

**STEPHEN FRANKS MP**  
**ACT NEW ZEALAND**



18 September 2003

Janet Lake  
National Collective of Independent Women's Refuges Inc  
PO Box 11074  
**WELLINGTON**

**By Fax: 04 802 5079**

Dear Ms Lake

Your letter of 2 September to Mr Goff, objecting to my participation in consideration of the petition on the Ellis case, has been copied to me. I understand the Justice & Electoral Select Committee will write to you separately about the position under Parliament's rules. As the decision is up to me I think it is fair to give you more explanation.

You appear to believe that the Committee should include only members who are impartial. I believe such a committee would be undesirable even if it were possible.

Parliament is not adjudicating in this matter. The Committee is not a tribunal. We will look at the petition as elected representatives charged with deciding whether to recommend a particular way of independent assessment of whether our law should change, or whether the Executive has been properly administering the law.

My concern is that some longstanding protections against wrongful conviction have been warped over the past two decades. It is my duty as an MP to form views on such matters, and the Ellis case seems a good example to investigate.

We should urge the appointment of a Royal Commission if it emerges that the legal establishment, including its political arm, has not, and is unlikely to review itself constructively and objectively. Depending on who is appointed to a Royal Commission, it may have an objectivity and willingness to admit mistakes that will not often be found inside the system.

I start with concerns about our criminal law. Rules of procedure and evidence should protect the innocent from wrongful conviction, and reduce (as far as is prudent) the numbers of the guilty being discharged undeservedly. I think a number of recent changes, usually well meant but some driven by politically correct

ideology, have eroded confidence that the system is properly focused on convicting the guilty and discharging the innocent. The standards are well expressed in the familiar phrases “innocent until proven guilty”, proven “beyond reasonable doubt”, and “better that 10 guilty go free than 1 innocent be convicted”.

If investigation of the Ellis case establishes prima facie that the system does need improvement, I hope we will then look at how the establishment has responded to concerns to date, then decide whether an independent, authoritative, Royal Commission could best investigate and recommend changes.

I doubt whether any member of the Select Committee, or of Parliament, will be impartial in the sense you seem to want. All will have preconceptions about the policy, resources, priority, and ideological factors to be weighed. Some may be encumbered by Party instructions, or will be as events unfold. I know I will not.

Some may have views on whether Mr Ellis offended against children at the Christchurch Crèche. Some may be open minded on that yet still feel, from what has emerged so far, that it is doubtful that the charges were proved beyond reasonable doubt. That is probably closest to my position but it is not strongly held and I am willing to be persuaded by the evidence. But even members who have much more firm views, whether or not they disclose them, are perfectly entitled to sit and be valuable members of the Committee provided they want to know the truth, and act on it.

My starting position has been disclosed. I came to Parliament to press and vote for good law. In this area I know there is widespread concern among practising criminal lawyers. The balance between properly testing evidence to avoid wrongful conviction, and concern for witnesses, may have swung too far in one direction. That may or may not be self correcting, depending on whether the judges have room to correct it. I hope to know more about that by the end of the Committee process.

Though I will release this letter publicly I would be grateful if you could ensure that it is received by the organisations on whose behalf you wrote, Unicef NZ, Child Abuse Prevention Society, National Network of Stopping Violence Services, Barnardos New Zealand, and Save the Children NZ.

Yours sincerely

**Stephen Franks MP**  
**ACT New Zealand**