

# **IS MINISTERIAL RESPONSIBILITY THIS DEPRAVED?**

## **The Major A Warren Case**

The attached Ministerial Representation of 8 July 2005 was sent to the Minister for Defence, Senator Robert Hill. It reveals how pervasive the debauching of ministerial decision-making has become so as to threaten our civic society.

Responsible ministers have persistently acted to putrefy both our governing institutions and our rule of law. This is in total defiance of the Westminster doctrine that a Minister accepts full responsibility – including moral responsibility – for the administration of his/her department.

Systemic abuse of power by primary decision-makers has all but incapacitated the safeguard checks and balances that ought to have provided public trust and reliance in the Department of Defence, the Executive power of government and Parliament.

Evidence at hand indicates that Senator Hill, like his predecessors has the intention to cover-up, albeit by evasion of ministerial responsibility, the political abuses in this case.

Allan Warren  
3.8.05

8 July 2005

8 Yulong Street  
Bateau Bay  
NSW 2261

Senator R Hill  
Minister for Defence  
Parliament House  
CANBERRA  
ACT 2600

Dear Senator Hill,

MINISTERIAL REPRESENTATION TO SENATOR R HILL, MINISTER FOR  
DEFENCE

1. My case is well known to the Department of Defence and by some senior federal politicians. Fair resolution of it has been repeatedly denied to me by improper and outstandingly bad ministerial decision-making embracing both political parties over the last quarter of a century. Their conduct demonstrates the same failed standards that the June 2005 Senate Report into the Effectiveness of the Military Justice System is now willing to expose in military leadership.
2. The Senate Report vindicates my past ministerial representations and submissions to parliamentary inquiries into the Military Justice System (MJS). Since 1981 I have directed those representations to the responsible minister after been exposed to the full force of corruption of the MJS by senior military officers and Defence's legal officers. My representations gave direction and specific evidence to the minister as to how those officers were bringing about the now infamous collapse of the MJS.
3. Ministerial decisions on my case are a litany of failure in ministerial propriety, openness and responsibility on a grave case involving the deliberate and malicious

destruction of my military career, reputation and livelihood. The history of these decisions has defiled my "rights and freedoms" the Senate Report states is incumbent upon the Government to protect to the fullest extent. This public acknowledgment of the importance of these imperatives by Senators, unless acted upon, are degraded into weasel words or as Justice Kirby said, "lip service to a commitment to justice according to law."

4. The Senate Report has only in part exposed the extensive scale of maladministration in the MJS. The report fails on a most significant fact that would be well known within Defence, by the Minister and by the Senate. It fails to acknowledge how ministerially controlled investigations, such as in my case, were used and are still being used to deliberately uphold decisions that would otherwise be deemed improper or corrupt. In fact, the Senate Report has written ministerial responsibility out of the MJS, including any role of the minister in the review and appeal process i.e. the ministerial representation system. This is an extraordinary omission given the Senators' full cognition that it is only the minister who has the power and authority to demand full and open Departmental reporting to him on that system or any other matter. Neither the courts nor the parliament can do this. It is the power of ministerial responsibility that is the centre-piece of the military justice system which, in turn, is the keystone of Defence. This Senate Report in effect tells the public that the Minister for Defence has immunity from responsibility for the administration of his department and for the rule of law within it.

5. The chronology of my case shows that the formal structures of the Department of Defence, with its built-in hierarchical checks and balances, failed to restrain key officials from corrupting it from within. This makes these officers more powerful than the formal structures. Only corruption from the top down can achieve this. The safeguard of checks and balances blocks corruption from the bottom-up becoming systemic when there is integrity in military leadership and ministerial control over it. Ultimately, the very foundation of the formal structure of our governing institutions is ministerial ethics.

6. In my case the evidence of political dissipation of ministerial responsibility and decision-making reveals ministers are either acting in concert with the generals and their legal officers or simply duplicating their behaviour to putrefy both the institution and its rule of law. It is ministerial administration over the institution that is meant to protect its hierarchical structure and its rule of law. The minister cannot be absolved from that responsibility.

7. Abuse of power by Defence's legal officers has been so entrenched and protected that it has operated with unbridled arrogance for decades. It is pathological. Its damage to Defence and its people has been enormous. Yet, my ministerial representations allowed the Minister(s) for Defence to track this for all that time.

