

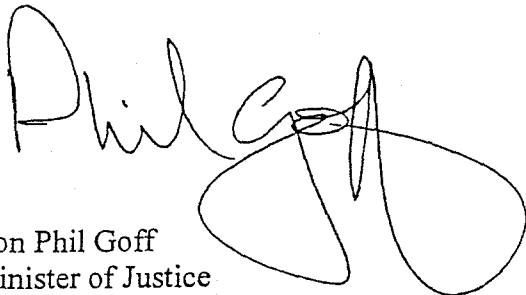
OFFICE OF THE MINISTER OF JUSTICE  
WELLINGTON

MEMORANDUM FOR CABINET POLICY COMMITTEE

PETER ELLIS: OPTIONS FOR FURTHER INQUIRY

As determined by Cabinet at its meeting of 6 March 2000, the matter of a further inquiry into the Ellis case has been referred to Cabinet Policy Committee for its meeting of 8 March 2000.

I attach for the Committee's information legal advice prepared for me by the Ministry of Justice on options for a further inquiry into Mr Ellis's case.

A handwritten signature in black ink, appearing to read "Phil Goff". The signature is stylized with large, sweeping loops and a prominent flourish at the end.

Hon Phil Goff  
Minister of Justice

OFFICE OF THE MINISTER OF JUSTICE  
WELLINGTON

MEMORANDUM FOR CABINET:

OPTIONS FOR FURTHER INQUIRY INTO THE ELLIS CASE

Options

There are two options:

*Option 1: An inquiry into reform of the law and administrative practice*

Mr Ellis's application for a pardon does not contain any factual material that was not considered by the Court of Appeal. Mr Ellis's application for a pardon could accordingly be rejected on the basis that there is no appropriate basis on which a pardon could be granted to Mr Ellis on the evidence presented.

An inquiry could then be held into the need for reform of the law and administrative practice surrounding the investigation and prosecution of mass allegation child sexual abuse. The case has raised issues about whether the law deals properly with child sexual abuse, particularly where mass allegations are involved; or

*Option 2: Establish an inquiry into certain unresolved aspects of the Ellis case as a basis for considering his further application for a pardon*

In their recent judgment on Mr Ellis's case, the Court of Appeal also commented that there were aspects of the case which it was unable to consider. The Court acknowledged in a number of places in its judgment that "there may well be matters worthy of and which could properly be addressed by a Commission of Inquiry".

A further inquiry could be conducted into the substantive issues left open by the Court of Appeal. The findings of such an inquiry could form the basis upon which to further consider Mr Ellis's application for a pardon.

**Option 2**

If option 2 were adopted the following issues arise:

**Scope of an inquiry**

In summary, there are four major factors that govern the scope of any further inquiry into Mr Ellis's case:

- The inquiry should not deal with matters that have been comprehensively considered and rejected by the Court of Appeal. Rather, the inquiry should only focus on matters which the Court indicated that it was unable to resolve;
- The inquiry should not deal into matters that have been comprehensively considered and rejected by the Executive, in the context of previous applications for exercise of the Royal prerogative of mercy;

- The inquiry should not attempt a factual reinvestigation of the events at the crèche. The original investigation at the Christchurch Civic Creche took place in 1991/1992. The case has since been subject to intensive public scrutiny, and the positions of those involved have become polarised and entrenched. In addition, it is unlikely that the children will be able to shed further light on the matter almost ten years later; and
- Any further inquiry should be structured in such a way as to minimise the harm to the children and their families.

The key issues left open by the Court of Appeal relate to the reliability of the childrens' evidence. There has been no consideration of the lessons learned in other jurisdictions, and how they might bear upon questions relating to the reliability of the childrens' evidence. In addition, there has not been a comprehensive analysis of the application of current expert understanding of the problems associated with obtaining childrens' evidence to this case.

### **Form of Inquiry**

On balance, a Ministerial inquiry would be the best method for investigating the matters outlined above. Such an inquiry would be less public and would result in a minimum of adverse impact on the crèche children and their families.

The main limitation of a Ministerial inquiry is that, unlike a Commission of Inquiry, the inquiry would lack the power to compel evidence. This is, however, unlikely to impose a problem in the context of this kind of inquiry, which will depend upon the assessment of expert opinion rather than the resolution of disputed facts.

### **Costs**

The cost of an inquiry will depend on decisions on the form of the inquiry and who is to conduct the inquiry, including whether there should be more than one person.

A Commission of Inquiry could take four or five months because of the large number of people who would be entitled to be heard. Having regard to the actual expenditure for the Incis Commission of Inquiry, this could mean costs up to two million dollars. This estimate does not take into account legal aid costs.

A Ministerial Inquiry is likely to be both faster and cheaper. An estimate is that it might take three months and involve costs of up to \$800,000, depending upon who is to conduct the inquiry, the rate of payment and the number of expert opinions to be sought.

A retired High Court Judge would be ideally suited to conduct the inquiry.



Hon Phil Goff  
Minister of Justice