

17 December 2014

Hon. Amy Adams  
Minister of Justice  
Parliament Buildings  
WELLINGTON

Dear Minister

Congratulations on your appointment to the role of Minister of Justice.

We write to you about an issue on which we have held serious concerns for a long time, namely the conviction of Peter Ellis in the Christchurch Civic Creche case.

In our view, the time is long overdue for the Minister responsible for our justice system to demonstrate the political will and moral courage necessary to ensure that a comprehensive and genuinely independent inquiry is held into what is widely regarded as New Zealand's most egregious miscarriage of justice.

We ask you to commission an overseas judge to review the entire case. We believe this is the only realistic option left. In support of this proposal, we offer the following points:

- Though more than 20 years have passed since the controversial conviction of Peter Ellis, disquiet over the Civic Creche case remains widespread and ongoing, and extends to some of the most senior judges in the country.
- In the history of New Zealand criminal justice, no petition to Parliament has been supported by such a weight of political, legal and scholarly authority as the 2003 petition calling for *A Royal Commission of Inquiry, presided over by a judge or judges from outside the New Zealand jurisdiction, to inquire into all aspects of the investigation and legal processes relating to the Christchurch Civic Creche case*. Among the hundreds of petitioners were two former Prime Ministers, 12 former Cabinet Ministers, 28 MPs (from every party in the House), 12 law professors, 10 Queen's Counsel, a retired High Court Judge and four Psychology Professors.
- The Civic Creche case is recognised internationally as a manifestation of a wave of child abuse hysteria that swept the western world in the 1990s. Hundreds of innocent childcare workers were convicted of bizarre and often impossible crimes against very young children. Yet in all these cases there was no reliable evidence that any crime had ever taken place. The convictions were based solely on the coerced evidence of very young children. Most of the overseas cases have now been overturned. In the Creche case, some of the accusing children have retracted their allegations. New academic research has highlighted the unreliability of the children's testimony. That the wrongs done in the Creche case have not been righted after all this time is nothing short of a scandal.
- Among the charges faced by Peter Ellis was an allegation that he was party to an offence committed by an unknown man at an unknown place on an unknown time

and date. Despite the absurdity of that charge, not only did the jury convict him, but their verdict was upheld twice by the Court of Appeal, and again by a Ministerial Inquiry conducted by former Chief Justice Sir Thomas Eichelbaum. Clearly, in the Creche case, the justice system has failed repeatedly, and has been unable to self-correct.

- The Creche case began with the ambiguous comment of a 3-year-old boy and ended with a bitterly divided city, scores of families thrown into turmoil, 12 childcare workers stripped of their jobs and their previously unblemished reputations, four childcare workers arrested and discharged, and one (Peter Ellis) convicted and sentenced to 10 years in jail. For everyone involved in the case, that was too high a price to pay. A full enquiry is needed to ensure that the mistakes made in the Creche case will not be repeated.
- This is exactly the sort of rare occasion when it is incumbent on the Minister of Justice to restore public confidence in the justice system by invoking her constitutional power to order a Commission of Inquiry into a criminal case. As well as inquiring into “all aspects of the investigation and legal processes relating to the Christchurch Civic Creche case” (as requested by the 2003 petition) the presiding judge should be given the power to recommend a pardon for Peter Ellis if he or she finds that a miscarriage of justice has occurred.
- Because many senior New Zealand judges have had some involvement in the Creche case, it is imperative that an overseas judge be brought in to head the inquiry.
- The last Commission of Inquiry into a criminal case in New Zealand was ordered by the Rt. Hon. Sir Robert Muldoon into the conviction of Arthur Allan Thomas. That inquiry was conducted by an Australian judge.
- The Commission of Inquiry into the Thomas case was completed early and under budget. An inquiry into the Creche case need not be an unduly expensive exercise.
- Calls for an inquiry into the Thomas case were strenuously opposed by the officials advising government, but their predictions of dire consequences for the justice system proved to be without foundation. The opposition of officials to calls for an inquiry into the Creche case has been equally vehement. Nevertheless, the Minister has the constitutional power to override the vested interests of her advisors and order an inquiry. In our view, to do so will be widely hailed as a brave and necessary act.
- Two mutually-contradictory arguments frequently advanced by Justice officials opposed to an inquiry are that, on the one hand, the accused has not exhausted his legal options, and that, on the other hand, the case has been repeatedly examined and should be allowed to rest. At the time of Arthur Allan Thomas’s pardon, his case had been the subject of two trials, four Court of Appeal hearings, three petitions to the Governor General and one hearing before Privy Council. The Peter Ellis case has been the subject of one trial, two Court of Appeal hearings, three petitions to the Governor General, an enquiry by a High Court Judge, a Ministerial Inquiry and a petition to Parliament resulting in a Select Committee inquiry. But just as Thomas’s legal options were not exhausted, so Ellis’s legal options are not exhausted. The soul-destroying legal merry-go-round could go on forever. It is time for the Minister to put a stop to this cynical game-playing with a comprehensive and genuinely independent Commission of Inquiry.
- We understand that some members of the Government are convinced of Peter

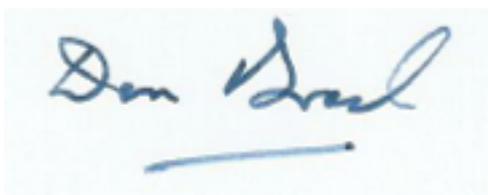
Ellis's guilt. We know that other members of the Government are equally convinced of his innocence, and indeed one of your Ministerial colleagues who is convinced of his innocence had children at the Creche at the time of Peter Ellis's alleged offending. A fully independent inquiry is the only way to sort this out once and for all.

- In view of the complexity of this case, the time that has already elapsed and the scores of people whose lives have been blighted by the case, the resolution of this matter cannot be deferred for consideration by a yet-to-be-established Criminal Cases Review Commission. Further, unlike the other criminal convictions currently causing public disquiet, in the Creche case there was no reliable evidence that any crime was ever committed. For all these reasons, the Creche case warrants its own comprehensive inquiry without delay.
- In Australia the notion that the justice system is sometimes unable to correct its own mistakes seems to be better understood. Between 1940 and 1990, Frederick McDermott, Edward Platt, the Ananda Marga trio, Douglas Rendall, Lindy Chamberlain and Ziggy Pohl were all pardoned following Commissions of Inquiry. These inquiries proved to be constructive and worthwhile exercises. The Australian justice system is more robust and transparent as a result.

We trust you will give this ongoing source of public distrust in our justice system your urgent and serious attention.

We would be happy to discuss this request with you further at any time.

Yours sincerely

A handwritten signature in blue ink that reads "Don Bradman". The signature is written in a cursive style and is positioned above a horizontal line.A handwritten signature in black ink that reads "Lynley J. Hood". The signature is written in a cursive style.