8. The Senate Report has now recommended that integral parts of the MJS be removed from Defence but has left the people responsible for its breakdown in place. The Senators' recommendation for structural change serves to cover-up ministerial involvement in the collapse of the military justice system and ignores the nexus between the responsible minister and the rule of law within Defence. It provides for the responsible minister(s) to cut and run. This upholds their culture of immunity to evade responsibility for their decision-making.

9. Furthermore, the Senate Report is cleverly written to add, by other means, to the avoidance of ministerial responsibility. It is peppered with words that invert the reality of the abuses of military justice investigations, such as in my case, into a "perception" in the mind of the victim. This has been done using word games. "Words" such as "may", "potential", "perception" and "perceived" have been used to protect the impropriety in investigations and decision-making. Thus, grievances against corrupted military justice investigations, including ministerially controlled ones, become "perceived grievances". This serves to take the blame for impropriety away from the minister and turns it into an illusion in the mind of the victim.

10. Also ardently pushing this theme is the Director-General of Defence Legal Service, Air Commodore Harvey. His dismissive evidence to the Senate inquiry is that impropriety by legal officers is "perception rather than reality" (Senate Report para. 4.64 p73). This echoes the position on the public record by then Chief of Air Force, Air Marshall E McCormack. His state of mind is that:

*"Any suggestion that breaches of military justice have been condoned by senior officers is wrong."*

11. The evidence in my representations to ministers over years undoes any notions of "perception." Those representations repeatedly exposed the generals and their legal officers as the driving force in the long term and systemic breaches in the military justice system. Their continuing dishonour and breach of trust is staggering. Ministerial decision-making on my case has been condoning this behaviour for years.

12. Part of Air Commodore Harvey's leadership responsibilities is control over the Director of Defence Administrative Law and the Director of Defence Discipline Law (both LTCOL equivalent). Had there been a MJS "unfixable breakdown" in only one section of Harvey's Directorate then the damage could have been contained to the responsible subordinate director. But the breakdown has been systemic across the entire MJS. The 2004/05 Senate MJS inquiry ought to have been a place and time for contrition by Air Commodore Harvey. But he showed he is of the same culture as Air Marshall McCormack. Furthermore, over the years, there have been media reports on Defence's legal process involving the squandering of millions of dollars in Defence contract and procurement. It is this culture from which COL Hevey, the Director of Military Prosecution, now wants statutory independence so as to uphold the rule of law within Defence free from the influence of the chain of command.

13. However there is no demonstration that this Senate inquiry was prepared to respond to my evidence submitted to it about COL Hevey's conduct as a legal corps major in 1979. He was the officer who gave legal opinion against my Redress of

Grievance so as to bury it. An Administrative Appeal Tribunal (AAT) decision in 1993 was critical of then Major Hevey's conduct in denying procedural fairness to me.

14. In part, it was my revulsion at Major Hevey's 1979 conduct that gave me the determination to pursue my case. It was the reason why I accessed the ministerial representation system so as to by-pass Defence's practise of corrupting their internal MJS review and appeal safeguards. Tragically, I encountered similar impropriety at the ministerial level of decision-making when I made representation to the Minister for Defence, R J Killen, in 1981. Then followed years of making further ministerial representations against blatant abuses in the process of ministerial decision-making only to be aggrieved by more intense ministerial impropriety as manifested in the then Governor-General Hayden's decision against me in 1990. That decision totally debased ministerial ethics. My submission dated 20 January 2004 to the Senate MJS Inquiry gave details of the current Governor- General MAJGEN Jeffery's involvement in Defence's 1990 crime during its investigation of my case for the then Governor-General B Hayden. MAJGEN Jeffery was the then Acting Chief of Army.

15. The Senate Report has identified "serious problems with the administrative component of the military justice system" (Senate Report page lv). This quote represents the most significant finding in the report because it acknowledges that the problems are so widespread and represent what was raised in the majority of submissions to the committee. There have been on-going extreme abuses of this component of the MJS in my case to date.

16. The Senate Report recommendation to establish an Australian Defence Force Administrative Review Board (ADFARB) is a matter of concern. The Senators made this recommendation in full knowledge of my submission evidence that showed how the AAT, a separate statutory body, can be as improper as Defence's Redress of Grievance system. In that submission I detailed how the AAT protected the Military Secretary, Brigadier Hooper's use of fabricated evidence to corruptly destroy my career. This evidence suggests that members of an independent statutory military appeals tribunal

such as an ADFARB will act corruptly when collegial networking has acted improperly.

