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The Hon. J. Luxton
Minister of Police
Parliament Buildings
WELLINGTON

Dear Sir

Re: Christchurch Civic Child Care Centre

1. Introduction

I recently appeared for twelve persons who brought personal grievance proceedings against the Christchurch City Council ("the CCC), arising from the closure of the above centre ("the Creche"). The case was heard in the Employment Court before Chief Judge Goddard. Decision has been reserved until 16 March. The focus of that case related to the actions of the CCC in acquiescing in closure of the Creche in September 1992, as a result of a joint approach from the Police and the Ministry of Education. It is not necessary for me to dwell upon the employment law issues which arose, and which will shortly be the subject of decision from Chief Judge Goddard.

2. Rather, I am writing to record fundamental concerns which I hold, largely as a result of the Employment Court hearing, as to the actions of the Police in this matter. This is a personal letter, although I confess I indicated to the applicants in the personal grievance case my intention to write it.
3. I record at the outset that the concerns I wish to raise do not relate to the case of Peter Ellis. As you may know, I am counsel for Ellis. For present purposes his case can be put to one side. That is so because he left the Creche in late 1991, whereas my concerns centre on the events of September/October 1992, when the Police took steps to force closure of the Creche.
4. I am aware that Gaye Davidson wrote to your predecessor, the Honourable John Banks on 24 May 1993 seeking in inquiry into the general handling of the Creche case. I have seen a copy of that letter and also of the reply from Mr Banks. I do not propose commenting upon the then Minister's response, other

than to say that it demonstrates what I believe is a fundamental problem in this area, namely that the spectre of child abuse generates hysteria rather than rational judgment.

5. In any event, this letter is written from a somewhat different perspective to that written by Ms Davidson. She wrote as one of four women charged and acquitted of sexual abuse. I write while the details of the Employment Court case are fresh, and out of a concern not just for the four women who were charged but for the staff as a whole, whose lives have been devastated by this affair.
6. My purpose is to suggest that there is a need for a suitably qualified independent person to inquire into the Police handling of this matter as it affected the Creche staff, the children attending it at September 1992, and their parents. I do not pretend to have knowledge of how the internal aspects of the Creche matter were handled by the Christchurch Police. What I do have is some experience of major Police investigations, and of how decisions which would be of significant consequence in the community, were taken in past times. My essential concern is that the results of the Police decision making in this instance have been so disastrous for so many, that the internal processes behind them should be the subject of independent scrutiny.

7. Background

To explain myself it is necessary to provide a short chronology:

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| 21.11.91 | Ellis was suspended from the Creche. |
| 30.3.92 | Ellis made first appearance upon criminal charges. |
| 2.9.92 | A joint Police/Ministry of Education delegation approached the CCC and secured an arrangement for the Creche child care licence to be cancelled as from the following day. |
| 3.9.92 | Further meeting at which the Ministry gave written notice of suspension of the licence, the CCC advised it had no submissions to make in response, and written notice of cancellation was served. |
| " | At 5.30 pm the CCC City Manager advised staff of the Creche of its closure, and that they were redundant. During the early evening parents of children were told by telephone of the closure. |
| 1.10.92 | Four of the women staff members, of a total then staff of 11, were charged with sexual abuse. |
| 5.3.93 | Deborah Gillespie, one of the four women, discharged in the High Court. |
| 6.4.93 | Remaining three women discharged. |

As is evident from the chronology, seven staff members lost their jobs, and more importantly their reputations, as a result of the closure yet were never the subject of criminal allegations. The allegations against the four women who were charged, were shown to be unsustainable before trial.

8. It is against this background that my concerns arise. On what basis did the Police act in causing the closure of the Creche, with drastic dislocation for so many people, when such limited criminal action as followed their intervention failed totally? That is to state the matter in the most general of terms. It is better to isolate a number of specific issues which, to my mind, should be the subject of inquiry.

