

**Senate Foreign Affairs, Defence and Trade
References Committee**

SUBMISSION COVER SHEET

Inquiry Title: Effectiveness of Australia's Military Justice System

Submission No: P59

Date Received: 15 June

Submitter: Mr George Heron

Organisation:

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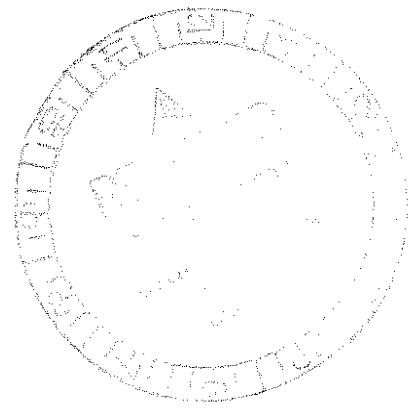
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Date Authorised: 21 June



The Secretary
Senate Foreign Affairs, Defence and Trade References Committee
Parliament House
CANBERRA ACT 2600

On Wednesday 9 June 2004, Mr Grant Clark gave oral evidence to the Committee with respect to the inquiry into the Effectiveness of Australia's Military Justice System. His evidence included references to the circumstances of my appointment to the Board of the inquiry into the death of Sapper Andrew Jon Morrison during Exercise Big Wall 2000, and to a specific occurrence during the conduct of that inquiry. I submit that these references were factually incorrect on a number of points, and reflect adversely on me. In accordance with principle 3 set out in the "Advice to Submitters" available through the inquiry web site, I hereby respond to those references.

I have taken each point raised by Mr Clark in the sequence set out in the Proof Committee Hansard. The matters referred to by Mr Clark were comprehensively addressed in public hearings during the Exercise Big Wall 2000 inquiry. I have provided references to relevant pages of the transcript of that inquiry.

In the context of his submission that there were appointments made to two boards of inquiry because the appointees were friends of or personally known to lawyers in the Defence Legal Service, Mr Clark stated that "There is a Mr Benson.....who appointed his next-door neighbour to sit on the board of the Big Wall board of inquiry..." This statement is incorrect on two points. Firstly, I have never been a neighbour of Mr Benson, though I have known him for some years. Secondly, I was appointed to the Board initially by the Deputy Chief of Army (DCA) and later by the Chief of Army (CA), not by Mr Benson. Mr Clark went on to imply that the basis of my appointment "...smacks of cronyism." Such a suggestion clearly has the potential to reflect adversely on me and, I submit, on all parties concerned with my appointment.

In order to place my appointment in what I believe to be a more reasonable context, I now set out my recollection of how it came about.

I do not recall when I was first asked by Mr Benson if I was interested in being a member of an Army Board of Inquiry, but it was probably some time in June 2002. I had at no time sought such an appointment, through communications with him or anyone else in Defence.

My understanding at the time of Mr Benson's contact was that there was a need to start the Big Wall 2000 inquiry as soon as possible, noting that already some eighteen months had gone by since the death of Sapper Morrison. I also understood that Army was having difficulty identifying suitable persons who were available to be appointed to the Board. I further understood that Mr Benson had asked me about my interest because he was aware of my military background and my international humanitarian aid work, considered me potentially suitable to be a Board member and thought that I might be available.

It was after considerable thought that I indicated I might be interested in the appointment. On the one hand, I was reluctant to return to Defence after some twelve years in very different environments. On the other hand, I concluded that the work associated with membership of the Board would be challenging and very interesting, and appropriate to my skills and experience. Having indicated an interest, my expectation was that this would be passed on to the Office of Chief of Army (OCA), and I would be contacted later if the Appointing Authority for the Board considered my experience suitable, and preferred over that of any other candidate who may have been under consideration.

On 17 July 2002, I received an email from the Deputy Director Coordination-Army (DDCORD-A) outlining the incident and the anticipated timescale for the inquiry. He asked if I would indicate acceptance of appointment to the Board. I gave this indication by email later that day. At some point around that time, I made it quite clear to DDCORD-A, during a telephone conversation, that I had no rock climbing experience whatsoever. As I expected, his response indicated that my appointment was based on my overall military experience.

