



Office of Hon Amy Adams

Member of Parliament for Selwyn

Minister of Justice

Minister for Courts

Minister of Broadcasting

Minister for Communications

21 APR 2015

Lvnlev Hood

[s 9(2)(a)]

Don Brash

[s 9(2)(a)]

Dear Dr Hood and Dr Brash

Request for inquiry into Peter Ellis case

Thank you for your correspondence of 17 December 2014. I have now given further consideration to your request for a Commission of Inquiry into the Peter Ellis case. For reasons that follow, I have decided not to recommend that a Commission of Inquiry be established.

Previous history

Mr Ellis was convicted on 16 charges in 1993. Since then, his case has undergone extensive consideration.

On Mr Ellis's first appeal against conviction in 1994, three convictions were set aside after parents of one of the complainants reported that she had retracted her allegations. He then applied for the Royal prerogative of mercy. Acting on advice from the Ministry of Justice, the then Minister of Justice advised the Governor-General to refer the convictions back to the Court of Appeal. A second application for the Royal prerogative of mercy resulted in the reference to the Court of Appeal being broadened, again on the Ministry's advice, to ensure the Court could deal with all relevant matters.

The Court of Appeal dismissed the second appeal in 1999. The Court was not satisfied that any individual ground of appeal had been made out or that, taking all the grounds of appeal together, there had been a miscarriage of justice.

A third application for the Royal prerogative of mercy was made days after the appeal was dismissed. The then Minister of Justice decided to establish a Ministerial inquiry to assess whether any features of the investigation and/or interviews of the children might have affected the reliability of the children's evidence to such an extent as to render Mr Ellis's convictions unsafe. Sir Thomas Eichelbaum was appointed to conduct the inquiry and he was assisted by two overseas experts. All three examined the videotaped records and typed transcripts of the interviews as well as evidence given at trial or depositions. Sir Thomas reported in 2001 that the case advanced on behalf of Mr Ellis fell short, by a distinct margin, of satisfying the Inquiry that the convictions were unsafe.

In his concluding remarks, Sir Thomas summarised the extensive scrutiny that the Ellis case had been given, noting that the prerogative of mercy was available as a further protection when full legal processes in the courts had been used.

In 2003, your petition to Parliament requested a Royal Commission of Inquiry. After hearing submissions and giving the matter careful consideration, the Justice and Electoral Committee did not recommend that an inquiry be established.

2008 request for a Commission of Inquiry

Against that background and together with Katherine Rich MP, you renewed your request to the former Minister of Justice, Hon Simon Power, in 2008.

As you know, he announced his decision not to recommend a Commission of Inquiry into the Peter Ellis case in October 2009. The Minister's decision followed a careful and comprehensive examination of the case and consultation with Cabinet. In making the decision he considered, amongst other things, the public interest, constitutional and legal issues associated with the proposal for a Commission of Inquiry. These included the advice of the Crown Law Office that an inquiry into the correctness of Mr Ellis's convictions was likely to be ultra vires the Commissions of Inquiry Act 1908.

At the time, a key factor in the decision was the fact that Mr Ellis was still able to seek special leave to appeal to the Privy Council. Mr Ellis had indicated that he intended to exercise this right and that an application to the Privy Council was being drafted. Advice considered by the Minister also emphasised that if new evidence became available that had not been previously considered, a further application for the Royal prerogative of mercy could be made.

I attach a copy of Hon Simon Power's letter to you dated 14 October 2009, which briefly outlines the decision and his reasons.

The current request for a Commission of Inquiry

Your letter of 17 December 2014 requesting a Commission of Inquiry is in almost exactly the same terms as your 2008 request. Your latest request does not address the former Minister's decision or mention any new information or development that warrants reconsideration of his decision.

One important development is the enactment of the new Inquiries Act 2013, which underlines previous advice that a Commission of Inquiry is not an appropriate vehicle for inquiring into the correctness of a person's convictions. Section 11 of the Act expressly states that an inquiry has no power to determine the criminal liability of any person.

I note that both your 2008 request and your letter of 17 December 2014 state that "new academic research has highlighted the unreliability of the children's testimony". I am aware that Professor Harlene Hayne was reported to have analysed the transcripts of the children's interviews. However, her work has never been produced in support of an application for the Royal prerogative of mercy or your requests for a Commission of Inquiry.

It remains the position that there are proper channels for Mr Ellis, if he wishes to do so, to challenge his convictions. An application for leave to appeal to the Privy Council was

first mentioned by Mr Ellis's lawyer over a decade ago but has not been pursued. That option remains open.

If there is persuasive new evidence that goes to the heart of Mr Ellis' convictions and has not been previously considered, it is also open to him to make a further application for the Royal prerogative of mercy.

Finally, I consider that the implication in your letter that the "vested interests" of Ministry officials have precluded proper consideration of Mr Ellis' case is completely without merit. I remind you that on each of Mr Ellis's three applications for the prerogative of mercy, the Ministry supported further consideration of Mr Ellis's convictions, through constitutionally appropriate mechanisms. I have no difficulty in acting contrary to official advice if I believe it is wrong. However, I have read the Ministry's reports to Hon Simon Power. They contain the kind of responsible, professional advice a Minister of Justice should expect to receive. I also note that external and independent advice on matters relating to Mr Ellis' case has been sought when necessary – in addition to Sir Thomas Eichelbaum's 2001 advice, Sir Thomas Thorp provided independent advice to the Ministry in 1999 on Mr Ellis' second Royal prerogative of mercy application.

Conclusion

The former Minister's decision to decline a Commission of Inquiry was made for good reasons. His decision took into account the thorough examination to which the Ellis case has been subjected and the difficulties associated with establishing a Commission of Inquiry. There is nothing in your letter of 17 December 2014 that adds to your earlier request.

Notwithstanding the lengthy history of the case and its examination, it remains open to Mr Ellis to challenge his convictions through the proper channels, particularly if there is now new and compelling evidence relevant to his convictions that has not previously been considered. That is a matter for Mr Ellis and his legal representatives to decide.

Yours sincerely



Hon Amy Adams
Minister of Justice