17. In covering up for one of their own the AAT knew Brigadier Hooper had left a trail of wreckage of the military justice system. By establishing the ADFARB these rule of law matters will not improve because the Senators have merely recommended that the Brigadier Hoopers and the COL Heveys be given a new Office to play with. This ADFARB will inevitably be contaminated because the Senate Report failed to adequately address and assess the potency of this military culture and its network. It was responsible for both the internal and external improprieties and breakdowns in the military justice system. The MJS was structurally sound with its hierarchical checks and balances to safeguard it. These formal structures didn't break down. They were corrupted by the generals and their legal officers and the Senate Report leaves this culture substantially in place.

18. My case was covered up by Defence Minister, D.J. Killen fabricating a process of an alleged impartial and independent investigation by the Office of the Defence Force Ombudsman. The reality was that there was no independent Office of the DFO at that time. Killen knew this. In spite of being formally challenged he persisted in maintaining there was an independent Office of the DFO. In fact this alleged "independent investigation" was done by a senior Department of Defence public servant, Mr B. C. Campbell. This is the man Killen claimed was the independent Executive Officer of the Office of the DFO. Nine days after receiving Killen's directive to investigate my case, Mr Campbell reported back to him. In his report of 26.3.82 to Killen this pseudo DFO went so far as to applaud Army's corruption of the military justice system by stating:

*"Indeed, after a thorough examination of all files, I am impressed by the methodical administration by army in this Case (sic), and at all times according to the letter of the law."*

26.3.82

This was both a disgusting and blatant cover-up against my assertions then that there were significant breaches of army management practises to bring about the dishonourable termination of my military career, reputation and livelihood.

19. Mr Campbell's report to the Minister of 26.3.82 was little more than a plagiarism of the Director of Army Legal Services (DALs), Brigadier Ewing, and the Military Secretariat's cover-up investigations of Brigadier Hooper's abuse of power that had been used to falsely accuse me of unprofessionalism and incompetency. In 1980 Brigadier Hooper had acted in concert with other officers to fabricate joint evidence to bring their charges against me. The substance of Brigadier Hooper's impropriety was at issue in my representation to the Minister for Defence, R J Killen. Mr Campbell had simply remodeled the Army's cover-up investigation as his own work. A 1993 decision by the AAT described Mr Campbell's work as a 'cut and paste job' and the DALs document as "superficial". The AAT baldly stated that there was no Office of the DFO when Killen was the Minister for Defence.

20. LTCOL B J Salmon QC's 1995 report for the Minister for Defence is Defence's on-going attempt to cover-up systemic corruption in my case. That report vaporised any question of impropriety in the administration of the rule of law by avoiding an investigation of procedural fairness. Instead, Salmon QC produced a report on how Army unfairly treated me in a moral as opposed to a legal sense of fairness. Salmon QC stated that whilst no-one was to blame there was not one scintilla of evidence in Army's documents to support the charges used to bring about the dishonourable termination of my officer career appointment. The Salmon QC report was written to protect the network of perpetrators within Army. This is consistent with Defence's modus operandi to get the "right" QC to do a cover-up investigation. And this is the report that the Prime Minister and Ministers for Defence have used to shut down my case. The intent of Salmon QC's report is consistent with Air Commodore Harvey's agenda to convert reality into perception in the mind of the victim. The legal improprieties throughout my case remained covered-up to date. My case is one of the cases the Chief of Defence, LTGEN Cosgrove refused to comment on to the Senate inquiry.

21. LTGEN Cosgrove's failure in responsibility and leadership over the MJS was appalling. The purpose of the Senate inquiry was not to rediscover the universal purpose of a military justice system per se. It was to enquire into its effectiveness in the Australian Defence Force. LTGEN Cosgrove's resisted this by re-inventing the argument that a MJS is essential to commanders and that it must be left in place. Alarm bells have been ringing for years that the MJS was being subverted by systemic abuses from the top down. At the helm is a senior officer culture of impunity steeped in careerism, which lacks the moral courage to arrest it and comprehend the damage being done. LTGEN Cosgrove took leadership over it as Chief of Army then as Chief of Defence. And this culture has continued to thrive under ministerial administration of Defence and its MJS.

22. Year after year I detailed in my representations to the minister(s) how Defence's reporting of my case to him (them) were being corrupted. Those representations clearly exposed to the responsible minister how the MJS was being made unworkable by the generals. The generals repeatedly allowed Ministers for Defence to make decisions on my case knowing them to be dishonest. But successive Ministers up to and including the Prime Minister have entrenched an unconscionable ministerial decision-making process to maintain their culture of immunity from what was happening within Defence.