9. Specific Issues

In no particular order I suggest that the following matters, pertaining to the Police approach to this case, require detailed consideration and critical assessment:

- (i) When the CCC was approached on 2 September 1992, its officials were told that children at the Creche were "at risk" and that the centre should be closed that day. No details of the evidence available to substantiate that concern, were provided to the Council. The Police officers indicated that disclosure of any information would prejudice their on-going inquiry. Not surprisingly the CCC officials inferred that children then at the Creche had disclosed evidence of abuse against the current staff. That was not so. What the Police apparently had was some disclosure evidence, particularly from a child identified in the subsequent proceedings as "X", which suggested that members of the female staff had been involved in abusive conduct during Ellis' time. Child "X" had left the Creche in about February 1991. No children attending the Creche in September 1992 ever made disclosures of abuse so far as I know. All relevant disclosures related to 1991 at latest, but generally earlier than then. In short, I consider that the Council officials were significantly misled as to the nature of the evidence available to the Police, such as it was. It may be suggested that my point is of little consequence, since once the Police had evidence which implicated existing staff, children at the Creche were potentially at risk. Plainly that is an argument, but not I believe an answer. The misleading way in which the situation was presented to the Council at the very least seriously curtailed its ability to grapple with the problem, other than by total closure of the Creche. That factor had profound consequences for many innocent people.
- (ii) The second issue concerns the worth of the evidence which the Police had against the four women, and upon which they also acted in securing closure of the Creche. I shall include with this letter a copy of the evidence which was given by Mr G. H. Nation at the Employment Court hearing. That evidence is relevant to several of the concerns I am about to raise. Fundamentally, it illustrates the lack of substance to the evidence, which principally came from child "X", as any basis for charging the women, even less for the closure. Again, it may be countered that the Police had little or no choice in that once there was any evidence of child abuse, they were obliged to act. Also, it might be said that the relevant evidence was sufficient to secure a committal

of the four women for trial, which was vindication of their approach. I suggest there is little weight in either argument. In my experience, and in my view, the Police have a responsibility to examine whether evidence is credible before proceeding on the strength of it. That the evidence in this instance was of child abuse, should make no difference to the need for a rational judgment as to whether such evidence could possibly be acted upon. Indeed, given the stigma attaching to allegations of child abuse there is all the more call for the Police to bring judgment to bear. As to the fact that the four women were committed for trial, it is only necessary to read the judgment of Judge Anderson, to see the narrow basis upon which he approached the matter and effectively abstained from considering whether the evidence was credible. I urge the need for independent assessment of the Police methods applied in this case. Who looked at the evidence relied on to charge the women, and close the Creche, and determined that it was a fit basis for these actions? Did anyone independent of the day to day inquiry look at the evidence with an open mind and pose the question, is this evidence reliable and believable? Generally what checks and balances if any, were in place to ensure that there was a proper basis to proceed, before decisions were taken to charge four individuals and cause the closure of the Creche, which decisions have had profound consequences for so many innocent people?

- (iii) The evidence given by Mr Nation shows that soon after the closure he formed serious doubts concerning the Police approach to the matter. Refer his evidence (para.4) of writing to the Police on 14 September 1992 indicating that all of the Creche staff wanted the opportunity to answer allegations if allegations had been made against them. At that time all of the staff were in a singularly invidious situation in that the Creche had been closed in a precipitous fashion, with no explanation given, and suspicion fell upon all concerned. Then after the four women were charged, and soon after he had seen the nature of the evidence against them, Mr Nation wrote to the Crown Solicitor on 29 October 1992 voicing his fundamental concerns, and offering his clients for re-interview provided such interviews were conducted by someone who was senior and who had an open mind. Still nothing was done. Incidentally, Mr Nation is not only a practitioner of considerable relevant experience, he has as well a reputation for restraint and common sense. He confirmed in the Employment Court that he had not previously experienced a case where it was so obvious to him that something was seriously wrong and which prompted him to write letters of the kind referred to above. That he reacted in this way, calls in question how it was that someone within Police circles had not likewise looked at the evidence and appreciated that it was so deficient? The source of Mr Nation's concerns appears compellingly from paragraphs 2 to 35 of his evidence, in particular,