On Friday 26 July 2002, one working day before the Board was to hold its first public hearing, I visited OCA to deal with contractual arrangements. During that visit, I first became aware that my appointment to the Board would be the subject of objections by Counsel Representing one or more potentially affected person(s) (PAP). This advice made me feel most uncomfortable, because I had no desire to take up a position that any stakeholder considered, on reasonable grounds, I was not qualified to hold. Because of this, and in the light of administrative difficulties relating to my recruitment process, I asked DDCORD-A to try to identify an Army officer who could take up the position instead of me, but held little hope that he could do this. As I recall, the third Board member had still not been named at this late stage. In the event, it was not possible to identify a replacement for me. Because all the arrangements were in place to commence the inquiry the following Monday, I felt committed, in the interests of avoiding a further delay, to participating as a Board member, despite my discomfort at the knowledge that such membership would be the subject of objections during a public hearing.

On the basis of the sequence described above, I submit there was nothing improper in the process leading to my appointment to the Big Wall 2000 Board of Inquiry, and certainly nothing that could possibly be described as cronyism. I further submit that my appointment did not, in any way, detract from the prospect that the Board would conduct its business with appropriate transparency, independence, fairness and integrity.

I would like at this point to make a related observation. My view is that the appropriateness of my appointment to the Board would be best judged against the actual and potential outcomes from that inquiry, and assessments, where possible and/or appropriate, of the extent of my contributions to those outcomes. As a starting point, I refer to what I can best describe as a statement of promulgation for the Executive Summary of the Report of the Big Wall 2000 Board of Inquiry. This states that, following comprehensive legal review and advice, the Chief of Army accepted the recommendations of the Board. It also states that these recommendations cover a wide

range of policy and administrative areas related to adventurous training activities in the Australian Army. It further states that the recommendations will help Defence to learn valuable lessons to ensure that immediate and lasting improvements are made to the conduct of similar adventurous training activities and to its response to critical incidents.

I now turn to the matter of Mr Clark's statement, set out in the Hansard, to the effect that he objected to my appointment, specifically because I was a civilian and did not know anything about big wall climbing. In responding on those objections, I will now describe how they were dealt with during the conduct of the inquiry.

The question of the appropriateness of my appointment to the Big Wall 2000 Board of Inquiry was raised on a number of occasions during public hearings. The first occasion was on Monday 29 July 2002, when Lieutenant Colonel (LTCOL) Clark, Counsel Representing a PAP, objected to my appointment on the specific grounds that I was a civilian and as such did not, as required by the Administrative Inquiries Manual, have specialist skills and experience relating to rock climbing. I believe, but can not confirm, that his objection was supported by other Counsel Representing PAPs.

Following his submission to the Board, I declined to disqualify myself because I considered the basis of the objections was not valid. As I pointed out at the hearing, I was appointed on the basis of my previous military experience and qualifications, not as a specialist civilian. This point is supported by the words used by OCA in a draft short form contract forwarded to me by DDCORD-A on 24 July 2002. The words were: "The primary basis for the selection of Mr George Heron is his availability and previous military experience to perform the task". During this hearing, I first became aware of the report of the Joint Standing Committee on Foreign Affairs Defence and Trade 1999 inquiry into military justice in the ADF. I noted that this report acknowledged the merit of drawing Board members from a group of retired senior officers. This gave more strength to my view that the grounds on which the objection was based were not valid. As indicated later in this response, I raised this point during a subsequent hearing.

Whilst the Board did not agree that I should disqualify myself, it did agree that the situation should be reviewed by the Appointing Authority. This review occurred and the decision was taken that I remain as a member of the Board. When the Board reconvened on 14 October 2002, the same objection was raised by LTCOL Clark. Again, the decision was taken by the Appointing Authority that I not be disqualified. I thought this matter was finally put to rest on 17 October 2002, when LTCOL Clark advised the Board that the person he represented accepted the reasons the Appointing Authority had given for the decision, and endorsed the view that I had significant experience in command and risk management situations. This advice is set out in the Big Wall Inquiry Transcript, page-106.

