Ross Francis
PO Box 12-603
WELLINGTON

Dear Ross Francis

Peter Ellis case

I refer to your letter of 30 November 2007 to Hon Annette King and your email to me dated 10 February 2008 enclosing your articles and seeking answers to a number of questions about the Peter Ellis case. As Associate Minister of Justice I have responsibility for matters relating to the Royal prerogative of mercy. Your letter has therefore been referred to me for response.

You will know from your research that the Ellis case has received extensive scrutiny and has been the subject of both appeals and reviews. The case has been examined by the Court of Appeal twice, and been the subject of a Ministerial inquiry. The case has therefore already been scrutinized in a number of different fora where the considered conclusion has consistently been that Mr Ellis' convictions are safe.

You will also be aware of the petitions presented to Parliament in 2003 seeking a Royal Commission of Inquiry into all aspects of the Ellis case. After two years of consideration, the Justice and Electoral Committee report concluded it was unlikely that a Royal Commission of Inquiry would reach a better view of the facts than was achieved at the original trial, given the effect of the lapse of time on the availability and quality of the evidence.

The Select Committee Report noted that a Royal Commission of Inquiry cannot exercise judicial functions, such as a determination of criminal responsibility. That is, a Commission cannot be convened to determine the guilt or innocence of an individual as its primary purpose.

The Select Committee Report also raised concerns about the effect an inquiry could have on the child complainants and their families given the passage of time.

Given the further passage of time I consider that the Select Committee's conclusions are even more relevant.

In your articles you criticise the Ministerial Inquiry conducted by Sir Thomas Eichelbaum. I do not accept the essential conclusion of your articles, that the procedurally Ministerial Inquiry conducted by Sir Thomas Eichelbaum was flawed. I also do not accept that officials advising Sir Thomas improperly influenced or predetermined the outcome of the Inquiry in any way.

Sir Thomas decided who to appoint as experts. He sought nominations from a range of parties when selecting the experts who advised him as part of the Inquiry, including Judith Ablett-Kerr QC, the Crown Law Office, the families of the children who gave evidence at the trial, the Commissioner for Children and the Ministry of Justice. He also made independent inquiries to inform his final decision on the appointments. You are critical in your articles of the appointment of Dr Sas. However, Sir Thomas was advised by two experts, who worked independently of each other and who expressed the same overall conclusions about the case. It is also clear from Sir Thomas' report that he placed significant weight on the opinion of Professor Davies. His conclusion was that:

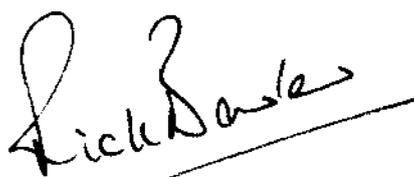
"the case advanced on behalf of Mr Ellis had failed, by a distinct margin, to satisfy the Inquiry that the convictions were unsafe, or that a particular conviction was unsafe."

Sir Thomas did not consider that the grant of a pardon was warranted.

If Mr Ellis wishes to pursue the question of whether a miscarriage of justice has occurred, the avenue of appeal to the Privy Council remains open. Mr Ellis' lawyer, Ms Ablett-Kerr, has indicated that she is currently preparing a petition seeking leave to appeal Mr Ellis' case to the Privy Council.

I note that appended to your letter of 30 November 2007 was a list of questions to officials. On 18 December 2007 these questions were transferred to the Ministry of Justice by Minister of Justice Hon Annette King in accordance with section 14(b)(ii) of the Official Information Act.

Yours sincerely

A handwritten signature in black ink that reads "Rick Barker". The signature is written in a cursive style and is underlined with a single horizontal line.

Hon Rick Barker
Associate Minister of Justice