- (iv) I also noted from Mr Nation's evidence his comments concerning his efforts to ensure the appearance of the four women in the District Court in the late afternoon of 1 October as opposed to their being held in custody over night (para 10), the position adopted with regard to their release on bail (para 11) and the stance adopted with regard to defence access to the video tapes of the evidential interviews (para 34) which tapes were effectively the evidence in chief of the child complainants. Admittedly I do not know the full details relevant to these three issues. However, Mr Nation's evidence on them certainly caused me to question whether the normal balanced and sensible approach expected of the Police, was in evidence in this instance. Frankly, I was forced to think that the need for a just and even handed approach had been lost sight of. After all, the four women in question not only had clean records but were qualified child care workers and were well respected within the community before the trauma of these events beset them.
- (v) The most harrowing aspect of the Employment Court case was listening to the evidence of the applicants as to the effects on their lives, of the Creche closure. I am now speaking of not just the four women who were charged but the seven other child care workers as well. As they gave evidence before Chief Judge Goddard each emerged as an ordinary decent New Zealander. Moreover, as people who were genuinely committed workers in their chosen field of child care. The effects on their lives have been nothing short of disasterous. None have been successful in regaining employment in the child care field. To varying degrees, all have been subjected to taunts and abuse from sections of the public. Some have suffered depression and other health problems. A loss of self esteem and loss of confidence in their contacts with children, were commonplace symptoms. Unfortunately, no-one from the Police was involved in the Employment Court hearing and heard the detail of this evidence. My experience in listening to it, prompts me to ask what consideration, if any, was given by the Police to the likely consequences of their actions upon innocent people such as the staff who were not the subject of any allegations? If viewed realistically there had been credible evidence of child abuse against the four women, which obliged the Police to act as they did in September 1992, then perhaps the effects on other staff members could be viewed as tragic but unavoidable. Where however the basis for Police action has been totally discredited, as here, then it must be asked whether senior officers provided oversight and made proper assessment of the implications of the Police approach?
- (vi) Lastly, the grievance case served to provide some insight into the effects of Police actions upon Creche parents and their children. Evidence was given by a Mr Simon Fraser who also happens to be a Christchurch solicitor. He was the Chairman of the Management

Committee of the Creche at the relevant time. He had a daughter who attended the Creche. His evidence established that following the dismissal of Ellis a group of parents remained loyal to the Creche into 1992. These parents had made a careful assessment of the situation and obviously reached the judgment that their children were perfectly safe in the care of the then Creche staff. Mr Fraser, like Mr Nation, is a person of judgment, discretion, and integrity. He had no notion of the Police actions on 2 - 3 September until the closure was announced at the meeting at 5.30 pm. He was dumbfounded at what then occurred. Subsequently, with his wife, he personally filed proceedings in the District Court to challenge the cancellation of the licence. Those proceedings were discontinued following the charging of the four women. Regardless, the action of filing those proceedings gives some indication of the confidence which a person well placed to judge, and with every reason to do so, had in the operation of the Creche. He explained that had it been possible for a licence to be obtained from the Ministry of Education the parents would have wished the children to return to the care of the old staff of the Creche, albeit that some other entity might be the licence holder. His evidence also touched briefly upon the effects on children at the Creche, which flowed from its sudden closure. I am prompted to ask why the Police did not consult with a person like Mr Fraser, as a representative of the parents, before embarking upon a course of action directed at immediate closure? To suggest confidentiality precluded consultation is, I suggest, empty. It was a matter of public record that Ellis was facing multiple charges, that a major Police investigation was under way, and that former children of the Creche were the subject of on-going evidential interviews. In those circumstances, to have consulted with Mr Fraser for example, could have done no harm and might have bought some commonsense to the whole situation.

10. Conclusion

I intend to send a copy of this letter to the Minister of Education. The closure of the Creche was effected by cancellation of its licence. As explained earlier the Police initially persuaded officers of the Ministry, that licence suspension was required. I do not know how that was done. No-one from the Ministry was called to give evidence before the Employment Court as to the licence issues. Anyway it seems to me that the Ministry has an interest in this matter, to the extent that its actions were prompted by the way in which the Police went about their investigation.

11. I shall also send a copy of the letter to the Attorney General. That reflects the fact that he is apprised of the matter, as a result of correspondence from Mr Nation in which rather more wide-ranging concerns were raised.