I do not recall when the question of a Board member being known to Mr Benson first arose. However, I do recall that Mr Benson's name was mentioned during a hearing in the context of him being a potential witness on the issue of the delay in commencing the inquiry. After review of the inquiry transcript, I now know the date of that hearing was 16

May 2003. On that occasion, I advised the President, the other Board member and Counsel Assisting, out of session, that I knew Mr Benson socially and this might, if he was called as a witness, be seen as constituting some conflict of interest. In the event, he was not called, and the matter was not pursued any further at that time.

On 23 June 2003, Ms Sue Pitman, who I believe is a Social Welfare Worker, gave evidence to the Board regarding a report she had compiled. In her evidence, she said that Mrs Kim Morrison, the widow of Sapper Andrew Jon Morrison, was under the impression that there was a connection between Mr Benson from the Defence Legal Service and the President and/or me. I was later asked by the President if I had anything to say on the matter. My response (Big Wall Inquiry Transcript, pages 7026-7027) started with a statement that I did know Mr Benson and described, in broad terms, the background to my appointment. I observed that I could see no reason why this connection should have been declared, as it constituted no conflict of interest or potential for outside influence. I took the opportunity, on this occasion of the appropriateness of my appointment being questioned yet again, to refer to page 61 of the report of the Joint Standing Committee on Foreign Affairs Defence and Trade 1999 inquiry into military justice in the ADF, which acknowledged the merit of drawing Board members from a group of retired senior officers.

I next became aware of a reference to a member of the Big Wall 2000 Board being personally known to a staff member of the Defence Legal Service when I read Mr Clark's submission to the current inquiry into the Effectiveness of Australia's Military Justice System. In the knowledge of that submission, specifically the comment in the section that addressed the appointment of Board members, I followed some of Mr Clark's oral evidence of 9 June 2004 on the internet. This response to comments included in that evidence also sufficiently addresses my concerns regarding his written submission.

This brings me to the last point in Mr Clark's oral evidence on which I wish to respond. He informed the Committee that I had come in one day during the inquiry and said "I went to Queanbeyan at the weekend and I bought a book on big wall climbing. Would anyone like to have a look at it". This advice is incorrect on the following points. Firstly, I did not buy a book in Queanbeyan. Secondly, it was not presented to the Board in the way described by Mr Clark. I believe that, apart from being inaccurate, Mr Clark's comments reflect adversely (and unfairly) on the professionalism of my approach to my responsibilities as a Board member. They serve to trivialize my preparation for hearings and to place in a negative context an event that should, in my view, be seen as an example of the transparency of the Board's proceedings. I take this opportunity to describe what actually occurred before and during the event which I believe to be the one referred to by Mr Clark.

During the two months or so between the hearings on 29-30 July 2002 and the commencement of the taking of evidence in mid October 2002, I studied, by way of preparation for the coming phase, a number of reports that had been tendered in July. At this stage, I had not had the benefit of any technical briefing on climbing matters. In order to improve my understanding of these reports, I purchased a book that explained most of

the climbing terminology, pieces of equipment and techniques referred to in the reports. At this time, the Board had not been reconvened, and the event described by Mr Clark could therefore not have occurred.

The study of the reports, together with the technical descriptions in the book I had purchased, was the start of a very steep learning curve with respect to knowledge of climbing terminology, equipment and techniques, a learning curve that all of us involved with the inquiry experienced as extensive oral and documentary evidence was placed before us. Much later in the inquiry, on 5 March 2003, after progressing a long way up this learning curve, I saw the need to seek comment from one witness regarding a statement in the book that had stuck in my mind. This was necessary because I needed to reconcile this statement with oral evidence he and other witnesses had given. In order to give full visibility to the source of the information against which I would formulate my question, I tendered that source. This part of the Board's proceedings is comprehensively covered by pages 3826 to 3827 of the Big Wall 2000 Inquiry Transcript.

I assume that the process of tendering the book was what gave rise to Mr Clark's comment on 9 June 2004. I can think of no other occurrence that could have done so.

That concludes my responses to the comments made by Mr Clark that reflect adversely on me. I submit these responses for consideration by the Committee.

I am a Canberra resident and would be readily available to give oral evidence on the issues covered in this response if the Committee so requires.

George Heron

12 June 2004