



Mr. Vern Dalton  
Mr. John Avery  
Strategic Operations Review Branch  
Probity & Performance Management Division  
Department of Corrective Services  
VIA FACSIMILE: 9289-3943

Dear Sirs,

This letter constitutes our submission to the Review of the office of Inspector General of Corrective Services.

We are concerned that because of your respective histories, you might be seen as not being objective in your assessment of the Inspector General. For this reason, we ask you to withdraw from the review panel.

However, in the case that you remain, we think you need to be aware of sources of information which are essential to the review of the position of Inspector General. We think you should interview the people and review the following material:

- 1) Richard Harding, Inspector of Custodial Services, Western Australia. (08) 9212-6200
- 2) *Her Majesty's Inspectorate of Prisons: Scope and Focus.*  
(<http://www.scotland.gov.uk/cru/resfinds/ipsf-00.asp>)
- 3) Lindsay LeCompte, previous NSW Inspector General of Corrective Services.
- 4) Official Visitors.
- 5) Inmate Development Committees from 32 establishments.

Justice Action supports the presence of an independent oversight body with sufficient powers to provide protection against abuse of authority.

For a definition of independence, we quote *Her Majesty's Inspectorate of Prisons: Scope and Focus.*

The Irish Commission for Justice and Peace (in examining the feasibility of the establishment of an inspectorate for Ireland) set out what it saw as seven main requirements for an independent inspection process. In doing this, the Commission examined approaches to prison inspection in a range of jurisdictions (including the UK and other commonwealth countries, the US and Scandinavia) and, as such, is a comprehensive and well argued summary of existing practice worldwide. The main requirements set out by the Commission are helpful in setting a wider context for work in Scotland (summarised and re-worded):

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- Inspection needs to be enshrined in legislation, and be appropriate to the prison system being inspected;
- The inspectorate must enjoy a sufficient degree of independence to be proof against coercion, obstruction, intimidation or institutional bias;
- Resources must be adequate to ensure a sufficient frequency and breadth of inspection;
- Personnel must be of the highest integrity and competence;
- The inspectorate must be able to publish reports and findings quickly without restraint, and to secure their scrutiny by appropriate committees;
- The inspectorate must be free to encourage public and media discussion of its reports;
- The findings and recommendations must be able to secure an adequate response by government and prison authorities. (p. 3)

The Department of Corrective Services is unique in that it is the only Department in which the government has total control over its citizens. This requires extra care to ensure that the extraordinary powers are not abused. It is necessary for there to be correspondingly extraordinary accountability, safeguards and specialist knowledge. The trend in other states is to maintain an office of Inspector General.

The need for an Inspector General is attested to by the following quote from *Her Majesty's Inspectorate of Prisons: Scope and Focus*.

... there has been a considerable change in the overall prison climate since the establishment of the Inspectorate in 1980. At that time, prisoners had no means of redress for grievances, and there was virtually no external scrutiny of the prison system. The respondent noted that, with the advent of the complaints procedure and the Complaints Commission, and particularly with the installation of telephones in most halls (which are accessible, albeit with various restrictions, to virtually all prisoners), there is now little prospect that poor treatment could go undetected or poor conditions be ignored. Prisons are, in the view of this respondent, more open than ever before, and, therefore, the need for an inspectorate might be seen to be lessened. However, on a pragmatic level, as another interviewee noted, the dismantling of the Inspectorate would be likely to undermine public confidence in the system of inspection and in prisons more generally. (p. 31)

The Department claims that the Ombudsman is capable of an independent oversight role, however the prescribed and proscribed roles of the Ombudsman and the Inspector General are different enough to warrant the existence of both offices.

The Ombudsman can respond to individual complaints from prisoners, but does not have the power to conduct a broad investigation into prison policies and procedures. This is the role of the Inspector General. The Ombudsman is also proscribed from investigating complaints about politicians or ministers. Any truly independent oversight body must have the power to review the makers of policy regarding the agency being overseen.

Our own experience with the office of the Ombudsman has proved disappointing. We have dealt with the office since its inception in the 70's, up to the present day. In a

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recent letter from Ms. Jennifer Agius, Senior Investigation Officer, she states, "...the Ombudsman does not perform a role of reviewing individual cases where discretionary decisions are made by public authorities, such as Corrective Services."

In another case, we enquired about several prisoners at Junee Correctional Centre – the only private prison – we were informed that employees of Junee are not public servants and therefore do not have public accountability. We were told to write to the Ombudsman's office for advice on what levels of accountability we can expect from the private prison. Having done so on 26 February 2003, we have not yet received a response or acknowledgement of receipt of the letter.

The office of the Ombudsman withdrew from the Prisoner Legal Service Community Committee due to lack of interest and preparedness to oversight their work.

Contrary to this experience, there is evidence of the effectiveness of the office of the Inspector General. The office has expertise which is specific to the area of prison oversight. The twenty reports which have been delivered are valuable resources for change. None of these were presented to Parliament as of right, and have largely been ignored.

The former Inspector General himself noted,

I have recently been advised by reliable sources that a number of staff within the Department are actively working to hinder and thwart the implementation of any recommendation made by my Office... Their position regarding my office is reflective of the inwardly focused, elitist command-control style of management that currently exists within the Department.

Whether the Department's senior management realise it or not, this style of management is obsolete and is in direct opposition to the interests and expectations of the Department's staff and that of the Government and the community. (Quarterly Report, October 2001)

*Her Majesty's Inspectorate of Prisons: Scope and Focus* emphasises the importance of inspection reports in the Scottish system,

One senior member of staff within SPS suggested that inspection reports are taken "very seriously", and that it would be very rare for an inspection recommendation to be ignored, once it had been accepted by the Service. There is considerable evidence from both intermediate and subsequent full inspection reports to support this view. A very high proportion (it is difficult to be more precise due to different time scales involved) of recommendations were found subsequently by the Inspectorate to have been addressed. This was noted by several interviewees as a mark of success for the Inspectorate. (p. 48)

The NSW reports have not been acted upon because of a major problem of conflict of interest: the Inspector General reports to the Minister privately about problems in the Minister's responsibility. In order for the effective independent oversight of prison administration, the reports of the Inspector General need to be delivered to Parliament, not to the prison administration bureaucracy itself.

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Her Majesty's Inspectorate of Prisons: Scope and Focus suggests a procedure for presentation of reports to Parliament,

When completed, the reports are sent directly to Scottish Ministers and are not subject to negotiation with Governors or the Scottish Prison Service. In due course, a Ministerial response is normally published along with the report. The Chief Inspector has no executive powers but is able to draw Ministers' attention to any aspects of a penal establishment which call for comment, whilst the publicity which the Chief Inspector's reports attract can be an instrument for change. (p.77)

In conclusion, we would like to request more time to prepare a submission, and that submissions be open to, and actively sought from the public. Justice Action believes that this review process is an extremely significant social decision which effects the safety of the entire community, and that considering the hundreds of millions of dollars allocated to Corrective Services, should be conducted with more care and thoroughness than has yet been in evidence.

Sincerely,

Stacy Scheff  
24 April 2003

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