23. Parliament eventually had to respond to the public's knowledge of the scale of rot in the military justice system, particularly that caused by the failure of the generals and their legal officers. It took this Senate Inquiry 20 months to discover what the political parties already knew years ago. It is only to avoid responsibility for this scandal that the political parties have now adopted a bipartisan damnation of the unprofessional ethos within Defence leadership.

24. I am concerned that Senators have used this inquiry process to shut out the serious issues of ministerial responsibility raised in my submissions and ministerial representations. My concerns are heightened by the Senate Report page 82, para. 5.21 where Mr Richards, a Canberra lawyer with reputable knowledge of the MJS, has

signaled that the Chief of Defence Force (CDF) and the Minister for Defence, Senator Hill intend to oppose change within the Australian Defence Force. It reads:

*"The direction given by the CDF and the Minister with portfolio responsibility for these issues, supports a perception that the Government is seeking to preserve its interests and investment in its leaders. Moreover, it appears that the Government is not willing to consider implementing any mechanism to improve the transparency and public accountability of military justice procedures."*

25. There has been a blatant history in my case of the government refusing to investigate the generals. This cannot be seen as preserving the public's trust in the credibility of its military leaders particularly when the evidence is so serious and scandalous to be of national concern. Mr Richards's concerns are powerful and are strongly validated by the evidence of my treatment at the hand of responsible ministers and their generals 1981 to date.

26. A proper and fair investigation of my case has never been done in response to any of my ministerial representations 1981 to-date. Instead, over time the techniques and strategies used by Defence have become more sophisticated, albeit conspicuous, to avoid doing so. The effect of this is to maintain the chronic political cover-ups of abuses of power by primary decision-makers and their failure to properly administer their portfolio responsibilities.

27. Parliamentary inquiry reports make it clear they are not there to investigate or resolve individual cases. That responsibility always remains with the relevant Minister and his or her Department. I have consistently pursued resolution of my case to the appropriate minister and when the minister failed, on advice from the Governor-General's Office in 1984 as being fair and proper to do so, to the Prime Minister.

28. The Minister for Defence's 1990 investigation report directly for the then Governor-General Hayden stands as a disgusting example of the arrogance and contempt with which the Minister for Defence exercises his responsibility and accountability to the Crown. That report for the Governor-General is testimony to how far the responsible minister is prepared to go to cover-up for the general's abuse of power in the military justice system.

29. I would remind you that Defence will advise you to use the LTCOL Salmon QC report to shut down my case knowing that the report was deliberately done to cover-up the impropriety of those involved in bringing about my dishonourable termination from Army.

30. I am now concerned about Air Marshal A Houston's position as reported in the Sydney Morning Herald of 5.7.05. He was reported as saying that he "would not embarrass" former top officers in the Australian Defence Force who were alleged to have acted improperly in the MJS. Yet he claims to be totally committed to reforming the culture of military leadership to fix the military justice system. But his position puts his collegial loyalty and its cover-up culture above the rule of law. The major problem with the MJS is that it has been corrupted from the top down by the type of generals Houston now refuses to investigate. The alarm has to be that if he won't investigate the improprieties of former top officers so as not to embarrass them then he is certainly going to cover-up for current collegial networks who abuse the system. This vindicates Mr Richards's concerns in the Senate Report (see para. 24 above).

31. In the wake of the Senators' admission to the collapse of the military justice system, the public knows that evilness, bigotry and impropriety can permeate our governing institutions from the top down. This military justice system fell into chaos because of this. Defence cannot recover by itself in the absence of close ministerial administration and control. Only with ministerial strength and integrity can public trust in Defence be restored. It is now incumbent upon the responsible minister to do this.

32. I have endured substantive and multiple injustices as a result of the corruption of ministerial decision-making 1981 to date. I request that you do a proper, fair, and rigorous investigation into the circumstances of my forced resignation in disgrace and into the causes of improper ministerial decision-making that failed to redress the continuing harm and injury to me. This would demonstrate that the ministerial system of government has the intent and is capable of doing its duty. It would bring closure to the 25 years of systemic political bastardisation of my case and allow you to properly redress the harm and distress caused to my family and me.

33. Given the amoral history of corrupted ministerial decision-making on my case it is important that your decision should be made open, transparent and accountable. It would be evil and inhuman for any parliamentarian, from either political party to now embed the behaviour of the army generals and their senior legal officers by continuing improper ministerial decision-making on my case. Your ministerial ethics must be used to restore and preserve the purity and integrity of public office without which a successful democracy is impossible.

Yours sincerely,

Allan Warren