



Office of Hon Simon Power

MP for Rangitikei

Minister of Justice
Minister for State Owned Enterprises
Minister of Commerce

Minister Responsible for the Law Commission
Associate Minister of Finance
Deputy Leader of the House

14 OCT 2009

Don Brash, Katherine Rich and Lynley Hood
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Dear Dr Brash, Mrs Rich and Dr Hood

Request for a commission of inquiry into the Peter Ellis case

I am writing to advise you of my decision on your request for a commission of inquiry into the Peter Ellis case.

I have carefully and comprehensively examined the case and your request for a commission of inquiry. I have also consulted with my Cabinet colleagues on the matter.

I acknowledge the ongoing public and professional disquiet over Mr Ellis' case. I take seriously any impact this disquiet has in terms of public confidence in New Zealand's justice system generally and Mr Ellis' case specifically. However, after considering all relevant factors, I have decided against recommending a commission of inquiry into Mr Ellis' case. In coming to this decision I have considered, amongst other matters, the public interest, constitutional and legal issues associated with the proposal for a commission of inquiry into the case.

In reaching my decision, I gave weight to the arguments in support of a commission of inquiry into Mr Ellis' case. I have considered not only the specific arguments outlined in your letter of 25 November 2008 but also arguments presented in other contexts, including the petition considered by the Justice and Electoral Select Committee during 2003 to 2005.

I have also looked at the possible form and scope of such an inquiry, and the nature of the evidence it might need to consider. The Commissions of Inquiry Act 1908, which determines the form and powers of commissions of inquiries, is not well designed for an inquiry into the safety of particular criminal convictions. While this does not prevent a commission of inquiry from being established, it does have some implications for the way a commission would run. For example, it does not appear possible (even if it were desirable) to require a commission to conduct an inquiry "on the papers" with a limited role from complainants and their families. In addition, there is a question about whether indeed it is legally possible under the Commissions of Inquiry Act to order a broad-based commission of inquiry into the safety of criminal convictions. While there was a Royal Commission of Inquiry into the Arthur Allan Thomas case, the question of Mr Thomas'

convictions had already been determined by a pardon before the Inquiry was established.

Ultimately the overriding factor in my decision is that Mr Ellis has not exhausted his appeal rights in the court system. He still has the opportunity to seek special leave to appeal to the Privy Council. His lawyer, Ms Judith Ablett-Kerr QC, has previously indicated that Mr Ellis intended to exercise this right and that an application to the Privy Council was being drafted. This fact has bearing on the suitability of an Executive inquiry and its ability to achieve finality at this point in the case's history.

There have been several occasions in the case's history where Executive action has been appropriate, namely the Governor-General's exercise of the Royal prerogative of mercy in 1998 and 1999, and Sir Thomas Eichelbaum's Ministerial Inquiry in 2000. It may be that further Executive action is again appropriate in the future.

I enclose copies of the advice I received from the Ministry of Justice for your information. I have also provided Ms Ablett-Kerr with a copy of this letter and the Ministry's advice. I intend to make a public announcement regarding my decision on Wednesday 14 October at 3 pm.

I appreciate your work and continuing commitment to Mr Ellis' case, and thank you again for raising the case and your concerns with me. My full and detailed consideration of the matter reflects the importance I accorded your request.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Simon Power', with a stylized flourish at the end.

Hon Simon Power
Minister of Justice